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# EVIDENCE OF ANXIETY: WOMEN'S AGENCY AND ENGAGEMENT LAW IN AMERICAN LITERATURE AND FILM, 1880-1935

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A Dissertation Submitted in Partial Fulfillment of the Requirements for the Doctor of Philosophy

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DISSERTATION APPROVAL

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During the end of the nineteenth century, breach of promise laws, which had protected unmarried but engaged women for centuries during their vulnerable engagement period, began to come under public scrutiny. The demonization of this legal protection coincided with increased legal agency in other areas of married life for women, but in most historical and critical discussions of this era, breach of promise, also nicknamed Heartbalm, has been overlooked, and the purpose of this dissertation is to examine canonical and non-canonical literature from this period and recontextualize these works in light of breach of promise's historical impact on courting and unmarried couples. Both men and women writers from the late nineteenth and early twentieth century picked up on the dramatic potential of these lawsuits at a time when the definition of marriage was transitioning from a relationship based on fixed economic gender roles established in the nineteenth century to a relationship of companionship and emotional connection. For many young people, the breach of promise suit insinuated that women sought marriage purely out of financial gain and stability, and as such, women were often branded gold diggers, or worse, for their emotional disconnect with their lovers.

By bringing together American literature, cultural and legal histories and headlines from *The New York Times*, this dissertation also informs readers about the serious social activism at work in what might otherwise appear to be insignificant stories about family conflicts over marriage and family finances. The works of William Dean Howells, Edith Wharton, Anita Loos,

Margaret Deland and others benefit from putting their texts alongside newspaper headlines and case studies from their era because breach of promise was often a covert force in those stories and only careful reading of the texts brings out the complexity of the characters' pre-marriage anxieties. In the films of the 1930s, however, heartbalm was demonized to the point where it now appeared ridiculous, and in 1935, the law was rescinded in a number of states across the country, and effectively dead. As a protection available for young women, however, its absence led to an increase in unmarried women without any legal tool available to hold an absconding lover responsible for his unfulfilled commitments. Though the study ends with this observation, the 1935 arguments mark a complete reversal from the ideology expressed by nineteenth century lawmakers who enforced heartbalm and defended its existence, and as such, this study traces that reversal, and the accompanying changes in social expectations for courting couples as enacted on the pages of American literature and in early American films.

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# CHAPTER 1

# INTRODUCTION

In 1917, a young actress named Honora May O'Brien successfully sued eighty-five year old John B. Manning for a quarter of a million dollars for breach of contract. It created a stir among newspaper editors and lawyers, not only because it was the largest amount ever awarded in such a case, but also because Honora admitted that "she did not love and never had loved the old man" ("Cold"). As she told the court, she had hoped that by marrying him, she would be provided with a healthy income. Instead, she didn't have to marry him to benefit from his wealth; she just had to prove to the court that they were engaged. As a result, Manning's lawyer, Martin W. Littleton, made this announcement to the public: "'My professional advice is that a man had better keep his eye open or he is apt to get hooked.'" The legal "hook" he was talking about was not created specifically by proposing to a woman, because as in the case of Manning, a man could be taken to court merely for the flirtations that led members of the public to assume that a man had the honorable intention of marrying the object of his desire. The engagement contract as such was not created by a direct proposal because as Littleton notes:

> "A promise to marry may be proved by direct or circumstantial evidence ... for instance, circumstances before the promise tending to show the relations of the parties and the feeling between them at the time of the alleged promise, the nature and extent of the acquaintance of the parties ... the understanding of friends and relations ... there are a good many sources from which evidence may be extracted to build up proof of a deliberate intention to marry. And when a convincing quantity of this evidence is

> presented to the jury, damages are almost invariably awarded the complaining woman." ("Cold")

The law in question, an engagement breach of contract or breach of promise, also called heartbalm law, was eventually repealed in many eastern states in 1935, and today has been nearly forgotten, but as the above passage shows, early twentieth century men were reminded, from many quarters, about the protections provided to unmarried women by the law, even though the need for protection was coming into question. Not only were men held responsible for breaking a woman's heart by abandoning her, but they were also held responsible for misleading a woman even before making a proposal.

Littleton's statement does much to illuminate the views of those working in the legal field at the time, giving rationales for why the law exists, and problems with the law as seen in the courtroom. He focuses on the need for change because, "the element of damage, in the event of breach, is just as barren of sentiment as is the contract. It is simply what the woman lost in money value ... and nothing more." Marriage, he argues, is about emotion and love, or at least it should be, and monetary lawsuits cannot do anything to assuage the pain of either a man or a woman who fails to marry the person they love. As Littleton goes on to say, "the law is going to denude the contract of marriage of all sacredness," if it is not changed. Ironically, however, the "emotion and love" argument was quite new, and it can be argued that the only sacredness of the institution was its religious background (which was not in jeopardy), not its emotional place in American society up to that point in time. Littleton's comments are forward-thinking in their conclusions, but in 1917, there was still a loud public debate regarding the purpose of marriage. Just ten years earlier, stories continued to depict couples negotiating a marriage like a business deal, and ten years later, that would cause audiences in movie theaters to howl with laughter.

American society was still making the shift in 1917, and Manning's comments cannot quite be taken at face value. Some historians claim that there were no important breach of promise cases after 1900, but the Manning case proves that argument wrong. The study of literature and film helps make the case for heartbalm's continued presence and significance whereas a study of law alone might, and has, disagreed, claiming that heartbalm suits were already anomalies of little importance. Heartbalm was still in effect, but it was certainly on the way out. Even when the law was abolished in 1935, there were still many who defended its use, and even today, some who call for its return.

The history of the decline of heartbalm, however, is connected to other social changes happening in America, and its study should not be limited to a series of court cases which did or did not result in the settlement of money for a jilted lover. Women had earned the right to vote, the ability to prevent pregnancy, control over their finances, entry into the workplace, and access to education. In many ways, they had earned agency, and entered the public sphere, but for some, they had too much agency. As Nancy Cott puts it, even the Supreme Court was a "bastion of conservatism, even of reaction…against the tide of women's sexual self-assertions. The court did so by reaffirming the very core of marital unity, the husband's private control of his wife's body" (160). Women were also readers of novels and newspapers, and attended the theater and later, the cinema. As such, they were privy to the stories in literature and film of this period which give great insight into the struggles faced by engaged couples as they came to grips with the agency of courting women, and discussions about what they, and what the men they married, wanted out of marriage. Was it, as Honora saw it, a relationship of ease for a woman whose goal was merely to catch a wealthy husband, or was it something more? This confusion about the purpose of marriage provided many plots for writers of this period, and through a study of these texts and

stories, it is possible to understand that heartbalm was a very real and serious problem for society at that time and related to questions of agency for women. Though heartbalm had given women agency for centuries, a movement was on to contain this form of agency by demonizing those who used it, and later by mocking these new "gold diggers" and the men they ensnared with their flirtatious attentions.

**Engagement is a Special Relationship**

To be engaged places couples in a unique relationship that is not as clearly delimited as the relationships coming before or after, in which they functioned as either courting couples or married couples. The complexity of defining engagement and its role in advancing a couple to marriage is best understood by looking at engagement as a social practice under discussion not only in the professional realm of the courtroom and in lawyers' offices but by examining literature in which fictional characters worked through disputes, misunderstandings, and resolutions of various kinds. Less helpful are historians of marriage and courtship, like Ellen Rothman (*Hands and Hearts* 1984), Stephanie Coontz (*Marriage: A History* 2005) and Karen Lystra (*Searching the Heart* 1989), who provide insight into the concerns of couples, but only occasionally speak of engagement. Rothman, for instance, looks at courtship practices as they changed through the nineteenth century in America. Her study of letters, diaries and memoirs helps her create a history of parental influence and courtship practices—including intimacy—that led up to a marriage proposal, in order to define something like a common or normal set of practices in nineteenth century America. Coontz and Lystra both examine how the idea of marriage changed in the nineteenth century, and how the emotion of love became an important concern for couples and for society (leading up to the beliefs of Littleton and others), whereas marriage had previously been a traditional way of building social networks or securing financial

dynasties. There has yet to be, however, an American history that focuses specifically on engagement, and none of these historians gives much discussion to the effect of heartbalm laws on courtship or marriage. Breach of promise itself has a long history, and is not peculiar to America, though it manifests itself in unique ways in the U. S. A.

American historians who specialize in legal issues provide their own insights into marriage practices, including engagement, along with information about state definitions and interventions. Like the *New York Times* editorial about the Manning and O'Brien suit, however, these historians focus on legal arguments and debates about the law. Important works from this group include Nancy Cott's *Public Vows* (2000), Rebecca Tushnet's "Rules of Engagement" (1998) and Michael Grossberg's *Governing the Hearth* (1985). While Nancy Cott's book does not discuss heartbalm laws directly, her book makes it evident that the courts, at different points in history, stepped forward to legislate limits and controls over marriage, while at other times argued for government to stand back and let community standards dictate marriage practices. Grossberg's study, on the other hand, has much to say about heartbalm in the nineteenth century as part of his study of law and the family. In his conclusion to a chapter entitled "Broken Promises," he explains that heartbalm's "legal and social significance had fallen markedly" (63) by 1900 and he quickly looks ahead to 1935, when the law was officially struck from the books in many of the most populated states, effectively killing it nationwide. Grossberg's book deals only with the nineteenth-century, and perhaps he did not consider actions like the O'Brien-Manning suit to be sufficiently mainstream. This dissertation refutes his claim that heartbalm suits had lost significance by 1900. Unfortunately, Tushnet's article discussing heartbalm's early century effects depends heavily on Grossberg's conclusion, which is to say, after quoting Grossberg as a source, she begins her study of twentieth century engagement law with the

debates in the 1930s. She moves on to talk about more recent developments without opening a new investigation of the period from 1900 to 1930. But this dissertation will show that heartbalm was well-known during this period and had not lost any of its significance—in fact, it had exploded into a social crisis for both men and women, resonating in public debate, fiction and film.

Engagement, of course, has a long history that considerably predates the American heartbalm laws. That long history reveals that it was a legally protected relationship, based on eighteenth century British law meant to regulate the marriage process and eliminate secret marriages, and to give parents some control over their children's marital decisions. Earlier, starting in at least the twelfth century, Church law in England continued to have a simple policy "until the middle of the eighteenth century. 'There was no absolute requirement of parental consent or of a certain age'" (MacFarlance 125). In Europe, Catholic priests working with, or sometimes against, the rulers of Europe, had legal control over the children of European nobles who could be betrothed in relationships even before they reached a marriageable age. Historians, like John Witte, Jr., have given ample information about the origins of breach of promise in England. In his book, *From Sacrament to Contract*, for instance, Witte goes back as far as the Protestant movement and the writing of Martin Luther who argued, to prevent seduction, that engagements had to be made publicly and approved by the parents, and that a betrothal and a marriage were effectively the same thing, separated only by the sexual union of the couple (58-9). Under the Church of England, however, marriage was a private matter, unregulated by the state or by the church. This made it difficult for a woman or her family to take an errant husband to court and led to pregnant women and their parents fighting these men with varying items of proof that a marriage had taken place. The Marriage Act of 1753, credited to Lord Hardwicke,

abolished clandestine (secret) marriages and forced men to get a state license and go through a process of public announcements before a marriage (or an engagement) would be legally recognized.

The literature of this period also attacked secret marriages as dishonest and dangerous, with novels like Oliver Goldsmith's *The Vicar of Wakefield* (1766) touting the downfall of women who elope. In the nineteenth century, Jane Austen, in *Sense and Sensibility* (1811), among others, and William Makepeace Thackeray in *Vanity Fair* (1848), continued to depict dangerous elopements, dictatorial parental roles and problematic engagements. Anthony Trollope's *Can You Forgive Her?* (1865) and Charles Dickens' *Great Expectations* (1861) also explore the limits of female empowerment in the engaged relationship, showing, for instance, the sad fate of the jilted Miss Havisham in the latter, and the negotiating skills of the fickle-minded Alice Vavasor in the former. Late in the century, George Gissing in *Odd Women* and Oscar Wilde in *The Picture of Dorian Gray* offered up their own alternatives to responsibilities and liabilities of engagement for British couples, but the history of breach of promise in England is slightly different than its American counterpart. As Saskia Lettmaier notes in her book *Broken Engagements*, British women faced even tougher court battles with breach of promise than their American counterparts because of the strict requirements for documentation, including a breakdown of the costs to be recovered. As Lettmaier comments:

> The ideal woman was too blushingly delicate to require her lover to commit his offer to paper, pronounce it in front of witnesses, or couch it in any set phrase … too great a formality in the evidence adduced in support of the man's promise might be regarded as an indication that the plaintiff was possessed of shrewd business sense or, worse still, a masculine intellect. This would tell against her. (65)

Furthermore, an 1869 law created tight restrictions and established fixed settlements so that a woman had to pass through excruciating questions about her character, and even if she did win, she "gained next to nothing" for her troubles (Lettmaier 134).

In America, however, courts were much more liberal in their application of the law, and from state to state, the evidence required to accept and settle a case of breach of promise varied greatly. The lack of a standard added to the anxiety felt by young people, and when parents also read about cases, such as the very late decision (1902) by the Indiana Supreme court that a man's "death constituted a breach of promise for which the estate might be properly sued" ("Breach"), they were surely alarmed at the precedent. Michael Grossberg lists a number of exceptions which men sought, and were denied in seeking a release from their commitment, including the discovery that a woman was regularly drunk, had ailing health, hadn't disclosed a previous marriage and divorce or pregnancy. The evidence of their engagement also varied greatly, and included gifts, love letters, and lavish attention—even doting on a woman could place a man in legal trouble. Sexual activity between couples was acceptable during a publicly announced engagement in some communities, but not in others. In New York, for instance, the state legislature passed a law in 1848 dealing specifically with women who could prove that they were engaged before the time they became pregnant, but it was one of the only states that protected pregnant women from absconding fiancés. As historian Stephen Robertson notes, lawmakers were primarily concerned with the working class, not the middle or upper class:

> Other Americans, particularly workers living in urban settings, continued to go to the courts when informal efforts failed to resolve such crises and to initiate prosecutions in order to put pressure on men to agree to private settlements involving compensation or marriage. (342)

As noted in many of the studies, middle class women, in particular, were urged to avoid taking a man to court, and often were treated like children in need of protection, which came in the form of fathers and brothers, who better understood the law, deciding when and where to pursue legal action on a woman's behalf.

Seduction, however, reinforced the gender codes of the nineteenth century which imputed that women were passive, and men aggressive in all things sexual, and after 1900, both women and men began to argue against the logic of the seduction case. As Robertson notes, seduction prosecution transformed into rape charges, or sexual assault, but abandonment of a pregnant woman ceased being an issue at about the same time that heartbalm laws were done away with in 1935. Robertson explains it thus: "The almost complete disappearance of seduction prosecutions after the mid-1930s suggests that new understandings of gender, sexuality, and age transformed understandings of sexual violence in the second half of the twentieth century" (336). The fact that women were no longer considered passive objects coincided with a number of legal changes that empowered women around the turn of the century, including the federal law granting women the right to keep separate property and income in 1892, and the right for a woman to charge her husband with abuse, a right which varied from state to state as outlined in David Peterson del Mar's book *What Trouble I Have Seen*. A woman could get a divorce based on violent behavior, but even the Supreme Court believed that a married couple was a tightly bound unit, and often overturned community verdicts against men. Nancy Cott summarizes a 1911 Supreme Court verdict which stated: "Allowing interspousal tort suits would encourage wives and husbands to bring marital spats into the public spotlight, unnecessarily and inappropriately" (162).

Even while heartbalm continued in the law books of America, many judges began to refuse to hear breach of promise cases, including the famous Ben Lindsay, a crusader for children's rights and companionate marriage. These judges recognized that the new gender dynamics that had emerged in the early twentieth century meant that both women and men wanted to "try out" marriage before making a legal commitment, and that marriage had come to be considered as not primarily, but only secondarily an economic relationship. Newly empowered women could also turn the tables on men, and while men tried to use their money to seduce women, women could also use their bodies to attract wealthy men. Within about twenty years, from 1900 to the early 1920s, public sentiment completely changed about the contractual nature of marriage, and with it, the contractual obligation of engaged couples to stay together. The term gold digger was born, and suddenly women like Honora May O'Brien were demonized for the same values that had been openly espoused a generation earlier—she didn't love Mr. Manning. She wanted to marry a man who would give her financial security.

It is difficult to say if writers and filmmakers pushed the legal agenda of change, but both men and women began to think of heartbalm in terms of negative agency, and it is very likely that women in particular were influenced by books, newspapers and films. When women read about Lily Bart, for instance, they might not have seen her as dangerous to men, but instead as a woman like them, who had grown up reading and learning that a good marriage was a marriage of convenience, in which a woman used her good looks to attract a man with a fat wallet. The late nineteenth century, however, had empowered her to the point where men were now afraid of such a woman, afraid of her agency in the form of heartbalm. If he opened his heart, he might lose his wallet and still not get the girl. Women, and women writers, realized that this was

causing a problem, as it does with Lily Bart, and many of them began to participate in the demonization and mockery of those who used heartbalm and its agency, even in legitimate cases.

**The Heartbalm Trajectory in Literature and Film**

Against this legal backdrop of shifting definitions and regional variation, the study of literature presents a wide range of responses that move in relation to changing times. In the novels of early America, it was better for a woman to kill herself than to live with the public humiliation of putting her "jilt" out there for all to see. Elopement was also a dangerous game for women, and early representations of women in American literature who elope show them suffering as much as their British counterparts. *The Coquette*, by Hannah Webster Foster (1797), is an early example of an American flirt who is seduced by a cunning rake, becomes pregnant, and then dies from humiliation. The best-selling novel in America before *Uncle Tom's Cabin*, *Quaker City*, by George Lippard (1844), also makes use of the British tropes of a bad elopement, with a few American twists. The rake, the false marriage ceremony, the fall into prostitution and the elusive power of the law, all appear with commentary in this popular American novel. A third writer from the Antebellum period is E. D. E. N. Southworth (though she continued to write in the second half of the nineteenth century). Her popular novels about women in distress frequently feature predatory men and women, and engagement was often a prominent relationship in novels like *The Broken Engagement* (1862) and *The Bridal Eve* (1864). Louis May Alcott's novels and short stories also feature problem engagements, and her tropes are often steeped in the British literary tradition. Southworth and Alcott, however, probably best represent the sentimental women novelists that William Dean Howells and his contemporaries raged against, and his attempt to make novels more "realistic" ushered in an era in which the marriage novel dealt with fears of elopement and breach of promise with hushed silence.

Howells and his late nineteenth century contemporaries sought to tone down the sentimentality and emotional excess of popular fiction, and their novels focus on parlor room dialogues, on family discussions over dinner tables about the meaning of marriage. These conversations reflected the shift in public attention from marriage as an economic arrangement to marriage as a friendly, compassionate relationship. Yet even as these fictional families enjoyed discussions that downplayed emotional breakdowns and vulgar displays of affection, newspapers of the times narrated the worst of scenarios for engaged couples, unafraid of scandal and sensationalism. Michael Grossberg, who documents many of the changes in breach of promise law during this period, notes this about the wide variety of stories surrounding heartbalm: "The late nineteenth-century appellate record indicates a much greater diversity … peopled with pregnant servants, anguished farm girls, and duped daughters" taking men to court (55). Newspapers focused on high profile cases, in which wealthy, powerful men like John Manning were sued, rightly or wrongly, by the women they encountered in a world where women were increasingly available.

This study opens with the novels of William Dean Howells written during the 1880s, just as the battle over what constituted an engagement was heating up. Even without speaking directly about heartbalm law, his novels often reveal an acute awareness of its effect on society, and readers can use his representations to see problems with the public debate and its dialectical approach to engagement and its said purposes and roles. Howells wrote many novels over his forty plus year career, but in the 1880s, he wrote three novels which represent problems with engagements: *A Modern Instance* (1882), *The Rise of Silas Lapham* (1885) and *The Minister's Charge* (1886). Howells was a social critic, and an admirer of Honore de Balzac, Charles Dickens and George Eliot, who were known for their detailed and accurate depictions of social

life, as well as their critical view of the legal system and certain social customs. His novels have long been applauded for their accurate social details, but he was influential in other ways as well. As a magazine editor, he was also responsible for the anthology *Quaint Courtships*, published in 1900, which he culled from his own magazines and presented as a collection representing the "zigzags" of modern engagement (vi). Despite his designation of quaintness, this collection does include serious questions about the legal, contractual status of engagement. The representations are still set in the nineteenth century, but as with many texts of the 1890s, these stories are not afraid to face high drama and the occasional breach of promise threat, even if many of the stories end with "a fortunate close" (vi). His role as editor also allowed him to surround himself with other writers, and some of them have also made their way into this study because of their various representations of engaged couples.

Two of these other writers are female, and all are non-canonical. Mary E. Wilkins Freeman has had a considerable literary rebirth in the past thirty years, but Margaret Deland, another prolific woman writer from this period, has been largely overlooked. She was a popular magazine writer, as were Herman Whitaker and Robert Herrick, but these writers have since faded in the esteem of literary critics. Though Deland is a complex, modern writer, who with luck will enjoy a full revival, Herrick and Whitaker are less likely to rise again in the ranks of American literature. Whitaker's stories and novels were always part of the developing tradition of formulaic Westerns, but Herrick sought a place next to William Dean Howells in the world of elite literature with his tragic view of modernity, called by some Naturalist and by others Romantic. A consideration of all of these writers, however, helps to flesh out the various attitudes toward empowered women at the end of the nineteenth and beginning of the twentieth

century. The wide range of writers helps present a more informed view of contractual engagement, because, as Stephen Greenblatt and Giles Gunn have pointed out:

> [L]iterature is not something given once and for all but something constructed and reconstructed, the product of shifting conceptual entitlements and limits … Any study of literature, then, is necessarily bound up implicitly or explicitly with an interrogation of imaginary boundaries. (5)

Greenblatt and Gunn's belief is also based on the argument used by many women critics who note that the discussions about realism in American literature have historically excluded women's voices, and particularly those women who were, at some point, considered "local color" writers, a term which has been used for both Deland and Freeman. Joyce W. Warren notes that this exclusion was based on gender bias. The inclusion of these women writers is one way to challenge the "hegemonic definitions of gender, class, and racial identities" delimited by early critics in their definition of realism, and realistic novels worthy of study (18).

The idea that any one writer or form of writing is more "realistic" than others is problematic, but there are certain qualities which place these writers into the category of realism, for convenience, in this study. These texts depict their contemporary surroundings, with city names and historical markers that were (and continue to be) recognized by readers. The writers focus on social customs and character types that place them historically in that era. These writers also fit certain definitions established by Amy Kaplan in her book *The Social Construction of American Realism*:

> To call oneself a realist means to make a claim not only for the cognitive value of fiction but for one's own cultural authority both to possess and to dispense access to the real. Indeed realists implicitly upheld the contradictory claim that they had the expertise to

> represent the commonplace and the ordinary, at a time when such knowledge no longer seemed available to common sense. (13)

Kaplan also argues that the realists positioned themselves in opposition to other forms of reality, mainly the world depicted in journalism, and as noted above, these writers, in writing about heartbalm, also wanted to explore something other than the "typical" newspaper stories that were circulating about engaged couples ending up in court, airing their private grievances. Nancy Bentley puts Howells' feelings about journalism this way: "The problem with this brand of journalism [sensationalism] was not its popularity but rather the source of that popularity in the frisson that comes from gratuitous public exposure" (84).

For many of these writers, their expert handling of characters in negotiating breach of promise situations only comes to light when the modern reader is also informed about heartbalm and its consequences. Their lack of overt attention to the term "breach of promise" or "heartbalm" within the stories and novels does not preclude its subtle presence within the texts, which is why this study includes those other newspaper stories which contextualize the law's operation in creating anxiety on couples. The same is true of Edith Wharton's handling of breach of promise, but instead of negotiating her characters past the problem, many of Wharton's characters have problem engagements, or no engagements at all. She had many of the hallmarks of Howells' genteel approach to writing, but her focus on marital tragedy, instead of sensible compromise, marks a decided change in looking at heartbalm. She was part of a group of writers at the turn of the century interested in the "train wrecks" of society, a label given by Bentley in her book *Frantic Panoramas*:

> This paradox—that to rescue high culture from conspicuousness, culture must make itself conspicuous—locates the generative rivalry that accounts for much of the controlling

> energy and creativity of the literature in this period. With varying degrees of perception, realist works recognize that mass culture was remaking the order of the real. Under the pressure of the rivalry, realist fiction begins to resemble the world of spectacle it opposes. (81)

The popularity of newspapers made it clear: People had become fascinated with sensational headlines. Modernity embraced speed, crash and scandal. Many of Wharton's contemporaries were chided for going "too far" with their depictions of modern life—Frank Norris' *McTeague*, for instance, or Theodore Dreiser's *Sister Carrie*. Both of those novels were admonished by critics for being vulgar or sensational, but such novels by Edith Wharton as *The Touchstone, The House of Mirth, Summer* and *The Glimpses of the Moon* attained their success by dealing with controversial matters.

Edith Wharton spent much of her later life in Europe, in the company of writers like Henry James, George Moore and Andre Gide, but her early novels are set in the environment she knew from her birth, New York, Boston and the surrounding countryside. Her first novel, *The Touchstone*, is set in New England and deals with the pressures on an engaged man to make good on his promise of marriage. His commitment forces him into a moral dilemma and the novel explores the consequences of his decision. Other novels also represent the problems of engagement in a unique way, from Lily Bart's dilemma in *The House of Mirth*, to *Summer*, in which a woman, Charity Royall, is in a complicated relationship with two men. Published in 1917, it comes at the time when Wharton was loosening her ties with America. *Summer* puts a decidedly negative light on heartbalm laws and the contractual nature of engagement, and makes engagement the primary relationship in the novel. *The Glimpses of the Moon* is a late novel with an international cast of characters, but with an American couple at its center. Published in 1922,

*Glimpses* deals with another ramification of the heartbalm crisis—the gold digger stereotype, directly related to predatory women and harking back to her Lily Bart character from 1905. Wharton's later novels are no longer concerned with engaged or courting couples, but her commentary on marriage and its function coincides with the discussions in the 1920s about trial marriage and companionship. From crisis in her early novels, her later novels offer resolution and possibility, and perhaps explain why her later novels were less critically successful, whereas her earlier, tragic novels have been lauded since their publication as masterpieces of American literature.

Wharton's novels have garnered much critical commentary and debate. While engagement as a particular relationship has not been the focus of these studies, her commentary on marriage and the conflict of nineteenth and twentieth century definitions of a good marriage have helped literary critics and historians map out the complex problems facing early twentieth century couples. Critical texts that have informed this study include *Modern Love* by David R. Shumway, which examines the role of novels in redefining love's relationship to marriage as the divorce rates skyrocketed. Davida Pines' book *The Marriage Paradox* argues that novelists felt the need to protect and encourage marriage, even as the country was going through a marriage crisis, and she looks at many of the same authors that I have for this dissertation, but for her purpose of seeing how novels defend and encourage marriage, despite the problems. *Love American Style* also studies many of the authors and texts in this dissertation, but Kimberly A. Freeman's focus is divorce and its representation. The topic of marriage and its shifting emphasis, from a financial contract to a companionate relationship, has been well-documented, as have the period labels New Woman, flapper and femme fatale, but these terms are not key to this dissertation, and are only used when they appear in the works of other critics.

The last of Wharton's novels to be included in this study, *The Glimpses of the Moon*, was published in 1922, a key transition year in this study. Also released that year was Mack Sennett's film *Heart Balm*, his first serious attempt at a social drama, and like *Glimpses*, it had mixed reviews. Sennett's film was a serious attempt to tell the story of breach of promise as a serious danger to society, exactly as it appeared so often in the newspapers. His audience, it is reported, laughed at scenes which Sennett staged as serious social drama, and though he tried to rework the film, releasing it again in 1923 under the title *Crossroads of New York*, this time as a comedy, it still couldn't satisfy viewers, who were likely tired of hearing about the threat of social climbing women to naïve, young rich men. With the advent of such scandalous public figures as the oft-divorced Peggy Hopkins Joyce, the gold digger had become a well-identified figure. The creation of this figure worked to contain heartbalm as it was increasingly considered a negative form of women's agency. Not only did women want to avoid the public interrogation of their reputation by filing a breach of promise case, there was an increasingly negative stereotype forming in the press, and in films and books, about "that kind" of woman, the kind who went after a man for his money. Wharton's heroine in *Glimpses* struggles with distancing herself from "that kind" of woman, and as audiences were being inundated with images of these women, they must have laughed at the hero of Sennett's film when he was foolish enough not to be able to spot that kind of woman with her eye on his wallet. Even if he was naïve, it seemed that everyone was aware of these women in society, and throughout the films of the 1920s and 30s, a new stereotype prevailed of "old-fashioned" women (in sequined dresses and short, blond hairstyles) , almost always in a comic role in combination with a mesmerized man or two, anxiously spending money on her and trying to secure her favor.

The last novel in this study, *Gentlemen Prefer Blondes* (1925), by Anita Loos, was the first comic hit based on an apparently gold digging heroine. Loos had been writing Hollywood scripts since she was a high school student before the Great War, and her novel asserts that a woman does not have to be very smart to understand how heartbalm works. Lorelei Lee lays out in very precise terms the way to trap a man in heartbalm, but in the end, she, like so many other heroines of her era, cannot be the predator she sets out to be, and with a softened heart, she marries the man she set out to blackmail. The play "Within the Law," first performed in 1910, had come to the same conclusion, but without any comedy. The popularity of this play led it to be published as a novel, and to come out on film, not once, but three times. The last version, starring Joan Crawford, was released in 1931, and foregrounds not only the change of heart in the blackmailing woman, but also the point that women who used the law were only following what men had been doing for centuries. The law, which had been the exclusive arena for men, had a long history of misuse and misapplication, and smart, corrupt men, knew how to work the system, and had done so to exercise power over women. Yet, when empowered women took up legal tools, they were immediately demonized, and the focus moved from legal questions, to character questions, as a woman's reputation was somehow more important than the letter of the law.

None of these movies makes this more obvious than Mae West's *I'm No Angel*, released in 1933. West's character Tria has a clear case of breach of promise, including all of the evidence necessary, but somehow that doesn't matter. Instead, the lawyer defending her ex-fiancé turns the courtroom into an attack on her reputation, bringing out a string of male witnesses to make her seem like a player and a predator. Other women in film from this era make clear that they cannot be bought, and the notion that they might be out to blackmail a wealthy

lover often ends with an insulted woman throwing a man out of her life. Heartbalm continued to provide ample story material for Hollywood right up until the law was rescinded in 1935, but often these movies turned more on the question of marriage as it related to contract. Did men want to buy women, or were they looking for a friend and companion? Were women willing to give up their bodies to the highest bidder, or were they also searching for something else? Those who opted for the financial arrangement became the dupes and fools of the cinema, and the heroes and heroines increasingly chose a financial loss if it meant a solid, friendly relationship with their spouse.

The modern woman (of the 1930s) is no longer concerned with breach of promise, and if a man gets sued, the narratives imply, it is only because men are immature—flirting, for both men and women, is a bit risqué, but that is part of courting's charm and appeal. Women, like Loos' narrator protagonist Lorelei Lee and Mae West's Tira, could get money from men without compromising their principles, and heartbalm, or the legal system, was not the best tool for extracting wealth, though these women and their lawyers and even family members used the newspapers and public media to circulate their names and increase their visibility. The 1930s films also downplay the class warfare aspect of heartbalm. Women, and men, could marry in a way that improved their social standing, but men were discouraged from relying solely on their wealth, and women were demonized if they exploited men with their beauty and sex appeal. Companionship was the new standard, and it looked past class boundaries, or so the movies told the public.

**Evidence of Agency and Anxiety**

Upon considering these texts, and the other studies written on marriage, there are a few goals that this dissertation can fulfill. It initiates a socio-historical discussion of a topic,

engagement, during a period of social and legal flux and reversal. The law, which initially empowered women in an era when they had little legal power, became vilified once women gained further rights, realized their agency and began to act upon it. The exercise of their power led to an almost immediate reaction and attack by journalists and even those in the legal profession to contain this agency, by affixing a negative label to women who challenged their male counterparts. In relation to other studies of marriage and courtship, this research complements those works, and in many ways reaffirms what other critics have said, with some modification. This text also examines the role of literature in resisting, or assisting these changes, particularly the reaction to women's agency. Of particular note is how women writers themselves begin to negatively depict women who use heartbalm law to their advantage, though for different reasons than male writers. In some cases, writers alter the tropes in accordance with certain comments made in public debate, or introduce new conditions to pre-existing narratives to challenge or reinforce the outcome. Writers who claim to speak about social problems often critique or applaud legal changes; at other times, they allow people to think beyond a concern which the writers feel is blown out of proportion. Writers make use of legal debate and public discourse, the historical moments recorded elsewhere, and offer up complex re-creations through the action and commentary of their fiction. Literature, read in relation to history and public legal debate, offers up additional case studies to help inform all fields concerned with understanding the motives and cultural logic behind historical and legal changes, and affirms the importance of the study of literature to develop a more complex understanding of American culture, particularly the role of marriage and gender roles within marriage in relation to society's regulation of these roles through the law.

The role of literature in the legal process and society is itself a topic of study for many of these writers, including both Howells and Wharton. Many of these novels highlight the way that the media, particularly newspapers, cater to various political or ideological groups; lawyers and judges live in communities and cavort with writers, and as history also tells us, these novelists often had close connections with the legal professionals and politicians. The novels represent societies in dialogue, and ideologies in action. They also depict those people who espouse beliefs that are ideologically at odds with their own actions. Howells in particular lays out various rules for writers and novelists, in their moral and national obligations to the public. If some of these writers are to be believed, newspapers and popular novelists were powerful enough to shape public opinion and influence law, though it also appears in novels that laws are controlled by a small, elite group who use public discourse because they need outlets for justifying the changes they seek. Novels fulfill a purpose, as the writers see it, and by considering their reaction to the heartbalm crisis, we can see how they intersect with the public debate.

A strictly historical reading of public texts also risks making assumptions about texts which might be completely off base. Consider, for instance, the paranoid rhetoric of "The Love Racket," a column written by Mary Day Winn in 1930. Though historian Grossberg claims that heartbalm is no longer significant at this late date, the writer of this essay believes the opposite to be true. At one point, Winn says:

> The hazards of the love racket begin from that first unguarded moment when an enamoured gentleman asks for the telephone number of the lady he has just met, and the dangers thicken around his path as he pursues his reckless way. If he changes his mind at almost any point in his rendezvous with destruction, he faces the danger of a breach of promise suit or a settlement out of court ... (4)

This two page newspaper article, with a clear agenda of legal change, offers up many myths without any opportunity to question or test their premises. Winn also makes the case that "the majority of such claims are quietly settled out of court," but how can that be proved? How prevalent was blackmail? Were men really being pressured into marriages which they hated? Was a male flirt deeply concerned about the threat of a lawsuit? Statistics don't yet exist on the number of heartbalm cases that went to court, or were awarded in court, and the records would be hard to procure, but even more impossible is the task of ascertaining how many cases were settled out of court. Is it true that in 1930, juries were no longer making huge settlements unless a woman had substantial evidence of a man's commitment, like an engagement ring and a public announcement, or could all male juries be swayed by a pretty face in tears? The novels from 1922 onward also reveal a decreasing concern with heartbalm, and a growing interest in alternative marital relationships, such as companionate marriage or open marriages. Novels from the 1930s like William Faulkner's *Light in August* (1932) and Nathanael West's *Miss Lonelyhearts* (1933) both feature women in broken engagements who have, seemingly, no recourse to the law, despite the fact that the heartbalm laws were still valid when those novels were published.

Novels give the broadest representation not only of the direct effects, but also the indirect effects of these laws—threats, coercions and settlements surrounding young men "hooked" by women, either intentionally or unintentionally. The novels of the modern period in American literature, starting in roughly 1880 and extending up until the 1930s, are filled with concerns about marriage, and the so-called marriage crisis, fueled by women's empowerment, the New Woman debate, and rising divorce rates. Critics of this period have increasingly focused on the problems of marriage during this period, but engagement, as a relationship with its own problems

and crises, has yet to emerge as a topic of study in and of itself, and the goal of my dissertation is to recover this crisis and its related implications on the understanding of American culture of that period, which in turn will enrich our understanding of what marriage means in America, then and now. By considering non-canonical texts, this dissertation also counters the argument that these novels or stories lack dramatic tension or do not depict serious social problems because readers have not been able to contextualize the dramatic tension. The late nineteenth century was a period of increased readership too, and many of those readers were women. Women writers also tapped into this audience and brought with it their own concerns and their solutions to these problems, including, for instance, a reconsideration of elopement as an alternative to engagement. Women complained about the engagement relationship because they also wanted flexibility in dating and marriage. They realized that they wanted different things from their partners than their mothers had wanted, and this is reflected in the writing they did as well as in the stories they wanted to read and movies they wanted to see.

Furthermore, this dissertation highlights the trends that have brought marriage questions to where they are today. If marriage is not an economic contract, based on traditional gender roles of an income-generating husband and a consumable wife, and is instead about companions, then it seems only natural that the next evolution of marriage would include gender-neutral relationships of shared life. After stripping away the agential power that heartbalm and seduction suits gave women, American legal system enforced equal access to women seeking equal rights, throughout the 1960s, 70s and beyond. The balance of legal and economic rights between courting couples is also an important consideration, and one that is still being worked out today as well. Relatively new concepts, such as date rape and paternity tests, have been created to regulate sexual practices among unmarried couples, and bridge the gap left after breach of

promise and seduction protections were removed, which left unprotected women suffering through single motherhood without recourse to the law. We are still fighting the idea that a woman's reputation is first and foremost on trial before her accusations are considered legitimate, however, as we can see in the very recent case of presidential candidate Herman Cain, and the multiple accusations made against him by women. The media has generated more discussion about the backgrounds and reputations of these women than they have directly addressed the possibility that Cain is perjuring himself in what amounts to a he said, she said argument.

That literature is part of culture, and responds and reacts to many aspects of culture, continually informs this study. The likelihood that women were highly active readers is also a crucial aspect of this study, and with literacy came an understanding of law and their rights. Their continued empowerment meant that they understood their legal rights, their bodies, their parents and the men in their lives in more complex ways. They saw both the positive and the negative examples laid out in the various forms of public discourse, and they could imagine themselves in ways that were not easily possible before 1900. By including the law, historical documents, newspapers, films and fiction, this dissertation continues discussions of gender relations, marriage and social order that have been generated by feminists, legal experts and historians, along with students of literature and cultural studies. In many ways, this project follows the calling of Edward Said, who stated in *Culture and Imperialism*, "[t]he job facing the cultural intellectual is therefore not to accept the politics of identity as given, but to show how all representations are constructed, for what purpose, by whom, and with what components" (314). Most of the writers in this study had a particular agenda, and spoke from a particular historical position, and only by combining these various views does an understanding develop of the

complexities of engagement and the contractual law that protected it during this era, and how heartbalm was then dismantled, eventually forgotten, and now, recovered.

# CHAPTER 2

## REASONABLE RESOLUTIONS: HOWELLS AND ENGAGEMENT IN THE 1880S

In the spring of 1882, the Pennsylvania Supreme Court upheld a lower court's decision that an engagement between Charles Markley and Eliza Kessering was indeed valid, even though his proposal was made "on Sunday, and was, therefore," argued Mr. Markley's attorney, " invalid, the same as any other contract, business-like or social, made on that day." As the report of it in *The New York Times* continues to explain:

> The opinion of the Supreme Court in sustaining the verdict of the jury says that there was nothing in any of the assignments of error to warrant a reversal. The case was properly submitted to the jury, and the fact that the contract of marriage was entered into on Sunday could not avail, in view of the evidence which was overwhelming to the effect that the engagement had been subsequently recognized by Markley. ("Sunday")

The jury's verdict, in this case, was an award of $998.75 for Miss Kessering, to compensate her for the broken engagement. According to the report, "Markley purchased his lady love a number of presents, and seemingly prepared for the wedding day. What fire was in his heart, however, suddenly cooled, and one evening he told Miss Kessering ... that he guessed he was too old and lame to get married." Furthermore, he insisted that "his father was lying at the point of death, and it would not be proper to marry under such circumstances" ("Sunday"). Whatever the reason, however, the jury sided with Kessering in her suit for breach of contract, and the appeal case was considered significant enough to be heard by the state supreme court. From a modern perspective, this case might seem absurd, but the seriousness of the judge's decision and the national media's attention on the case highlight the very different environment in which couples thought of marriage and the engagement contract in the 1880s. The attention on this case, and

others like it, questioned the limits of when could a man (or woman) back out of a marital commitment without facing an angry jury of men and suffering a financial loss.

Engagement was still considered a distinct legal relationship, yet to look at the Markley case in another way, the court's decision also highlights the diminished importance of the actual proposal. The fact that he "seemingly prepared" with "gifts" along with his actions over time worked to establish what a single declaration of love did not. More important, from the court's point of view, was testimony by the woman and other witnesses that their courtship had reached that stage where a marriage was imminent, even if the proposal was made on a Sunday. Throughout the 1880s, the importance of making present the "absent proposal" emerged again and again in the novels of William Dean Howells because the concern about what evidence and conditions applied to establish engagement was playing out in courtrooms and newspapers, especially when courts accepted cases by considering a variety of indicators that an engagement had happened, without a clear or valid proposal. Courtroom decisions variously defined the conditions under which a man would be held responsible for misleading a woman regarding his "honorable" intentions. In a few, isolated cases, women were suspected of leading a man on with hints of marriage, masking an interest in purely material gain, especially by gossip columns in the local papers. For the most part, however, the *New York Times* articles before 1890 were sympathetic to women, and while the possibility of women as predators was acknowledged, such women were typically represented as ineffective and transparent in Howells' novels. Howells sees the problem of predatory women as less important than the spiritual emptiness of any marriage not based on mutual love and respect (marrying for the "wrong" reasons, such as for money, status, passion or sentimentality/priority). As Howells makes powerfully clear, the absent proposal provided a rich source of novelistic drama. This dramatic situation of characters reading

"mixed signals" is as old as literature, but in his dramatic and self-proclaimed realistic novels of America, the engagement relationship represented a legally contested space that Howells approached again and again to emphasize the perils of reckless courtship.

The same year that the Markley case was decided, Howells published his first popular novel of the 1880s, *A Modern Instance*. It could be mere coincidence that Howells has the couple engaged on a Sunday, that her parents discuss the sanctity of the Sabbath, and that his main character is named Bartley, a clear rhyme with the man in the aforementioned case, Markley. It is well-known, however, that Howells was an avid reader of newspapers, and that he formed his stories from incidents he saw and read about. His initial inspiration, for instance, to write *Modern Instance* came from a performance of "Medea" in 1876. The various elements which Howells used from that performance have already been examined by Gerard Sweeney in his article "The Medea Howells Saw," and other articles likewise explore the influence of other texts and events (such as the Haymarket trials) on this and other novels. Except for the Sunday engagement, however, there seems little similarity between Bartley and Markley, as Bartley goes on to marry his sweetheart. For Howells, this case is important because a proper engagement, agreeable to both parties, is a necessary element for a successful marriage. According to the examples laid out in Howells' novels, Markley should have had the right to end the engagement (even with a legitimate proposal), if it seemed otherwise likely that the couple would head for divorce court later on. This is not to say that Howells was an activist for changing the law, and either cancelling out the "heartbalm" suits or banning divorce. The law, which is subtly acknowledged in these novels, was creating an anxious and uncertain environment, as can be found by reading about the Markley suit and other cases that appeared in the *New York Times* in the 1880s, and the history of breach of promise court cases and judgments found in Grossberg's *Governing the*

*Hearth*. Howells does not need to explain to his 1880s readers the historical context in which his characters operate. This dissertation reveals Howells' interest in representing the pressures and resulting problems of engagement, by simultaneously reading legal cases such as Markley vs. Kessering to contextualize and expose the latent threat of breach of contract legal action that operates as a backdrop for the novels' conflicts.

*A Modern Instance* (*MI*) was only the first of Howells' 1880s novels to deal with problematic engagements. Though the characters in this novel work through their engagement problems and marry, *MI* and other novels provide a reading of the complex problems facing young couples as they make their decisions about potential and real engagements. Other Howells' novels of the 1880s, such as *April Hopes* (1888), *The Rise of Silas Lapham* (1885), *Indian Summer* (1886) and *The Minister's Charge* (1887), include engagement problems to varying degrees, but for the most part, Howells' critics and biographers have classified these novels as either courtship or marriage novels. This is somewhat misleading because in many cases engagement becomes the critical, problematic stage of the relationship, and it seems that his focus is instead on how the complex laws and social norms of engagement were creating anxiety, as the definition of marriage, and engagement's role for couples, was changing. Victorian and Republican definitions of marriage, established in the early nineteenth century, focused on marriage as a social contract. In the 1880s and after, these pre-existing definitions increasingly came into conflict with "modern" and spiritualist notions of marriage as a relationship based on love and happiness. Added to this was the growing struggle against the legal precedent that made the proposal a binding contract. Though the proposal was not legally necessary, its presence still played an important role in legally and socially separating the un-

engaged from the engaged couple, and Howells foregrounds this very American complication to engagement.

For the purposes of this study, only three of Howells' 1880s novels will be analyzed, and those in reverse order of their publication. They are *The Minister's Charge* (*MC*), *The Rise of Silas Lapham* (*SL*) and *MI*. Not only do these novels deal with engagement issues, but the novels of the 1880s period are considered by most critics as Howells' most socially complex and "realistic" works. Novelist Hamlin Garland, among others, believed "that Howells' *Modern Instance, Indian Summer, The Minister's Charge,* and *Silas Lapham* struck readers as the most original and technically skilled writing America had known. People eagerly awaited their publication and debated their merits" (Goodson 268-9). Other novels from this period, including *Indian Summer* and *April Hopes*, also revolve around engaged couples, but the characters and settings of those novels are not limited to Americans and America. The legal issues, therefore, are multiplied by their transnational nature. *Indian Summer* mainly has a cast of American characters, but the novel is set in Italy. *April Hopes* is about a family that has returned from a long stay in Europe, and the engagement problems are not related to the law, but to courtship and marital expectations, especially of the bride's mother, Mrs. Pasmer. Both novels also end in marriage, and the engagements themselves are relatively brief. Since the focus of this dissertation is on American law and the pressure it placed on couples who tried to negotiate their relationships through the engagement stage towards, or back away from, marriage, these novels are less salient.

*The Minister's Charge*, written last, represents Howells' most direct discussion of the confusion faced by a single man. After courting a woman for a few months, various characters wonder, is he already engaged? Howells then presents the novel almost as a series of legal

questions for the unmarried man. What happens when the man realizes his sweetheart is not right for him, but she, on the other hand, is expecting marriage? What if he discovers that she is sickly, perhaps fatally so? What happens when he meets another, better woman whom he prefers over his first lover? Can the first woman take him to court for breach of promise, even when he hasn't made an official proposal to her? Though these questions are not always overtly discussed, there are enough references throughout the book to make it apparent that Howells is thinking through these questions as they come to bear on Lemuel Barker. In the end, however, Howells also provides Lemuel an easy escape, perhaps because Lemuel is poor and has little to offer his first lover, perhaps in the name of "realism," by pushing an unexpected, sudden change in one of the characters, or perhaps simply because Howells was no longer interested in teaching Lemuel (and by extension, his readers) a lesson in the value of a proper proposal. By working chronologically backwards through his novels, this chapter explores Howells' more subtle attempts at negotiating the legal problems for engaged couples, the problems and solutions of priority between women courting the same man, the question of when an engagement becomes official, and Howells' own definition of the limited role American parents should play in influencing their children's choice of partners. The women of these Howells' novels do not tap into their legal agency, and even those who occasionally make their own marital decisions fail, and turn to fathers, husbands or ministers to resolve their problems.

Because none of the broken engagements in Howells' novels include courtroom lawsuits, it might seem that a broken engagement is merely a personal or family concern for Howells and his readers, not a legally charged situation. It is easy to overlook the question of breach of promise while reading his novels. To date, not a single critic writing about Howells has brought up the question of engagement law, or "heartbalm" suits like the one reported in *The New York*

*Times'* article on Kessering and Markley, in relation to Howells' novels. On the other hand, many critics have written about Howells' use of contemporary news stories to develop ideas for his novels, such as the case of Kessering vs. Markley. This lawsuit had come to prominence earlier (Markley proposed in late 1879) and had already been settled by the jury while Howells was writing *MI*. However, it was not the only case of its kind during the early 1880s, and it was not only a question of Sunday legality. The Markley suit further reinforced the legal devaluation of a proposal, but did not settle the question of when a man or woman could break off an engagement. When was it safe to do so for a man or a woman, and what reasons could someone show in court to avoid a lawsuit? As well as bringing accusations of premarital prostitution, suitors asked courts to break engagements between couples who had problems with religious difference, family interference (even one about a man fearful of his future mother-in-law), sickness and drunken habits because the simple declaration that one of the partners was not in love was unacceptable.

The Markley case highlights the legal concern about both entering and exiting an engagement that form the subtext of Howells' novels in the 1880s, and there were many such questions that came through the courts on this issue. Could a man break an engagement if he found out the woman was pregnant? Previously married? Invalid? Insane? If she had lied or misled him, or if he proved to be an alcoholic or abusive? The law did not specify, and as pointed out by Michael Grossberg in *Governing the Hearth* (1985), and Nancy Cott in *Public Vows* (2000), both legal histories of marriage in America, since community standards dictated when the contract could be invalidated, it was up to a jury to determine if a man or woman could "escape" the commitment legally, or if some payment was necessary, as "balm" for a woman, or compensation for a man. The question of love was still beyond the court system, and this is the

one point that Howells seems to make, over and over again: if an engaged couple is not in love anymore, they should simply break the engagement without consequence. Though it takes many novels before this point is clearly articulated, this sentiment is expressed in various dialogues by his recurring character Mr. David Sewell, the minister in *The Minister's Charge*. The other legal problems that plagued the 1880s regarding engagement are also addressed in that 1887 novel: when is a couple actually engaged? And what happens when a man is apparently courting two women at once, or when he loses interest in one woman and proposes to another, especially if the first woman doesn't want to relinquish her legal claim?

These issues are decidedly American in nature, and come to the surface, I believe, because Howells constantly prided himself on dealing with issues pertaining specifically to Americans. Throughout his novels, he highlights the peculiar practices and beliefs surrounding courtship, engagement and marriage in America, for both good and bad. These issues emerge, mainly, because of the democratic nature of American law, and Howells was also keenly aware of this difference. Contemporary critics have made American democratic practices and its effect on family law the focus of many studies, such as Carole Pateman's *The Sexual Contract* and Jay Fliegelman's *Prodigals and Pilgrims*. American law, for the most part, has "a declining emphasis [from colonial times onward] - both social and legal - on the necessity of parental permission and approval in the question of a child's marriage" (Fliegelman 10). One way that Howells was able to focus on individual choice, instead of a family or parental decision, was by making a considerable number of his main characters (especially the young women) orphans, or fatherless. Howells' choice of orphan figures has been the focus of Michael A. Dockery's research, where he looks at eight novels written during this period. Dockery posits that Howells is fascinated with parentless American youth. His analysis claims that Howells' orphans stand

"as Howells' optimistic metaphor for America, as the moral center of his novels" (6). Most of these orphans, though, have mentors and advisors, and do not make their decisions completely on their own; those who do act independently suffer.

For young people in England or Europe, their problems were often caused by parents or guardians who did not give their express consent to the marriage; the couple could elope, but these unacceptable matches led to extreme family problems, as dramatized in such novels as William Makepeace Thackeray's *Vanity Fair* and Emily Bronte's *Wuthering Heights*. Even as the legal system in England began to relax the enforcement of these laws in the nineteenth century, British parents could still create obstacles for disobedient children. British novelists frequently portrayed this situation, criticizing those parents who exercised their legal rights; for example, late in the nineteenth century, in George Gissing's *The Unclassed* (1884), an unsavory match is opposed by a father who legally disinherits his daughter. At the end of the novel, he laments his action and adopts his granddaughter back into his house. Howells, who made his own marriage decisions in the cavalier fashion he advocated in his novels, had firsthand knowledge of the legal difficulties of traveling abroad as an engaged couple when he travelled with his fiancé, Elinor Mead, to England in 1862, and sought to get married there (Goodson 85).

In nineteenth century America, as Howells notes again and again, parents only came to know about marriage decisions after their children had made them (in theory, at least). In *April Hopes*, Howells shows how this American tendency upsets Mrs. Pasmer, a woman of Boston society who values the European lifestyle and worries endlessly about how and when to advise her daughter, who is courting a Harvard student, about suitors and her behavior with them. The European and British systems thus clearly defined when a couple was engaged—when the parents were informed and approved of the arrangement. The parents were also then involved in

any dissolution of the engagement, and an amicable dissolution was often preferred, if the parties could not agree on the conditions of the marriage. Because American young people were making their own decisions, and held responsible for their own actions by the court, the American system often had to deal with arguments between fickle lovers, and as Grossberg puts it:

> During an era when only males filled the nation's jury boxes, breach-of-marriage-promise cases afforded them the opportunity to punish the sexual machinations and treachery of their brothers as well as to present themselves in the appealing role as the defenders of womanhood. (49)

Howells considered himself one of those "defenders of womanhood," and it emerges many times in his novels; he did not, however, believe the courtroom was the right place for this defense. Instead, he hoped that couples themselves, along with their communities, could "reasonably" see that forcing a couple to marry, or forcing a man to follow through on his flirtations, would only lead to unhappy couples and more divorces.

The purpose of this chapter, therefore, is to look at a few select novels written by Howells in the 1880s, and to explore the growing crisis surrounding engagement law as represented by Howells, placed in the context of other events happening in this decade. Anxieties about the law are represented subtly, through the situations and dialogues. When these moments appear, and when they are placed in a historical context, there is no question that these representations explore engagement at a moment of crisis. The legal system was trying to preserve an old world definition of marriage, based on contract and social responsibility, while Americans, at least in the novels of Howells and others, were adopting a definition of marriage based on love and respect. As Howells says throughout his novels, and in his other writings, if Americans could just think reasonably about the situation, then there would be no lawsuits or court cases, and

individuals could work out their relationship problems on their own. Sometimes that means the engagement will still end in marriage, as in *April Hopes* and *MI*, or it will lead to the quiet end of one girl's expectations of engagement, as in *SL* and *MC*. Howells does not attack the legal system, or promote a vision of reform, or look to European and British law as a solution. What he seems to urge, instead, is for communities and judges to listen to reason, and make their decisions in the best interest of the couple. After a short analysis of each of the novels, this chapter will conclude with an overview of the problems with engagement that Howells has raised, and his "reasonable" resolutions. The question raised by the Kessering case, of when a man can invalidate an engagement, only arises in *MC*, and it is that concern which starts this analysis.

### *The Minister's Charge*, or, There Must Be Some Way out of This ... Commitment

The first one third of *MC* reads like a comedy of errors as the innocent country boy Lemuel Barker runs afoul of one treacherous legal blunder after another. Lemuel comes to Boston after his countrified poems are lightly praised by a minister, Mr. Sewell. When Sewell explains to Lemuel that his poetry is not up to the standard of the Boston marketplace, however, Lemuel does not want to go back home "defeated," so he tries to settle down in this complicated new urban environment. Lemuel is the victim of a fraudulent money exchange, and then a young woman falsely accuses him of stealing her bag; because he is so overwhelmed by his surroundings, he doesn't even defend himself when arrested. His accuser, Statira Dudley, realizes her mistake while she is in front of the judge and cannot positively identify him; afterwards, she feels shame and tries to make it up to him, which leads to their romance. Lemuel doesn't realize it, but he is treading into yet another dangerous situation, one which Boston readers would have recognized quickly. After visiting her for some time, and becoming more

intimate with her, kissing her and petting her under the approving gaze of her friend and self-appointed guardian, ‘Manda Grier, Lemuel’s friend Berry announces to a gathering of friends that Lemuel is engaged. Lemuel isn’t sure how to respond to this charge, except, as the narrator tells us, “Lemuel turned fire-red” (152). On reflection, the narrator notes, “Of course he was engaged to Statira, but he had hardly thought of it in that way” (153). How is it possible, that without asking her for her hand in marriage, or deciding for himself that he is engaged, this situation can develop?

There was, however, a long standing legal tradition in this regard that most modern readers have forgotten because breach of promise cases are so rarely heard by judges. As Grossberg explains:

> To surmount the secrecy of espousals, courts applied liberal evidentiary rules built on Lord Holt’s 1704 ruling in *Hutton v. Mansell* that mutual promises of marriage need not be proven by direct evidence but could be authenticated by circumstantial proof. This freed courtship from a number of limitations usually applied to contracts, and highlighted the unique contractual nature of nuptials, and the willingness of American judges to deviate from contractual uniformity when a larger goal—in this case protecting deserted brides—demanded it. (39)

Not only could a man slip into an engagement without calling the relationship such, but once he entered into that relationship, it was almost impossible to get out of it without both sides agreeing to end it. One such case reached the Massachusetts Supreme Court in 1880, in which the court confirmed that Samuel Neat had “erroneously assumed that he had ‘the right, without the consent of the other party to the contract, to break off the engagement, without liability to make any compensation or indemnity, if he should come to the conclusion that the proposed

marriage would not tend to the happiness of both parties'" (Grossberg 53). It is the narrator who confirms that Lemuel is engaged, and his comment "of course," is a confirmation that exists between the narrator and readers, but as Lemuel continues, he tries to deny his engagement. After he goes home to see his mother, and she warns him against any "foolishness" with a young woman (162), he returns to Boston and tells his friend Berry, "'I'm *not* engaged!'" (165). Berry congratulates him with a statement which further illustrates Berry's own awareness of the situation. "'You've got a future before you, Barker, and you don't want to go and load up with a love affair that you'll keep trying to unload as long as you live. No, sir!'" (166). The danger, as Berry notes, is not only the engagement, but the love affair itself, which might give a woman the impression that she is engaged, and if she isn't interested in getting out of it, Lemuel will be trapped.

Unfortunately for Lemuel, as the novel continues, this seems to be the case. Statira is not at all interested in ending their affair, and eventually her friend 'Manda begins to accuse Lemuel of stalling, as if it is clearly understood that he is marrying Statira. In 'Manda's words: "'You want to let it lag along, and *lag* along, and see 'f something won't happen to get you out of it! *You waitin' for her to die?*'" (223). Lemuel might have been content to marry Statira, but in the meantime, there is another woman who attracts his attention, Miss Carver. Berry, when he hears that Lemuel is not engaged, encourages him to pursue Miss Carver, an art student, and the female companion of Berry's own love interest Miss Swan. Lemuel accompanies Berry to the girls' room on numerous occasions, and when he thinks of Miss Carver and Statira, he finds Miss Carver much more to his liking. Miss Carver is aware that there is another woman in Lemuel's life, but they never discuss her, or his possible engagement to Statira. When Lemuel introduces Statira to Miss Carver, Statira is openly upset. As Lemuel considers Statira's emotional response

to meeting Miss Carver, the narrator tells us that Lemuel spends some serious time wondering "whether he was really engaged to Statira or not" (168). With this question in mind, he approaches Mr. Sewell again, but Lemuel does not have the nerve to ask for advice from his mentor directly. Instead, Sewell senses that Lemuel has a question about a girl, and he advises him against "a silly girl," and he gives Lemuel this advice: "'So far from urging the fulfillment of even a promise, in such a case, I would have every such engagement broken, in the interest of humanity—of morality'" (175). Sewell is aware that this is not in accord with most people's thinking on the issue, including the law, and his wife chastises him after Lemuel leaves. Mrs. Sewell calls his advice "wicked," and then espouses her opinion, which echoes much of the legal discourse that called for the protection of women and continuation of the "heartbalm" laws.

> "[Y]ou men are all alike ... you never think of the girl whose whole career is spoiled, perhaps, if the affair is broken off! ... Perhaps it's her one chance in life to get married—to have a home ... a rash engagement, as you call it ... shall one do all the suffering?" (176)

The Massachusetts Supreme Court had said as much when it sided with the jilted woman in the 1880 case mentioned earlier. Regarding that 1880 case, Grossberg notes: "Neat's argument that the marriage would not have been successful made little impression on a court that grounded rights in initial conduct, not later reflections" (53). Lemuel's reaction to the minister's words, however, is not to break the engagement, but instead to try to cool off the relationship, slow it down, and point out problems to Statira, such as his dislike for Statira's friend 'Manda Grier, who he feels is constantly interfering.

It is worth mentioning that neither Statira nor Lemuel (nor Miss Carver) have a father, and the only parent who makes any appearance is Lemuel's mother, who lives outside of Boston

in his hometown of Willoughby's Pastures. Lemuel's stand-in father is Mr. Sewell, the relationship invoked in the title of the novel, while Statira has only 'Manda Grier. Statira and 'Manda have a particularly warm and emotional relationship that critics have long noticed. In a 1969 article, Clare R. Goldfarb says this of the women's relationship; "'Manda is more than a Lesbian; she is a *voyeur*. Like [William] Faulkner's Popeye [*Sanctuary* 1931], she sets up and watches love scenes. She creates the romance between Statira and Lemuel" (89). Instead of monitoring and restricting their behavior, 'Manda participates to some degree, further complicating the relationship. At one point, after Lemuel has kissed Statira, Statira insists that he do the same with 'Manda, "her chin knocked against his ... and she gave him a good box on the ear" (127). Following this, 'Manda comments that "'there's more kisses where that came from, for both of you'" which might mean real kisses, or the kind of hit or slap which she just applied (128). Though he might have considered the two women as lesbian-like, it is more likely that Howells thought of 'Manda's role like that of a sister or servant in the long established tradition of "bundling," which also carries with it a voyeuristic surveillance meant to set limits on the fondling and caressing of unmarried lovers. Instead of her protector, Goldfarb calls 'Manda a "rival for Statira's affections," (89) and in the end, this is perhaps why Statira breaks off her relationship with Lemuel. The possibility also exists that Howells wrote in clues to readers that 'Manda and Statira were in a Boston Marriage, a lesbian-like sisterhood, and that this was one more way that Howells was making Lemuel a fool in front of his contemporary readers.

Late in the novel, Lemuel gives Statira an ultimatum, demanding that Statira either go with him and leave her friend behind, or end her relationship with him and stay with her friend. Statira wavers long over the first option before finally, within a page of the novel's conclusion, choosing the second option, ending her romance with Lemuel and closing the novel. As 'Manda

and Lemuel come into conflict over Statira's future plans, 'Manda's angry chastisement that Lemuel is waiting for Statira to die, mentioned above, provokes Lemuel to an equally angry reaction, and he tells 'Manda that if that's how Statira feels, the whole thing is off. As he walks off, the narrator tells us, Lemuel "conquered himself at last into the theory that Statira had authorised or permitted 'Manda Grier to talk to him in that way. This simplified the whole affair; it offered him the release which he now knew he had longed for ... He was free" (223). Because of the two women's relationship, Lemuel sees 'Manda as Statira's guardian, and he thinks to himself that Statira also wants to end the affair; the first place he goes after this argument is the new home of Miss Carver, where she lives alone. His renewed contact with Miss Carver, and his sense of relief allow him to become more intimate with her, but they do not have any discussion about Statira or his newfound sense of freedom. His sense of freedom is short-lived because Statira writes him an apologetic and pleading letter to come back to her the very next day. When Lemuel reads the letter, "[h]e felt the deadly burden of it drag him down" (229). Howells then gives this telling description:

> His impulse was to turn and run, but there was no escape on any side. It seemed to him that he was like that prisoner he had read of, who saw the walls of his cell slowly closing together upon him, and drawing nearer and nearer till they should crush him between them. The inexperience of youth denies it perspective; in that season of fleeting and unsubstantial joys, of feverish hopes, despair wholly darkens a world which after years find full of chances and expedients. (229)

The overwhelming sense of oppression is heightened by an awareness of Lemuel's legal vulnerability. Not only is it a matter of responsibility and shame, Statira's claim over him could take Lemuel back to the court of law, and this time Statira might not be so kind, if she chose to

punish him in this fashion. Unless she relinquishes her claim over him, he has no other choice but to stay by her side, and presumably marry her.

At the time the novel was written, this legal question, of when a man could break off his engagement without fear of legal recourse, was a prominent topic in the press. Judges were slow to sympathize with men's vulnerability to the growing sense of female legal agency, but it was happening more often in the late 1880s. Grossberg gives this overview of the situation.

> Public concern had come full circle by the late nineteenth century. The fear aroused by the breach-of-the-marriage-promise suit was that good men could be abused when they were compelled to save their reputations from calumny either by marriage or by settling with a money-grubbing harlot out of court. (54)

As early as 1872, the Illinois Supreme Court had warned that "if courtship and not actual promise of marriage had become the foundation of the suit, 'it would be dangerous for an unmarried man to pay attention to an unmarried woman'" (Grossberg 57). Grossberg furthermore sets 1886 as the date of a critical judgment against a woman's claim, in a case where an absent proposal was questioned and declared non-binding. In a Michigan case, *McPherson v. Ryan*, the court came to this conclusion.

> An adventuress would come into court and swear to a breach of promise to marry, and then bring others of like ilk, her friends and intimates, to sustain her stories she has told them in plan to further damages. There is no necessity of throwing open the doors of courts to such opportunities to work injustice. (Grossberg 57)

In light of this legal decision, it can be understood that Howells was clearly delineating the problems for men courting, and the assumptions that could be made about their engaged status. Statira is not overtly described as predatory or opportunistic, but her friend 'Manda is just as

potentially dangerous to Lemuel in a situation where she serves as her friend's advisor and mentor. Grossberg notes that often a woman herself did not want to pursue legal action, but her friends or even, in at least one case (Kraxberger v. Roiter, 1886), her minister, might urge her to do so as a way of protecting her honor, and to compensate her for emotional damage brought about by an insincere lover (55).

By advising Lemuel to break the engagement, Sewell speaks in the voice of a progressive judge, but the reasons Sewell gives are decidedly influenced by the philosophy of Emanuel Swedenborg, which was very influential in Howells' belief system. Among his many beliefs, Swedenborg made this statement in *Conjugal Love* regarding the importance of love in marriage: "love is nothing else than the willing of two to be a one, that is, their will that the two lives shall become one life" (qtd. in Stanley 138). Obviously, if either of the engaged partners has doubts, the advice would be to stop the wedding. Swedenborg's philosophy had been discussed in his family since Howells was very young, and critics have also taken note of the influence. Susan Goodson, in her recent biography of Howells, traces the influence back to his childhood, and Prioleau notes Swedenborg's influence on Howells' ideology in her study of Howells' novels, *The Circle of Eros*. In *MC*, Sewell's advice is also based on the fact that Lemuel has not yet announced his engagement to the public. Is Sewell intentionally giving Lemuel bad advice? At least two critics think this is the case, though they do not address the potential breach-of-promise lawsuit. Paul Abeln makes the argument that Sewell is constantly giving Lemuel bad advice, partly because Abeln calls *MC* "a text obsessed with the repercussions of errors" (20). Abeln goes on to claim: "It is easy to argue that Sewell and Barker represent a splintering of the author's own self-image and voice in the text" (21). Lemuel, for Abeln, is the young Howells, fresh from the country, and Sewell represents the "man of refined taste and good judgment," but

faulty because he is more concerned with "preserving his own reputation" than he is with "Lemuel's development" (39). In the case of Lemuel's courtship with Statira, however, Sewell seems to urge Lemuel in the right direction. Lemuel, however, cannot find his way out of his responsibility and slowly accepts that he must become financially responsible for Statira and bring her into his family. There is no proposal scene between Lemuel and Statira, but Lemuel comes to Sewell, to ask for a blessing and a loan, with the announcement that he is getting married (249). A greater comedy of errors might have resulted if Lemuel had followed Sewell's advice, broken the engagement, and then found himself slapped with a lawsuit.

Melissa M. Pennell also argues that Sewell is the source of Lemuel's problems. She claims that Sewell lacks the kind of personal responsibility for Lemuel which Howells displayed when he mentored young writers. In an article that plays on the novel's title, "The Mentor's Charge," she calls Sewell a "poor choice as mentor, for he lacks sufficient belief in the value of his own work and ideas to appreciate the meaning with which another might invest such endeavors," beginning with the dishonest praise he gives Lemuel's poetry (38-9). As a literary mentor, Sewell proves himself a poor candidate, but when it comes to courtship and marriage, he speaks like a progressive, modern-thinking minister. Love, he argues strongly, should be the basis of marriage, not infatuation or desire. Sewell espouses the same logic in at least one other novel, *SL*, when the Lapham family comes to him for advice. In contrast to what Pennell says of him, that "Sewell hesitates to espouse strong convictions or give voice to opinions that he feels are not generally accepted" (38), Sewell is very vocal in his advice to Lemuel to break off the engagement. He openly expresses these feelings to Lemuel, and afterwards justifies it this way to his wife: "'I wish ... that I could be the means of breaking off every marriage that the slightest element of doubt enters into beforehand. I should leave much less work for the divorce courts'"

(176). Because this same sentiment occurs again in *MI* and *SL*, it seems clear that this is not only a philosophy espoused by Sewell, but also one that Howells himself believed in, and his novels continually come to the same conclusion about mismatched engagements. Luckily for Lemuel, he avoids the divorce court not because he heeds this advice, but because Statira decides not to get married just when it seems a settled part of their future.

Late in the novel, Sewell has a brief encounter with Miss Carver who comes to him regarding her own feelings towards Lemuel. The narrator does not give us many glimpses into the workings of Miss Carver's mind, of her expectations regarding Lemuel, but in the meeting, she asks Sewell to help her with a dilemma. After some demure moments, she tells him that there is someone she likes, "'but if there were some one else that had a right first ... Don't you think it is always right to prefer another—the interest of another to your own?'" (245). Oddly enough, in this instance, Sewell tells her to do "'the unselfish thing'" (245) As they talk, however, he clarifies this statement to her by expounding on the term unselfish.

> "I have always felt that I did right in advising against a romantic notion of self-sacrifice in such matters. You may commit a greater wrong in that than in an act of apparent self-interest. You have not put the case fully before me ... if you contemplate any rash sacrifice, I warn against it." (246)

Miss Carver is confused by his constant redefining of his definition, and she leaves without understanding what he really means. The result of this interview, however, is the disappearance of Miss Carver from the novel, and Lemuel's sudden increased seriousness with Statira, implying that Miss Carver has either told Lemuel that he should commit himself to Statira, or she is in a self-imposed exile from her friendship with Lemuel. In either case, it adds to the many

qualities of Miss Carver that would make her another example of Howells' sentimental, middle-class women that have so often appeared in his novels.

Myra Kogen tracks the appearance of these sentimental heroines throughout the Howells' novels of the 1870s and 80s. Her argument is that Howells creates two distinct types of women, and continually complicates and undermines the stereotypes of each. Kogen's research deals with many of Howells' novels, but not with *MC*. The Howellsian heroines she discusses are marked by qualities of middle class leisure, knowledge of the arts, kind-hearted simplicity and Christian charity, all of which can be found in Miss Carver. One of the hallmarks of this type of woman was her ability to "improve" her husband, a quality which Sewell points out to Lemuel earlier when he advised him against "silly girls." While Miss Carver is out of town, the narrator tells us this of Lemuel's thoughts; "so pure and high a being [Miss Carver] must never know anything of his shameful past, which seemed to dishonor her through his mere vicinity" (186). If Kogen had analyzed *MC*, she would surely agree that Howells presents Lemuel with the choice between a traditional, sentimental heroine, and a modern, working-class girl who gives him physical satisfaction and adoration. Statira has the mark of many of the modern women in Howells' novels, including the inability to finally commit to marriage, a condition which he describes in other novels such as *Doctor Breen's Practice* (1881) and *The Coast of Bohemia* (1899). Both of these novels are analyzed by Kogen, and both include modern women who have trouble committing to marriage, even if they are in love or find someone they admire.

If *MC* is a comedy of errors, Lemuel's choice of the modern woman over the traditional sentimental heroine seems to be a part of that series of mistakes. Lemuel remains committed to Statira, though he thinks Miss Carver is the better woman. Miss Carver has come into his life later, and it is more than just a sense of personal responsibility that pressures Lemuel to remain

constant; yet, eventually his modern lover won't commit to marriage and he is left without any bride. Though some critics have said that Lemuel will find and marry Miss Carver, it is not clearly indicated in the novel. Howells ends the novel with this hint: "[B]e assured here that the marriage which eventually took place was not that of Lemuel with Statira; though how the union ... came about, it is aside from the purpose of this story to tell" (262). Engagement is not the only matter that Howells wishes to critique in this novel, but Lemuel struggles throughout the second half of the novel as he finds his "absent proposal" traps him because of his continued involvement with Statira. Bound by a sense of priority, Lemuel and the reading public of the 1880s knew that behind this sense of personal responsibility were the breach of contract law and a judging public that would have heightened Lemuel's anxiety. A proposal was supposed to acknowledge his intentions to Statira, and make public his acceptance of her responsibility, but instead, it ironically sets Lemuel free. Because they all respect the law of priority, the women resolve the issue between themselves also, without making their dispute public. The conflict resolves itself with the breach of contract law hovering in the background, but Statira's sudden release of Lemuel sends a message to readers that she feels their marriage would be a mistake after all. His anxiety, about being forced to marry her, about their future life together, does not materialize. Howells never brings forward the legal crisis because Lemuel's sense of being trapped does not even imagine the possibility or consequences of simply breaking the engagement. These same problems exist in the other novels as well, including an absent proposal, an actual proposal, the question of priority between women and one male suitor, and a "reasonable" resolution to the problems. In the next novel, *SL*, the importance of priority between women suitors is a central conflict in the novel, and the absent proposal is challenged and found unworthy.

***The Rise of Silas Lapham*, or, A Sisterhood of Suitors**

Though *SL* is one of the most discussed and analyzed of Howells' novels, the problem of the engagement itself, and the proprietary "block" that prevents Penelope from accepting Tom's proposal, have not been analyzed in relation to the legal anxiety surrounding engagement. The "marriage plot," as most critics point out, runs alongside an economic examination of ethics and profit, and the storylines overlap in terms of ethics and controlled loss. To summarize briefly, the novel follows Silas' business dealings, from the height of his business success, through his interactions with his competitors, to his eventual loss of dominance in the marketplace. Tom Corey, the son of "old money" in Boston, seeks to join Silas' business, and in the course of their dealings, it seems Tom might have a dual interest in their family. The family assumes he is interested in the younger sister, Irene, but it turns out that his heart is attached to the elder of the two, Penelope. The question of courtship and its attendant "signs" is discussed within the novel, but when questioned, Tom declares he had no intention of visiting their house to call on Irene, and his interest in Penelope isn't developed through traditional courtship; his declaration of love and desire for marriage are espoused suddenly, when the two are given a few minutes alone.

One critic, Graham Thompson, has gone so far as to say that Tom has no interest in either daughter, but instead has a homoerotic interest in Silas. I don't particularly agree with this reading, but the novel allows for this interpretation because of the surprise nature of Tom's proposal. Before that moment, Tom has had little time alone with either of the girls, though his visits to the house are immediately classified as calls by mother and daughters. Tom, Penelope and Irene also openly discuss George Eliot's *Middlemarch* (1872), in which a young doctor's visits lead to a wedding proposal, suddenly, in a moment of emotional weakness, though the family in that novel was also uncertain if his visits were purely professional or had a secondary

purpose. Descriptive similarities between the character of the younger sister Irene and *Middlemarch*'s Rosamund Vincy, might also lead readers to expect as much from Howells' novel, but Howells seems to have created these overlaps in order to foil readerly expectations and explore a different outcome.

Besides discussing the overlapping qualities of the two novels' plots, critics have also noted the parallels between the Lapham sisters' love story and the main plot of Silas's rise and fall as a business tycoon; the marketplace ethics of both plot resolutions have been pointed out by critics such as Donald Pizer and Dawn Henwood. Both economic and marital decisions are determined by the best end result for all participants, not just any one, and justice is served by keeping no secrets between the various partners. Everything should be open and discussed, and the profit should not be one-sided, but shared between at least two of the parties involved. Likewise, in a love triangle, or competitive courtship situation, two of the three parties should be in love, and one particular person's emotional attachment should not interfere in the lives of the other two. This might seem common sense to modern readers, but the popular, sentimental novels, cited within the pages of *SL* and widely known by nineteenth century readers, often featured stories about a young woman in love (usually with a man who was not overly fond of her), when a friend or relative unsuspectingly draws the attention of the woman's suitor, resulting in a conflict that usually hinges on the question of priority instead of love and happiness.

*Tears, Idle Tears* is a make-believe novel used as an example within the pages of *SL* to discuss the sentimental rubbish that romantically explores this love triangle, where the second-comer graciously sacrifices her love (and the man's as well) because of the courtship priority held by the first girl in love. Howells' name for the novel is original, but as Alfred Habeggar has

convincingly argued, Howells' fictional novel was based on a popular novel of the mid-nineteenth century, *A Lost Love*, by Annie Ogle. Penelope initially rejects the sentiments expressed by the characters of these sentimental novels, but when she finds herself in a similar situation, she reacts by encouraging Tom to accept Irene, a response that Sewell, the same minister that advised Lemuel in *MC*, deems "the shallowest sentimentality" (222). Irene was introduced to him first, and she does have a decided attachment to him, but as Tom points out, and as the others attest to later, albeit slowly (especially in the case of Mrs. Lapham), he has not intentionally misled anyone. "'We have not done wrong,'" Tom heatedly exclaims, in a moment that might seem overly dramatic to modern readers (235). As readers in the 1880s would have known, his emphatic denial did not stop similar cases from ending up in court, and the tears of the first love could convince a jury that the man had done something terribly, and legally, wrong.

The proposal in this case both establishes Tom's choice among his female interests, and creates the conflict and tension in the middle of the novel. Before the proposal, however, there is much discussion between various characters about the status of their relationship, and even questions of a secret engagement, of which the parents might not yet be informed. As with Lemuel in *MC*, assumptions are made about Tom because of his calls at the house and because of certain activities and dialogues that he has with the two Lapham girls. Critics have given differing opinions about the quality and nature of these calls, and of the two girls' reactions and expectations. Though Penelope is the elder of the sisters, the younger Irene is described as far prettier and physically attractive to men in general, and their mother, Persis, clearly has higher expectations in marriage for her younger daughter. The mother grooms her younger daughter for callers, and positions Irene before Tom with high expectations. She also has "priority" as a female interest because she was alone with him during their first encounter while on vacation,

and the family assumes that his social call in Boston is prompted by a desire to follow up on that first encounter. Before the proposal, however, each move and action is weighed and discussed by both sets of parents, and the two young ladies, and it is those discussions which highlight the continued uncertainty about the courtship and/or engagement relationship. The legal question is not brought forward, of course, because the two women are sisters, but when considered in light of the anxious legal background, it offers another solution to the problem—a peaceful compromise.

The presumed "courtship" happens in this way. After Tom returns from his vacation, he visits the new Lapham home, still under construction, and by chance meets the whole Lapham family there. Various clues, however, indicate that he might be interested in Irene, and there is the added fact that he comes to see them only one day after returning from the vacation—he is hasty to continue his relationship with Irene. For instance, the narrator tells us, as the family meets Tom at the construction site, "then his face lightened, and he took off his hat and bowed to Irene" (49). From the time he meets Penelope, they form a triangle of interests; Irene uses her sister as a chaperone, and Silas places Tom near Penelope when Irene is not present. Tom's interest also increases when he learns that Penelope is the reader in the home, and Tom can talk about books with her, beginning with Eliot's *Middlemarch* and continuing with the sentimental *Tears, Idle Tears*. Though the text describes his encounters with the sisters, it does not make clear what Tom intends to do, or if he is interested in marriage or not. In conversations with his parents, he seems interested in Penelope, but not romantically or physically. His description of her as dark and short to his mother are not qualities stereotypically sought in women of that era, as pointed out by many of the characters within *SL*, especially Tom's mother. Tom pays a few visits to their home, as part of his ongoing discussions and negotiations with Silas about his

"proposition" to become a partner (72), but neither he nor the narrator indicate that the visits are primarily for courting one of the daughters.

The scene which seemingly confirms the love interest between Irene and Tom comes when they are alone, and together pierce a flower-shaped wood shaving in what many critics have said is a metaphor for a sexual encounter. He sees her "playing with shavings," using the tip of her parasol, and he teases her about it. He pins one down with his foot for her; "He did so, and now she ran her parasol point easily through it. They looked at each other and laughed. 'That was wonderful. Would you like to try another?' he replied" (107). He then presents the shaving to her, commenting that it is "like a flower" (108). They part shortly after, but Irene proudly wears the shaving home, and her sister teases her about it, clearly knowing who gave it to her. As the teasing continues, Irene breaks down and cries, "'he didn't mean anything. He doesn't care a bit about me'" (114). Mrs. Lapham also concludes that it is just meaningless flirtation, and that he has no real interest in Irene, but as he continues to visit their house, and takes steps to introduce the two families, Mrs. Lapham find it hard to accept that her younger daughter is not the subject of his interest. Another important step is the introduction of the parents. First, the fathers meet when Bromfield Corey visits his son at Lapham's office, and then the Laphams are invited to a dinner party hosted by Tom's parents. Though Penelope always sees Tom when he visits, and he talks more to her than to Irene, Penelope declines the dinner party invitation with an understanding that Irene and Tom are courting. Mrs. Lapham, for instance, tells her husband this about going to the party, "I know very well that you're doing it for Irene," (172) and they all seem to accept that the dinner was prompted by Tom's interest in Irene, not because of the business connection, and certainly not because of Penelope. Penelope's reaction, that she "went upstairs with her lips firmly shutting in a sob" (173), gives credence to the readings done by

some critics that argue Penelope was always interested in Tom, but she cannot directly express her interest because of, among other reasons, her sense of Irene's right over him.

At the dinner party, and at other times when Tom converses with Irene, he turns the discussion to Penelope, and he is clearly disappointed when Penelope does not attend the dinner. It is on the heels of this party that Tom comes to their home seeking out Penelope, accusing her of avoiding him and declaring his love for her (203). "Until this moment when he declares his love for Penelope there is nothing in the text which in any way positions Tom's desire in relation to her. It is only in retrospect that incidents can be read to produce this positioning of desire" (Thompson 16). The few scenes between Irene and Tom also exhibit very little "desire," and yet she seems inconsolable when she hears that Tom has declared his interest in Penelope. Her mother, who has often doubted his interest in Irene, also seems stunned by this announcement and is the first to declare that there is something wrong if Penelope now accepts Tom's proposal. Her recurring chorus during these chapters is "I don't see as anything can be done." Silas and his wife consult minister Sewell, and that is when he explains to them the "economy of pain," by which Irene should put aside her objections. This "economy" is defined as "'One suffer instead of three'" (222), and he again blames the sentimental novel for creating the confusion around what should otherwise be a very rational solution. Irene is clearly distraught, however, and the family sends her away to spend time with her cousins until she can recover from the emotional shock, which she does over a period of time—an act which seemingly matures her into a young woman, as Howells explains it. Penelope is then able to accept Tom's proposal, and the wedding plans continue in a very subdued manner.

The very business-like language used regarding this relationship, and the main story line's focus on ethics and business, both highlight the contractual and business-like way in which

marriages were done during the nineteenth century. The "broken contract," which becomes so important to the business plotline, again underscores the very real legal contract of the engagement. Silas avoids the court in settling his debts, and instead employs a similar resolution —he goes to friends and confidantes to work on his behalf with his creditors who want a reassessment of his business assets. As stated previously, from a modern perspective, the legal and contractual nature of engagement might be overlooked since the law is not directly invoked, and Tom is not asked to consult his attorney for a settlement of "heartbalm" for Irene. By invoking the legal system, and opting not to use it for the resolution of the business contract, Howells establishes a pattern that acknowledges the law, even as it operates outside the legal system.

The possibility of the heartbalm lawsuit makes the drama, which might otherwise seem trite and sentimental, important enough to parallel the consequences of Silas' financial collapse and recovery. Donald Pizer, for one, has pointed out that many have seen the "subplot as an excrescence arising from a need to satisfy the popular demand for a romantic entanglement, as a digressive attack on the sentimental, (80)" but heartbalm suits were quite real, and Howells' exploration of the engagement mix-up is more than just a plot device. Both plots reach crisis moments, but both are eventually worked out amicably for most of the parties involved following the "economy of pain" formula as laid out by Sewell. Critic Allen Stein puts it this way: "The 'economy of pain' doctrine which Silas adopts from the resolution of the Penelope-Tom-Irene triangle and applies to the moral question in the business sphere is simply a re-naming of the old New England moral imperatives" (517). Part of the moral imperative, then, is to settle matters between parties through open and honest discussion, without invoking the law. Howells makes this solution pertinent to engagement law by highlighting the sisterly approach to

resolution, and maintaining that Irene has overemphasized her expectations from Tom based on a few intangible hints that he might be interested in her. Furthermore, the scene in which they pierce the shaving, and the sexual metaphor invoked by many critics in their interpretation of this scene, might in fact establish the impossibility of an engagement between Tom and Irene because symbolically Irene has already acted immodestly.

In her book *The Circle of Eros,* Elizabeth Stevens Prioleau sees Irene as both immodest and narcissistic (78). She also identifies her as a type of sentimental heroine that Howells loved to critique. On the other hand, for Prioleau and other critics, Penelope initially represents the modern or New Woman because of her "forthrightness, her sense of humor, and her overall attitude toward life" (Powell 68). Kogen's dissertation on the New Woman also argues that Penelope and Irene switch roles, once Tom declares that he is interested in Penelope. Penelope begins to adopt traits of the sentimental heroine, and Irene becomes cold and hard, destined for life as an "old maid" (*SL* 317). Critics are divided over whether Penelope has any interest or expectation from Tom throughout the novel, and whether his declaration of love is really so surprising. They also debate the marriage as a resolution of the nouveau riche / old money division of Boston society, and the possibility that either status or money is driving the romantic interest of either Irene or Penelope. Penelope seems the most concerned with this issue during her father's financial crisis, and she actively tries to distance herself from any accusation that she is a social climber. She writes to Tom that her father's failure will absolutely be the end of their relationship, and Tom's mother is struck by the overly-proper form of this announcement. Once they finally marry, the narrator comments: "Neither [Silas] nor his wife thought now that their daughter was marrying a Corey; they thought only that she was giving herself to the man who loved her" (331). The Coreys likewise wonder if the class difference will affect them, but once

they get married, the narrator concludes that the Corey family is in "harmony with Penelope" (332).

One other feature of Irene's which should be highlighted is her aggressive pursuit of Tom, which is decidedly not sentimental in nature. Like Statira in *MC*, and Marcia in *MI*, Irene pursues her lover, and seemingly makes herself available to him, forwarding herself as a possible match, and perhaps signaling to readers that she is more modern than traditional, and for Howells, this always signals a problem. As Prioleau puts it, for Howells, "unmonitored passions lead to the Victorian 'house of death,' ... in *A Modern Instance* ... The Hubbards' lawless sexuality leads to untimely 'deaths'" (81). Prioleau argues that Tom Corey is sexually naïve, and perhaps he senses that Irene is too strong in this regard, too forward to be accepted into polite company, and the meeker, more subdued Penelope is the right choice. Critics have by and large focused on Howells' critique of the New Woman, excess sexuality and passion, and class conflict, all of which take place in the pages of *SL*, but the problems of engagement and its potential threat to the social order has not been discussed. A working knowledge of these threats, however, shows that there is a real and dangerous potential for scandal and disruption which is carefully bypassed by Tom and the Lapham family, when the absent proposal becomes present to set matters straight.

In the two novels discussed thus far, the characters make the apparently "right" choices—though unhappy, Lemuel sticks to Statira, and she releases him instead of making a serious mistake by forcing what would surely be an unhappy marriage. Likewise, Tom is presented with two sisters and finally chooses the one that fits harmoniously with his family, despite the apparent priority established by Irene. The third of these novels, in which the engagement plays the smallest role, further highlights the problems of priority, and underscores the importance of

having an engagement by offering us the only example of that long-standing trope, the tragic elopement. In *MI*, there are many signs that the marriage is doomed to failure, starting with the proposal and continuing through the marriage ceremony itself. Legal issues also play out overtly, while the possibility of a lawsuit over "priority" also makes clear that Howells knew of the legal potential for engagement problems throughout the 1880s, and exposes the latent threats hidden in the background of his later novels.

### *A Modern Instance*, or, Woman Proposes, Man Disposes

A Sunday proposal, a pre-engagement kiss and a "prior" interest in other women are all signs to nineteenth century readers that Bartley Hubbard and his fiancée Marcia are headed for trouble, even if all of these activities are sanctioned by the American society of 1880. Marcia and her father are worried about each of these blemishes on Bartley's character, but as her father (the Squire), is a judge, he initially urges her to overlook these common occurrences. That changes when it appears that Mr. Morrison, the father of one of Bartley's female employees, wants to sue Bartley for breach of contract. The potential scandal surrounding this event, and her father's hints at future infidelities, cause Marcia to give back Bartley's ring, but it doesn't take long for this emotionally unstable character to change her mind, pursue her lover, propose to him and elope. The novel then shifts focus to their marriage and life in Boston, where it seems that their life together is relatively smooth. When it begins to fall apart, however, Bartley is quick to point back to their unconventional engagement as the root of their problems. Their serious fights always lead them to talk about their past. During one argument, for instance, they have this exchange:

> "If you wish to take up by-gones, why don't you go back to Hannah Morrison at once?"

> "I should have been willing to do that," said Bartley, "but I thought it might remind you of a disagreeable little episode in your own life, when you flung me away, and had to go down on your knees to pick me up again." (258)

Of all the Howells' novels included in this analysis, *MI* most prominently explores the effects of a failed or broken engagement on a marriage, and it continues by following this couple through marriage and into the divorce court to make the consequences clear—a situation only hinted at in *MC* and *SL*. Instead of listening to the sound advice of those around them, the couple in *MI* follow their hearts and act on impulse. The engagement, proposal and marriage are all unconventional, but their troubles during their engagement continue to emerge as points of conflict later, pushing their turbulent marriage to its end in divorce.

This chapter began by examining the Markley case, which questioned the legality of a Sunday proposal. Marcia's mother also raises this concern, but her father, a retired judge, puts aside his wife's concerns by pointing out that the Sabbath is not sacred anymore, punctuated by the fact that he is willing to work around the house on that day because "'There's never but one first day to an engagement'" (53). He reminds his wife that courtships take place on that day, and the sanctity of the Sabbath is an old-fashioned sentiment. The pre-engagement kiss is also a concern for the parents. Her father sees them kiss good-bye in the first chapters of the novel, and the scene continues after Bartley leaves:

> "Marcia," he asked grimly, "are you engaged to Bartley Hubbard?"
>
> The blood flashed up from her heart into her face like fire, and then as suddenly fell back again and left her white... she did not speak... in her shame she seemed to herself to crawl thither, with her father's glance burning upon her. (15)

A kiss, in and of itself, is not a problem, especially in a place like rural Maine, where the novel opens. As Howells himself knew from growing up in Ohio, kissing games were common among young people in rural areas, and the Squire himself hints at such events when talking to his wife, but when he sees his own daughter kissing Bartley, he becomes concerned. The kiss is a sign of her sexual desire, however, further indicated by the kiss she gives the doorknob after Bartley leaves, and her passionate surrender once they are engaged. Howells portrays her as a woman who cannot control her passions. Therein lies the problem. An additional red flag, Bartley's prior interest and connection with women, comes out in the flirtations between him and Marcia. He teases her by comparing her to other women he has known, and he admits to her that Hannah Morrison "wants to please me" at the office (8). Yet these concerns are set aside by Marcia when she accepts his proposal and swears to him that "'I shall not care for anything that you—that's happened before to-day. It's all right'" (45).

Marcia goes back on her word, however, when confronted with the possibility of a scandal. Sitting in her father's office, she hears Bartley tell the story of his confrontation with Hannah's father, and though he denies doing anything wrong, she promptly returns his ring. The text never discloses the exact relationship between Hannah Morrison and Bartley, but he does admit to having a weak spot for her, and later, when Marcia returns to him, he tells her: "'I made love to Hannah Morrison; I never promised to marry her, but I made her think that I was fond of her'" (130). This is the first time that Howells has anyone threaten to use the law to protect a woman's priority rights—invoked not by Hannah herself, but her father. Mr. Morrison doesn't want to go to court, but wants to settle things "amelcabilly," or amicably (66). Morrison wants a witness, however, and as he questions Bartley, Bartley tells the witness, one of his assistants, "'Mr. Morrison wishes to convict me of an attempt upon Miss Hannah's affections'" (67).

Bartley is not worried about this threat; as he tells Marcia's father: "'I didn't believe from the first that the law could touch me, and I wasn't uneasy on that account'" (88). The law, in this case, is clearly the breach of promise suit, and Bartley seems confident that it is just a ploy and that neither Hannah nor her father have any hard evidence against him. As later chapters in this dissertation will investigate, this threat was often invoked either by a woman or her father, until the threat of blackmail became the primary concern surrounding heartbalm suits in the twentieth century. Bartley is right about the suit because it never appears again in the text, but it invokes an awareness of the law, both on the part of Howells and his characters, and confirms Howells' awareness of at least the potential of a legal threat to Tom Corey and Lemuel Barker in later novels.

Marcia breaks the engagement, and Bartley also puts this in legal terms when talking to her father. "'Miss Gaylord has released me from any obligations to her,'" invoking not the language of love, but of contracts and rights (88). When Marcia hears that Bartley is about to leave town, however, she takes a chance and tries to meet him at the train station, and when they do meet, she is the one that asks him to take her back. "'I was wrong,'" she flatly asserts (130) and immediately he whisks her off to an illegal marriage—illegal because they need a certificate and then have to wait a certain period of time before marrying, accompanied, in many parts of America, by "banns," a series of public announcements about the couple's intention. The marriage scene is loaded with literary precedence as elopements, midnight marriages and certificate problems are the tropes of bad marriages going back at least as far as Oliver Goldsmith's *The Vicar of Wakefield* (1766). Kitty Bennet, from *Pride and Prejudice*, is another infamous eloper as is Bathsheba Everdene from Thomas Hardy's *Far From the Madding Crowd* (1874). In American society, the elopement would seem less problematic because of the

autonomy with which children made their marital decisions, but other nineteenth century American novels have included tragic elopements, most noteably George Lippard's popular *Quaker City* (1844). Not only are there questions about the marriage's legality, but as with other Victorian novels, an elopement signals uncontrollable urges and questionable motives. In this case, Marcia is too embarrassed to face her father after he calls her "disgraceful" for continuing to pine after her lover, after she breaks the engagement (97). Marcia doesn't realize that there is any problem with their marriage, but later in the novel, when they fight, Bartley questions the credibility of their marriage:

> "...isn't sacred rather a strong word to use in regard to our marriage, anyway?"
>
> "Why—why—what do you mean, Bartley? We were married by a minister."
>
> "Well, yes ... He couldn't seem to shake himself together sufficiently to ask for the proof that we had declared our intention to get married."
>
> Marcia looked mystified.
>
> "Don't you remember his saying there was something else, and my suggesting to him that it was the fee?"
>
> Marcia turned white. "... it's tainted with fraud from the beginning." (321-2)

Marcia might not understand the intricacies of the law, but she knows that their problems began with the broken engagement and hasty marriage, and Howells verifies this with his readers.

Critics have debated the causes of conflict in this couple's marriage as they search for Howells' message about marriage, overlooking the evident problems with their engagement. The most radical of these interpretations is probably Kimberly Freeman's assertion that *MI* is about exercising our rights and freedom. In her book on literary divorce, *Love American Style*, she concludes her remarks on *MI* by saying: "The West, then, and divorce, encourages the freedoms

of American individualism" (49). Howells, she asserts, is creating a modern narrative for America, and highlighting the importance of divorce in attaining freedom and the chance to start over. Freeman also argues that Marcia is "an extremely sentimental young woman, who has given too much to her beloved ... Howells consistently portrays Marcia as unrealistic and subject to emotional delusions, suggestive of popular romantic heroines" (28). Freeman claims that the focus of the novel is divorce, and that "Howells uses divorce to demonstrate his advocacy of an American realism as a corrective to popular sentimental and romantic fiction and scandal-hungry journalism" (26). The trope of elopement, however, is not new and "realistic," but rather a staple of the sentimental and sensationalist novels—the susceptible female heart duped by her manipulative lover. It was on this belief that the original English breach of promise laws were created, so that the Vicar of Wakefield has recourse to the law when his daughter falls prey to a false proposal. Kitty Bennet is likewise tricked by her lover into a marriage that the narrator tells us is doomed to failure, but in her case, she does not have the option of divorcing her husband, or at least Jane Austen does not present or entertain that possibility. Howells shows readers that Marcia is slow to realize her mistake, but the divorce is an unhappy release for her in the end. Various characters indicate that widowhood would have been better for her when it becomes clear that Bartley has abandoned his wife, but either way, all of the characters resoundingly agree that she is better off without him. If Howells meant *MI* to be a corrective, he does not plot out a better life for his characters after their divorce. Bartley goes West, but dies, and Marcia lives an isolated life back in Maine, taking care of her father until he dies.

Most critics, however, do not focus on Marcia's sentimental side, but instead see her as another form of the New Woman because of her demanding nature and forthright expression of desire. One critic of *MI* declares that Marcia and Bartley are the "most typically 'modern' of

couples" who destroy everything around them (Stein 512). Paul Eschholz claims that "Marcia is the unsophisticated, innocent country girl," but she also has her faults. "Not only does she lack orthodox religious ties, but also she is unable to control her passionate jealousy ... part of the blame for the marriage difficulties ... must fall upon her shoulders" (73). In his analysis, it is the city that corrupts them both, though Bartley is well on his way to his corruption at the novel's outset. According to Kogen, in her dissertation on the New Woman, "Marcia Gaylord is a woman who, like so many other women, is incapable of envisioning herself as an independent entity" (135). For Prioleau, Marcia is a sensual woman trapped in a Victorian world which causes her "untamed appetites [to] swing from ecstasy to deadly despair" (56). Her emotional immaturity is commented on by many, often connected to the resulting divorce. It seems irrelevant how Marcia can be classified, from the time she marries until Bartley leaves her. She might be typical, she might be repressed, she might be rural or urban, but it is the troubled engagement that points to the ultimate failure of their marriage. The dissolution of their marriage, after years of relative peace, can also be seen as forced by Howells, just to get them to their divorce. It is only when they dwell on the past that they feel their marriage is falling apart.

Prioleau is one of the few critics to focus on the engagement as problematic and significant in the overall plot:

> Their engagement celebration and marriage further elucidate their contrasting savage dispositions and predict their doom ... In an image of their runaway libido, they let the colt 'open up' on a country road ... As the colt picks up faster and faster speed, they run into another sled. (57)

What Prioleau doesn't mention is the foreshadowing this event has on their marriage, because in that other sleigh is Hannah Morrison, the same woman who brings about the end of their

engagement and later, the end of their marriage. Their engagement problems haunt them in Boston because the rural and the urban are not as distant from each other as some critics would lead us to believe. The anger expressed by Marcia when she breaks the engagement returns when she finds Hannah living in Boston. Though the text tells readers almost nothing about Hannah's life after Marcia and Bartley elope, Hannah suddenly appears as a drunkard "at the bottom of the street" (344). Marcia bitterly narrates the encounter to Bartley: "'I was on my way home to you, and was thinking about you, and loving you, and was so happy in it, and asked her how she came to that, she *struck* me, and told me to-to-ask my-husband!'" (345) Marcia hastily assumes that her husband has kept in touch with her rival over the years and accuses him of having secret encounters with Hannah. Bartley refuses to deny her suspicions, and she walks out. Their marriage is over at that point, though it takes a few years for the actual divorce to materialize. Hannah's role in breaking both the engagement and the marriage speaks to the readers about the couple's instability, and about the specter of "priority" which might haunt a couple and bring about an unhappy marriage, even divorce.

**Can You Keep a Secret? Howells on Parents, the Press and Privacy**

Despite Howells' apparent focus on the autonomy of youth in America, those characters seem to do best who seek out and contemplate the advice of their elders. Like Lemuel Barker, Bartley Hubbard is fatherless, but unlike Lemuel, he is not looking for a mentor. Tom Corey, on the other hand, represents a son who reveres his parents, but still makes decisions on his own. Lemuel and Tom, who are able to navigate through difficult relationships, consult their elders often, even if they don't always heed their advice. Despite what Fliegelman and others say about American children and their autonomy, parents' approval and acceptance was still an important part of children's marriage decisions. In her history of courtship in America, Ellen Rothman

includes not just the family, but points out that the entire nineteenth century community still had some influence on engagement decisions: "Community surveillance of the transition to marriage was declining, but engagement remained a subject for public disclosure. It was a personal event, which retained vestiges of its public significance" (161). Howells echoes this sentiment in the pages of *SL*. Mrs. Corey tells her husband, "'Oh, people do interfere with their children's marriages very often.'" To which he responds, "'Yes, but only in a half-hearted way, so as not to make it disagreeable for themselves if the marriages go on in spite of them, as they're pretty apt to do'" (90-1). Silas explains it to his daughter Penelope in these terms: "Recollect that it's my business, and your mother's business, as well as yours, and we're going to have our say ... I don't say you've got to have him; I want you should feel perfectly free about that; but I do say you've got to give [Tom] a reason" why she isn't willing to accept his proposal (233).

The Hubbards on the other hand, both Marcia and Bartley, operate as free agents. Marcia accepts Bartley's proposal without consulting her parents, and when she tells them about it afterwards, the narrator adds this telling comment: "There had been no formal congratulations upon her engagement from either of her parents; but this was not requisite, and would have been a little affected" (52). Once the Hannah Morrison situation develops, Marcia's father is convinced that Bartley has been exposed as "that *kind*" of man (79). As already noted, Marcia eventually dismisses her father's condemnation and elopes with Bartley. The parents have no say, and later, during their married life, Marcia does not like to take advice from the few people she knows in Boston, and Bartley is decidedly an independent operator, accepting even his wife's advice with resistance. Howells does not present any character that is completely under the influence of his or her advisors (though Statira is indecisive and vacillates between Lemuel and 'Manda Grier's advice), at least in these novels, the advice of elders always opens up

important considerations, even when, as in the case of Sewell to Lemuel, the advice seems misguided.

In Howells' novels, though, parents are often equated with the law, and exist as a paternal shadow overseeing all. In *MC*, Sewell is a minister, but his friends are lawyers, and together they discuss points of policy, and Sewell himself criticizes the contractual implications of Lemuel's courtship with Statira. Marcia's father is a judge, and Bartley originally has aspirations himself to study law, like his good friend Ben Halleck has done. Ben could have acted as a legal advisor to his friend, but Bartley is not interested in his advice. Ben's friend Atherton is also a lawyer, and the two of them often discuss their friends the Hubbards, both the legal state of their marriage and their apparently loveless relationship. Tom Corey goes not to his father for advice, but to his Uncle Jim, a businessman and legal advisor, who also advises Silas, and helps him settle amicably with his creditors. In each of these cases, the law appears as a caring, paternal force. Even in the divorce scene, the Indiana judge listens very carefully to the evidence and speaks with "a caressing deference" to Marcia's father (440). When the Squire collapses, after leveling charges against his son-in-law, the judge is one of the first to jump from his chair to assist him (445). The law, in these novels, is not threatening or dangerous, but operates much like the fathers of the novels, as a soft-spoken guardian who oversees and gently nudges his charge in what he thinks is the right direction.

The only serious threat that appears in these three novels, from a legal standpoint, is the suit by Mr. Morrison against Bartley, but in all three, the same concern brings about fear in the courting men—priority. When one woman is already involved with a man, a second or third woman recognizes that he is not available, and often insists on leaving the couple alone, even when the first woman, as is the case with Hannah Morrison and Irene Lapham, has had very little

incentive to believe that their relationship is a proper engagement. Statira has more reason to believe that their relationship has reached that level, but she also makes an assumption about her priority position before any formal proposal is made. There are no idle seductions in Howells' novels, no sexually active unmarried couples, and apparently no pregnant, unmarried women drifting through society. The concern for Howells is not that men won't follow through on their proposals, but that women, and others, will force men (especially those like Lemuel Barker) to stay true to their first love interest, even when the love is gone, and as his Swedenborgian mouthpiece Minister Sewell makes very clear, this only leads to divorce.

This lack of sexual activity has been commented on by many critics, but it is probably best explained in the words of Elizabeth Prioleau.

> Howells' age was tense and repressed to an extreme … He was bound in real ways by his time and personality … Because of Howells's own happy marriage and the domestic, Victorian sympathies of the day, he could not imagine rotating relationships, homosexual liaisons, or single parenthood. (xvi-xvii)

Whether he could imagine them or not, they are clearly lacking from his novels. Instead, Howells deals with sexuality through symbolism and innuendo, as Prioleau's study goes on to delineate. Marcia Bartley's kiss on the doorknob, the piercing of the wood shaving by Irene Lapham and the supervised cuddling of Lemuel and Statira all hint at sexual encounters. From a modern standpoint, it would also seem that the heartbalm laws would protect unmarried women who might become pregnant by a suitor, or by a fiancé, but instead, there exists an odd loophole. A woman who became physically involved with a man before marriage compromised her legal right over him, as Grossberg makes very clear in his discussion of breach of promise law, though this was also changing over time. In colonial times, for instance, "the court rewarded sexual

purity and punished sexual weakness" (46). Concerns about seduction, however, put the emphasis on the male seducer, and the public put pressure on judges to recognize the victimization of women. "Victorians stressed the passionlessness of normal women … Judges not only accepted the new advice, they made the law conform to it" (47). After a promise had been made by the man, and confirmed by the woman, the couple expected, and usually received, more private time together. The timing of any pregnancy prompted a particular legal response. If a promise of marriage had been made, a pregnancy "was excusable and understandable; active sexual behavior without the pretense of a nuptial pledge was not" (48).

As Howells makes clear, perhaps inadvertently, this private promise created ample space for confusion, and only through the public declaration of a man's intention to marry, could the engagement be marked, legally, and a woman feel secure. Inadvertently I add because Howells' own engagement was commenced between himself and his future wife through letters, and no public announcement was posted. After he accepted his diplomatic post in Italy, he asked her to join him in England, where he hoped they would marry, making his plans independently, and against the will, of his father (Goodson 83-5). Letters between the couple are the main source of information to historians about their relationship, and hints from novels, because in his own autobiography, Howells has very little commentary about his courtship, and his relationship with Elinor Mead, his future wife. It emerges in *Years of My Youth* as a brief short paragraph explaining a short vacation and the woman that is with him. "I had not told him [Biondini] or any one of the errand which was taking me from Venice … 'Your sister?' 'No; my wife.' Then he gasped …" (245). The story about his friend Biondini continues on without much mention of this new woman in his life. Howells believed in the privacy of his decisions, and the personal decision to transition their relationship from courtship to marriage. Without the consent of family

or the community, Howells is satisfied that he was able to make the right choice, reflected in the equally satisfied front he gives in the brief allusions to his married life. Couples could make these promises in secret, but also break off those relationships, as Howells makes the minister advise, if the couple realizes, or even one of them realizes, that they are not compatible. Considered alongside his personal experience, Howells' apparent focus on making his characters' engagements public, and in agreement with parental consent, complicates his message about engagement.

The media's focus on engagement problems further complicated the private nature of engagement. Public discourse and literature, especially the local newspaper and the sensational or romantic novel, all noted the many problems that could develop during engagement. Howells made this point clear in the earliest of these novels, *MI*. The characters themselves raise the question of ethics in journalism. Were these private affairs proper topics for newspapers to print and make profit? Was the threat of a lawsuit enough to get a man's name in print, or could the court deem it blackmail? The main character in *MI*, Bartley, is an editor in a small town newspaper with connections to other small papers, and later, when he has married, he works for the larger papers in Boston. Engagement announcements and the scandals that surrounded broken engagements are newsworthy stories. In Boston, one of the editors tells Bartley that he finds stories because he contacts young men across the country to send "'an account of a suicide, or an elopement, or a murder, or an accident, he should be well paid for it...'" (264) Elopements, jiltings, lawsuits and fights over broken engagements could provide a newspaper with high drama for its readers, and Bartley was aware of its commercial potential. Bartley also experiences, firsthand, blackmail from a father, Mr. Morrison, who might threaten to go to the press, if it wasn't Bartley himself who was the editor of the town newspaper. That situation

indicates Howells' clear awareness of the relationship between blackmail and the press—the editor had the power to disclose or hide a story, based on personal preference.

Kimberly Freeman has analyzed Howells' attitude towards journalism, as expressed in *MI*, in relation to ethics and privacy, and come to the conclusion that, for Howells, journalists are in the dangerous job of making everything private, public. In her analysis of the dialogues in the novel, Freeman divides Howells' comments on three types of texts and their roles in society—newspapers, novels and the law. As she comments on *MI*, "By putting the novel aside, Atherton [the lawyer] suggests that it teaches vain and sentimental lessons, and that Atherton means to revise or correct those lessons" (30). About novelists, Freeman points out quotes in *MI* that reinforce the well-established Howells' belief in "the duty of the writer to protect and educate his audience" (31). The divorce, Freeman argues, is the most public of all marriage ceremonies, and the most closely related to journalism. Freeman continues to discuss *MI* when she makes this note:

> The unusual privacy of their marriage ceremony, an elopement, contrasts with the publicity of the divorce court; there is nothing private about it … [Howells] implies that a major part of Gaylord's attraction to the law is its dramatic possibilities, undermining Gaylord's moral stance and professional status. (47)

Public display, airing the scandalous, unveiling the private, all amount to the work of journalists and, in all three novels, feed on broken lives in hurtful ways. Presumably, Howells' own novels discuss these issues without themselves falling prey to the "low" part of using these scandals to make a profit.

Freeman argues, in part, that divorce is the modern act of marriage, and it alone is the most public of the stages of matrimony. Howells' novels in part confirm, however, the very

public nature of engagement, and the importance of all parties having open and honest discussions about the couple and their future. The public, through the media and through the legal system, monitors the couple and expects the couple to keep to any promise they have made about their intentions to marry. Howells consciously writes to avoid unnecessary details, but looks at these courting couples, nonetheless. Howells knows that he also comes under scrutiny for what he has produced in a self-proclaimed realistic novel. Are his novels also merely voyeurism into the lives of young couples? His defense of novelists insists that they correct the stories found in romantic novels, to give a true picture of life in America.

The importance of the public proposal, and announcement of marital intentions, even if just to family and friends, is revealed in these texts, but not against the background of breach of promise law, perhaps because that was to invoke the very same newspaper material that Howells hoped to avoid. Without the bite of scandal, of money hungry women or morally depraved rakes, Howells' novels instead focus on the "normal" people of society who can work out engagement problems reasonably. Instead of gold-diggers, women tend to be victimized, and emotionally at risk, and men unaware, at worst, of the romantic aspirations they stir up in the young women around them. The dangers which they avoid, which modern readers are likely to overlook, are the merely hinted at stories that are raging around these characters, in the newspapers of the day, and in other writings which play up the fears of parents and unmarried couples in what Howells criticized as both overly dramatic and tabloid quality stories. What this study of Howells demonstrates is the intense focus on engagement as a specific issue in his novels, and the importance of inserting the legal environment as a subtle backdrop to these novels. His novels also create a ground work of issues around engagement to analyze in other novelists and fiction writers in American literature.

Howells' daughter Winnie died in 1890, and many critics have noticed that his novels changed in nature after that event. His utopian series on "Altruria," and other conceptual novels, ceased revolving around young, unmarried couples, and depicted elderly or married characters. As an editor and critic, however, he helped establish a wide range of writers during the 1880s and 90s, and many of them continued to write about courtship and engagement problems, including Mary Wilkins Freeman, Robert Herrick and Margaret Deland. They adopted, in many ways, his theories about realism and the law, and for the most part, avoided depicting the scandalous "heartbalm" court case that was becoming vilified to a great degree in the 1890s. Howells' novels lay out a response that exposes the complex nature of the problem of engagement. His novels also explore a wide range of New England settings, and use the city as a location for misunderstandings to exist, because characters bring with them values that don't always match those of the people around them. This variety, and focus on questions around engagement, still revolves around essentially "reasonable" outcomes in the defused emotional plots that are the trademark of Howells' Realism. Though he explores a wide range of problems related to engagement, his Victorian limits keep him from exploring certain other possible outcomes, which later writers will address with various levels of candor.

# CHAPTER 3

# FICKLE CONTRACTS AND DEFIANT ELOPERS: TURN OF THE CENTURY SHORT FICTION

For William Dean Howells, the problems of engagement must have seemed far less significant after the death of his daughter Winnie in 1890. The distinct change in Howells' work after 1890 has been noted by many observers, including his earliest important biographer and critic, Edwin Cady. More recently, biographers Susan Goodman and Carl Dawson declare that the novels of the post-1890 period "address the commercial rapacity, the breakdown of traditional values, and the capitalist greed he saw to be overwhelming his country" (289). Paul Abeln marked 1890 as a watershed for Howells in a chapter entitled "'Disintegrating under the Reader's Eye': The Aging Howells and His Public, 1890-1920." Abeln believes that "Howells struggled to adapt to the emergent consumerism that began to dominate literary economics and aesthetics" in the 1890s (50). In *The Circle of Eros*, Elizabeth Prioleau also notes this shift, but she sees it as his "sex-weariness" (127). She notes that Howells' recurring character Basil March, a thinly veiled version of himself, comments in the 1897 novel *An Open Eyed Conspiracy*, "'How sick I am of this stale old love-business … It is wholly unimportant who marries who, or whether anybody marries at all' (*OEC* 86)" (127). Later novels, she notes, express this same weariness with love stories and their entanglements.

As a writer Howells might have tired of these stories, but he continued to publish stories that explored the dramatic potential and social relevance of engagement problems in his editorial assignments. Howells promoted emerging writers on the American literary scene for various reasons. First, as Abeln notes, Howells' own concern with vanity gave him an ethical incentive

to promote other writers instead of himself (68). Howells also enjoyed his ability to shape American literature and to draw attention to those writers he felt deserved it most. Howells' editorial contract contained a provision that his publishers would continue to print and market his own "literary" but not quite popular novels. He settled a contract with Harper & Brothers publishers, which Abeln calls "a conservative and dependable investment, one that would allow Harpers to take risks with younger writers" because Howells had proved himself again and again in his ability to find and promote new authors (54). His role behind the scenes can be noted not only in the pages of *Harper's* magazines, but also in Harper's anthologies, like *Quaint Courtships*, published in 1906. Many of the authors included in this collection were Howells' favorites. In the 21st century, most of them have been forgotten, but some of them, including Margaret Deland, Mary E. Wilkins Freeman and Herman Whitaker, were writers of volumes embraced by Howells and the public of their day. Their stories of courtship and marriage also reflect the wider social concern with engagement as a legal contract, and like Howells, they represent couples that face stumbling blocks on the path to marriage, but find ways through those challenges into successful marriages.

By including Deland and Freeman alongside more traditionally accepted writers, this analysis also seeks to challenge the long-standing idea that "woman's view of realism was deemed unrealistic because it was different from the patriarchal view. Women could not write realism" (Warren 5). Over the past twenty years, a few of these writers have been accepted into the American canon, but often they have been compartmentalized as "regional" women writers only, and not part of the wider realist movement. Though these female writers still had to pass through the publishing gatekeepers represented by Howells, a careful reading of their stories

reaffirms Joyce W. Warren's assertion, as stated in her essay "Performativity and the Repositioning of Realism:"

> [W]omen writers in mid-nineteenth century did not accept the hegemonic system. By freeing themselves of cultural restrictions, they were able to write more frankly, and consequently more "realistically," about life and society … instead of reifying societal representations of gender, they presented themselves and their perspectives through their works in ways that challenged normative behavior. (6)

The same can be said of the ways in which these writers represent couples negotiating their way to marriage. The stories analyzed here, and other stories from these writers' collections, illustrate unique engagement situations. By classifying their stories as "regional," critics have been able to label the aberrant or unusual behavior of these characters as safely removed from the wider picture of American society, but these stories tell us much about the way these women writers imagined couples negotiating their way through engagement problems in turn of the century communities, and exposes the pervasive nature of these engagement problems. Their stories, for the most part, also avoided the sensationalist quality that Howells derided, written instead in the "realistic" style he preferred. Furthermore, they offer up elopement as a positive alternative for couples who otherwise find engagement impossible because of parental or guardian's concerns about a prospective "bad match." Although initially disruptive, these rebellious characters find community support, challenging the idea that small towns are too backwards and conservative to accept change.

This chapter serves a number of purposes as it continues to explore literary representations of engaged couples in the 1890s and the early years of the twentieth century. First, it examines Howells' continued interest in engagement stories, both as writer and editor.

His short play, "A Previous Engagement," published in 1895, echoes many of the conclusions reached in his 1880s novels, in his most direct, and least complex, representation of engagement problems. A "quaint" quality surrounds the problems of engagement in that text, and this attitude continues in the naming of his 1906 anthology, *Quaint Courtships*. His brief introduction states that most courtships run smooth in America, but sometimes there are "zigzags" due to "angles of individuality" (vi). The resulting stories are "interesting and charming to the spectator" (vi). The title is a bit misleading, however, as the legal specter of heartbalm has a more powerful effect on some characters, and the first hints of danger emerge in the form of blackmail, with more force than the idle threats made by Mr. Morrison in *A Modern Instance*. Concerns about breach of contract emerge in these stories, and in other stories by these writers, in contrast to, or at least in slight variations of, the stereotypes emerging in the press and the courtroom about empowered women seeking legal redress. The Howells' heroine, who was dependent, especially on a father figure or guardian, and often helpless to pursue legal interests is replaced by more active and knowledgeable women. These stories often examine women who find themselves trapped by competing values in a similar fashion to those presented in Howells' novels. Modern women, or representations of the New Woman, come into dialogue with restrictive New England values. Women characters increasingly take a lead role and pursue their marital wants and desires, sometimes by hinting at the legal recourse available to them, at other times negotiating with a rival or suitor, and when faced with extreme resistance, eloping.

To examine a few additional texts by the writers included in Howells' anthology, in other stories which represent breach-of-promise situations, is to see the widespread interest in engagement problems. Many writers were picking up on the anxiety faced by unmarried, courting couples, and heartbalm was central to that anxiety, causing many tense plots to unfold

which seem trite and perhaps meaningless by today's social standards. In the face of these anxieties, and parental concerns about their children's futures, elopement also emerged during this period as a safe alternative to engagement. Traditionally, elopement, even in American literature, was portrayed as rebellious and dangerous, especially for women. In novels such as William Makepeace Thackeray's *Vanity Fair*, George Lippard's *Quaker City* and, of course, Howells' *A Modern Instance*, eloping couples were portrayed as unstable, and the dangers to women were foregrounded. Despite the insistence by literary historians like Jay Fliegelman that democratic values in America reduced the importance of parental consent, writers and novelists in America still represented elopement as a dangerous alternative. Instead, it was hoped that a couple could convince their parents, over time, that the match was appropriate and gain acceptance before marriage through a proper engagement. The stories of the 1890s, however, send a message to readers that once a couple decides to marry, and if the rest of the community sees no problem with the match, the couple can bypass the engagement and enter directly into marriage, thereby avoiding the various problems of engagement.

In contrast to the complex ways in which these "Realist" writers invoke the legal specter of breach of contract, more sensational novelists and short story writers of the same era began to openly blame women for engagement problems. Robert Herrick, who in his day was outselling and overshadowing today's well-known literary figures like Henry James, Jack London and Theodore Dreiser, began his literary career in the 1890s, and crafted his own sensational stories about engaged couples. His short story collection, *Love's Dilemmas*, published in 1898, provides further examples of engaged couples and their anxieties. Though Herrick was an admirer of Howells' work, and he borrowed the plots of Howells' novels (especially his revisionist take on *The Minister's Charge* in his bestselling novel *The Memoirs of an American Citizen*, 1905),

Herrick derided modern women, including his female colleagues in the literary world, and Herrick's novels did not find favor with Howells. Herrick earned his popularity by exploiting growing fears that empowered women were the cause of the rising divorce rate and the marriage crisis. Even in his stories about engagement, Herrick relies not on complex representations but instead on the nineteenth century belief that fickle, emotional women could easily become confused by the opportunities and expectations of modern, twentieth century society. All of these works reinforce the theory that engagement brought about great anxiety on a couple, with pressures coming together on couples from the law, from parents and from themselves, as they questioned the roles of love and sexual desire in making their marital decisions, and writers were interested in this complex relationship as a focal point for their works.

**She Can Handle the Truth: Howells and the New England Moral Imperative**

In December of 1895, *Harper's* published the short "comedy" play by Howells, "A Previous Engagement." In many ways, this play has little to offer the modern reader. On the other hand, the lack of dramatic tension, and the comic take on engagement problems, highlights Howells' post-1890s view that couples get caught up with laughable concerns that are easily resolved. Nonetheless, the dramatic tension emerges from the same concerns with engagement that appeared in his novels, and the play deserves discussion as a way of connecting Howells' later view on engagement with the quaintness he saw in the stories of his 1906 anthology.

There are only four characters in the short play: Mr. Camp, his love interest, Philippa, and her aunt and uncle, Mr. and Mrs. Winton. Philippa's parents are dead (at least, her mother is—there is no mention of her father), and Mr. Camp's parents are not mentioned. Camp has proposed to Philippa in a letter, and as the play opens, he arrives at her house to receive her answer. Her guardians seem to have little to do with this decision-making process, but they

openly express their opinion that Mr. Camp is a suitable match for their niece. Philippa announces her concern this way: "Your letter—your offer—was a perfect surprise; but as soon as it came I was resolved that you should know everything." She confesses to him that she was engaged before, and "I broke off the engagement. I tired of him." She explains that her concerns are two-fold. First, that it will be awkward for him if he meets her first love later in life, and second, that, as she says, if she is "so fickle and variable as that. I'm not sure that I'm worthy of you." It turns out, however, that she has a third concern as well, which is the possibility that he also had a previous engagement, and she offers him the chance to tell her about it. As it turns out, he did have a previous lover, so she then returns to the question of love and priority. Before leaving him to think over her ultimate decision, Philippa plants a kiss on her lover, throwing Camp into some confusion. She then walks the beach alone while Camp discusses the issue with both of her guardians. They encourage him to pursue Philippa, noting that the kiss was an indisputable sign of her intention to accept his proposal.

In the end, of course, they overcome their concerns and she accepts his proposal, making it clear that Howells has raised these concerns just to put them to rest. Old time sentiments stand in the way of modern marriages, or so Howells seems to indicate. The other question that runs throughout is, what is love, and how does a couple know that what they have is "true?" As Mrs. Winton explains to Camp, "How should a girl know her own mind? … They're brought up not to know their own minds. That is supposed to be pretty, and refined, and delicate. Tell me, now; should you respect Philippa so much if you thought she had known her own mind when you asked her to marry you?" To help Camp overcome his confusion, she assures him that the kiss is all-telling. Through their dialogues, Howells does not provide any definition of "true" love. Mr. Winton asks his wife, "How did you make up *your* mind, Bessie, for example?" Her answer does

not address the issue; she says merely, “it was too long ago.” Mrs. Wilson provides us with a definition of women that is challenged by the women writers of this period—Freeman and Deland—but which finds favor with Herrick. Women don’t know what they want and have to be guided either by their future husbands or by their guardians.

Mrs. Winton returns to the meaning of the kiss in the dialogue with her husband. As she puts it, “whatever Philippa fancies, I hope you can see that she’s committed … Young ladies don’t go about kissing young men without giving them a well-founded expectation that they are going to marry them.” Though Howells has presented other characters where this is not necessarily the case (Statira), this kiss, coming after the proposal, seems less ambiguous. Her commitment to him is made evident, and in return, she expects an open and honest confession about his past, and both her aunt and uncle agree that this is the most important quality of their pending engagement. Mr. Winton confronts Camp, before the couple can confirm their love, and asks him, “[A]re you frank? Are you capable of being frank?” The meaning, again, is twofold. Does he really love her, and is he hiding anything from her? As the two men part, Mr. Winton emphasizes another word to him, candor. When Philippa meets Camp near the end of the play, he tells her about his previous engagement to a woman who didn’t love him in return; the lovers dwell on the question of love and ask each other questions about the proof of their love for each other, but Camp bristles briefly, telling Philippa, “I’m not on trial now.” “I am not on trial, either,” she responds, adding, “Your accusation doesn’t put me on trial.” “My accusation?” As she goes on to explain, he has hinted that she baited him into this confession in order to prove that he is a liar, because he hid his previous engagement. Through the use of legal terms and concerns about previous lovers, breach of promise is implied, but their playful banter diffuses the

legal threat and they quickly put their concerns to rest and agree that "to insist upon our having lived up to each other's ideals before we knew each other would be something a little unreal."

What holds Philippa back from making any commitment is the "sentiment" of first lovers. Camp dismisses that early on, when they discuss her previous engagement. He says to her, "I suppose a man likes to be the first, though I really don't know why…" Philippa considers the other woman's priority claim on his heart, but she accepts his word that the previous relationship is over, and his heart maintains no longing for the first woman. They leave the stage together, ready to take the next step towards marriage, and Mr. and Mrs. Winton remain on stage for the final dialogue. They are happy that the couple has come to an agreement, but Winton expresses some doubt about the arrangement: "I'm not sure it's a solution," he tells his wife. "If we can't have solutions, we'd better have reconciliations," she says, and that is the final line of the play, indicating that this tension might cause problems for the couple later in life, but for now, at least, they have seen their way past this potential roadblock and have accepted each other because of their apparently honest confessions about their pasts, and their stated commitments to each other. As with the novels of the 1880s, Howells has pinpointed the problems of priority claim and sentiment, and raised the specter of potential legal problems for an engaged couple, but the reconciliation comes because they are honest and ethical with each other, and because they both want to move ahead with their relationship. Because it is a comedy, Howells also implies that there is something laughable about these sentimental holdups, hinting that the only court that should hear this discussion is the court of the heart.

The striking difference between this play and the novels is the quick sense of resolution, or reconciliation, with which both parties settle the engagement. Philippa is still a bit sentimental about her love affairs, and about her lover's history, but she comes across as a balance between

nineteenth century sentimental heroines and the New Woman. She requests to kiss her lover, even while casting doubt in his mind about her feelings. Shades of Statira and Marcia Hubbard and their aggressive sensuality appear in her character, but without the sense of desperation that marks them as dangerous or unstable women. Philippa acts independently of her guardians, though they urge her to accept him and be done with it. Unlike the women of the novels, she also appears to know about the law, and invokes the language of courtrooms in their banter about accusations and condemnation. By invoking the law, this play is in step with the other literature appearing in the 1890s; a wide range of writers were invoking the legal specter of heartbalm in a variety of situations, at a time when the legal historian Michael Grossberg says courtrooms were seeing fewer and fewer cases because of the negative stereotypes about women who pursued legal recourse:

> In 1900 the social climate surrounding the breach-of-promise suit had dramatically changed. The action was no longer popularly seen as the meritous act of a mistreated woman. The public and professional consensus that supported the suit in colonial and nineteenth-century America had evaporated. By the turn of the century, the breach-of-promise suit came to be regarded as legally sanctioned blackmail, a threat to marriage and the family … The social costs of the action ceased to justify its potential use for most jilted women. (62-3)

This threat of blackmail, however, affected both men and women. There were still moments when women needed this law to protect their futures. Men could make idle promises, and they could ruin the reputation of young, naïve women. On the other hand, men, especially those from the upper-middle and upper class, were becoming wary of involvement with women who appeared desperate or materialistic. This quandary created many dramatic situations that a wide

variety of writers employed in the 1890s to explore the continued problems of engagement that could not be solved as easily as Howells makes it appear in "A Previous Engagement."

**Not So Quaint: Mary Wilkins Freeman and New Stereotypes**

It is no surprise that when Howells put together his collection of stories *Quaint Courtships* in 1906, Mary Wilkins Freeman was one of the authors selected. Aside from the fact that she was a prolific writer of short stories, and many of her stories included courting couples and engagement problems, she was also lauded as one of the best short story writers to come out of the late nineteenth century. Howells considered her not only a great realist, but also one of the few women writers to merit serious attention in her handling of issues in the lives of New England families. Donna Campbell describes their relationship thus:

> As one of the many authors whose work he had championed and held to a high standard of realism, Freeman and her body of work became for Howells a touchstone against which to measure the achievement of other regionalists and short story writers. But in making her work a touchstone, he also risked pigeonholing her achievement and counting far too much on the very quality that distinguishes a touchstone: its consistency. (115-6)

Recent critics of Freeman have done much to dispel the limiting term "regionalist writer" that has plagued her writing since the 1880s. The setting for her stories is often the rural countryside around Massachusetts and upstate New York, New England at large, but there is another element to her writing that emerges, both in the other critical work that has been done by others, and by an analysis of her writing in light of engagement law, and that is rebellion. The story "Hyacinthus," which is included in *Quaint Courtships* (*QC*), is just one example of a young woman who rebels against her family's expectations regarding her engagement. By reading this story alongside some of her other stories, a complex picture of country life emerges. Freeman

creates empowered young women who defy expectations and negotiate their way to better lives in a variety of stories. Two prime examples chosen for this analysis are, "A Moral Exigency" (1887) and "The Old-Maid Aunt" (1907), her contribution to another Howells' project, *The Whole Family*.

In her critical biography of Freeman, Leah Blatt Glasser discusses the sense of rebellion that emerges from Freeman's fiction:

> Expectations of passive conformity to contemporary standards of femininity and to the restrictions of religious orthodoxy were an implicit part of her upbringing. Struggling always with the longing to rebel against such limiting codes of behavior and the need to suppress that impulse in order to win love, Freeman ultimately turned to her fiction to reconstruct the meaning of her childhood and to channel her unvoiced revolt. (2)

In her engagement stories, this sense of rebellion emerges in challenges to priority claims and to parental interventions, and though her stories occasionally invoke breach of contract threats, they concentrate on women who know their rights and at times aggressively assert their desire for a particular husband without suffering the consequences readers might anticipate, especially readers expecting a moral code of New England femininity as represented in Howells' fiction. "Hyacinthus" and "A Moral Exigency" provide two very different examples of these assertive and rebellious women who pursue the man they desire, and challenge priority rights of engagement.

The female leads in these two stories are quite different. Sarah Lynn, in "Hyacinthus," is "a great beauty" who lives with her mother and grandmother (76). Her small town, Adams, is devoid of suitors except for their neighbor John Mangam. He is a regular guest at their house, apparently interested in Sarah; though he is "elderly," he is also "a very rich man in Adams"

(77). Sarah doesn't like him because, as the narrator tells us, he doesn't do anything. He and his brother "come over nearly every evening and sit and rock and say nothing, and often fall asleep … It was not so much the silence as the attitude of almost injured expectancy which irritated" Sarah (78). Eunice Fairweather, the daughter of a minister and main character of "A Moral Exigency," is twenty-five and "a tall, heavily-built girl … Her features were coarse, but their combination affected one pleasantly" (2). She has not had any suitors, but the story opens with a proposal that comes through her father. The one proposing is Mr. Wilson, "a widower with four young children; his wife had died a year before" (3). She tells her father that she needs more time to decide, but it is clear that she is not excited about this offer of marriage. Her father urges her to accept it because he also sees few choices in her future.

Both women are expected to marry these older men who appear as unsuitable partners, and both of the women then meet men whom they appreciate much more, but the circumstances present very different options. Sarah tells her family, in front of John Mangam, that she thinks their neighbor Hyacinthus Ware, "'is the handsomest man I ever saw'" (80). Her mother mocks her interest and complains that he is odd, a recluse who never talks to his neighbors. This only stirs Sarah's interest more. She starts spying on him, and one night they meet and talk; thus their romance begins. Eunice is also interested in a handsome, new young man of the town, Burr Mason. "He was thirty and a little over, but he was singularly boyish in his ways, and took part in all the town frolics with gusto. He was popularly supposed to be engaged to Ada Harris, Squire Harris's daughter … Her father was the prominent man of the village" (7), but somehow, he develops a fascination with Eunice, and despite his engagement, which he admits to Eunice, he enjoys Eunice's company and is often seen by her side, riding through the countryside, a fact that thrills Eunice and confirms that she will not accept the other proposal. The narrator tells us:

"People even came to her and told her that the jilted girl was breaking her heart," but her response is silence, and "she kept on" going out with Burr (8). Eunice challenges not only her family, but the entire community, and eventually she is confronted by the other woman, Ada, who reminds Eunice of her priority rights. Eunice immediately makes it clear that there are three hearts involved; "'You ask me why I do this and that, but don't you think he had anything to do with it himself?'" (9) Instead of love, Ada continues to talk about the situation in terms of rights.

> "You knew he was mine, that you had no right to him. You knew if you shunned him ever so little, that he would come back to me. And yet you let him come and make love to you. You knew it. There is no excuse for you: you knew it. It is no better for him. You have encouraged him in being false. You have dragged him down … You cannot make him a good wife after this. It is all for yourself—yourself!" (9)

Even after this lecture, Eunice is unmoved, and Ada leaves, staggering and moaning as she retreats. Burr, on the other hand, admits to Eunice that he can't decide which of the two women to pursue, and he is simply trying to avoid making a choice. As Glasser notes, "*His* infidelity is over-looked, even accepted, but Eunice's engagement to him is seen by Ada and her parents as 'immoral,' 'wicked,' and 'cruel' behavior" (66). Freeman has taken Howells' economy of pain and complicated it with a man who seemingly loves two women.

"A Moral Exigency" has presented the perfect situation for a breach-of-promise lawsuit, especially given the fact that Ada's father is a judge, but that legal threat never develops. Instead, Eunice has a change of heart. What brings about this reversal is unclear, but Ada's accusations reverberate in her head as she lies in bed, and the narrator tells us her "strong will broke down" (10). Glasser goes to women's psychology to explain the change, and cites Jean Baker Miller's *Toward a New Psychology of Women*: "What Eunice inevitably develops is what Miller calls

women's 'exaggerated inner equation: the effective use of their own power means that they are wrong, even destructive'" (70). Glasser concludes her analysis with this comment: "Freeman depicts the complexities of loving and being loved, suggesting that for women to negotiate these complexities successfully, they must suppress rebellion, stifle self-interest or even self-love. This at least is what Freeman shows us in Eunice's struggle" (72). Though she sacrifices the man in her life, Freeman makes it clear that even if Eunice gives him up, she has learned an important lesson in agency. Though she declines to use her agency to directly challenge social order, she will use agency in another way, to negotiate with Ada. Holding Ada's golden head "on her bosom," she makes this final comment: "'Love me all you can, Ada … I want something'" (10). What she wants is not clear, since this is the last line of the story, but the few critics who have written about this story all agree that there are homoerotic implications. Eunice has realized that she has power to negotiate for something that she has wanted, and never received before. First, she is empowered by the attention of a popular young man of town, and secondly she can use this newfound power to negotiate with an attractive, well-connected young woman. Mary Reichardt has identified this as a trend in Freeman's stories, and says this about Freeman's work: "Many of these stories therefore turn on themes of cheating, theft, or false identity, all 'sins' committed by a woman to raise or protect her acceptance and esteem in her rival's eyes" (56). At the beginning of the story, Eunice was seemingly powerless, but through her "conquest" of Burr, she has gained power to bargain with the socially superior Ada.

The ending of "Hyacinthus," on the other hand, is not about female competition, but about Sarah's ability to manipulate the two men in her life. Sarah spies on her neighbor, Hyacinthus Ware, by hiding in his garden, where she "thought of a possible lover and husband, and that some day he might come, and she resented the supposition that John Mangam might be

he, but she held even her imagination in a curious respect" (85). One day, while watching him, it strikes her how inappropriate she might appear, spying on him. "It seemed to her that no girl, certainly no girl in Adams, had ever done such a thing. Her freedom of mind now failed her" (89). She tries to remain perfectly still and wait for him to go inside from the porch, but eventually "she sank down … like a broken flower herself" (91) and Hyacinthus comes to her rescue. She accuses him of pretending to be asleep and when her strength returns, she leaps up and runs home. He begins to appear at the Lynn house. The narrator tells us: "He often came when John Mangam occupied his usual chair in his usual place, and his graceful urbanity on such occasions seemed to make more evident the other man's stolid or stupid silence" (95). These visits become regular events, and after some time, her mother points out that this is a cruel game between the two men. Sarah does not heed her mother, until her mother announces that "'*Hyacinthus Ware has got a woman livin' over there in that house*'" (97). An angry exchange begins, and when Sarah withdraws, more is revealed about the meetings between Sarah and Hyacinthus. Sarah looks at herself in the mirror and thinks:

> Hyacinthus Ware had kissed that face [Sarah's face] the night before, and ever since the memory of it had seemed like a lamp in her heart. She had met him when she was coming home … and he had kissed her at the gate and told her he loved her, and she expected, of course, to marry him. (99)

No proposal is made, but the kiss and the declaration of love bring about expectation in Sarah's mind; however, the news of this other woman "*livin' over there*" enrages Sarah and spurs her to action. She sneaks over to her neighbor's house that night and sees "Hyacinthus on the porch and there was a woman beside him. In fact, the woman was sitting in the old chair and Hyacinthus was at her feet, on the step, with his head in her lap" (100).

Sarah's angry reaction is to run to the Mangam house, where she forces John to say something about his interest in her: "John Mangam mumbled something inarticulate, which Sarah translated into an offer of marriage. 'Very well, I will marry you if you want me to, Mr. Mangam … I don't love you at all, but if you don't mind about that—' John Mangam said nothing at all" (102). She returns home and tells Hyacinthus, who is there to meet her, about her pending marriage to John; Hyacinthus is shocked, declaring that he was just about to ask for her hand, but Sarah comments that he cannot because he has a guest in his house. He leaves, apparently shamefaced. When she learns that this "guest" is his half-sister, Sarah is completely repentant. The half-sister herself comes and pleads for Sarah to "'marry my brother … for Hyacinthus is breaking his heart, and he loves you'" (105). The grandmother then makes this statement to Sarah and her mother.

> "You are a fool … if you wouldn't rather hev Serrah merry a man like Hyacinthus Ware, with all his money and livin' in the biggest house in Adams, than a man like John Mangam, who sets an' sets an' sets the hull evenin' and never opens his mouth to say boo to a goose, and beside bein' threatened with a *suit for breach*." (106, emphasis added)

That settles the matter and Sarah joins Hyacinthus. The narrator foreshadows their marriage, but the question of the suit of breach is not explained. In fact, it is not mentioned in any other part of the story, and as such, almost passes without notice.

The grandmother has intuited that the relationship between Hyacinthus and her granddaughter had reached that stage where a proposal was inevitable, and even though he did not officially propose, and Sarah did not mention the kiss and love declaration with her family, Hyacinthus seemingly has priority to make a breach of promise suit possible, despite John Mangam's mumbled proposal, which comes first, and John's long years of visiting their home

and apparently waiting for something to trigger his own proposal. The grandmother has invoked the specter of heartbalm against John Mangam, and the threat, a form of blackmail, is enough to end his interest in Sarah. As with so many of the other texts considered in this dissertation, breach of contract operates in the background as a legal specter, but does not emerge as an overt part of the plot. Sarah, like Eunice before her, is an empowered woman who manipulates the rules of priority to suit her ends and bring about a satisfying relationship, at the expense of others around her. Her grandmother also points out the material gains that will come to Sarah through Hyacinthus, and perhaps unwittingly, anticipates the gold digger stereotype which emerges in the discussion of breach of contract suits in the early 1900s. Freeman clearly condones Sarah's manipulation of one lover over another. She accepts that Sarah should favor a second, wealthier suitor over one with a long-standing relationship with the family, and one who was seemingly preferred, at least by her mother, almost until the end.

In both stories, the characters challenge the rule of priority in unusual ways, and reveal the shortcomings of the breach of contract law and its inability to enforce any claim of priority. As a woman, Eunice is not at risk of a breach suit—it is her lover, Burr, who would be guilty in the eyes of the law. Ada is not willing to take him to court, however, because she hopes to recover him and prevent her rival from breaking her heart. According to the conventional rules of breach of contract suit, John Mangam should also be able to make a claim on his priority rights to marry Sarah, but his character is too meek and withdrawn to fight for his right. He had, as the story shows, an established habit of calling at their house, and he also, technically, made the first of the two proposals. Sarah and her grandmother assert Hyacinthus' primacy, however, because he was more forward in his advances, and Sarah has clearly reciprocated his emotional interests. Sarah also knows that he was the first of the two men to kiss her and declare his love to her.

From a modern standpoint, these are also more significant actions than the silent and emotionally devoid calls of John Mangam. There seems no reason for Sarah's grandmother to mention the breach of contract threat, but she throws that comment in (a hint at blackmail), just to insure that John withdraws from the scene and drops any claim he has over Sarah.

Freeman's female characters and their ability to manipulate their suitors present readers with a different form of marriageable female from those in most of the Howells' texts, with the possible exception of Philippa, the character from the play "A Previous Engagement." Eunice aggressively pursues Burr, Sarah spies on Hyacinthus and entices him, but the Lapham girls would find such activities unbecoming, and both Statira and Marcia are unsuccessful in their pursuits of a good husband. Yet, Howells must have appreciated, on some level, what Freeman had created, and Donna Campbell makes at least one point of similarity between the two writers:

> "Hyacinthus" shows that, for all their powerful physical magnetism, Sarah and Hyacinthus conduct their courtship in the approved Howellsian manner: through conversation … As in a Howells novel, talk becomes the currency by which true attraction is measured, as is shown most notably in Tom Corey's preference for Penelope Lapham in *The Rise of Silas Lapham*. Thus John Mangam's silence and his inarticulate proposal to Sarah rather than his age disqualify him as a true suitor … By the end … the independent-minded, well-educated, curious, and high-principled Sarah has shown herself to be a Howells heroine worthy of the name. (126)

Though this point is well-made, Sarah also has many similarities with Marcia Hubbard, in that she seems emotionally unstable, breaking with Hyacinthus at the first sign of trouble, and then running back to him with an almost equal desperation. For Howells, this signaled that a woman would continue this instability after marriage (or be unable to commit to marriage) and help push

a marriage towards divorce, but Freeman does not see this as a sign of weakness; it is an empowering feature for her women. Eventually these conflicting views of female empowerment created conflict between Howells and Freeman, when he asked her to collaborate on his *The Whole Family* project. Their sensitive handling of courtship might have had similarities, and suited Howells' sense of realism (as avoiding the vulgar), but their views on empowered women were clearly different.

*The Whole Family,* published in 1908, was a literary experiment meant to bring various authors together to pen one book about a family preparing for the marriage of one of its daughters, set during the engagement. Freeman was one of the contributing authors, but her empowered female character, envisioned by Howells as an aging spinster, upset his vision of the novel. Howells even tried to prevent the Freeman section from appearing in the final text. As one critic puts it, "staying faithful to the truth that she knew, Freeman became a traitor to the cause of the Howellsian realism" (Campbell 128). In a recent edition of the novel, Alfred Bendixen summarizes the situation in his introduction:

> Freeman … took possession of the novel. She made the old-maid aunt into a thoroughly modern and bold woman who relished the attention of men and refused to be confined by the family's old-fashioned notions. Instead of the relatively minor figure she was in Howells's original plan, the aunt became the moving force behind the novel. The quiet world Howells had created in the first chapter was shattered by Freeman's revelations that the young man who had just become engaged to the daughter, Peggy, was really hopelessly in love with the aunt … Suddenly, *The Whole Family* had become an entirely different book. (xxii-xxiii)

After years of championing Freeman as one of the best short story writers in America, Howells felt betrayed. Luckily, this disagreement between writers only helped make the book more popular, and critics "found it amusing," while also praising it as "faithful to … American life" (Bendixen xxxv-xxxvi). They had never been close friends, but after this, they never worked together again. Ironically, Freeman was the first recipient of the American Academy of Arts and Letters William Dean Howells Medal in 1926, just six years after his death.

**Ugly Threats: Herman Whitaker's "A Stiff Condition"**

"Quaint" is a strange label for Sarah's courtship with Hyacinthus, but it seems even less appropriate for what happens in Herman Whitaker's story "A Stiff Condition," which Howells also included in his anthology *Quaint Courtships*. Unlike Freeman, Whitaker has not attracted any critical attention since his death 1919, but his story definitely merits consideration in this study. "A Stiff Condition" originally appeared in *Harper's* magazine in April 1905, and his popular novels were mostly set in California and the rural Western states. His novels have not been reprinted since the early twentieth century. A glance through the plot summaries of these novels shows that marriage and courtship were not often represented in his novels, and indeed the picture of courtship Whitaker creates in "A Stiff Condition" is rough and ugly compared to other stories in the anthology. For the first time, a character is completely motivated by the threat of breach of contract, but again, not in a courtroom, and the ending gives an interesting twist to the plot. It is the only other story in the anthology where breach of promise suit is threatened, and a male character considers the legal consequences of a broken engagement.

Whitaker sets his story in Zorra, a small town in western Ontario, and his main character, Joshua Timmins, is an outsider, a "Brit" who has recently arrived. When he visits the community church for the first time, "the congregation turned bodily and stared till recalled to its duty by the

minister's cough" (137). They expect that the Englishman will be openly mocked and driven out of the church, but the minister instead welcomes him with open arms and encourages him to regularly attend services. The "Scottish hearts" struggle to accept him into their community, but his neighbor's daughter, Janet McCakeron, goes out of her way to talk with him and assist him in settling into his new home. His interest in her rapidly develops, and he approaches her father to discuss a marriage proposal. Though she has no other prospects for marriage, as she is not considered very beautiful, her father flatly refuses, but adds "'ye canna ha' her till … ye're an elder i' the Presbyterian Kirk'" (143). Timmins quickly adopts their religion, but it seems impossible to become an elder in the church, an elected position that only becomes available when a current elder dies. Luck has it, however, that one of the elders dies and his post opens, but another candidate stands ready to fill the position, and without much community support, Timmins has little chance of getting elected.

The situation is further complicated when Saunders McClellan, "a bachelor of fifty and a misogynist by repute" drives past the McCakeron farm, drunk on "corn-juice" (147) and calls out to the still single Janet.

> Saunders bellowed to Janet: "Hoots, there! Come awa, my bonnie bride! Come awa to the meenister!" In front of her mother and Sib Sanderson, the cattle-buyer—who was pricing a fat cow,—Saunders thus committed himself, then drove on, chuckling over his own daring. (148)

When he wakes up the next day, he hopes his drunken memory is false and returns to speak to Janet. He feels despair that he "had fallen into a pit of his own digging!" (149) She confirms that he asked her to marry him: "[H]e pleaded. 'Ye'll no hold me til a drunken promise?' But he saw, even before she spoke, that she would. 'Deed but I will!'" (149) When he asks about the

Englishman, she responds that her father "'broke that off'" (150). Finally, he threatens that he'll jilt her.

> "Then," she calmly replied, "I'll haul ye into the justice coort for breach o'promise."
>
> With this terrible ultimatum dinging in his ears Saunders fled. Zorra juries were notoriously tender with the woman in the case, and he saw himself stripped of his worldly goods or tied to the apron of the homeliest girl in Zorra. (150)

Saunders realizes that he is trapped. There were witnesses, she has no prior commitment, and the courts will side against him. His predicament and planned solution are anything but quaint.

Saunders sets out a twofold approach to solving this problem. First of all, he forces his unmarried sister to help him convince Janet to fall in love with the Englishman. As he tells his sister, "'wi' a bit of steering she'll consent to an eelopement'" (151). If she fails, he threatens to marry her off to this Englishman, and she bristles at that suggestion. His other strategy is to begin campaigning for Timmins' election to the elder post. If he can fulfill the condition placed on Timmins by Janet's father, Timmins will be in the priority position again, and Saunders won't have to face the jury. Furthermore, the narrator tells us that the Devil himself comes to Saunders' aid. His sister devotes herself as a go-between to the Englishman and his love interest, and Saunders invites Timmins to his house and introduces him as a friend to various members of society. On the day of the election for the new elder, Saunders requests a paper ballot, and the Devil rigs the votes so that Timmins wins the elder position, and all seems favorable to Saunders. As readers might have predicted, however, the Devil has tricked Saunders, and the entire community. Timmins is no longer interested in marrying Janet; instead, he has fallen in love with Saunders' sister while she tried to work up the love affair between him and Janet. Saunders has not been able to get out of his commitment, and the story ends with this twist: "Saunders

blenched. He half turned to flee, but Janet's strong fingers closed on his sleeve; and as her lips moved to claim him before minister and meeting, he thought that he heard the Devil chuckling, a great way off" (163).

Though the initial reaction of readers might be a humorous laugh, the situation is actually quite dire. Saunders has already threatened that he will beat Janet, if she is his wife, and he does not plan on stopping his flirtatious behavior. In fact, in the moments immediately after the election results are announced, Saunders is glowing and steals a wink "at Margaret McDonald across the kirk. Man, but she was pretty!" (163) Saunders' pending marriage to Janet is built neither on love nor honesty, and, most likely, Howells' favorite minister Sewell would frown on any such match. Yet, there they stand, in front of the congregation, ready to commit themselves to marriage. The only reason for their marriage is the breach of promise contract, and the threat that Saunders will lose all of his wealth if he backs out. The message comes through clearly to readers: Don't make any idle promises of marriage, and that, in fact, is the very message that lawmakers hoped it would bring to communities, but by the time this story was published, 1905, the fear that this law would be misapplied was a serious challenge for those who still believed in its effectiveness. Howells' own refrain that a loveless marriage only leads to divorce, and that if the couple isn't in love, they should at least care and respect each other, is curiously absent. This story, then, presents a challenge to Howells' own stated belief that these "interesting" stories present merely quaint problems to courting couples.

Yet another challenge emerges in Whitaker's story; he seemingly contradicts Howells' belief in the autonomous nature of courtship. In "A Stiff Condition," and in other stories by Mary Wilkins Freeman and Margaret Deland, parents are portrayed as powerful agents who stand in the way of matrimony. The father in Whitaker's story places a "stiff" condition on Joshua

Timmins, a seemingly impossible requirement, to prevent his daughter from marrying an undesirable member of society. Apparently, she is not very interested in his proposal anyway, as she opts for her second suitor and clings to him even when the Englishman Timmins meets the conditions set by Janet's father. Saunders points out the possibility of an elopement, but most children wanted to avoid conflict within the family. Howells had already weighed in on the trope of elopement in *A Modern Instance*, and his conclusion echoed the long-standing literary sentiment that elopement was dangerous. By the 1890s, however, elopement appeared as a viable option for couples. The threat presented by breach of promise suits, combined with the possibility of parental or community interference, made elopement appear more attractive to courting couples, and both novelists and short story writers began to challenge the negative stereotypes and generate positive representations of eloping couples. Like the women writers represented here, Whitaker shows women to be emotionally assertive, not fickle, in matters of marriage, providing an interesting counter-narrative to Howells' and Herrick's views.

Whitaker's ideological challenges to Howells' own beliefs might lead readers to wonder why Whitaker's story was included at all in this collection, but among the various "regionalists" Howells praised, the Western story seemed removed from the standards Howells set for his New England favorites. It is widely known that Howells and Mark Twain, for instance, were great friends, and Twain's work is comparable to Whitaker's. People on the edge of American society were rougher, and the stories of their intersection with "civilization" often marked with humor and even an element of the supernatural. By including it in this "quaint" collection, Howells is indicating that the law is necessary where lawlessness rules, and for a drunkard and a cheat, the law holds him accountable as a way of trying to establish social order and keep it in place.

**Defiant Children: Deland, Freeman and Heroic Elopers**

Margaret Deland's "An Encore" and "The Promises of Dorothea" are only two of the positive representations of elopement published during this period; yet, among all the writers included in this study, Deland had the most extensive interaction with young women who suffered because of false promises made by male suitors, and presumably the motivation to support a stable engagement over a potentially dangerous elopement. Instead, her endorsement of elopement is more powerful than that of her contemporary Margaret Wilkins Freeman. Freeman's story, "The Love of Parson Lord," (1898) also narrates the story of a young woman struggling with and eventually overcoming her father's objections to marry, through a sort of elopement. In each text, the couple is happily married in the conclusion, but they can only reach that state if they bypass the engagement and marry immediately. Parents are the main obstacle for these couples, but other family members can also intervene to prevent the couple from marrying. As Freeman's views on marriage have already been examined, her story begins this analysis.

The heroine of Freeman's story "The Love of Parson Lord," Love Lord, is morally and emotionally burdened by her father from the time of her birth. Before she was born, she had an elder sister that had been a precious gift of God to both of her parents, and when that sister died, Love was brought into this world with even more "religious ardor" (161). Her mother, "Mehitable Lord … died because of her preying grief over the loss of her first-born, and the fear lest the second, who was delicate … would follow her" (161). Her father, Parson Lord, becomes extremely overprotective of her and swears that she will never marry, but serve him, and God, for the rest of her life. She is a dutiful daughter and takes on all the domestic responsibilities of the house, but when she sees a young man, Richard Pierce, in the church, he reminds her of a

doll she has stolen from her cousin (a great sin that haunts her throughout the story) and a fascination forms in her mind, and in her dreams, towards him. He also sees her at the church, on many occasions, and begins to wonder about her. Richard goes away to college, but Love is then invited on a regular basis to his step-grandfather's house, to have tea with Richard's grandmother. When he returns from college, and finds her in his house, he "could scarcely take his eyes from her," but she does not look at him, and feigns ignorance, though in fact she is equally interested (176). Slowly, over six weeks of his home visit, a warm friendship develops until he kisses the hem of her gown. She acts angry and leaves him.

Richard continues to court Love, sending her letters and gifts, but she acts uninterested, despite the feelings in her heart. Eventually, he tires of it, but his silence makes her sick. Months later, she hears that he is courting another woman. She becomes sicker, and Richard's grandmother hears about this illness and senses the truth about her emotions. On his next trip home, his grandmother and step-grandfather argue that it is the Parson's fault, and not hers, that she has not expressed her true interest in Richard, and they convince Richard to visit Love once more. He sends her "a letter in which Mr. Richard Pierce begged her to be in the grape-arbor at eight o'clock, for the purpose of conversation upon a matter pertaining to them both. He concluded by stating that he would consider her failure to be there as final" (186). After a slight mix-up with timing and clocks (which convinces Richard that he has arrived late), Richard decides to knock on the door and talk to her directly. They declare their love for each other, after some tense questioning, and then she tells him, about marriage, "Never without his [her father's] consent. I cannot, Richard," but he persists by saying he has a plan (187). Following the law in their community, Richard publishes "the banns … copied neatly on a fair sheet, and hung in the frame used for that purpose beside the meeting-house door" (188). The community begins to

gossip about it, but no one tells Parson Lord because they wonder "was this without his knowledge or approval?" (188) In accordance with the law, the banns remain posted for "three Sundays," after which time Richard, his grandmother and step-grandfather come to the Lord house to take Love away. Love's father refuses to give consent, and the two guardians argue over Parson's right to control his daughter's marriage rights, and in the end, Richard's step-grandfather, says in a "solemn proclamation, 'in virtue of the authority vested in me as justice of the peace of this township, I pronounce you man and wife'" (190). Parson's first reaction is shock "beyond words, and with a strange expression of guilt" (190). He then kisses his daughter and blesses them before hastily leaving the room. Her father then dies, but upon finding his journal, Love realizes that he was conflicted all along and secretly wished for her to rebel against him and marry Richard. The story ends with the journal, so readers do not get to see her reaction to her father's confessions, but it excuses her action to readers and explains the death as release, not the result of a broken heart.

Unlike other Freeman characters, Love's rebellion is reluctantly drawn out. She hopes that her lover has such an overpowering love for her that he will continue to pursue her, even while she pushes him away. On the outside, she is cold and remote, but inside, her heart longs for him. Her father is equally conflicted in his attitude towards his vow to keep his daughter unmarried. In fact, the misperception of time, when Richard thinks he has arrived late to meet his lover, is staged by her father, Parson, to prompt Richard to approach the house. Love is too obedient to go outside and meet her lover, so her father makes it look as if she had just been there (by placing her shawl on a chair), and abandoned the grape-arbor only after waiting there for some time. She shares the same quality with her father in that she cannot break her vow never to meet Richard again. Her father has vowed that she will never marry, and he also feels that he

cannot go back on his word, even as, he notes in his journal, he begins to realize that it is wrong. Her rebellion is only in her secret wish that she hopes her lover will disobey her order, just as her father secretly wishes his daughter will likewise be disobedient. The lover saying no when she really means yes is an old device, and one used by Howells in "The Previous Engagement," and is meant to test the man's resolve in love. The twist, obviously, is that the father is also presenting a false front to his daughter, but it is one of the rare times in fiction when a parent does not truly want to stop his or her child from marrying against his or her wishes.

The few critics who have looked at this story have found other details to examine. Most important among them is Leah Blatt Glasser's assertion that Love is not really interested in Richard because she is actually more infatuated with Richard's grandmother, perhaps because she desires a surrogate mother, and perhaps because of a latent homosexual desire for the woman. Glasser interprets the story this way: "The conclusion of the story establishes a pattern Freeman followed in almost all her fiction about female infatuation. Love's desire is transformed by the end of the story and directed toward the acceptable male figure" (180). Likewise, critic Martha Satz sees Love as more interested in a mother figure than in a husband. These interpretations echo the concerns written about Tom Corey in *SL*, that Tom is more interested in Silas than he is in either of the daughters, and only wants to marry one of them to be closer to him. While there certainly develops a strong relationship between the two women, Love becomes increasingly depressed during Richard's absence, and while she might desire marriage as a way of joining Richard's family, grandmother included, the story makes it clear that she wants to marry him and imagines him as the perfect man in her life. Since there is very little contact between them before his indiscretion, there is a strong element of romance and obsession that brings them together. The question of love does not arise, or a definition of what that love

entails; their interest and dedication to each other is enough for the justice of the peace, and the narrator assures us that society accepts the banns as legitimate when we hear them comment on the father's tyranny.

In many of Freeman's stories, the parents object or interfere with their children's engagements, though few of her characters successfully elope. The novel *Pembroke* (1894), for instance, begins with the breaking off of an engagement, and ends with the father's acceptance of his new son-in-law, allowing them to finally marry. The middle part of the plot revolves around the discussion of the various faux pas committed by the son, ideological and social. Eventually, through discussion and good deeds by the future son-in-law, he is found acceptable. On the other hand, those who choose an elopement are able to bypass this lengthy process of qualifying and accepting a candidate into the family. Concerns about priority were either intentionally avoided, or in the haste of proceedings, undiscovered. This was a primary concern that emerged in the novels of England, throughout Jane Austen's period, and up at least until Thomas Hardy's *Far From the Madding Crowd* (1874). Usually a man was hiding something from a woman and her family, and only through an elopement could they avoid public scrutiny, or direct parental interference. American literature, until, and even while Howells was writing *A Modern Instance*, has few examples of successful elopements. *The Coquette*'s Eliza Wharton (1797) is tempted to run away with her lover and subsequently dies, and in George Lippard's *Quaker City* (1844), the false offer of marriage offered to the young heroine Mary Arlington tempts her to runaway, but she finds her fiancé is a pimp, ready to lead her into a life of prostitution after one night of supposedly wedded bliss. Writers struggled with positive representations of elopement, but the 1890s period offers up new, positive endings to these stories, even if, as in Freeman's "The Love of Parson Lord," they are carried out in hybrid versions of elopement and engagement. The

couple finds support from various members of society who assist their elopement, unlike the complete independence of elopers like Marcia Hubbard, who acts alone against her parents, and presumably against other members of society who know her future husband.

Margaret Deland's elopement narrative, the opening story in Howells' *QC*, is "An Encore," which presents us with another happy conclusion. Initially it appeared in the December 1904 issue of *Harper's* magazine, but like other writers in this anthology, she had already published other, more radical variations of engagement conflict. Among those, "The Promises of Dorothea" most openly heralds an elopement against a guardian's strict prohibition. It was also originally published in *Harper's* magazine, April 1898, and included in her book, *Old Chester Tales* (1899), a collection of loosely connected stories about the small, seemingly backward world of Old Chester. "Promises" is also the lead story in that collection, so it includes an overarching definition of the problems facing rural communities like Old Chester in America. As a fictional location, it examines an opposite movement to Howells' focus on rural newcomers encountering the city. "Promises" and other stories in *OCT* depict modern ideas, technology and nomads testing the limits of traditions and a closed society. Her stories offer compromise as a conclusion, allowing "modern thinking" the chance to integrate into her small town world even as the community expresses fear that the change will be disruptive. Conservative defenders of the old ways often suffer when confronted with public opinion, even among the citizens of a "backwards" community like Old Chester. As in Howells' novels, moderate, reasonable solutions are preferred, based on honest expressions and not those based on passion or pride, but Deland's stories exist in a world that changes and adapts with experience, in contrast to the hard trajectories laid out by Howells in his novels.

"An Encore" is also set in Old Chester, and looks back to 1804, with the birth of Letty Morris. When she is eighteen, she is courted by a student named Alfred, but Letty's parents arrange for him to be "sent away," "'to save him,' says the father. 'To protect my daughter,' says Mrs. Morris" (6). Alfred convinces Letty to run away and meet him at the minister's, but despite their assertions to the minister that they are of age, the minister "*sent a note to Alfred's father, and Letty's mother!*" (9) The narrator then adds this personal commentary on the action:

> We girls used to wonder what the lovers talked about while they waited for the traitor. Ellen Dale always said they were foolish to wait. "Why didn't they go right off?" said Ellen. "If I were going to elope, I shouldn't bother to get married. But, oh, think of how they felt when in walked those cruel parents!" (9)

The narrator and her friends represent the opinions of the late nineteenth century, and clearly their outlook on the pending action is quite removed from the action of the story. The parents intervene, and even pressure the children to take other partners, but the story then moves forward forty years or more, when Alfred and Letty come together again. Their partners dead, a new romance becomes the talk of the town, though their adult children are initially unaware of the couple's history. The narrator tells readers: "Old Chester displayed interest; when she [Letty's daughter] decided upon a house on Main Street, directly opposite Captain Price's, it began to recall the romance of that thwarted elopement" (13). Alfred's daughter-in-law, Mrs. Cyrus, tells her husband that she thinks it is a plan to "hook" Alfred, now called the Captain, (18) and she approaches Letty's daughter, Miss North, to ask if she is aware of the past relationship. They both agree that a romance or marriage at this late age is disagreeable and should not be allowed. Her daughter begins to deny all callers to the house, but the Captain finds a time when the daughter is away to call on Mrs. North. They have a pleasant conversation, but the narrator tells

us that he sees her as an old woman, not the Letty he remembered. Their unassuming friendship, however, continues to disturb Mrs. Cyrus and Miss North, who incessantly comment on the potential danger of their continued association.

After continuing for some time in this way, the Captain picks up Mrs. North one day for a ride in the countryside, and their conversation turns to the topic of interference.

> "Why, Alfred, I love to see you. If our children would just let us alone!"
>
> "First it was our parents," said Captain Price. He frowned heavily. "According to other people, first we were too young to have sense; and now we're too old." … He sighed, with deep discouragement.
>
> Mrs. North sighed too. (44)

Almost out of spite, they laughingly agree to get married. They think it might be best to leave their home community to perform the ceremony, but plan to live together in town afterwards. On their way out of town, however, they literally run into the carriage of Dr. Lavendar, the local minister oft-quoted by the couple's children as being against late marriages. When they talk to him, however, he quickly agrees to perform a marriage ceremony for them. "'Let's go into the orchard. There are two men working there we can get for witnesses'" he tells them happily (49). The message about their future is also clear. When they ride off together in their buggy, Dr. Lavendar turns to one of the workers there and says part of the well-known motto, """*if at first you don't succeed*" – '" (51). This final comment, along with the title, confirm the notion that this couple has done the right thing, and that Old Chester, just like its minister, will accept them as having completed what should have been done from the start.

"The Promises of Dorothea" has a consistent view of elopement as an intergenerational shift like that expressed in "An Encore." In earlier times, elopements were dangerous, and

women needed protection for their weak hearts (the stated reason for heartbalm settlements), but modern couples challenged this belief. The story begins with an explanation of the city: "Old Chester was always very well satisfied with itself" which is "at variance with progress … as for progress, everybody knows it is accompanied by growing pains … It looked down upon the outside world. Not unkindly, indeed, but pityingly" (3). We are then introduced to one of the old families who represent typical Old Chester values. Dorothea, an orphan, lives with her aunts, Miss Mary and Miss Clara. Mary is bedridden, and has stayed there for thirty years, following a tragic jilting, reminiscent of Miss Havisham, from Charles Dickens' *Great Expectations*. Her sister, Miss Clara, likewise promotes an environment of shushed tragedy. The narrator gives us this insight into young Dorothea's impression of the house:

> To Dorothea it was all ghastly and repulsive: and to her young mind the silent house, and the broken heart, and the shadow of the poplar coming and going across the high ceilings of the empty rooms, came to be all a strange, dreamlike consciousness of something dead near her. (10)

Her lover, Oscar King, is described as "a torch among dead leaves," but the narrator also hints that he is connected to the story of Miss Mary's jilting (10). He left Old Chester at about the same time as the jilting, the narrator tells us, and has returned "fifty years old, a handsome, determined, gentle-hearted man, and fell in love with Dorothea the very first Sunday that he saw her at church" (10). When he calls at their house, Miss Clara makes certain cutting remarks to him which indicate that there is some history between them regarding this event. "Miss Ferris had received her caller with a frigid bend of her body from the waist … 'My sister is as usual. Entirely crushed.' 'Crushed?' Oscar said, puzzled. 'You have forgotten,' Miss Clara said, icily, 'that my sister was deserted at the altar. She has never recovered'" (14).

Oscar speaks to Dr. Lavendar, who approves of his plan to marry and rescue Dorothea, all in one act. After a few more calls at the house, Miss Clara has "dark suspicions" that Oscar "meant to include Dorothea in his visits," and Miss Clara's pessimistic, conservative world view appears. Miss Clara becomes extremely anxious about his past, that Dorothea is "'too young—he has been abroad—no one knows—'" Miss Mary insists, on the other hand, that "'[i]t's nothing wrong'" if he is interested in Dorothea and wants to marry her (19). Miss Clara confronts Dorothea, and the narrator presents the encounter this way: "'Did he speak of –*love*?' She took the girl's limp little hand in her own cool, satin-smooth fingers, and pulled her, with vampirelike strength, until she sat down on the edge of the bed. 'I think so,' Dorothea stammered" (20). When Miss Clara asks the question of love, she offers up this definition: "'Did it make you happy to have him speak to you?' 'I—think so,' Dorothea said, crying. 'Then,' Miss Mary said, 'you love him'" (21). She lays down this ultimatum to her charge.

> "… the person who called here this morning has lived abroad for many years, and we do not know what has gone on. Therefore I do not wish you to permit him to take such liberties, or say good-bye to you again in this manner. I trust no words were uttered that I should have objected to?"
>
> … "He asked me if I—cared. And I said I didn't—know" (22)

As a result, the first promise is made, that Dorothea will "'remember'" Miss Clara's words (23). She writes to Oscar, requesting him to cease his calls at their house, and he responds by going to their home and confronting Miss Clara. "'Dorothea must be her own judge,'" Oscar tells Miss Clara, to which she responds, "'[m]y niece's judgment always coincides with mine'" (24).

Dorothea vacillates between the two players for her affection and control. Her sense of respect for her sister is countered by her fascination with Oscar and the escape he offers. On the question of love, the narrator also chimes in her opinion about the couple:

> The fact is, the man who falls in love with one of these negative young creatures hardly takes the trouble to ask whether she loves him; he loves her. And he wants to have her for his wife—to do as he wishes, to think as he thinks, to echo his opinions, and to admire his conduct; such a combination is almost the same thing as adoring. (25)

Furthermore, the narrator notes that when Dorothea sees Oscar at church, her "heart was beating and swelling with misery and wonder and joy; but if one had said the word 'love' to her, she would not have recognized it" (26).

In his discussion of their situation, Oscar is very clear about what they have to do. "'[A]unt Clara won't let you be engaged … so we are going to be married,'" he tells her (27). When she points out problems, he responds with the unusual explanation, "'you see, dear, how dangerous it is not to be married'" meaning that they cannot meet and speak of love openly, without being a married couple (27). She makes a promise to him as they leave, that she will meet him, because otherwise he'll "'have to come into the house with you now'" to speak in front of her aunts about their intentions (28). He puts her in the uncomfortable position of declaring their intentions together, in front of her aunts, or of her simply slipping away, and she prefers the second choice, but still has some doubt. When Miss Clara tries to extract another promise from Dorothea, however, Dorothea is stubborn, and she cannot promise to obey her aunt because she has already made a conflicting promise to Oscar. Dorothea gives her stubborn response this way.

> "I think—I won't, Aunt Clara."

> "Won't what? Won't see him?"
>
> "Won't promise, Aunt Clara."
>
> Miss Ferris, her lips parted to speak, stared at this turning worm.
>
> "You—won't?"
>
> "I think I'd rather not, please, Aunt Clara." …
>
> There are no exclamation points which can tell Miss Clara Ferris's astonishment.
>
> (30)

Miss Clara continues to lecture her and once more demands a promise. "She waited; she dared not risk another command, but she waited. There was no reply. The silence grew embarrassing" (31). Despite Dorothea's resolve, Miss Clara does not believe that her niece is capable of completely disobeying her, and eloping in the night, but that is exactly what happens in the early morning hours the next day.

Dr. Lavendar, the minister, explains to them, "'I don't approve of runaway marriages, as a rule. I made Oscar promise to bring you here, because I couldn't have one of my children married by anybody else. You are of age, and you have a right to be married, and I believe Oscar to be a good man'" (35). The irony of this, for long time readers of Deland, is the fact that Dr. Lavendar marries the couple in "The Encore," which could be considered a runaway marriage. In the next story of *OCT*, "Good for the Soul," he also performs a marriage for a couple from out of town, who want to marry on a moment's notice. Under the minister's approving eye, the marriage is sanctified, but the remaining story focuses on the effects this has on the unmarried aunts, and this situation reveals much of the possible back story regarding Mary's jilting. When Miss Clara discovers Dorothea missing, she has something akin to a psychotic episode, which makes Mary rise from bed for the first time in thirty years. "Then her mind went back to this

amazing news and her sister's anger: Clara would kill the child!" (37) When Clara cannot stop the events already set in motion, she becomes the bedridden sister, while Mary takes up a normal life, though she becomes haunted by doubts, including "a dreadful suspicion of herself; perhaps, after all, her heart had not been broken? perhaps her fine delicacy had not existed? … There was no end to her moral and physical distrust of herself" (39).

The implications of this reversal raise many questions about the previous jilting. Was Miss Clara responsible for driving away Clara's lover? Did she raise the same objections about that man, write him letters and undermine her sister's wishes? What was the feeling of love that she originally had? Was it Clara all along who felt such shame and pang of pride, and who fed those emotions to her sister, to keep her bedridden and helpless for thirty years? These questions are only hinted at in the concluding pages, but clearly Miss Clara is permanently unsettled by Dorothea's willpower. She does not understand how Dorothea could ignore her warnings about a man who might have a past history with other women, prior marriages or prostitutes. The last lines of the story indicate that the couple go on to have a long and loving marriage, even if Dorothea is never very quick to understand her husband's jokes; the eloping couple is accepted into Old Chester society, and the authoritative aunt is unseated, emotionally broken and "suffered agonies of mortification" (39).

These stories of elopement ignore concerns about priority, and urge couples instead to focus on their right to marriage, though they offer an ambiguous definition of love, which hinges as much on attraction as on any deeper, faith-based commitment, or romantic notion of passion and aesthetic beauty. The parents or guardians are repeatedly depicted as tyrannical and unbending in applying their will to the young, or old, who don't "have sense" to choose appropriate partners. When the parents become impossible blocks to a marriage, the modern

community will acknowledge the adult children's right to marriage and accept them, as a married couple, back into society, even if the parents rant or fume about the event. The speeding up of a marriage, propelling it to take place in a moment, prevents other parties from interfering, and also prevents any investigation into the prospective partner that might stop the marriage. There is also, presumably, no chance to entrap someone. It removes the threat of a hidden intention behind entering into a long term contract which might later be used to blackmail or legally bankrupt an unsuspecting suitor. This study is not arguing that there were no more problematic elopements. *Sister Carrie*, for instance, is a prime example from this period of an elopement plot that does not end in a successful marriage. To be a success, the woman eloper cannot be coerced or tricked to abandon her community, as the treatment of Carrie by George Hurstwood certainly shows itself to be. The community contributes and assists the couple in the fight against tyrannical guardians, allowing them to enter the institution of marriage, or so Deland seems to be assuring her readers.

**Robert Herrick and the Threat of the New Woman**

In contrast to the quaint courtships, small towns and happy marriages presented thus far in this chapter, other stories from this era expressed the growing fear that women were hungry for sex, money and power. Various novels from this period present these concerns, and many of them were also on the newly created bestseller lists in America. *Sister Carrie*, mentioned above, was denounced as immoral, but it was far less popular than the novels by Frank Norris (*McTeague*, 1899) and Robert Grant (*Unleavened Bread,* 1900). Both of these novels center on women who are more concerned with material possessions than their husbands' welfare or the couple's future together. In the short fiction of the 1890s, another name was becoming popular, though he has largely been forgotten today, and that was the Harvard educated Robert Herrick.

In his day, he was widely praised for his complex understanding of modern society. As his contemporary Harry Hansen says of him, in his *Midwest Portraits*: "His tastes have nothing provincial about them and his viewpoints are based on long observation and study" (232). Herrick also admired William Dean Howells, and received some recognition from his idol early on in his career. By 1900, however, Howells was becoming critical of his novels. As early as 1895, Herrick was defending his position to Howells because, as Herrick saw it, "those who are too morally squeamish to fight with brass knuckles are doomed to be knocked down" (Auchincloss 139).

Herrick's first book of short fiction, *Love's Dilemmas* (1898), fed the public's belief that marriage was in crisis. As the title indicates, most of the stories in the collection focus on couples that suffer doubt, greed and general malaise in marriage. In almost all cases, women, often modeled on the New Woman type, drawn from the leisure class, have high expectations that pressure their husbands or lovers to the point of crisis. The first story in the collection, "Mute," for instance, follows the engagement of Stella Blake, a "very considerable beauty" from the top of Chicago society (1). Her fiancé is equally suited to her, but she suffers because her passion is "suppressed" and she harbors doubts about her ability to love (8). Though they do marry, this malaise continues to haunt her, and eventually she breaks her silence (thus the title) about her lack of feeling. The similarities to *A Modern Instance* are striking. Stella's husband, Sanson, moves with her to Chicago where he joins a newspaper as a feature writer. Stella's father warns her that he is the wrong "type" of husband, and he spends long hours at the club, talking literature. They have a child, but when Sanson associates with a stage actress who is also a divorcee, Stella cannot handle the scandalous talk and she returns home to her father; talk of divorce comes after several months. The final scene takes place in a lawyer's office, however,

instead of an Indiana courtroom. Brought together by the lawyer Hibbard (!), she explains that she only wants him to be "free" because he probably loves another woman more than he loves her (37). She continues to blame herself, saying "'There is no mystery, now that he has known me. He must have mystery … I will take myself—away'" (38). Like *A Modern Instance*, the marriage's problems are first exposed during the engagement, later pushing them to divorce proceedings. In the end, however, they leave together, presumably resigned to continue their marriage, but it is clear from the lawyer's thoughts that they will always be an unhappy couple.

Herrick's most direct discussion of the problems of engagement comes in the final story of the collection, "The Psychological Moment," written in 1895. Helen is a young woman with two suitors, and she is about to make her decision when the story opens. Mr. Wilson has wealth, and the narrator notes: "Money, to be sure, she had always held essential" (180), but "Mr. Wilson didn't give her the right sensations; she had a great curiosity about those mysterious feelings of passion, and the other lover seemed to promise them" (181). With this in mind, she refuses Wilson's proposal, and accepts her other lover, which leaves her mother "dumbfounded of course" (183). She entertains Wilson once more, and feels great sympathy for him, but confirms to him that she has agreed to marry someone else, and he leaves with tears in his eyes (185). Her engagement, however, is not what she expects, and her "lover seemed worried over business, and not at all disposed to note emotional flurries" (187). When her fiancé leaves the country on business, she decides to call Wilson back once more. The narrator explains her motives this way:

> All her life anything masculine had done her bidding, and now she had a vague desire to use one man to punish another. It never occurred to her that her act was a perilous one, or a wicked one. Time was when she had felt that an engagement was sacred, and had

> scorned the girl who broke her engagement as akin to the *divorcée*. But if her love is dead, she argued now, a woman is ruined, as far as emotion goes. (188)

She tells him that her engagement is off, and as he tries to understand her, she proposes to him: "'I ask you,' she continued harshly, 'to marry me now—today, tomorrow, as soon as we can'" (191). He cannot accept her, though, first, as he points out, because the other man has the priority right over her. He sees through her act of revenge and notes that this proves her feelings for the other man, not Wilson. "Swiftly her mind reconstructed her little drama, and the rightness of his words came home to her" (193), the narrator tells us, and Wilson leaves, concluding the story.

Women, Herrick notes again and again, suffer from emotional uncertainty when faced with marriage. They aren't sure when they are in love, and they whimsically enter and exit relationships, without concern for the men around them or respect for the engagement contract. This same view of women emerges in his later novels as well, including *The Web of Life* (1900), *The Master of the Inn* (1908) and *Together* (1908), and critics have noted it as well. Once the couples marry, Louis Auchincloss sees the situation this way: "A fidelity to an incompatible marriage seems to be the only virtue open to Herrick's unhappy women" (135). The husband is also "bound to become her victim" (136). Allen F. Stein says this of Herrick's representations of marriage: "In fact, it is clear that for all of Herrick's supposed faith in marriage, he is writing the institution off as a means to a gratifying life in modern America" (311). On the one hand, these women all want stability, and money, but they seem incapable of controlling their passions in the presence of another man. In *The Master of the Inn*, for instance, the main character speaks heroically of his ability to seduce women, noting with pride that on one occasion, one night was enough to win over a woman to his bed, despite the engagement ring on her finger: "I needed her then, and I took her—that is all" (75).

In Herrick's stories, engagements fail as contracts, or perhaps more correctly speaking, women do not understand contracts, and cannot commit to them as men do. Helen, in "The Psychological Moment," for instance, considers an engagement "sacred," and yet she makes the decision to break her engagement almost whimsically; her acknowledgment that Wilson is right further underscores that she has toyed with a relationship that should be an important contract with another man. For Herrick, women's indecisiveness puts men in awkward and uncomfortable positions, and it is up to men to make the right decision, or else later, they will suffer. The problem with women, for Herrick, is their vulnerability to passion or, as some critics have simply put it, sex. Herrick makes this charge openly against women writers. In a 1929 article entitled "A Feline World," Herrick claimed: "Women novelists are … particularly occupied with sex, not bluntly, like their brothers, but with more erotic effect … the interest of women in women novelists becomes primarily a manifestation of lesbianism" (Latter 448). These charges of "fickleness" and perverse sexual desire against women add to what critics have called "devices inherited from the sentimental romance tradition" that fill Herrick's novels (Walcutt 87). Critics have therefore cast him out of both the naturalist and realist camps. In "Naturalism and Robert Herrick: A Test Case," Charles Child Walcutt defines Herrick this way: "Herrick has plenty of potentially interesting ideas, but his action, far from being of the sort that might carry strong naturalistic ideas, are so contrived and sentimental as to fail even to produce what might be construed an acceptable realistic novel" (88). Allen F. Stein adds: "There is little, therefore, that is 'realistic' in the Howellsian sense in Herrick's vision of marriage" (315).

**Contracts, Love and Engagement: Moving Forward**

In all of the examples provided in this chapter, the characters look ahead to marriage with anxiety. They worry about priority claims, family objections and the level of satisfaction the

relationship will bring, and in most cases, the characters are propelled forward, sometimes quite rapidly, and urged to go ahead and get married. Long engagements, which had been common throughout the nineteenth century, are no longer preferred because they merely allow doubts and problems to emerge which, in most cases, should not prevent a marriage from happening. Even the Herrick stories give examples of women having second thoughts, or entertaining other lovers, during their engagement, and how this is ultimately damaging to their future happiness. This anxiety has been explored by other critics who note that the definition of a good marriage in Victorian terms was no longer acceptable at the turn of the century. In his book, *Modern Love*, David R. Shumway has analyzed the role of love in courtship and marriage, and makes these observations:

> The popular fiction of the turn of the twentieth century, however, is important in its own right. Though it was not in the least innovative, it was much more widely read and disseminated … The discourse of romance was thus presented in a more mundane or "normal" context, making it seem less a fantasy and more a "natural" part of life. (37)

As he continues to analyze this period, Shumway adds:

> In the late nineteenth century, romances seem to be fighting the battle for spousal choice that has already been won … The romance thus expresses an individualism even more extreme than that represented by the privatized family of the period. The individual's desires and the amorous couple's union are what matter. (49)

Shumway's explanation provides the backdrop to these stories from the 1890s. The choices made, by Philippa in the Howells's play, Sarah Lynn, in "Hyacinthus," Dorothea in "The Promises of Dorothea," and even Helen in "The Psychological Moment," all represent individuals making a choice, not the greater importance of social order represented by parental

control or the concern of relatives. As most of these writers depict, the community will adapt and accept the couple, once they are married. In "An Encore" as well, the couple asserts their right to make their own choice. The disruption is temporary. Love is not something grand and glorious, and beyond the reach of normal people, but a simple extension of the comradeship, the growing intimacy between a man and a woman expressed through conversation and a desire for one another. The realization that they should be together should therefore be acted upon as quickly as possible, before obstacles can erupt in their path. Questions about previous lovers, for instance, are only harmful, and as Howells assures us, quite unimportant and part of an old way of thinking about marriage. The question of "true love" is also beyond the scope of these stories.

Shumway does not end his analysis by praising the individualization of courtship and marriage, however. He goes on to make these observations:

> The turn-of-the-century romance narratives often indulged in bending the rules of gender construction suggests that such rules were somewhat less rigid than they have sometimes been depicted … Women in romances are accorded freedom, but such freedom is largely restricted to a choice among potential husbands. (50)

As texts, these representations were problematic because only fictional characters had these freedoms, but as Shumway argues, they served a purpose in society; "Romances didn't present a new picture of marriage, but they did allow people—especially women—to reimagine their lives as a narrative in which their choices and desires might be realized" (51). In other words, the female readers of *Harper's* magazine were not likely to elope and defy angry parents, but they might find the strength to turn down a suitor which they did not find acceptable with the hope that a better suitor might appear on the scene later. Exactly how much power these stories

engendered in their readers is unclear, but their popularity speaks to their power as imagined reality.

The rule bending, in this case, also applies to the contractual obligations and legal threats of heartbalm lawsuits. For the most part, these stories do not depict couples that find themselves in court, arguing over proposals and broken hearts. Freeman, in particular, makes it clear that emotional turmoil during an engagement does not mean it is over. Both Ada in "Moral Exigency" and Hyacinthus reclaim their lovers in the end, after some negotiation with those who interfere. The examples of unfulfilled broken hearts are problematic because sometimes the event seems debilitating, but in other stories, emotions are easily assuaged. Dorothea's aunt, in "The Promises of Dorothea," questions if her broken heart is really the cause of her depression. Aunt Mary, bedridden for years after being jilted, gains the strength to rise from her bed when Dorothea elopes, not because she is angry, but because she wants to prevent her sister from interfering. When she drags herself from bed and thinks back about all the years she has suffered in her Miss Havisham-style isolation, she begins to wonder about the real reason she laid in bed so long. The narrator tells us this of her moment of doubt: "To poor old Mary there came a dreadful suspicion of herself; perhaps, after all, her heart had not been broken? perhaps her fine delicacy had not existed? perhaps—perhaps!" (39) Instead of her heart actually breaking, she had merely reacted as her sister had expected, and her sister's constant pity and attention over the years fed her belief in her broken heart.

The other example of a broken heart is Herrick's Wilson in "The Psychological Moment," in love with a fickle woman; given a second chance to marry Helen, he turns her down, with a wisdom which modern readers might hope Ada in "Moral Exigency" would follow. Not because the contract proves invalid or because another love exists, but because the future

spouse cannot decide on a single partner and wants two lovers at once. Ada should perhaps thank her rival Eunice for exposing Burr's weakness for women, instead of negotiating with her at the end of the story. Wilson lays it out distinctly when he realizes that Helen is just playing a game with him, using him to get back at her fiancé for her future husband's seeming indifference to her emotional state. What the women writers explore is the fickle nature not just of women (and rarely women), but also men. The contract should be flexible, their stories seemingly argue, because people change.

The only example of someone caught in a contractual obligation to marry is old man Saunders in "A Stiff Condition," and the story clearly explains to readers that this is his punishment for wickedness and for playing with the devil. Good people, it would seem, do not get caught up in lawsuits over breach of contract. Saunders seems resigned to this marriage because otherwise he will lose all of his worldly possessions, but Janet does not want to marry him for his money. She is not a gold digger in that sense, but is simply desperate for a husband. Even the women of Herrick's stories are not depicted as unnaturally greedy in the pursuit of wealthy husbands. In his novels, the women mainly come from the same class as their husbands. In the novel *The Web of Life*, the woman who falls in love with Herrick's main character does not want to marry him, partly out of fear that she will be seen as a money-hungry divorcee. She would not contrive an engagement for the sole purpose of breaking it and taking him to court. But Herrick's stories, and even the stories of Freeman, indicate that it is natural for a woman to want a wealthy, stable husband, and that they might throw off another lover for someone better who comes along.

Thus far, it would seem from the stories presented that there were no harmful effects from the contractual nature of engagement, with the exception of Whitaker's Saunders character.

There were additional side effects, however, and Edith Wharton, among others, exposed the negative consequences while avoiding courtroom dramatics. It is important also to remember that during this period in American history, magazine culture had exploded onto the scene, and a thorough investigation of the thousands of courtship stories published during this time would yield a wide variety of engagement complications. In *Selling Culture*, Richard Ohmann notes that there was a dramatic increase of magazine readership during this period:

> I would say that there were no modern, mass circulation magazines in 1885, and that by 1900 there were in the neighborhood of twenty—enough to make them a highly visible and much noted cultural phenomenon. The numbers bear out this claim: at the end of the Civil War the total circulation of monthlies seems to have been at most 4 million. It was about 18 million in 1890, and 64 million in 1905. (29)

These magazines were big business, and the relationship between the ruling classes, and their ability to control the spread of ideology is in many ways related to these stories about social order, and obviously these publishers were happy to distribute stories about courtship and marriage because it diverted the public's attention from other problems that were of greater concern to the capitalists of America during that time, including the labor movement, Jim Crow laws in the South, and various military operations around the world, including the war in the Philippines.

Ohmann's explanation of hegemony helps illuminate why the stories of rebellious women, like those in Freeman's stories, and elopers, like the heroines of Deland's Old Chester, could make their way into the pages of these major national magazines, despite their apparent challenge to the more conservative historical views of stable social order, and the importance of the engagement contract and its role in preserving this order.

> For one thing, the legitimacy of the social order in the eyes of the subordinate classes depends on their belief that they are free and that their institutions—including the media—are open (and most members of the bourgeoisie themselves share in this belief). Thus the hegemonic process, when it is working well, is a system of rule that depends on the widespread, active consent more than on force or manipulation. (45)

The importance of this sense of freedom includes the freedom to choose a mate. Critics of courtship have noted this change, and so have historians of marriage. Yet, the contractual nature of engagement was still a legal reality, and for many men, especially those who resisted the belief that women deserved the right to move in and out of their commitments, they respected and feared this contract, as Herrick's hero of "The Psychological Moment" demonstrates. Writers like Whitaker also express the belief that this contract serves a purpose and holds men responsible for their commitments, and points to the seriousness of a proposal to a woman, or at least his belief in its seriousness. Men's steadfast belief in this contract's importance did have tragic consequences, and the following chapter will take a look at those dire examples.

# CHAPTER 4

# WRECKED ENGAGEMENTS: EDITH WHARTON'S CRITIQUE OF CONTRACTUAL RELATIONSHIPS

The turn of the century saw the wane of the empowered stories of the 1890s, and the popular novels of Robert Herrick and Edith Wharton ushered in a period of pessimism, especially in the literature of marriage and courtship. The reading public seemed to have had enough of the "adventure stories that show modern heroines rebelling against the past, successfully" that marked much of the popular magazine fiction of the 90s (Ammons 5). As many critics have noted, "Brave new women were invading fiction in the 1890s, and authors, by and large, had happy tales to tell" (Ammons 5). By contrast, Robert Herrick, Frank Norris and Theodore Dreiser, and their more pessimistic novels became the bestsellers of the early twentieth century. They presented the public with "train wreck" entertainment, a term used by critic Nancy Bentley in her recent book *Frantic Panoramas* to describe the public's fascination with destruction and failure. Howells was very critical of this trend in public entertainment, expressing, along with others, the opinion that "the events and genres of this new field of culture seemed designed for nothing but the pursuit of sheer sensation" (Bentley 3). Novelists in this new tradition of honing in on the details of the "wrecks" challenged the concept of marriage in a new way. They were less concerned with the daily problems of an engaged couple, and often bypassed the engagement stage altogether, because the depiction of marriage was the focus of critique. Frank Norris, for instance, gives his *McTeague* characters Trina and McTeague a short, traditional engagement, and in Theodore Dreiser's *Sister Carrie*, Carrie passes as married and calls herself a wife, but never legalizes her relationship with George Hurstwood. Herrick's *The*

*Web of Life* (1900) also focuses on a couple that lives together but never marries, and which also ends in tragedy. Edith Wharton, on the other hand, started her career in the 1890s, but didn't become a bestselling author until 1905, when *The House of Mirth* established her as a leading novelist of the new generation of women writers who were more critical of marital relationships, and less optimistic about women's ability to rebel successfully. Instead of inspiring her readers with ideas of freedom and possibility, Wharton told stories in which it is common, as Elizabeth Ammons puts it, "for a woman abruptly to come face to face with some bitter disillusionment" (6).

Though some critics have deemed this next generation of writers "naturalist" instead of realist writers, the term realism for Wharton aptly applies when we consider, as Amy Kaplan suggests, that the realistic novel observes "cultural practice within society rather than placing the realist outside society as a neutral observer" (7). Wharton, like Howells and Deland before her, did not need to explain the full cultural context of her stories to her readers because both she and they resided in the culture and understood the signs and cues of the culture well enough. These writers honed in on cultural practices and anxieties, through an awareness of the law and the popular press, and wrote their own case studies set in the same time and place of contemporary American readers. Howells and Deland might have been proposing solutions to the problem of engagement anxiety, but Wharton was justifying that anxiety, and gave readers additional examples to dwell on as they considered the complex problems facing courting couples who wanted to enter marriage. Kaplan's definition explains why Wharton deserves the label of realist instead of naturalist:

> Realistic narratives enact this search [for representing reality] not by fleeing into the imagination or into nostalgia for a lost past but by actively constructing the coherent

> social world they represent; and they do this not in a vacuum of fictionality but in direct confrontation with the elusive process of social change. (9)

For Wharton, this meant dealing with social change not as an idealistic positive, but as a complex situation in a world of people both progressive and conservative, people who could not transform society by embracing the new forms of agency available to them. Her characters might know what they want, but they lack the power or the will to make it happen, or if they use their agency, the results are not as expected.

Wharton read widely from her American contemporaries, and made this assessment of these literary sensibilities in her autobiography:

> W. D. Howells's "A Modern Instance", was the forerunner of "Main Street," of "Babbitt", of that unjustly forgotten masterpiece "Susan Lennox", of the best of Frank Norris, and of Dreiser's "American Tragedy". Howells was the first to feel the tragic potentialities of life in the drab American small town; but the incurable moral timidity which again and again checked him on the verge of a masterpiece drew him back even from the logical conclusion of "A Modern Instance" … (*Backward* 147-8)

Wharton clearly valued writers who were not afraid of giving details of "wrecks" in their stories, but her detailed focus on law and love, as they influenced courtship and marriage, unfold in domestic settings similar to those examined thus far by Howells, Deland and Freeman. Wharton couches her criticism of engagement law not in the courtroom and newspaper headlines, but in the unfolding of events that might lead to sensational conclusions. Wharton and her contemporaries were part of a new generation of writers that attempted to blend sensationalism with the domestic realism of Howells. Bentley describes these turn of the century writers thus: "American artists and intellectuals learned from and, indeed, even imitated elements of the rival

mass culture they also subjected to sharp critical analysis" (10). Wharton in particular puts her fictional marriages through extreme duress and knew that the popularity of her novels made her a target of criticism as she gave her own unique versions of these well-circulated stories of courtship and marriage.

The impulse to marry is repeatedly explored in Wharton's novels, from the very beginning of her career until the very last novel, and in each, she presents a new, complex situation that places the contractual nature of marriage at the center of her plots as she explores the pressures on both men and women to conform to social and legal expectations. As Hermione Lee states in her recent biography of Wharton, "All through her writing from the 1890s to the 1930s, marital bondage, attempts to escape it, divorce and the illusions of freedom are some of her main subjects" (363). Unlike the texts examined in the last two chapters, Wharton's fiction dwells on the impossibility of escape, and the power of gossip and the popular press to control aberrant or rebellious behavior. Her characters cannot elope, cannot overcome social boundaries, and cannot construct a successful marriage based on love, unless, like the couple in Wharton's *The Glimpses of the Moon* (1922), they enter the relationship fully aware of the contractual and legal nature of marriage, and then negotiate their emotional needs as they emerge until finally something like love develops.

Howells, Freeman and Deland have thus far illustrated the novelists' impulse to look past the negative effects of heartbalm laws, hinting at breach of contract, but also finding ways for their couples to either successfully marry, or finally break off the courtship. As Bentley puts it, "[f]or Howells in particular, mass culture seemed a nemesis, a rival for the work of shaping the sensibilities of a national public" (12). Despite the fact that Howells was both magazine editor and novelist, he saw the novelist at odds with the popular press, and considered himself one of

the gatekeepers of American (and universal) literary values by avoiding sensationalism. Bentley clearly places Edith Wharton at odds with Howells.

> Wharton's fiction registers forms of social and somatic vertigo that have less in common with any sentiment in Austen or Thackeray than with the aesthetics of disaster and bodily thrill … her literary analysis is able to uncover and explore the distributions of risk that lie behind a key mass sentiment, the diffuse apprehension that "something may happen to somebody." (219-20)

Something does happen to characters in her novels, and usually it is the result of disastrous personal relationships. Howells saw these representations as "cheap" and common, but from Edith Wharton's perspective, the contractual nature of engagement needed to be exposed because it was just as damaging to relationships as the contract keeping a married couple together.

Her pessimism about marriage in 1900, however, does not lead her to wallow in sadness over the loss of sentimental gender roles (as Robert Herrick's representations often do); instead, she is quite frank in pointing out that lingering expectations on both men and women block the path to modern married relations, and that many men and women did not want the contractual binds of engagement or marriage established and perpetuated in the nineteenth century. Men and women both want something different from marriage, but legal and social obligations prevent couples from pairing up. An examination of just about any of Wharton's novels gives credence to this view, and a number of critics have also noted her tragic views on women and marriage. Yet while the scholarship on Wharton's opus is quite extensive, the heartbalm crisis, or the question of engagement has not been part of the critical equation. In most instances, the introduction of these concerns does not drastically alter the critical readings and interpretation

done on her texts, but it does inform her works, and in that way challenges some of the particular claims made about her novels, particularly *The House of Mirth*. For this dissertation, three novels that provide an overt exploration of these situations will be examined, and each provides unique examples of the stress placed on engaged couples, or couples who wish to become engaged, but find their path blocked.

*The Touchstone*, Wharton's first novella (1900), explores the pressure on men to be financially solvent before marrying, and the unintended consequences of this pressure on a newly married couple. Her early bestseller, *The House of Mirth* (1905), might seem an interesting selection because Lily Bart cannot or does not get engaged, but Wharton is already exploring the effects of male anxiety over what will become the gold-digger fear in later decades, and this study will examine Bart's inability to enter into a valid engagement. Finally, *Summer* (1917) openly explores male power and the law, as a young woman vies for the man she loves, but ultimately fails because he is already promised to another woman. The novel's overt condemnation of patriarchal power and its extension into the legal system has led Hermione Lee to say: "[*Summer*] is one of Wharton's most outspoken and lacerating books about the limitations of women's lives. She is not easily described as a feminist writer, but *Summer* is particularly bitter about female oppression" (512).

These novels are realistic not only because they give detailed accounts of social codes for young women and men, but also because they explore the legal system and reveal Wharton's extensive knowledge of the laws of marriage. Alicia Renfroe is just one critic that has noted Wharton's analysis of the law. As Renfroe puts it, "Wharton often employs legal discourse, particularly the language of contractual obligation and rights, to depict relationships among characters, to examine the ways in which characters define themselves, and to challenge

contemporary accounts of justice" (193). In many of Wharton's novels, and in all three examples selected for study here, her male characters are lawyers who talk with other lawyers; likewise, the women discuss their problems and the possible results in terms of the law, either with male lawyers, or with other women. There are also scandals, and problems with reputations scarred by gossip, often with a hint of blackmail and the threat of legal action. These discussions often revolve around potential heartbalm cases without directly invoking the term "heartbalm" or even "breach of promise" in any of her novels.

*The House of Mirth* takes place in and around New York city, a setting which Wharton used often, but other novels look at rural settings, and consciously seek to represent what Wharton considered "a truer picture … of the 'snow-bound villages of Western Massachusetts'" to counter "the 'rose-colored' versions of … New England" created by writers like Mary Wilkins Freeman and Margaret Deland (Lee 382). Wharton, Freeman and Deland all see the same problems facing couples, but whereas Freeman and Deland provide their characters with a way out, and often a positive spin to that outcome, Wharton sees them deadlocked and settling for less than they want, or for nothing at all. The same issues emerge that have filled the previous chapters—the priority rights of suitors, parental control and influence over their children and the fear of blackmail—but Wharton adds new complications that expose some of the decidedly negative effects of breach of contract and heartbalm lawsuits on couples at the turn of the century. She also sees these effects as bearing down on both men and women, at times causing such anxiety that a proposal is not even possible.

Wharton's path to and through marriage was unusual. We don't know much about her courting days, but she did have both a broken engagement and a divorce. Before she met Edward "Teddy" Wharton, she was briefly engaged to Henry Leyden Stevens, but the engagement was

called off because of "'an alleged preponderance of intellectuality on the part of the intended bride'" (Lee 62). The broken engagement happened in 1882, but by 1885 she was again engaged, and married, though the wedding was also unconventional, taking place quickly after the engagement was announced, and, as Hermione Lee reports, "no bridesmaids and no honeymoon" (75). It is well-known that theirs was not a happy marriage, and many observers have also noted that their 1913 divorce is not even mentioned in the pages of Wharton's autobiography, *A Backward Glance*. Despite her personal escape from marriage, she did not write about happy divorcees, though her 1920 novel *The Age of Innocence* flirts with the notion that divorce is the right path for some people. Wharton also presents less than flattering parents and/or guardians that contest the benevolent view of parents presented by Howells and other nineteenth century writers; orphans, Howells' heroes of choice, are equally trapped in Wharton's novels, and they lack the self-determination necessary to act independently, in what Howells saw as the democratic ideal. These decidedly negative, and at times tragic, stories set Wharton apart from her predecessors; they also expose the early patriarchal fears of "gold-digging" women which emerged fully in the 1920s and 30s, paving the way for the removal of breach of promise (heartbalm) laws, and for the more liberal views of marriage and divorce that emerged in the twentieth century.

**No Money, No Honey: Engaged Men and the Financial Burden of Marriage**

Wharton's first novella, *The Touchstone*, presents a common problem for engaged couples in the nineteenth century—the pressure on a man to be financially solvent in order to support a wife, before they can marry. As historian Ellen K. Rothman notes in *Hands and Hearts*, long engagements had been the norm in the nineteenth century, but as the turn of the century came and went, so did this tradition. "A man thought of engagement primarily in terms

of when it would be over: how could he exert himself—and persuade his fiancée—to bring about the earliest possible wedding day?" (164) A man could bring about the end of the engagement by proving that he was financially secure to support his new wife, especially men in the middle class. A wife could be an expensive addition to a man's life, and the writers of this period were well aware of the problems this could create for an engaged couple. Wharton's *Touchstone* uses this situation to initiate her plot, and readers would have well-understood that her hero, the young lawyer Glennard, is under extreme pressure to marry his sweetheart and end their long engagement. Mary Wilkins Freeman also used this situation in some of her stories, most famously in "A New England Nun," which some critics have examined for its use of female agency despite the fact that her action was an old form of agency, well-known to readers. Women had control over the shortening or the elongating of engagements throughout the nineteenth century. As Rothman points out, long engagements often had more to do with the circumstances of the woman than the man. If a woman was working, or living in an unpleasant home, she was more willing to marry quickly than a woman from an affluent home who maintained strong ties to her family. As Rothman puts it, "young women who labored in mills, schoolrooms, or shops often looked longingly at 'home' as something missing from their lives that only marriage could provide" (159). On the other hand, if the woman came from a wealthy home, her fiancé had to prove that he could provide for her to live at the same level, if not better, than the situation she would leave behind.

Wharton's heroine in *Touchstone*, Miss Trent, is neither a working woman, nor particularly wealthy, but she knows that her husband's financial situation is holding up their marriage. She has a wealthy aunt and other affluent friends in society, and because her engagement has lasted, in her opinion, a little too long, she is anxious to secure her financial

future while she's still young. As the novel opens, Miss Trent is considering an offer from her aunt to spend two years in Europe. "'It will be a great relief to mother and the others to have me provided for in that way for two years. I must think of that, you know,'" she tells him, adding, "'I try not to cost much—but I do'" (37). They both know that her tour might lead to an encounter with a wealthy bachelor abroad, and Glennard desperately asks her to stay and to consider living on less money. "'Alexa—if we could manage a little hole somewhere out of town? … In one of those places where they make jokes about the mosquitoes … Could you get on with one servant?'" (38) Miss Trent seems willing, but she's still uncertain; this exchange of words solidifies his decision to sell his personal letters from a famous, recently deceased writer, Margaret Aubyn, which fuels the plot for the rest of the novella. The letters from Aubyn to Glennard discuss her literary life, but also her feelings of unrequited love for Glennard. The publication of these letters brings in a large sum of money to Glennard, and he tries to bury his mixed emotions in the hopes that the anonymous publication will take place outside the bounds of his day to day life. That is not the case, however, and he is plagued by the scandalous potential the publication brings about.

Miss Trent, on the other hand, seems to have no reservations about her husband's sudden wealth, and fully trusts that he has done the right thing, even after she learns about the letters, and the love expressed in them for her husband. She accepts that he needed the money, and she accepts that he loves her, yet her love and forgiveness cause her husband further consternation. As he confesses to his wife, at the end of the novella, "'But for her I shouldn't have known you—it's through her that I've found you. Sometimes—do you know?—that makes it hardest—makes me most intolerable to myself" (117). Aubyn's letters gave him the wealth he needed to marry his new sweetheart, but his wife accepts that and urges him to make the most of it and to

think that it would have made the dead woman happy to know that he found happiness through her, even without her.

Wharton's positive spin in the conclusion of her novella comes with the taint of scandal and heartache. The novella ends before we can see if this situation causes further damage to their marriage, but in light of her later works, we can only imagine that this couple is not finished wrestling with this troubling history. There is no easy way out for this couple, and they continue to suffer through their decisions, and presumably will continue to struggle in the future, all with the hope of finding happiness someday. Wharton is critiquing the problems of engagement, without speaking directly about long engagements, or the contractual pressure on men to follow through on their commitments; yet a careful reading shows that these are at the root of the problem faced by this couple. If he could marry Miss Trent without providing her more than one servant, he wouldn't need to sell the letters. Waiting two years, Glennard knows, is also too long. He might have built up his legal practice by then, but odds are, another suitor would have come along who was financially solvent, and scooped up his beautiful lover while vacationing in Europe. Miss Trent has also admitted as much, that a wife is a costly thing for a man, even if she tries to curtail her habits. Women in the nineteenth century had certain materialistic expectations from marriage, especially women in the middle class, and Miss Trent has those same expectations. As Rothman notes, even those women who had worked before marriage did not expect to continue to earn once they were married. She cites the case of working girl Lucy Harris, "who admitted that she had 'looked at marriage as an escape from drudgery (poor girl),' and resented her brother's suggestions that she continue to teach after her marriage to a poor young lawyer" despite her brother's insistence that Lucy was losing her "'bloom'" (158).

For women who were financially independent, men had to provide a stronger economic position. A husband had to provide for all of her habits, and he could not expect her to marry into a lower standard of living. If a man took too long to build his nest egg, the couple's emotional connection might completely vanish. Freeman makes this point resoundingly clear in her story "A New England Nun." Louisa, the main character of the story, has waited fourteen years for her beloved Joe to earn enough money to support her. Given that she lives alone in a quaint but well-furnished home, the reader knows that she is accustomed to a certain lifestyle and has enough wealth to sustain herself without working. The story opens when he re-enters her life, and readers can immediately sense the emotional distance between them. The emotional focus of the story also makes it easy to overlook the contractual nature of his promise to her, to marry her. He is obviously burdened by his commitment, and tired of it as well, but he dares not speak of breaking it for fear, we can easily assume, of facing public censure and possibly a heartbalm lawsuit. He doesn't express his concerns to Louisa, but she overhears him speaking with another woman, Lily Dyer, with whom he shares a newly-expressed love. He tells Lily, "'I'm going right on an' get married next week. I ain't going back on a woman's that's waited for me fourteen years, an' break her heart.' 'If you should jilt her to-morrow, I wouldn't have you,' spoke up the girl, with sudden vehemence" (30). Joe's concern over Louisa's heart, which does not vent its emotional fondness in their meeting, and Lily's concern over jilting and Louisa's "right," drive their discussion, not their love for each other and its power to overcome obstacles.

They continue to talk, with Louisa listening in the shadows. Though he is poor, Joe expresses every intention of sticking to the contract he has made with Louisa.

> [Lily] "…Honor's honor, an' right's right. An' I'd never think anything of any man that went against 'em for me or any other girl, Joe Dagget."

> "Well, you'll find out fast enough that I ain't going against 'em for you or any other girl," returned he. Their voices sounded almost as if they were angry with each other. Louis was listening eagerly.
>
> "…I shan't fret much over a married man … I'll never marry any other man as long as I live … I ain't going to break my heart nor make a fool of myself; but I'm never going to be married, you can be sure of that. I ain't that sort of a girl to feel this way twice." (31)

The ideology which endorsed the heartbalm lawsuit held that a woman could only truly love once, and if she expressed this love and intention to a man, it was as good as a marriage vow on her part; thus the contractual obligation on a man to carry through and marry the woman who loved him. Freeman is tapping into this rhetoric through Lily and Joe's discussion of rights, love and the heart. When Louisa hears this dialogue, however, she realizes that she is no longer in love with Joe, despite whatever feeling she had for him years ago. When he returns to her later, Louisa very diplomatically releases him from the contract because "she had lived so long in one way that she shrank from making a change" (32). The narrator tells us that she is very anxious about this discussion, that she does not want to "do Joe a terrible injury … it was a difficult thing" (32). Louisa is happy in the end, however, and this has led to many critical discussions about female empowerment; yet these discussions overlook the very serious nature of the contract that binds them together and causes them both anxiety. A powerful message to emerge from this story indicates that emotional needs are more important than past promises and legal commitments for a marriage to work, and a couple to find happiness.

A woman's power, in this contractual relationship, was not new to the late nineteenth or early twentieth century because men rarely sued women for breach of contract. In the same way,

Wharton's heroine Miss Trent can opt out of her contract, and hints of the possibility when discussing her trip to Europe. Freeman's character is not imbued with a new form of agency, but merely tapping into the modern trend of women opting out of loveless, or endless, engagements. An earlier literary example of this female agency is portrayed by Ebenezer Scrooge's betrothed in Charles Dickens' "A Christmas Carol." Briefly considered, Dickens' character Belle is neither a feminist icon of rebellion nor an opportunist woman shrugging off one lover for another. She is merely conscious of the change in Ebenezer's character as he accumulates wealth. As she ends their engagement, she tells him, "'Our contract is an old one. It was made when we were both poor and content to be so, until, in good season, we could improve our worldly fortune by our patient industry. You are changed … I release you'" (27-8). This is the last scene played out before Ebenezer by the Ghost of Christmas Past, and in many ways it implies that this left Ebenezer the heart-broken wretch that needs saving, and this would be consistent with Dickens' overall portrayal of wealth and its corruption of humane feeling, but it also contradicts the belief that women are unable to break a pact of love and move on in life. Freeman's New England "nun" is following in this tradition, and though it might strike some readers as evidence of a particularly strong emotional decision on the part of Louisa, it is neither a complete enactment of a new form of women's agency, nor particularly unexpected. Rightly, I believe, Wharton has taken the same situation and presented it as a natural appearing option for a young woman—to opt out on a proposal which cannot be acted upon in the foreseeable future. In many ways, Freeman's heroine is already a spinster when the story begins, and her rejection of an almost forgotten lover is as natural as the description of the old dog as "fat and sleepy" instead of ferocious or vivacious. Though critics often discuss "A New England Nun" as an exemplar of women's agency, I do not believe it is one of the better examples of what Melissa McFarland

Pennell calls Freeman's focus on "women who are trapped within the social structures and codes that dictate a path of life for them whether they are inclined to follow it or not" (208). In this instance, at least, Freeman's heroine is empowered, not trapped, and it is she who is free to dictate the next step, not Joe or anyone else in her life. Louisa has made her happy home, and the minor aberration which appears on the horizon is mercifully swept away and order is quietly restored.

Wharton's heroine Miss Trent likewise has options, but her husband is trapped by his engagement. Wharton rightly points out that men were under great anxiety to carry through on any proposal made to a woman, and as her hero is a lawyer, he would have been critically aware of the possibility of a heartbalm lawsuit if he could not make good on his proposal. Though Miss Trent does not seem interested in taking Glennard's money, if the break did not originate with Miss Trent herself, a parent or concerned community member could pressure her to bring the suit in order to preserve her honor. Advocates of Freeman's story could also turn their focus to the condition of Joe Dagget, and his recognition that his pledge to Louisa is binding, despite the changes in his own heart. He speaks to Lily in terms of honor, but he also recognizes that he has a very real legal obligation to Louisa, even if he no longer loves her. Dagget, like Wharton's Glennard, is pressured to make good on his proposal, and ultimately it is only the woman who can negate the contract.

*The Touchstone* thus appears as an example of Wharton's conscious break with what she saw as women's tendency for sentimental writing that focused its sympathy on the female lead. Biographer Hermione Lee notes that this break with tradition, including an emphasis on male protagonists cornered by their commitments to women, challenged the established stereotypes of magazine fiction on many levels.

> Wharton's self-creation through the 1890s and 1900s as a woman writer who could not be categorized under "feminine" or "sentimental," and a highly cultured author who could also appeal to a big audience, was a remarkable one. The toughness of her stories was at odds with the context she published in, and with her illustrators, who softened and prettified her sharp edges. (171)

Miss Trent, for instance, seems emotionally distant, and does not respond with a great deal of sentiment towards her husband's activities. Glennard makes the decisions, and he suffers through them for the most part, on his own. Wharton's early stories often hone in on male insecurity, not female emotional instability. Cynthia Griffin Wolff makes note of this male perspective in discussing another of Wharton's early stories, though the description matches these characters perfectly: "He cannot even enjoy her perfect receptivity to his moods, her ability immediately to adopt an easy air when he abjures her to put her cares aside … He wonders *who* she is, really, wonders indeed, whether she is anybody at all in particular" (104). Glennard cannot make sense of his wife and her acceptance of his past affair, but they are already married. The women in Wharton's texts try to conform to male expectations, but men are quick to see this as a mask for something underneath. This in turn, makes men anxious to know the "real" motives behind a woman. Even the seemingly simple Miss Trent suffers from this situation, so it is little surprise that Lily Bart is also misunderstood. Though Wharton wrote *The House of Mirth* from both the male and female perspective, men's thoughts are expressed only through dialogue, mainly with women. We hear about most of the male concerns through female voices. Critics have overlooked the possibility that men might have seen a heartbalm trap waiting for them as a way for Lily to secure her financial independence, but there are certainly enough hints to make this fear plausible if not entirely true.

**The Mask of a Very Definite Purpose: The Tragedy of Lily Bart**

"Any woman who wished to come to terms with her position as an adult would have to recognize that the world expected her to continue playing the role of child" (Wolff 106). Wolff's pronouncement boils down her argument about *House of Mirth* in her book length study of Wharton's literary career, *Feast of Words*: women could only get ahead in 1900 New York by playing a part, a childish part, in the world of men. Her analysis, however, does not take into account many other problems faced by Lily and her apparent search for a wealthy husband—acting like a child would not solve all of them. Wolff herself acknowledges that she did not address certain questions in the first edition of *Feast of Words*: "Why must Lily die at the novel's conclusion? What is Selden's role in the narrative and what are we meant to make of his passivity?" (413). Wolff attempts to answer these questions in the afterword of her second edition, but her response does not resituate the questions; it merely justifies her earlier position. Wolff places Lily's actions within certain stereotypes of the stage, noting that *House* was also written as a play after the novel settled on the bestseller's list. To Wolff, Wharton is simply using the conventions of the stage to plot her novel. Wolff comes to this conclusion about Selden:

> Selden has little interest in the tedious facts of Lily's behavior: the only "Lily Bart" that can interest him is a flattering accessory to his masculine sense of superiority. A once-beautiful woman, no longer young, who is struggling to achieve some morally admirable way of life can be no more than "an embarrassment to him." Lily sees this harsh truth. Where women are concerned, the only "reality" that the frivolous world of pleasure-seekers will acknowledge is masquerade. (432)

What Wolff and other critics have failed to recognize is the anxiety created by associating with women like Lily, for men like Selden who worried about slipping into a contractual relationship

(via an "absent proposal") just by expressing interest in Lily or even concern for her welfare. His perpetual assumption that she is wearing a mask, or harboring secret and unknown intentions, were clues to readers of the day, that her ambition might be something to fear. She might have designs on his money, a forerunner of the gold digger, but with the added element of heartbalm lingering in the shadows. Lily did not have to marry Selden; she only needed him, or another man, to propose, or profess his love publicly, or in print, and he would be ensnared in a legal contract. This is clearly not Lily's intention, but because men cannot see underneath her "mask," they are filled with anxiety about what might be underneath.

In order to establish this aura of male anxiety at the time of *The House of Mirth*'s publication, let us briefly consider some of the news stories written in *The New York Times*. Between 1899 and 1907, there were over 550 headlines that included the words "Breach of Promise." There are thousands more which include the term "breach of contract" (most of which are related to business, but some are broken proposals) and hundreds more with the word "heartbalm" or "heart balm" in the title. It is not the purpose of this dissertation to analyze and discuss the wide variety of these cases, but this simple number, and an examination of a few of the cases involved will help shed light on the attitude of readers, and especially the upper class young men of New York (and their advisors) as they surveyed the marriage market, and yet read in the papers about doomed engagements and the potential for blackmail, week after week, year after year.

One headline from 1902 reads, "Demands $100,000 for Breach of Promise." The story goes on to state that "Miss Marie E. Kaye is suing Robert Fulford, who was the husband of the late Annie Pixley, for breach of promise." The lengthy article details their romance, which began while Miss Kaye was still a school girl. He began courting her, and even paid for her to travel in

Europe, where presumably they carried out an affair. At one point, she claims they were about to be married, "but Fulford changed his mind and said he wished to keep their engagement a secret a little longer." Shortly after that time, he vanished, and she filed suit with the Supreme Court, because he was an Englishman. As proof, her attorneys note that they have many letters written from him to attest to his love and attachment to her. The tone of the article clearly sympathizes with the girl, and certain details, such as her age at the beginning of the romance, the fact that it was so close in time to the death of his first wife, and the simple "changes his mind" as the premise for ending the relationship all indicate that the writer of the article feels Fulford is guilty of using and misleading Miss Kaye.

In April of 1903, another headline reads, "Senator Clark in Breach of Promise Suit." The article then notes that "United States Senator William A. Clark of Montana, the copper multi-millionaire, has been sued for $150,000 damages for an alleged breach of promise to marry." Miss Mary McNellis, the woman in question, was a newspaper reporter and met Senator Clark at the 1896 Democratic Convention, where she says they began their romance, and he supposedly promised to marry her. As there is no documentation on her side to support the case, the *New York Times* reporter notes that the case is unlikely to proceed any further, and the Senator hints that the case is nothing more than blackmail; the reporter notes that the Senator and his lawyers have tried to keep the case a secret from the press, but finally decided to make it public. Details about their meetings, such as the brevity of their relations and their apparent antagonism from the start, make it clear that there was no chance for romance between the two, and that this is, seemingly, a clear case of blackmail.

What both of these cases illustrate is the dangerous position of wealthy men, those who make money themselves, or those who inherit it; in both cases, the women are from New York

society, and in many other stories, the plaintiffs are urban, semi-professional working women. Also in both stories, the presence or absence of letters plays a crucial part in determining the legitimacy of the claim on the part of the woman. Often, the *Times* notes that the cases are being dismissed, or the amount sought by the woman greatly reduced because she lacks proof in the form of a written proposal. In one case, for instance, a $25,000 suit ended with an award of only $600 for the jilted woman ("Breach of Promise--$600"), but in one well-publicized case involving a Philadelphia opera singer, Miss Nelly O'Reilly, she was awarded $15,000 for breach of promise when she found that her beloved had already married another woman ("Verdict for a Singer"). To say that on almost any given day, a reader could find a story about a heartbalm case in the pages of *The New York Times* is not an exaggeration.

While Wolff might be right in saying that women were expected to be children, all too often these very mature women revealed themselves to be quite aware of their legal rights, and their "unmasking" might have more to do with their search for wealth, than with revealing their individual "adult" identities. Ruth Bernard Yeazell notes that Thorstein Veblen's study *The Theory of the Leisure Class* (1899) mirrors many of the narrative comments made throughout *House*. As Yeazell puts it:

> If the desire to one-up the next person is not the only reason people seek wealth in *The Theory of the Leisure Class*, it dominates all the rest … the competition for wealth has simply come to replace more obvious kinds of "predatory activity" as the arena in which men struggle to prove themselves. (17-8)

Traditionally, men worried about wealth, and women only worried about having a rich husband, but in the era of women's independence, women might be masking their own pursuit of wealth, in the name of finding a husband. If they could get hold of a man's wealth, without having to put

up with the man, that might be the best opportunity for women, and there are many clues in the pages of *House* that indicate this fear might arise in those who encounter Lily Bart. After all, it is widely known that Lily needs money, but also that she acts independently and attracts the attention of many men without attaching herself seriously to any of them.

Yeazell herself does not make this argument. About women, she says, "As Veblen observes when he too considers the dressing of the leisure class, the woman's function is 'to put in evidence her household's ability to pay'" (21). According to Yeazell, and many other critics, Lily believes that her role is only a "conspicuous display of herself" (23). The tension between her surface appearance, and what is underneath, or the "real" Lily Bart is strikingly evident, but the fear of what is underneath has not been explored enough. Lily might want wealth and independence for herself, not a husband, and one means to finding this combination is, men might fear, through extortion or the legitimate case of breach of promise. The first two men who feature prominently in Lily's story both have qualities which make them wary of Lily, for different reasons, but both are alarmed at what they see as the disconnect between what she appears to be, and what they think might be the real creature who throws herself in their path.

The first candidate for a husband that appears in the book is Percy Gryce. Critics have noted that he is effeminate, pensive and cautious in regards to Lily, but he would be a prime candidate for any woman who could ensnare him in a proposal. The narrator also tells us that "Mr. Gryce had a constitutional dislike to what he called 'committing himself,' and tenderly as he cherished his health, he evidently concluded that it was safer to stay out of reach of pen and ink till chance released him" (37). Gryce is unwilling to put in writing any proposal, either business or personal, until he feels absolutely certain that it is legitimate. Whatever moderate flirtations happen between him and Lily, there is no passing of notes, nothing written that

expresses his interest in her, and no chance of entering a contract. When Lily first meets him, the narrator describes his character this way:

> Every form of prudence and suspicion had been grafted on a nature originally reluctant and cautious, with the result that it would have seemed hardly needful for Mrs. Gryce to extract [her son's] promise about the over-shoes, so little likely was he to hazard himself abroad in the rain. (17)

While with him, Lily is performing like a "good girl": not smoking, preparing him tea, acting interested, but not forward, and the narrator notes, "she must follow up her success, must submit to more boredom, must be ready with fresh compliances and adaptabilities … that [Percy] might … bor[e] her for life" (19). The narrator, the reader, and Lily herself, are all aware that she is putting up a front, but the narrator does not present the situation from Percy's point of view. Does Percy suspect that she is predatory, and does he consider that she might tempt him into a proposal of marriage, with no intention of conforming to his ideal wife? He certainly has clues, and he is cautious enough not to leave any evidence ("out of reach of pen and ink") for her to make a case that he has displayed his affection to her, or his intention or even interest in marrying her.

Lily's friend Judy Trenor gives her a list of problems to consider, while trying to "land" Percy: "'he's horribly shy, and easily shocked … if he thought you were what his mother would call fast—oh, well, you know what I mean'" (36). Aside from shock, Judy should have warned Lily about breaking promises to a man like Percy, and the precedent it would set. As it is, Percy might read more into her broken promise to accompany him to church on the Sunday morning while they are at Bellomont than she suspects. Her failed commitment there, along with her decision to spend the time with Selden, works as a metaphor for her unfaithful commitment to

Percy, and Percy is clearly distraught when she doesn't accompany him to church service. Lily sees him riding off in the carriage, and makes this assessment of the situation: "she had done wisely in absenting herself, since the disappointment he so candidly betrayed would surely whet his appetite for the afternoon walk" (46). From his point of view, however, this lapse in attention, and willingness on her part to break a promise, are signs that she makes commitments without intention—she doesn't realize the importance of following through on her word. Indeed, from the reader's point of view, she reveals her dubious character by consorting with Selden in an empty library, in Percy's absence.

Mrs. Dorset catches Lily alone with Selden and wonders aloud about their private encounter. With perhaps a hint at the courtship games going on in her house, the language used by Mrs. Dorset plays on the double meaning of "engagement."

> [Mrs. Dorset:] "I never interfere with Selden's engagements."
>
> The remark was uttered with a little air of proprietorship not lost on its object, who concealed a faint blush of annoyance … The latter's eyes widened charmingly and she broke into a light laugh.
>
> "But I have no engagement with Mr. Selden! My engagement was to go to church; and I'm afraid the omnibus has started without me." (47-8)

Yet, despite Lily's strong feeling that she has whetted Percy's interest through her absence, he has made no legally binding commitment to her. As the Sunday continues, Lily spends more and more time with Selden, ignoring Percy. She even tells Selden as much while they sit together in the afternoon. "'I have broken two engagements for you today. How many have you broken for me?' 'None,' said Selden calmly, 'My only engagement at Bellomont was with you'" (52). She tries to get him to admit his deeper feelings for her, since he does interest her as well, but he is

ambivalent. The narrator also tells us that Selden is "the secret pretext she had found for breaking her promise to walk with Mr. Gryce" (53). Percy packs his bags and leaves the party, and Lily finds more time alone with Selden to talk out his feelings for her. "'[Y]ou are always accusing me of premeditation'" she tells him (54). He makes it clear that she appears to have a sense of purpose, which includes acquiring wealth. "'[Y]ou will marry someone very rich'" (55), he tells her. In her defense of wealth and the good uses that can be made of money, Lily also insinuates the sentiment of Miss Trent in *The Touchstone*, "I try not to cost much—but I do." Their banter, which makes Lily cry, leads him to make this statement: "'Isn't it natural that I should try to belittle all the things I can't offer you?'" (58). Not surprisingly, this leads her to ask the question, "'Do you want to marry me?'" (58). Without giving her a definite answer, he implies that it might help her, and later when she asks him to confirm that he will marry her, they hold hands and seem to connect on a spiritual level, but oddly, they return to the party and nothing more is said of this apparent proposal.

Whatever these flirtations might have meant to Selden are unclear, but the reader knows for certain from the narrator that Lily looks back at that episode as "the worst mistake in her career" and "cheapening her aspirations" (71). Both Percy and Selden tempt Lily with proposals, but they never fully commit themselves, or even directly ask the question "will you marry me?" They want to probe Lily's receptiveness without making any contractual obligations. Both men disappear from her life until she meets Selden at a wedding party, where she also meets her poor cousin Gerty Farish; in her mind, the two of them belong together, mainly, perhaps, because Gerty is the kind of wife Selden could afford to keep happy. Lily's moment of intimacy with Selden exposes their emotional and personal connection, yet the financial expectations set by Lily on her potential husband means that she cannot accept his proposal at face value. She does

not have time for a long engagement, and her interest in moneyed men disgusts Selden to the point where he also loses interest in her as a potential mate, though he continues to feel sympathy for her suffering until the end.

The possibility of marrying Percy is finally put to rest when Percy announces his engagement to Evie Van Osburgh, "[t]he youngest, dumpiest, dullest" of the Van Osburgh sisters (73). In consideration of heartbalm laws, Evie is also a safe bet for Percy. She is not poor or desperate for money, and seemingly not intelligent enough to scheme or have a secret agenda in her pursuit of a husband. With Percy out of the picture, and Selden marked a "mistake," the only suitors that appear in the second half of the novel are not afraid of Lily's "mask," but both clearly understand that she needs a wealthy husband, or at least wealth, to live, and they toy with her as they dangle money in front of her and try to get her to respond. Lily's response to these wealthy suitors, Gus Trenor and Simon Rosedale, has led many critics to the same response: "Pleasing a man therefore becomes woman's job in life, which means that the married woman, viewed economically, differs very little from the prostitute; both exchange sexual service for support" (Ammons 28). Trenor and Rosedale both act as if they wish to purchase Lily, not marry her. Gus Trenor is a married man, and clearly cannot marry Lily, but Rosedale presents a more interesting situation in terms of breach of promise.

Rosedale proposes to Lily, ready to accept her as she is because she is a beautiful ornament, not because he cares for her as a person. He doesn't appear to be concerned about a breach of promise suit, but he is careful at each step of his courtship not to leave any evidence, and there is never a witness either, to confirm his proposal. When he first proposes to her, they are alone in her drawing room. Rosedale does not even ask her properly for her hand. As he puts it, "'I guess you know the lady I've got in view, Miss Bart,'" he asks her, after lecturing her on

what he wants from his future wife. "'If you mean me, Mr. Rosedale, I am very grateful'" is Lily's calculated response (144). As they continue, he makes it clear that their marriage would not be based on love, but on a "deal." "'I'm just giving you a plain business statement of the consequences,'" he explains to her (144). The narrator tells readers that this plain speaking leaves Lily upset—not because she doesn't understand the business side of a proposal, but because she "had to decide coolly which turn to take" (145). She asks for more time, and he shakes hands with her as he leaves. Is it enough for her that he has money, and that he is infatuated with her? It was enough for the young girl in Deland's story "The Promises of Dorothea," but not enough for the mature, conflicted Lily Bart. Rosedale is also very careful not to put this proposal in writing, or to offer her a gift or other item as a pledge of his proposal. The exchange is verbal, secret and tentative, a contract laid out in the air, but nothing to take to court. Rosedale's actions build on the pattern of all men in *House*—they flirt with making a proposal, but they hesitate to present gifts (such as an engagement ring) or make public proclamations or declarations of love to Lily.

Later, when Lily finds herself linked to a defamation scandal, Rosedale withdraws his proposal, again, verbally and personally. She initiates the discussion, telling Rosedale that she is ready "'to trust my happiness to your hands'" (206). As he explains to her his decision, he declares that they are still friends, and the conversation continues thus:

> "What is your idea of being good friends? … Making love to me without asking me to marry you?"
>
> Rosedale laughed … "Well, that's about the size of it, I suppose. I can't help making love to you—I don't see how any man could; but I don't mean to ask you to marry me as long as I can keep out of it." (206)

As he continues to explain his change of mind, it is clear that he understands the value of her reputation, as well as the damage that can be brought about by writing down his intentions. He hints that Lily should use a packet of letters to her advantage—letters which reveal Mrs. Dorset's interest in Selden, and which can be used to blackmail her or Selden for various ends. Rosedale, and readers of the day, knew the value of letters in a court of law, and letters were also used in heartbalm cases, to determine a declaration of love or a proposal for marriage. Rosedale knows this, and knows that he cannot put any such documents in Lily's hands—hinted at by the comment that he will "keep out of it" as long as he can, meaning a commitment to marry Lily. It is important to note that he wants to keep out of the "asking" relationship, not the marriage itself. He doesn't simply say "I don't mean to marry you," which would bypass the engagement stage. Such a commitment ("asking") would lock him into the contract and give Lily a legal hold on his assets, even without a proper marriage.

*The House of Mirth* is one of the most critically analyzed novels of the early twentieth century, and the introduction of heartbalm anxiety, or breach of contract concerns, is not a direct challenge to much of the existing criticism that has been written, but instead should foster a greater understanding of the complexity of Wharton's novel. Elizabeth Ammons' important feminist examination of Wharton's novels, *Edith Wharton's Argument with America*, for instance, focuses on the problems of patriarchy, noting that *House* lays out "Wharton's essential criticism of marriage as a patriarchal institution designed to aggrandize men at the expense of women" (26). She asks the question, "What if she [Lily] values personal freedom over security and does not want to spend her life owned and ruled by a man any more than she wants to spend it dependent on the charity of her old-fashioned aunt, Mrs. Peniston?" (34) The question of a woman's independence, however, plays into the concerns men have about gold-diggers. If these

women don't want men, they will use any means to extract money, without making a solid commitment in terms of marriage. Heartbalm, in this case, is the perfect opportunity for a woman like Lily who can make a promise to be a wife, refuse to act like a wife, and still cash in on her husband or fiancé's wealth.

More recently, Jennifer Haytock has argued that marriage for Wharton is not merely a matter of contracts and exchange, but also an emotional exploitation. "Becoming a wife [in Wharton's novels] means simultaneously losing power over oneself and gaining an unhealthy amount of power over someone else. Lily recognizes this paradox as early as her attempt to marry Percy … she maps out a strategy to control him" (139). Haytock goes on to point out that love, or caring, is not part of the equation for marriage, at least not in Wharton's early novels. This coincides with the conclusion of this dissertation as well, in that the question of love, and what love means, is not central to the marriage stories and novels of this era. In light of heartbalm concerns, however, Haytock is on track by noting that women manipulate men, and plan out strategies to control them. It is not only the women, however, who realize this role, but also men, which is the reason they have anxiety when they detect a "mask" on a flirtatious young woman attempting to elicit a proposal of marriage. Without a sense of solid commitment, after all, why would a man make a proposal? Even in the stories written by Deland and Freeman, and the works by Herrick, marriage is built on mutual interest, attraction or compatibility in the widest sense of the term, and not on a sense of deep understanding, sacrifice or emotional well-being which develops later in the twentieth century.

In discussing the problems of "modern" love in marriage, David Shumway describes the problems of representing marriage at the turn of the century: "The new vision of romantic marriage engendered expectations that many marriages did not fulfill, in part because romance

offered no vision of how marriage might fulfill them" (22). Partly, as Shumway explains, this is because love, as passion, as romance and an emotional high, had historically been placed at odds with marriage. In the late nineteenth century, there were some texts that challenged this idea, but as Shumway puts it, "[t]he opposition of love and marriage was never entirely absent, however, even from the novels that assumed a natural link between romantic love and marriage, for love triangle plots continued to structure these works" (38-9). Shumway also notes that it is the men of Wharton's novels who fail to act or understand women. "Wharton's persistent theme is the failure of men like Selden and Archer to live up to their own romantic expectations of themselves … they also fail the women whom they love" (54). As women like Lily Bart and Miss Trent come to recognize the business side of marriage, and seemingly accept that they should enter into an agreement (contract), instead of a romance, men are less happy about it, less accepting of women who are not overly, overtly emotional.

Many critics have also studied Lily Bart as an example of the New Woman. In Linda Wagner-Martin's book *The House of Mirth: A Novel of Admonition*, Wagner-Martin takes up the question of Lily Bart as New Woman, and Lily's rebellion against "the cultural mandates of True Womanhood" (4). Like many others, she sees Lily's objectification as the key problem to the text, stating that men are "not capable of accepting Lily as a person but rather [see] her as a costly object" (23). Her statement, however, that "the letters symbolize Lily's last hope," overlooks what letters symbolize in the question of heartbalm and women as blackmailers. The letters in question are those written between Selden and Bertha Dorset, presumably full of love and adoration from a married woman to a single man. They only represent Lily's last hope if she uses them to her advantage, not in court, but through blackmail. Wagner-Martin notes that "Wharton's reliance on the packet of Bertha's letters—and her mention of it throughout the

book—reminds the reader of the duplicitous social system, and of Lily's innocence" (35). Innocence, in this case, also points back to Lily in terms of heartbalm: Lily has no interest in blackmailing any of the men in the novel. Even with Rosedale, readers get the sense that once she has decided she will marry him, it is not an idle or deceptive offer. She has thought it through and accepted the opportunity, as she sees it at the time. Rosedale also urges her to use the letters to her advantage, to pressure Bertha into repairing Lily's reputation so that a marriage between Lily and Rosedale can take place, but she is not interested in blackmail, and this incident works to solidify this point.

Finally, what emerges from this informed reading of *The House of Mirth* is the fatality of the mask worn by Lily Bart. Wharton claimed that she used the first page of her novels to lay out all the clues to readers, and it can be argued, that the problems with Lily's mask are the very first problems noted in the text. The novel opens with Selden, and he sees Lily "wearing an air of irresolution which might, as he surmised, be the mask of a very definite purpose … she always roused speculation … her simplest acts seemed the result of far-reaching intentions" (1). Yet, Wharton is careful never to say exactly what that purpose, or "far-reaching intentions" might be. Instead, readers are clued in that there is some fear, some concern on the part of Selden, and after him, all the other men. It is not necessary for this dissertation to claim that the one and only fear, the sole purpose these men avoided Lily was to avoid being caught up in a heartbalm case, but this, along with anxieties about the breakdown of marriage, the independence of women and their newfound legal power, all connect to concerns that women were not always as eager for marriage as men had once assumed. The combination of fears is much more damning than any single concern, and by leaving it to readers to decide, Wharton has allowed us to collectively

watch Lily Bart fail in her pursuit and die, while we wonder about the cause, without knowing for certain if there was one particular fear more damning than the rest.

### *Summer* and the Fall: Patriarchal Law and Incest

Wharton only hinted at Lily's sexual activities and their relation to husband hunting, but later in her career, she became more explicit in her depiction of sex. As Hermione Lee notes in her biography, "In the fifty years of writing that came between her childhood and her autobiographical version, one of her achievements was to write with hard, penetrating, analytical realism … she exposed everything [society] wanted to conceal" (32). *Summer* exposes a dark world of near incestuous relations, and a pre-marital pregnancy, subjects taboo in the fiction of Howells and his circle of writers. Lee wonders if there was an illicit relationship between Wharton and her father, based on her "dark, sinister father figures" such as the one found in *Summer*, but she has no proof of any such relationship (34). Wharton's mother, Lucretia, however, might also be to blame for problematizing the role of her father by placing so many restrictions between father and daughter, that even a normal, loving father might at times come under his wife's censure for what she might deem inappropriate relations with his daughter. Even a kiss on the cheek seemed inappropriate to her mother (36). In her unpublished notebooks from 1918-1923, there are a number of stories in which father-daughter incest drives the plot. In one, about a girl named Beatrice Palmato, "Beatrice's husband is very fond of the little girl [his daughter] … Coming upon her husband giving the little girl a kiss, she screams at him to put the child down" (Lee 587). Lee also notes that an "'Unpublishable Fragment,' heavily corrected in pencil, describes Mr. Palmato making love to his highly aroused daughter … consisting of fellatio and cunnilingus, always in the dark" (587). Lee goes on to give the vivid descriptions in

a section of writing that Wharton obviously never meant for publication, and certainly raises questions about Wharton's feelings regarding incestuous relationships.

In writing *Summer*, Wharton continues to explore the impact of law on couples trying to enter marriage, but focuses on male power instead of male paranoia. Does the new legal agency for women make them dangerous creatures which must be handled with care? To this, she responds with a resounding no. Instead, men are constantly able to outmaneuver women to satisfy their own desires. In part, this might be explained by the location and upbringing of the girl, Charity, who is portrayed as a simple, small town girl instead of an urban socialite. Yet, the story overall follows plots similar to those of other texts examined in this dissertation—including both Howells' *A Modern Instance* and Freeman's "A Moral Exigency." Like Marcia Hubbard, Charity falls for a young man visiting her small town—a man who seduces her without fear of repercussion. He is absolutely careless in his overtures, sending her love letters, buying her expensive gifts and escorting her to public events. He even promises to "try to" marry her. Rather than follow through on this promise, however, it emerges that Lucius Harney is already promised in marriage to a well-to-do girl, Annabel Balch, from a neighboring town. Lucius promises that he wants to marry Charity, but like the "hero" of Freeman's story, he continues both relationships until Charity becomes pregnant and "releases him" from his promise to marry her. Lucius has left behind enough evidence to give her a legal right to sue, but she knows that her reputation would also come under public scrutiny if they went to trial. This story of a love triangle is complicated by Charity's "father," lawyer Royall, who raises her, and then attempts to rape her, promising also marriage. Though he is a well-respected judge and lawyer, readers can see that he is not interested in justice for Charity. Instead, he becomes the embodiment of the sexual component of their changing relationship—from guardian and ward to husband and wife.

Father Royall, and his relationship with the law, along with Charity's repeated emphasis on her "rights," has led many critics to focus on the legal dilemma, and yet, even in these discussions, heartbalm, or breach of promise, has not been mentioned. Instead, father Royall (never given a first name) "invokes the law to help him deal with complex feelings in a lawful way: he proposes marriage" (Hecht 93). As Deborah Hecht sees it, "his love and his persistence, coupled with her need for protection, eventually seem to win her trust .. his ethical actions redeem him" (96). For most critics, however, this reading is overly optimistic. Alicia Renfroe, for instance, believes that "Wharton's critique of rights depends upon an equally devastating critique of specific communities … Charity claims not specific rights to exercise her own liberty but points out instances in which other people have no right to infringe on her freedom" (195). As a woman, Charity is very clear that other people have limited rights over her, but she becomes confused about her rights and claims on other people. Rhonda Skillern argues that "we should be wary of placing too much confidence in seemingly closed linguistic and ritualistic systems, especially since the structural doubleness of the novel [*Summer*] exposes the inadequacy of traditional representations" (119). *Summer* also attacks the notion that the law and good fatherly intentions go hand in hand, as Howells consistently depicted, by making the father-figure a sexual competitor with Harney.

Carole Pateman developed her theory about patriarchal control of the marriage contract in her book *The Sexual Contract*, where she discussed the problems with fraternal patriarchy:

> Civil freedom is not universal … The sons overturn paternal rule not merely to gain their liberty but to secure women for themselves … The original pact is a sexual as well as a social contract: it is sexual in the sense of patriarchal – that is, the contract establishes

> men's political right over women – and also sexual in the sense of establishing orderly access by men to women's bodies. (2)

As mentioned earlier, it has been argued that America is founded on a fraternal legal grounding, placing all people on a level playing field (as in Jay Fliegelman's *Prodigals and Pilgrims*), but as *Summer* makes clear, fathers can compete, and win, with men young enough to be their sons, for control over young women's bodies. Father figures can also become husbands, but even as fathers they can be an impediment to other young men. Wharton exposes a weakness in this system, however, by depicting the power of maternity when Charity, in the end, continues to carry Harney's child, even though she decides to marry Royall. From the outside, it appears that the system, and social order, is maintained, and yet, the reader knows that this is false. Royall is not able to consummate his marriage with Charity, and Charity keeps a gift from Harney, the "brooch … her only treasure … for her baby: she meant it, in some mysterious way, to be a link between Harney's child and its unknown father" (95). Charity knows quite clearly, however, that the contract is all about sex, but she also understands that engagement is also a contract, and when she realizes that Harney is engaged to another woman, she relinquishes her claim to him and, because she is pregnant, accepts lawyer Royall's proposal. As Skillern notes, "Charity Royall exposes the gaps and discrepancies inherent in the accepted modes of representation and marks the 'space-off' of a different, provisionally uncontained, feminine site of experience" (122). Breach of promise law also does not empower the women who most need help, but allows them to be victimized by predatory men who use the law to their advantage.

Most critics, including Skillern, do not make much of Harney's previous engagement. Skillern claims that Charity is "[c]onvinced that marriage to Harney would be disastrous" but gives no supporting quotes from the text. Renfroe continually focuses on how "Wharton also

characterizes Charity in particular as one who wants to see herself as a possessor of rights that often turn out to be negative rights, no-rights, in order to prevent intrusions by others," (197) and sees this as the reason Charity gives in to Annabel's priority rights of engagement—that Charity doesn't have the right to take Harney from Annabel. Charity has the components necessary to make a legal suit against Lucius Harney, but there was also the question of her living arrangements, her genetic or personal qualities, and her reputation, that would all go on trial. Renfroe notes that Charity acknowledges Harney's right to marry Annabel because, as the narrator tells us, Charity sees "the case of girls like herself to whom this kind of thing happened. They gave all they had, but their all was not enough" (66). Charity is consumed by concerns about her ancestral history because she has been raised "on the Mountain" and was adopted as an outsider into the more civilized New England community of North Dormer. As Charity sees it, the established social order grants certain members' rights, but is less concerned with enforcing the rights of everyone. When Harney writes to Charity, again and again, that he is trying to get out of this engagement, it is clear to her, and to readers, that he is legally bound to Annabel because of the contractual nature of engagement, and Royall, who recognizes this, has no fear of Harney coming to whisk Charity away. He mocks them when he tells Charity to marry Harney, because he realizes the legal impossibility of this arrangement.

Ironically, it is Wharton, a high society New York native, who was living in France at the time, who makes these comments, and represents a situation which the narrator tells us "everybody knew that 'going with a city fellow' was a different and less straightforward affair: almost every village could show a victim of the perilous venture" (23). Marcia Hubbard, in *A Modern Instance*, is warned of this by her father, but she escapes this fate. Margaret Deland, with her cheery stories of elopement, makes some reference to single mothers, but paints an overall

positive image of society-defying women. Yet, in her own life, she started a program to help "fallen" women reintegrate into society, and notes in her autobiography how difficult this was in the late nineteenth century, even among progressive-minded people. In *Golden Yesterdays*, Deland narrates her experience in the 1880s when she and her husband took single mothers into their home.

> Of course the coming and going of these girls and their babies was not approved by some of our friends ... A more outspoken friend said to me: "Margaret, aren't you afraid that seeing so many of these unfortunate women may make *you*—well, a little lax in your judgments?" And a Pennsylvania cousin of my own age, who came to stay a day or two with us, met one of the girls, with her baby, in the upper hall, and coming down to the parlor, asked me who she was. I told her, and explained our theory of the baby's hand. There was a moment of tight-lipped silence. Then she said: "Do you mean to tell me—why! I never *heard* of such a thing! *A fallen woman in your house?* Why, Bob" (Bob was her husband) –"Bob would not permit such a creature to be under the same roof with me!" (159)

Deland's goal was to help these women find work and to help them reintegrate into society, but she saw a number of tragic stories unfold around her. "Of the girls whom I lost, I think now of three—Jennie, Delia and, most tragically, Nelly," and from there, she tells the stories of these three women and their difficulties (159). Delia, the second, is engaged but abandoned, and has no recourse to the law. When her baby dies, she thanks Deland for her kindness and disappears, an event which greatly upset her. "I didn't see her again for two or three years, and then, at last, it was on a bed in a hospital, where the frail little thing was dying of tuberculosis" (161). Deland is present when Delia dies, yet she never depicts this darker side of courtship in her stories of

Old Chester. To her credit, Deland's later novels dealt with harsher circumstances, as in the novel *The Iron Woman* (1911), but she avoided depicting the more unfortunate side of premarital pregnancy.

Wharton's Charity, on the other hand, represents the fate of these victims of "every village," and she is also from the lower end of the economic spectrum. Though Charity has not gone to school, it seems that she has understood the law very well whenever she speaks of rights and claims to her "father." It must be through his continuous lectures on rights and claims that she picks up this knowledge because she stands up for herself repeatedly and uses legal discourse to frame her argument, despite her struggles with basic literacy. Her primary struggle, however, is with her own sense of belonging, because of her birth on the Mountain. She worries that Harney will give her up when he hears about her history, and numerous critics have agreed that her lineage from the Mountain is an integral part of her character. Some have noted, like Dale Bauer in her chapter "*Summer* and the Rhetoric of Reproduction," that *Summer* is primarily a novel dealing with birth control and good parenting, especially because the social concern of the day was Eugenics, or the control of bad genes entering society. Charity embodies many of these questions, of inheriting qualities from her parents, of carrying with her qualities of the people on the mountain, and of abortion and its value to society. As Bauer puts it: "Charity comes from a lawless, inbreeding, 'uncivilized' culture engaged in unregulated reproduction of the 'lower' classes, precisely the kind of community eugenicists feared" (29). As Bauer notes, however, Charity pushes back against this notion because she rejects the mountain lifestyle in the end and marries into North Dormer society. Instead of an indictment against poor, uncivilized people, Wharton indicts predatory men, like Royall, who use the law to their advantage.

> Royall asks for trust as a paternal figure, then reveals his sexual expectations. By giving this relation an incestuous nuance, Wharton implies that desire cannot be contained by patriarchal categories. Royall cannot act both as her father and her lover; that he wants both suggests the problematic excess of the patriarchal desire for power. (45)

Charity knows, instinctually perhaps, but also through legal discourse, that Royall cannot control her actions, and cannot limit her courtships or mates as long as she lives as a guest in his house. He is not, legally, her guardian, though she was raised in his house. She is also clearly disgusted by his predatory activities, but gives into him in the end because she cannot retreat to the mountain and realizes that life with him is the best option available among her limited choices, if she wants to raise her child in a stable environment.

Charity embodies a new form of heroine than the type examined thus far in this dissertation. She suffers through a seduction as a single woman, against the will of her guardian, and is still able to reintegrate into society, while simultaneously rebelling secretly against her contractual obligations and denying "orderly access" to her body. She unknowingly enters into a love triangle, but relinquishes her claim over the man she wants despite her pregnancy and presumed outrage at the system which gives priority to another woman, because of Harney's earlier proposal. Charity's situation also highlights another problem area of the law, but one which was prevalent during that era, and that was seduction law. As Stephen Robertson notes in his article on seduction law and marriage, the law plays a strong role in reinforcing social order; "Just over one in every four prosecutions for statutory rape in New York City in the years 1896 to 1946 involved efforts to resolve the case through marriage" (334). Among older women, however, this was not a common way of settling rape cases. New York, and many other states, had seduction laws in place to protect women who became pregnant after becoming engaged, but

the timing of the proposal was key. If a man had not proposed, or the woman could not prove that she had been proposed to by the man, then she had no case. Often, breach of promise and seduction were seen as closely aligned laws because both protected engaged women from predatory men, so it is no surprise the prosecution of seduction cases ended at about the same time as breach of promise laws were rescinded. Robertson does not make the connection in his article, despite his realization that there was an "almost complete disappearance of seduction prosecutions after the mid-1930s" (336). The logic is clear, however, that if engagement is not a contract, then a pregnant, unmarried woman would have no recourse to hold her partner responsible. He also notes that the victims of these crimes were "without exception members of the working class" (336).

In his analysis of these circumstances, Robertson's findings are nearly identical to those of Michael Grossberg, when he noticed what class of women were winning heartbalm lawsuits.

> Middle-class attitudes, and the actions of reformers and legislators, neither entirely succeeded in denying working-class New Yorkers access to the courts, nor completely undermined the efforts of women to use the seduction law to compel men to enter into marriage. Juries and judges supported such efforts in part because a marriage would free the state of the burden of supporting children borne as a result of seduction. But they also shared with those who charged seduction the belief that a woman who had sexual intercourse outside marriage was "ruined," and that marriage was only way to make right that condition. (Robertson 338)

Though society frowned on the actions of these women, the precedent was there to force the man to "make good" with the woman and marry her, as he had promised. The class disparity seems clear. Poor women could use pregnancy to force a man into marriage, and a middle or upper

class “lady” could use “heartbalm” to protect her honor from fickle men, but they could not switch these categories around. A proper lady would never get pregnant before marriage, and a poor woman who was not pregnant had little recourse to the law if her fiancé opted out. Charity has no chance of winning over Harney, and readers of that time knew it. He was previously engaged, so she didn’t have priority rights. She became pregnant, perhaps as a means of seducing him, but once her condition was known, she could not take him to court for either breach of promise or seduction. Charity seems well aware of this too, in the final pages of the novel; “her soul was gathered up into one sick sense of coming doom” (93). Without “father” Royall there to marry her in the end, she might have met with the same fate as Lily Bart, but the ending is just another example of injustice, not an acceptable form of maturation on Charity’s part, as some critics have claimed. The law failed her, and men took advantage of her, again and again, under the law’s umbrella, leaving her vulnerable to predators on all sides.

**Companions over Contracts: Looking Ahead to the 1920s**

As noted in the above discussions, none of Wharton’s courting couples ends up in court, despite their legal concerns and the prevalence of lawyer characters. Judging from her later books, *The Age of Innocence* (1920) and *The Glimpses of the Moon* (1922), it would seem that Wharton avoids putting her characters in a courtroom no matter what circumstances might come. *Glimpses* is one of her few novels in which the characters seem destined for divorce, and in one of the final scenes, the main character discusses the divorce option in a lawyer’s office; yet, in all cases, lawyers convince the characters not to pursue a legal course of action. In *Innocence*, when Elena wishes to pursue a divorce, seemingly with just cause, Archer Newland (another lawyer character) advises her against it, reminding her of the damage that airing these grievances will do, not only to her reputation, but to the reputation of her entire family. In all cases, because the

characters are middle or upper class, they are more afraid of having their names in the papers than they are of injustice in society. Even the scandal of blackmail is employed by only the worst of characters in Wharton's novels. Lily will not resort to blackmail, and neither will Charity, despite her lower class origins (but perhaps middle class sensibilities). Miss Trent is not interested in legal recourse, and instead points out other threats to make her point. This attitude is in line with what Stephen Robertson says: "Middle-class Americans … sought to avoid the criminal courts since the eighteenth century, concerned to protect their privacy and reputation. They had also tried to make the law an effective means of controlling working-class populations" (337-8).

Reputation is often a prime motivator for characters in Wharton's novels. As many critics have noted, it is the loss of reputation that destroys Lily, as much as the loss of wealth. Any brush with the law was likely to tarnish a person's reputation, which in effect, contained the actions of women. They could not act, could not sue or go before the court, without risking severe injury to their reputation. Lily, in her attempt to bridge the public and private spheres, realizes that fatal fact, and critics have also been quick to point it out.

> Notice how, according to the advice book, the public exhibition of the young lady's beauty threatens to make her too "cheap" … But even the conduct books assumed that the marriageable young women had to "come out" in order to display herself … And if a double bind seizes women most forcibly as they attempt to move from one officially approved state to another, Wharton heightens the tension by imagining a heroine who has already been too long on the market. (Yeazell 33)

This display in public was even more damning to a woman who went to court. As both men and women complained, when a woman came to court, the jury was filled with men, and a woman

there was also expected to conform to certain ideas of womanhood which were under rigorous surveillance, cross questioned and scrutinized.

Women were not the only ones concerned about their reputations, and in many ways, the discussion about heartbalm came down to an argument about reputation. A man, brought before the court on charges of breach of promise, was guilty if he was a flirt, duping young women with false promises. If he was innocent, the woman was desperate, attempting to seduce an upstanding member of society. It was expected that a woman would not take a man to court unless she had documents, gifts, witnesses or other evidence to prove he was a "bad man" in society. Even with all of these points on her side, a woman still had to maintain a spotless reputation. During the early years of the twentieth century, however, the idea that a woman would do this, merely to secure her financial future, had an increased presence in the public imagination, and both men and women reacted negatively to this belief. After the Great War, this belief had taken such a strong hold on the American imagination, that the texts of the 1920s and 30s began to examine this stereotype directly, both establishing the practice as routine, and decrying it as base and immoral, part of a scheme or "racket" as some came to label it.

Women writers, on the other hand, including both Edith Wharton and Anita Loos, pushed this stereotype in another direction, which questioned the authenticity of this stereotype, and also pointed out that men were still predatory in nature, and if they got hold of a gold digger, they probably deserved it. The term gold digger has its roots in this era also—in the 1920s. Strangely, their message aligned nicely with the Whitaker story from the last chapter in which a womanizer is finally caught in one of his flirtatious moods by a desperate woman who doesn't want money, but who really wants a husband. The law works because only foolish men would get into that position, the logic of these writers tells us. For those who really needed the law's protection,

however, that protection became even more elusive. The number of cases appearing in court during the 1920s and 30s became negligible, and finally, when the breach of promise laws were removed from law books in the 1930s, there was little protest and much relief. Marriage, by that time, had become much more flexible as a contract, so why should there be such strict contractual obligations maintained on engagement, which was, increasingly, just another part of the pre-marital testing grounds for couples. The theory of companionate marriage helped counteract many of the anxieties about heartbalm and gold diggers. It allowed couples to have a relationship that moved past the "mask," to test the sexual component of their relationship, and then to get "free" if they did not have any children from their relationship, essentially changing the contractual nature of marriage and engagement.

# CHAPTER 5

# FROM MARRIAGE CONTRACTS TO MARRIED COMPANIONS: THE DEATH OF HEARTBALM

By the time Edith Wharton published *Summer* in 1917, much had changed in America, but heartbalm cases were still making news in *The New York Times*. "Gets $170,000 Heart Balm," a December 1916 headline reads, with the subheading, "Pittsburgh Hotel Cashier Wins Suit Against Aged Recluse." The article is short and to the point, noting that the woman is 40 years old, and that Henry Deniston is a 78 year old man "who belongs to an old Pittsburgh family and whose fortune is estimated at several million dollars." Another short news article on this story, published in the *Indiana Evening Gazette*, notes that this was the largest settlement ever given in a heartbalm case in Allegheny county history and that "Miss Richardson charged that relatives were designing on Deniston's money for preventing their marriage" ("Verdict"). There are few details provided, but as she won the settlement, it can be concluded that she had some evidence of his affection for her, including a written proposal or declaration of love, or at least strong evidence that he would propose marriage. Deniston had adult children, however, so the case obviously becomes more complex as they, like the adult children in Deland's story "The Encore," might have disapproved of their elderly father's marriage. The situation depicted in this story was also becoming a stereotype of the cinema, but also a representation of the class conflict at the heart of the issue. Wealthy men could not participate in the more liberal dating games of the twentieth century without some anxiety that their flirting and gift-giving to beautiful women might result in blackmail, or a lawsuit. The evidence of an engagement was becoming more important, but there was still some gray area where it could be legally argued the couple had entered a contractual relationship. Evidence or not, however, heartbalm was increasingly

demonized in the press, in stories and movies, as ultimately damaging to the emerging freedoms accorded to courting couples. Yet even in these depictions, it was only wealthy men who suffered from these cases. The "problem" of engagement law was foregrounded as a dilemma, resulting in more elopements, brief engagements and trial marriages. Even as a problem, however, there was some sense that it only happened to men who deserved it, and perhaps it was the response of powerful men and their allies, more than any other group, which led to the removal of these laws in 1935.

By the end of the Great War, and throughout the 1920s, "femininity was associated more with sex appeal than with sexual modesty," and marriage itself was losing much of its contractual power (Cott 160). Women were seeking the right to sue their husbands for damages, but, as Nancy Cott notes, "the court proved a bastion of conservativism" and struck down many of these challenges (160). In 1920, women received the right to vote, but their fight to be admitted to court juries was delayed. "Major states, including New York, Massachusetts, and Illinois, resisted women's jury service until the late 1930s" (Cott 165). Overall, however, women were empowered by their new rights, and Cott calls the 1920s an era that "equated women's enfranchisement with total emancipation" (166). There were many public voices that decried this move, however, and the reaction, by legislators, was to find ways to reinforce the marital contract, to prevent easy divorce, and to hold firm the lines that separated married couples from sexually active individuals. Carole Pateman delineates the fear felt by many at that time: "The logic of contract is that marriage would be supplanted by contracts for access to sexual property. Marriage would give way to *universal prostitution*. Moreover, 'individuals', and not 'men' and 'women', would enter these contracts" (184). Courts and lawmakers tried, in many ways, to prevent the erasure of these gender roles in marriage.

> The nineteenth amendment might have been expected to transform the legal and political status of wives more thoroughly, given the prior importance of the husband's political representation of his wife, but continuity in the economic relation of husbands and wives minimized the transformation. (Cott 166)

Holding a man financially responsible for abandoning a woman, especially his wife, but also his engaged girlfriend, was one way to keep the financial pressure on men, even as women were gaining more economic power within the marriage. New developments in social welfare also gave rights (and money) to married couples that unmarried couples did not have, rewarding women (and men) who were married, and recognizing "the wife's service as a necessary corollary to the husband's ongoing legal obligation to support her" (Cott 169). Cott notes that legislators were indeed worried about social order because they admitted as much when they argued that their goals included the "long-term purpose of making immigrant working-class men conform to American standards for marriage and the domestic environment" (169).

Yet the law could not stop the changing sexual mores that took hold after the end of the Great War. As courtship began to include a sexual element, writers began to explore what this difference meant to society. As David Shumway explains it;

> There is general agreement that the advice literature of this period represents an important shift, from earlier, Victorian forms. These changes in advice about love and marriage correspond to changes in practice. The most frequently observed change is the increased importance of sex … The main characteristic of this transformation is increased sexual activity on the part of women, especially middle-class women. The increased importance of sex in marriage doubtless had something to do with changes in courtship. (65)

The more relaxed sexual mores during courtship, and the leniency of divorce laws, meant that the parameters of marriage were also losing their contractual rigidity. Logically, if marriage contracts were becoming more flexible, why should engagement still maintain its contractual hold over lovers? As lawmakers were yet to restrict the use of heartbalm law, it fell on judges to make the determination, and increasingly, they refused to hear breach of promise suits, except in extreme circumstances. Judge Ben Lindsay, for instance, was a public hero for various causes, including the 1903 Colorado Juvenile Delinquent Law, which kept young criminals from serving long imprisonments, "The Mothers' Compensation Act of 1912" which "provide[d] means for mothers who were unable to keep their children solely because of financial need" (Larsen 73) and liberal pamphlets and books which took a lenient view on allowing divorce. He is credited with popularizing the terms, "companionate marriage" and "trial marriage." As one historian notes, Lindsay was the "Judge, who came to be regarded in the 1920's as the chief advocate of the sexual revolution" (Larsen 97). He favored, among other things, "a call for an end to excessive governmental interference in matters of private sexual conduct, and an advocacy of 'free marriage' and 'free divorce'" (Larsen 146).

Judge Lindsay wrote openly about these themes, and in 1925 his book, *The Revolt of Modern Youth*, announced his more fully developed theories about "modern" couples and sexuality. His 1927 book, *The Companionate Marriage*, also delves into the rights and responsibilities of young men and women who are interested in "trial marriage." He sums up the problems of America in the 1920s with this statement: "It is easier to force married persons to go on living together when they don't love each other than it is to wield love and marriage into an identical thing … We prate of freedom and we take it on ourselves to forbid the free play of human relationships" (Lindsay 17). Judge Lindsay goes on to give numerous examples in which

he advised young people to enter into marriage like relationships (meaning, sexual relationships) without becoming contractually obliged to each other, until they could determine if they were emotionally compatible, and that women should use birth control to prevent having children. Lindsay also expressed the opinion that breach of promise was essentially a case of black mail, a sentiment which had been gaining ground since the end of the nineteenth century, but which became increasingly believed through the 1920s and 30s.

The struggles between these two political ideologies, continuing to enforce breach of promise as a way of maintaining social order, or refusing to acknowledge engagement as a contractual relationship, did not ease male anxiety, especially for wealthy young men and their parents (or adult children); popular culture, in the form of the bestselling novels and the early films of Hollywood, used these conflicting ideologies to present personal conflict and confusion among young people across America, but especially in urban areas. Edith Wharton's novel *The Glimpses of the Moon* (1922) and Anita Loos' *Gentlemen Prefer Blondes* (1925) were both bestselling novels that depicted these new relationships, more open sexually, and yet connected to the economic roots of marriage in the nineteenth century. This chapter will examine these two novels in light of the conflicting impulses to either maintain the contractual nature of engagement and marriage, or to allow human relationships more flexibility based on emotional changes. Written from women's points of view, these texts focus on the economic quality of marriage, exposing the predatory side of human relationships, the problem of understanding what "love" means, and the need for legal flexibility.

Released at about the same time as these two novels, the Mack Sennett movie *Heartbalm* (1921) attempted to portray powerful, villainous women, but viewers, perhaps expecting more of Sennett's Keystone Kops antics, laughed at his serious depictions. Unfortunately, the film was

destroyed in a Hollywood fire, although a blogger claimed in 2010 that a section of the film has been uncovered in a Berlin archive. Hopefully it will be available soon, but until that time, there are a handful of sources that provide clues about this movie, and why it was not well-received by the audiences of 1921 and 22, when it was released under another title, *The Crossroads of New York.* Another heartbalm-themed play was adapted to film in 1922, "Within the Law" by Bayard Veiller, based on his hit 1910 play by the same name, and perhaps Sennett had been inspired by that play's success to try his hand at this theme. Veiller's play, however, depicted heartbalm as a way for exploited women to strike back at a male-dominated society, rather than the story of an empty-headed, pleasure-seeking gold digger. Working titles for Sennett's film included, "Heart Balm," "Heartbalm," "For Love or Money," and "When You Leave Home," all of which give us some hint to the themes he found interesting, and presumably he worked them into his film (Sherk 39).

Summaries of the film *Heartbalm* tell us that it had something in common with Howells' *Minister's Charge,* as it follows the life of a simple country boy who moves to the city and immediately enters a relationship with a working class woman. One major difference, however, is that the boy comes from a wealthy family. The woman who courts the young man seduces him into making a proposal, but then he meets a better woman and faces a breach of promise suit. The summary on the Internet Movie Database puts it this way: "he then falls in love with a pretty young socialite, and when his rich uncle dies finds himself being sued by a gold-digging vamp who wants to [get] her hands on his inheritance." Under "Trivia," this internet site goes on to give the following information:

> Mack Sennett intended this film to be Keystone's first entry out of the comedy genre and into drama. When it was previewed (as "Heart Balm"), however, audiences howled with

> laughter, much to Sennett's embarrassment. Not one to let embarrassment stand in the way of making a buck, however, he did some rewriting, performed some judicious editing, changed the title and released it as a comedy. None of the changes worked, however, and the film was one of Sennett's bigger flops.

Without seeing the film (in either the early version, or the final version), it is hard to know exactly why this film, which Sennett meant to be serious, was met with laughter, but most likely the audience did not perceive the same danger to society as Sennett did. Depending on the depiction of the woman, it might have been quite transparent or obvious to audience members that the "gold-digging vamp" was just that, and the hero, thus, a fool.

Despite the success and seriousness of "Within the Law," most of the surviving hit films during this period framed the heartbalm problem with humor. With the advent of well-known social climbers like Peggy Hopkins Joyce, one of the first women to become associated with the new term "gold digger," the film industry cashed in on this stereotype who was dangerous to only one type of man—the wealthy playboy. Anita Loos was well-aware of the comic potential of this new, flashy blonde, but many Hollywood writers picked up on it as well, and with the advent of sound films in 1929, this new character type found its way into many popular films, including the Busby Berkeley Gold Digger series of the 1930s. The stereotype of the predatory engaged woman played a significant part in other movies such as Sam Wood's *Paid* (1930), Frank Capra's *Platinum Blonde* (1931), Wesley Ruggle's *I'm No Angel* (1931) and Busby Berkeley's *Footlight Parade* (1933), all of which will be discussed briefly. Peggy Hopkins Joyce was so well-known that she even played herself in Paramount's star-filled movie *International House* (1933). This humorous assault on women who used heartbalm eventually led to the removal of breach of promise laws from the bylaws of many states, and the refusal of judges to

hear these cases in other parts of the country. Heartbalm quickly faded into obscurity, though a few high profile cases in recent years have brought breach of promise back to consideration. Though many women agreed that this law should be removed, it is unclear, even today, if heartbalm was a danger to single men everywhere, or if its removal was only necessary to allow wealthy men to enjoy the company of liberated women without any legal repercussion.

**"I would not mind my lover giving me a Diamond Bracelet but he could not buy me"**

By 1920, Edith Wharton had settled in France, but the post-war years brought many other Americans to that country as well, especially wealthy Americans who lived on the East coast. One of those who came to visit during that time was Peggy Hopkins Joyce, on her belated honeymoon with millionaire husband Stanley Joyce. It was her third marriage, and historian Constance Rosenblum makes this observation about Joyce's extremely brief engagements: "As with her previous marriages, the ceremony was quick and quiet; despite her frequent trips to the altar, Peggy never went in for fancy weddings" (83). On the other hand, the fact that the men proposed in the morning, and took her to the church by afternoon could also be explained another way—by the men's fear of breach of promise suits. Her scandals, surprisingly, all involve married relationships, and it was her insatiable consumerism and love of attention which became synonymous with the term "gold digger," despite the fact that the term had already come into circulation. Rosenblum gives the history of the term briefly in her book *Gold Digger*:

> … [T]he expression had made an appearance around 1915, and a few years later playwright Avery Hopwood selected it as the title of a comedy that began a long Broadway run during the 1919-20 season.

> Whatever the origins of the phrase, the gold digger was a type peculiar to her century … it was an exhilarating era, one that prized adventurousness, scams, and daring, and promised the possibility of huge rewards. (83-4)

As Rosenblum describes it, men could easily identify the "gold digger" type, and yet they fell for these women, perhaps with the hope that they would conform to the standards of a conventional wife. The men in *Gentlemen Prefer Blondes,* for instance, express the hope that once they get married, their "smart" wife will "bring in her husband's slippers every evening and make him forget what he has gone through" (13). The desire for a wealthy husband was nothing new, but the open exploitation of wealthy men was depicted negatively, as going against the "modern" view of love and marriage, and when it came to breach of promise, wealthy men (in particular) were concerned that this was the worst scam possible.

The Joyce divorce became international news in 1921, and as Rosenblum notes, the trial "engendered four thousand newspaper articles" and spread as far as Europe, partly because the 1920 honeymoon in Paris was also the end of their marriage. One of the details that attracted attention was a diamond tiara bought in Deauville by her husband while she was secretly meeting with the French businessman Henri Letellier, "proprietor of the Paris newspaper *Le Journal*" (Rosenblum 98). After her divorce, it was one of the items she was forced to return. During the trial, and also during her subsequent writings, Peggy admitted that she did not love her husbands, and raced into marriages without much thought about the compatibility of her partner because wealth was the only component necessary for marriage. Edith Wharton, who began to collect clippings from American papers at this time, marked those which critiqued America as "childish and self-deceiving," and though articles about Joyce are not mentioned, Wharton could not have been unaware of this messy divorce, or others like it, which flooded the

newspapers. Wharton was disgusted by much of what was happening in America during this time. As a result, "she took American culture as her subject in all her later novels … they were big successes at the time and made her a great deal of money" (Lee 629). This includes *The Glimpses of the Moon*, published in 1922, and its attack on those who made wealth the main criteria for marriage.

*Glimpses* has been dubbed a jazz novel, a representation of the young "flapper" who appears much like the gold digger stereotype that was already developing. Like Peggy Hopkins Joyce, Wharton's heroine, Susy Branch, thinks of marriage as a contract, and the goal of marriage, financial gain. The difference, however, is that her current husband is not wealthy, but he has agreed to be a stepping stone in her pursuit of other wealthy men. Their initial discussion of marriage includes "the definite understanding that whenever either of them got the chance to do better he or she should be immediately released" (18-9). Her goal, the narrator tells us, is "to wait till she found some one who combined the maximum of wealth with at least a minimum of companionableness" (7-8). There is no engagement, or at least, the novel passes over that time without comment, but there is much discussion about the contract of marriage, and the economical gains that come to married couples. Despite the critical consensus that *Glimpses* is a weak novel, it was a financial boon, selling "60,000 copies in three weeks" (Lee 595). *The Age of Innocence* had just won the Pulitzer Prize in America, and *Glimpses* certainly benefited by following in its wake. In *A Feast of Words*, Cynthia Griffin Wolff calls the novel's main characters "Nick Lansing and Susy Branch … almost caricatures of Selden and Lily Bart … both well-born young people who have no money" (334). Their marriage is viewed, in the beginning, as a stepping stone to better marriages. Yet, the narrator continues to dwell on the "complete

companionship" of their relationship (15). Susy clearly lays out the arrangements from the beginning.

> Why shouldn't they marry; belong to each other openly and honourably, if for ever so short a time … The law of the country facilitated such exchanges, and society was beginning to view them as indulgently as the law … their wedding presents … nothing but cheques. (18-9)

Neither Nick nor Susy mention companionship, but they seem to have the same goals in looking for a partner. Nick is also interested in finding a wealthy spouse, and he needs money to move in the right circles and meet the right women. Susy is able to manage everything, and the narrator tells us, "all her previsions had come true" (20). Though Wharton doesn't dwell on it, their marriage also facilitates their physical attraction for each other, and at the onset, at least, it appears that they enjoy each other's company, as Susy is "clasped in his joy" as they prepare for bed (20).

Their understanding of the contract is openly discussed, and yet, emotions come into play. The narrator notes that Nick is the first to experience some confusion about their arrangement. He sees marriage overall as combative, but not his own.

> He could not think of her as an enemy, or even as an accomplice, since accomplices are potential enemies: she was some one with whom, by some unheard-of miracle, joys above the joys of friendship were to be tasted, but who, even through these fleeting ecstasies, remained simply and securely his friend. (55)

Comments by the narrator, such as "unheard-of miracle" have given commentators on this book the distinct impression that these are satirical comments, and somewhere, the narrator is laughing at this couple and their problems. By the end, of course, the couple reconsiders the basis of their

marriage. The middle section of the novel depicts the couple drifting apart. Susy discovers that her old love interest, Charlie Strefford, has become "Earl of Altringham, and possessor of one of the largest private fortunes in England" (110). She still likes Nick, but begins to dream of another life. "Yes: to marry Strefford would give her that sense of self-respect which, in such a world as theirs, only wealth and position could ensure" (136). Nick sees that Susy is still on the lookout for a wealthy husband and abandons her to enjoy the support of the wealthy Hicks family, including their marriageable daughter Coral. With his marriage apparently dissolving, he needs to secure a follow up relationship, and he invests all his time in that pursuit.

It seems the couple is destined for divorce. Susy's friend Ellie Vanderlyn even asks her, "'why you don't announce your engagement before waiting for your divorce. People are beginning to do it, I assure you—it's so much safer!'" (168). Something changes in Susy, however, and the narrator does not give much explanation, why after pursuing Strefford and what he represents for so long, she should suddenly grow cold towards him, and tell him, "'there's nothing I loathe more than pearls and chinchilla…or anything else in the world that's expensive and enviable'" (178). Increasingly determined to marry Susy, Strefford takes her to a divorce lawyer who prompts her to send a letter to Nick, requesting an agreement for terminating their marriage. Even as Strefford tries to buy her diamonds, she contemplates leaving him and living "free from the necessities that enslaved her" (220). By the time Nick returns to Paris to discuss the divorce, she has distanced herself from Strefford to the point that Strefford doubts her intentions. Suddenly, in Part III of the novel, Susy is living like a governess, tending the children of her friend Grace Fulmer, and Nick has left behind his rich friends, as the couple come together to discuss a possible divorce. Nick contemplates seeing his wife outside the lawyer's office, but he is unsure of his own motives. As he thinks about Susy, he reflects on the reason they got

married; "he and Susy had simply and frankly entered into a business contract for their mutual advantage," not because of the emotional support or companionship they had briefly found together (257).

The conclusion has left many critics baffled. Nick sees Susy with the children and instantly he changes his mind about her. She also quickly accepts him back into her life and all seems right in the world. Millicent Bell goes so far as to say "Wharton had made Nick and Susy repulsive" with this conclusion (8). Wolff gives her opinion: "The transformation bears no relation to anything in the novel that has preceded it" (335). Hermione Lee points out that there are no repercussions for Nick and Susy's decisions, only an "inner instinct" which "makes for unconvincing gestures towards integrity and remorse" (631). Considering that Wharton frowned on the idea of quick and easy divorces, but also mocked the notion of companionate marriage, the conclusion of *Glimpses* might, in fact, be completely comic, as Lee suggests, and, like the ending of *Summer*, should not be taken at face value. It is not a happy ending, but a contrived and ridiculous ending, and Wharton is mocking these confused Americans, even as she writes the final pages. Ammons also believes something similar: "to judge from the way her maternal epiphany is not prepared for throughout the novel, but appears unexpectedly at the end, it came as something of a surprise to Edith Wharton as well" (161). Dale Bauer discusses Judge Lindsey and companionate marriage in relation to *Glimpses*, and finds much in common between Wharton and Lindsay. She is also troubled by the ending, however.

> Sentimental and melodramatic as the ending of *Glimpses of the Moon* is, its gentle mockery of Nick and Susy's reunion anticipates Wharton's concerns about the legislation of divorce and marriage laws in the twenties, what she saw as the increasing regulation of the individual by the state. (136)

Ultimately, Bauer points out that Wharton could not separate the idea of companionate marriage from the "free love" theories that had emerged in the late nineteenth century, tainted by memories of Victoria Woodhull and the scandalous life she led. Wharton, Bauer notes, had an "irritation with free love" that she associated with anarchy and bohemianism, both of which she despised (140).

The conclusion of the novel leaves readers unclear about the couple's future. At one point, the narrator makes this grand statement: "He and she belonged to each other … The impulse which had first drawn them together again, in spite of reason, in spite of themselves almost, that deep-seated instinctive need that each had of the other, would never again wholly let them go" (296). In retrospect, however, there was never any impulse in the beginning. They entered into their agreement as a business transaction. As the narrator continues, he/she also belies the notion that they are bound together. "[H]is mind dwelt on Coral with tenderness, with compunction, with remorse; and he was almost sure that Susy had already put Strefford utterly out of her mind" (296). Nick continues to dwell on the other woman who drew him away, and he is not sure, nor is the reader sure, that Susy has really forgotten about Strefford. Wharton is trying to make it a point that their feelings of "companionship" in the beginning were the right feelings and what sidetracked their relationship was the notion that they were still looking for better partners and could opt out of the marriage. When their relationship breaks down, it is because they are essentially dating while married. For Wharton, divorce was a last resort, not a topic for discussion before the marriage even takes place. They cannot be both committed to each other, and looking for a better life at the same time. Yet, what seemingly brings them back together again is their compatibility, not financial need.

The idea that instinct brought them together, or kept them together, is also laughable. Wharton does not use scandal in this novel to pressure the couple, but personal reputation and the new flexibility of marriage make characters skeptical of second marriages. Coral Hicks has reservations about Nick because first, he is poor, and second, because he is already married. Susy is also confused about how to proceed with Strefford because she is married. The people around her urge her on, saying that as a divorce is imminent, she should announce her engagement, move in with him, and begin to assume her role as wife, but Susy cannot accept it. It is not the scandalous nature of this relationship that bothers her, but the fact that people around her might start thinking of her as "that type" of woman. Other women who chase rich husbands seem to her "a caricature" of herself and she hates thinking that she will be more in their company after her marriage to Strefford (213). It also occurs to her that even a marriage with Strefford might not last. Their "engagement" will be a real test for her because Susy is still married, and other available women will compete for Strefford's attention. "The long period of probation, during which, as she knew, she would have to amuse him, to guard him, to hold him, and to keep off the other women, was a necessary part of their situation" upsets her emotional security (211). In light of their failed ventures for wealthy spouses, they "instinctually" fall back together, but is that a happy ending, a convenience or a joke? Have they truly pledged to stay married, or are they still competing with other married and single people around them to keep their spouses? Wharton condemns the permanence of the marriage contract as well as the absolute flexibility of marriage, but offers no middle ground solution that isn't also clouded by opportunism.

Wharton exposes the conflicting rationales for marriage through comedy, which emerged as the dominant means of handling characters who mixed modern and increasingly outdated notions of marriage and economy. As Saskia Lettmaier says in her book *Broken Engagements*:

"In the breach-of-promise comedy of the final period, readers and movie audiences were invariably invited to express their intellectual and moral distance from the outmoded nineteenth-century ethos by scoffing and scorning the old Victorian mystique" (185). *Glimpses*, in its tentative comic mode, was not a full-blown comedy, but it is clear that Wharton is not sure how to save her heroine from the results of opportunistic husband-hunting. Susy is certainly too forward and assertive to be a model of nineteenth century womanhood, and yet she still sees marriage as primarily a financial arrangement and downplays the companionate side of the relationship—until faced with the steps necessary to get a divorce. The same tentative, probing quality can be found in the comic potential of Mack Sennett's 1922 film *Heartbalm*, but by 1925, when Anita Loos published *Gentlemen Prefer Blondes*, the comic reaction was widespread. When Edith Wharton discovered this book, she reacted by praising Loos as a genius, perhaps because it expressed many of the sentiments in *Glimpses*, but without hedging the humor one bit. Susy is confused about what she wants, though she ultimately decides on a "modern" relationship. Lorelei, on the other hand, is not at all confused about what she wants, and readers (for the most part) found it to be comic gold.

**Pay to Play: Lorelei as the Faux Femme Fatale**

One of the powerful influences on Susy, which carries over into Anita Loos' *Gentlemen Prefer Blondes* and the films of gold diggers, is the distinction that some women see between themselves and "that sort" of woman, one who chases after money and not a companion in marriage. This opposition between one type of woman (the companion) and the nineteenth century Victorian woman, who seeks financial security, points back to the sisters in Howells' *Silas Lapham*. Men have to choose between the young, beautiful woman on the one hand, like Irene, who in the nineteenth century (and probably many other centuries) would be considered a

prized possession, and her more mature sister Penelope. As Lettmaier puts it: "The young child-wife was the ideal in Victorian fiction … the ideal woman was beautiful" (63). The man adored her, wanted to possess her (like the hero of Deland's "Promises of Dorothea"), and by providing financial support for her, initiated a transaction of money in return for access to her body (as delineated in Pateman's *Sexual Contract*). Because these nineteenth century women did not have legal rights (to control separate finances, or to seek legal redress for marital problems), they were legal possessions of their husbands. In essence, they were commodities for male consumption. With the advent of the "New Woman," and her various legal powers, including control of her finances, rights to divorce and to seek redress within marriage (for physical violence, for instance, or verbal abuse), the new empowered woman was not about to be bought and possessed, and the alternative, a companion, as embodied by Penelope Lapham, became the new ideal, for both men and women. Like Tom Corey, men wanted a mature wife who could offer companionship that might develop into love, a mature woman who was not financially dependent on a man (just as Penelope rejects Tom's offer of marriage until she knows her father is financially secure). Howells and other writers in the late nineteenth century wanted to warn men that a husband will get what he pays for, in a negative sense. The more beautiful a woman, and the more she views her husband as a financial asset, the more likely she is to disappoint later in life as these materialistic values continue to define the relationship, with nothing more to keep the couple together. Like the gold digger, the dependent wife will continue her quest for money and social prominence as they are her only goals, and her compatibility with her husband might never develop.

Women writers like Anita Loos and Edith Wharton also saw a flip side for women in this discussion. Men, they make clear, also fall into two camps. The first recognize this transaction,

and position themselves using their wealth to attempt to "buy" beauty and youth, without much concern for emotional compatibility. The lawyer Royall, for instance, and Rosedale, are both examples of men who express the desire for a beautiful trophy wife to show off in public, even if the woman does not like, and perhaps is on the verge of loathing, the man. The other option is a man who does not use his wealth to win a beautiful bride, either because he is not wealthy, or because he does not wish to "buy" a spouse. A financial loss for a woman could still translate into a win in terms of a relationship. Nick is a financial "loss," for instance, but a good companion to Susy, or potentially Selden to Lily, and certainly some of the less prominent men are portrayed that way, such as the husband of Nettie Struthers, a working woman visited by Lily Bart just before her death. Though Nettie and her husband are poor, Wharton shows us a married couple that has "a bond of faith and courage between a man and woman in order to bring them into the continuity of life through parenthood" (Ammons 42). Men who attempt to buy a woman are no better than women who go after the highest bidder. In fact, these writers tell us, they deserve each other. Edith Wharton is late to reach this conclusion, after her various novels about failed marriages, but Anita Loos picks up this sensibility and highlights it in her highly successful novel.

As judges, and the public, changed the meaning of the marriage contract, the engagement contract was losing its import, even as it remained a legally enforced institution. Women who used this legal advantage, however, were increasingly associated with the older standard of marriage as exchange, exploiting their own youth and beauty for monetary gain. As long as the law protected and rewarded them, it was a serious point of contention. The emergence of humor as a way of diffusing the tension around engagement law signaled its waning power as if to signal that it was a laughing matter for a man not to see this about a woman, and not to

understand that by choosing "that type of woman," he would be entering "that kind of marriage," which is to say, contractual, financial and predatory on the part of both parties. Neither men nor women were respected if they put the money question first in the search for a spouse, and often this created the humor of the situation as women became insulted at the notion that they could be bought, and as men who put money on the table saw it taken up by the woman in an exchange of money for services relationship, and not a serious, long term commitment. Lorelei does marry though, much to the surprise of some readers perhaps. In her introduction to *Gentlemen Prefer Blondes*, Candace Bushnell has this to say about the heroine: "not only was Loos's working-class heroine able to mingle in high society, she actually managed to marry into it" (xvi). In regard to engagement, *Gentlemen* presents readers with a single Lorelei offered a marriage proposal, and her reflections on what kind of husband she wants, involving the exchange of wealth for beauty. Her concept of marriage is revealed as contractual, not companionate, and her diary entries about men and potential husbands say much about her concept of the marriage market. Like Wharton's Susy, Lorelei makes the decision to settle down, though not until she meets a man wealthy enough to offer her a dreamy future.

Heartbalm is also clearly discussed as an option available to a single woman with a proposal on the table. After Lorelei receives a proposal of marriage from wealthy and powerful Henry H. Spoffard "in black and white," she considers her options. First, she "took Henrys letter to the photographers and I had quite a lot of photographs taken of it" but keeps the original handy because, as her friend Dorothy says, she "does not think the photographs do it justice" (128). The word justice is an ironic play on the court system because Lorelei goes on to explain, "now I have got to make up my mind whether I really want to marry Henry," and when she considers his family problems, "it might really be better if Henry should happen to decide that he

should not get married, and he should change his mind, and desert a girl, and then it would only be right if a girl should sue him for a breach of promise" (129-30). The decision has been placed in her hands, but Spoffard is bound by law to follow through on his proposal to Lorelei. Shortly after this scene, Lorelei plans to discourage Spoffard by buying expensive jewelry on Spoffard's credit, and by using her friend Dorothy to exaggerate her expensive habits in a private conversation with Spoffard. They enact the very scenario wealthy men fear when they propose to a woman, a scenario which even a simple, uneducated girl like Lorelei understands and operates, and yet, when the plan works, Lorelei suddenly has a change of heart. This change is primarily motivated by the advice of her friend Mr. Montrose, who reminds her that she can extract more money from a husband than she can by suing him for breach of promise, and she can continue to pursue her dream of becoming a film actress by involving her husband. Marriage is still more profitable, and though she might win a lawsuit, her reputation and personal history would become the fodder of newspapers across the nation, and maybe the world. It also suits the comic format that she should not turn into an absolute heartless villain in the end either, but that she should continue to pursue her dream of becoming a film legend, with the financial backing of her new husband, who agrees to her plan and accompanies her to Hollywood.

Lorelei does not settle for Spoffard because he is a good companion, but because she has a heart in the end. After Dorothy tells Spoffard about Lorelei's spending habits, Lorelei worries that Dorothy might have gone too far. She chases after him and finds him "with a look on his face which I shall never forget" and explains to him that it was just "a little test that I and Dorothy had thought up, more in the spirit of fun than anything else" (159). She teases him (and probably the reader as well) that he made "such a mistake in judging the character of a girl" by listening to the stories that circulate around a girl, and they embrace in forgiveness (159). As the

novel ends, she is too busy with her career to worry about her husband, and she gets him busy with organizing the working girls "so he can give them all of his spiritual aid" (163). Ultimately, she is happy because her husband provides her a rich lifestyle, not because they are companions. Throughout the novel, she has put down men who connect with her on a personal level. A nice guy, or even an attractive one, without money, is often met with Lorelei's assertion, "I am not going to waste my time on such as him," (16) as when she scolds Dorothy "because she does nothing but waste her time by going around with gentlemen who do not have anything" (26). When she does have fun with a penniless gentleman, she notes, "when a girl really enjoys being with a gentleman, it puts her to quite a disadvantage and no real good can come of it" (56). A poor man can ruin a girl's reputation, she notes, and a friendly relationship with a man distracts a girl from more important pursuits.

*Gentlemen* reflects on the problem of a woman who wants to be both attractive and smart, materialistic but also substantial. Lorelei is always pleased when a man calls her smart, but readers see through it, partly due to her spelling errors, cultural confusion and misinterpretation of statements. Men play a game in which they praise a beautiful woman for her intelligence, but that often masks what they mean by "smart." Catherine Keyser, in her book on women writers and modernism *Playing Smart*, says this about these contradictory impulses:

> Lorelei, shaping her body and her persona to fit the desires of the men who support her, baldly reports the contradictions of those desirers: "Gerry does not like a girl to be nothing else but a doll, but he likes her to bring in her husband's slippers…" Gerry only "seems" different … In fact, he prizes the decorated female body and resents evidence of women's intellectual and political engagement. (64-5)

Smart, as Keyser describes it, "tended to correlate with the modern (whatever was deemed smart was frequently also new), this ideal does not seem to depart much from a domestic vision of woman as helpmate, hostess, and shopper" (6). Loos manipulates the readers' ability to judge Lorelei's "smartness" by making her novel a first person diary. "Her loose and baggy syntax, malapropisms, euphemisms, and misspellings obscure both her body and the events she describes" (65-6). Readers see what the characters in the text cannot, which results in the comedy of the text. As Keyser points out, men might want a mental companion, but their "susceptibility to physical persuasion suggests otherwise" (66). Fortunately for Spoffard, Lorelei is not content to use heartbalm to her advantage, but she does openly consider and weigh it as an option within the text, and as a dramatic device, its time had come, as evidenced in the many movies which used heartbalm dramas to explore lingering concerns about predatory women.

**"I Don't Like Blackmail:" Heartbalm in the Cinema**

As this analysis has reached the age of cinema, it is only natural that those stories which had been confined first to novels, and then to magazine fiction, would be enacted on the stage and then reach the cinema. Some of Edith Wharton's novels were produced as plays, including *The House of Mirth* and *The Glimpses of the Moon*. *Gentlemen Prefer Blondes* also inspired a number of film versions and variations, and Anita Loos became a well-known figure in Hollywood after she left her home on the East coast. A lesser known playwright, Bayard Veiller, became world famous for his portrayal of heartbalm blackmail, and he worked closely with many directors of various film versions of his play. Veiller has not attracted much critical attention in the past fifty years, but after the 1910 debut, his social drama "Within the Law" became an international success and spawned numerous silent, and later sound, film versions of his play. The play was published around 1913, and in 1915 it was adapted to the novel form by

Marvin Dana. The popularity it received in all of its variations speaks to the nerve struck by the story, and as it would turn out, this play's title comes from the very problem of heartbalm—that women can use the law to essentially blackmail men by using heartbalm law, or breach of promise. The 1930 film *Paid* was also inspired by the play, but aside from the title change, which draws focus on money and exchange, instead of legal questions, much of the drama is the same. The main character, Mary Turner, still plans and carries out breach of promise suits, and the film includes many of the key dialogues about blackmail, engagement and the law.

Surprisingly, Veiller did not set out to write the play as an attack on blackmailers using heartbalm law to exploit wealthy men. In a 1913 article about the play, he discusses his motives in writing "an attack on the jury system" (334):

> [Mary Turner is] a salesgirl wrongfully accused of theft. And I made her plight the basis of an attack on the department store system in particular and our economic system in general. I am a Socialist … The fact is that our social fabric is so rotten that the entire industrial world is simply riding on the backs of women. (335)

After she is released from prison, Mary cannot find a job. Veiller sees Mary's rationale for using heartbalm this way: "she would say to herself: 'Oh, very well; if they won't let me be honest I'll get money in the same way the big, successful crooks, the politicians and the grafters get theirs, - dishonestly, but within the law'" (336). Despite the fact that she uses blackmail to earn a living, Veiller did not want to "alienate the audience's sympathy which her previous wrongs had won for her," and he has Mary protect her husband's family from a gang of criminals, even from Joe, the mobster who helped her when she was released from prison (336). Her character, as it turns out, is not based on the scheming, blackmailing gold digger, but the industrialist and the politician, who use their wealth and power, and their understanding of legal loopholes, to

consolidate power and gain wealth. Mary Turner is a complex character who embodies the role of victim, villain and hero at various points in the drama, and it is obviously impossible to tell if audiences understood Mary in the way Veiller intended. The various productions, however, do depict Mary as, at times, pathetic and innocent, and at other times, angry and desperate (as in the 1930's version).

Because "Within the Law" revolves around revenge, the blackmailing Mary Turner inspires both sympathy and fear. As the play opens, she stands accused of theft from the wealthy Mr. Gilder, but she denies the charge and decries the lack of justice for working people when their accuser is a rich man with connections. When she comes out of prison, the play follows her as she carries out her plan to blackmail wealthy men, with the aid of another woman she met in prison. As she cashes in on these exploits, she explains that she is not doing anything illegal because heartbalm is "within the law." The men she exploits are also depicted as predatory and perhaps deserving of a lawsuit, and once she acquires some wealth, she is able to seduce Gilder's son. At first, she tempts him to write down his declarations of love, but failing that, they get married, which Mary sees as the ultimate revenge. As Veiller explains it, "the best way to damage [the Gilder name] was to associate it by marriage with that of a convicted felon" (335). The play suggests that women can exploit men using heartbalm, but only the basest men fall victim, and that, as in this case, by marrying a woman like Mary Turner, a woman can wreck even more damage on a family—but again, in this case, it is not unjust—it is revenge. The result was a "sell out on the second night that the play presented in New York and [we would] never have an empty seat in the house for three hundred performances" (338). Veiller's autobiography, written in 1941, continually refers to the play as the defining moment of his career.

An apparent simpleton, on the other hand, like the hero of Sennett's *Heartbalm*, could be seen as comic because he naively falls in trouble, but also escapes that trouble. As one of Sennett's working titles suggests, "For Love or Money," the question of marriage and its purpose was on Sennett's mind, though by 1922, this also might be a comical question—of course no lasting relationship should be based on money without at least the semblance of love! Like Wharton's *Glimpses*, also published in 1922, the ultimate choice seems obvious, but the hero might have been confused by a glamorous, beautiful young woman. Her desire for a relationship based on wealth would be placed in opposition to another, more appropriate woman's desire for companionship, who would emerge as the proper heroine in contrast to the villainous gold digger. This would become the theme of many later movies in which there was no confusion about the comic element, much like Loos' *Gentlemen*. Heartbalm, or breach of promise, which had once served a legitimate purpose in protecting women from predatory men, had reversed its role, and was now depicted as synonymous with blackmail, though it is unclear how much sympathy there was for men who fell prey to these women. In most of the films of the 1930s, this became the general trend. In the films *Paid*, *Footlight Parade*, *Platinum Blonde* and *Golddiggers of 1933*, women who invoked breach of promise were synonymous with blackmailers. Mae West's *I'm No Angel* is one of the few films which defends a woman's proper use of breach of promise, but that film also ends with a reunion between the hero and heroine. In the final scene, West's character takes the check she has won in court and tears it in two. "I'm glad to know it wasn't the money you wanted," Cary Grant's character says to her. "You have a lot of other things it takes to make a woman happy," is West's final line as they kiss and the music swells.

*Paid* is certainly the darkest of these movies, and the earliest, released in 1930. The movie was the third based on "Within the Law," this one directed by Sam Wood, and with Joan

Crawford in the role of Mary. Two silent film versions were made in 1917 and 1923, according to a Stanford University website (*Norma*). Each of its incarnations was a hit, and there were even two subsequent films made after the 1930 production. In each, Mary Turner appears as a working woman falsely accused and convicted of grand larceny, who then plots revenge against her accuser, Mr. Gilder, just as it is in the play "Within the Law." The 1923 version, a well-received production released just a year after Sennett's failed *Heartbalm*, starred Norma Talmadge as a less intimidating, more sympathetic Mary. The Talmadge family was socially connected to Anita Loos as well, and she published a biography of Norma and her sisters later in life. No doubt she had seen and enjoyed Talmadge's version of Mary Turner before writing *Gentlemen*. A 1923 review from *Moving Picture World* gives this account of the film's title, *Within the Law*, which already presents a disconnect with the author's stated intention:

> The title of the picture is derived from the fact that, although her schemes are shady, she always keeps within the law. For instance, when she and a girl friend resort to what appears to be blackmailing of wealthy men by threats of breach of promise suits, the negotiations are kept within the law by being conducted through skilled attorneys. (Sewell)

The use of "skilled attorneys" plays up the point that heartbalm is already perceived as bordering on "shady" and presumably based on loopholes and courtroom theatrics, not legitimate "payback" to women for suffering under a corrupt, male-dominated system of oppression.

Other reviews noted that Norma did not look appropriately villainous to carry out Mary's blackmail scheme, but the 1930 movie *Paid* leaves no doubt that Joan Crawford as Mary becomes increasingly dangerous and malicious after her release from jail. Emphatically, Crawford gets a bit wild-eyed as she explains to her mobster friend that the difference between

blackmail and heartbalm is only the support of the law. If a woman can make a man "write a few sentimental letters and [she] turned them over to a lawyer for legal action, that's heartbalm and she gets $10,000." After one of their scams, she comments again, "What a great institution the law is … do you realize we couldn't get a nickel without it?" The film never clearly indicates how many successful suits she and her girlfriends conduct, but the police begin to investigate and Mary is determined not to let them intimidate her and her friends because their activities are all legal. This is not quite true, however, because in the one case depicted in *Paid,* her friend pretends to be a mere fourteen year old girl as a way of shaming her elderly suitor into settling the case out of court. The threat against his reputation is not just that he promised to marry her, but that she is quite underage (though the actress hardly looks younger than 20). Having gathered enough wealth, Mary puts her revenge plan in action and marries Gilder's son.

As with *Gentlemen Prefer Blondes,* the concluding marriage appears to be without a lasting foundation of the preferred "companionship" element, but as the couple continues together, Mary's heart softens for her new husband. Ultimately, she intervenes in a plot to rob her father-in-law's mansion, involving an undercover cop and her mobster friends. The police tempt her associates to steal Leonardo Di Vinci's *Mona Lisa*, which Gilder has supposedly hidden away in his library, but Mary refuses to take part and tries to convince her partners not to do it as it is not "within the law." Her scheme, her earlier friends, everything else is forgotten once she determines to stick to her husband, and in the end, the film, as well as the novel and play, implies that they will live happily ever after with their newfound feelings for each other. Even blackmailers, it seems, can be reformed by the right man, but in each of these movies, it is acknowledged that the law empowers these blackmailers. It is up to men with the help of their friends and family to see through these women's devices and catch them at their game. Though

Veiller meant his heroine to be sympathetic, he was quite aware of villainy among young women as well. In his autobiography *The Fun I've Had*, Veiller states that he was inspired by true life crime stories, and even the continued success of the play was aided by real life events:

> While I don't in any way want to detract from the great skill of the author of *Within the Law*, it was in part helped by the fact that the Rosenthal murder took place almost around the corner a few weeks later. That was all about police corruption, police crimes and police oppression. And my luck held because I had a great cast. (207)

Veiller also credits his ability to write about this theme because of his long years covering crime stories for various newspapers. After a reporter's stint in New York, where he made friends with Jacob Riis and Theodore Roosevelt, he moved on to work for newspapers in Chicago and San Francisco, covering police and court cases. As he notes from the discussion of cases he reported, he was well-acquainted with female villainy, but more often than naught, he saw their victimization at the hands of wealthy men.

The 1930s movies present blackmailers and gold diggers lodging cases against only the wealthiest of men, as they are constantly the victim of these women's devices, though in no instance is the man totally blameless in relation to the woman. Mr. Gilder is presented as an elitist, wealthy capitalist, as are the heroes of *I'm No Angel*, *Footlight Parade* and the Schuyler family in *Platinum Blonde*, who are called "blue noses" by the newspaper editor. Unlike *Paid*, *Platinum Blonde* gives a comic spin to predatory marriages by depicting the marriage of a wealthy woman to a working class man, who also happens to be a reporter. A heartbalm case, or the rumor of one, reaches the ears of a newspaper editor, and when he asks the hero Stew to go interview the Schuyler family for an article, Stew responds, "I could write that story without stepping out of my office." In the other films under consideration, *Golddiggers of 1933* and

*Footlight Parade*, wealthy theater producers are threatened, or feel threatened. In *Footlight Parade*, the blackmailer is revealed as a heartless gold digger who maintains multiple male friends, but the hero is one of them, not a blameless victim. When the hero discovers her infidelity, he refuses to pay her bribe and denounces her lawsuit. Ironically, in *Golddiggers of 1933*, there are no blackmailing gold diggers, but men fend off working women by using that accusation. As with many of these movies, the hero realizes his mistake and sees the true character of the woman in the end, allowing them to marry. *Golddiggers of 1933*, like *I'm No Angel*, ends with the hero making the "right" decision and marrying the good-hearted actress.

The movies also resolve the threat of heartbalm through quick marriage. In *Platinum Blonde*, the wealthy daughter of the Schuyler family, Ann, marries her lover, newshound Stew, offstage, and viewers learn about it through the newspaper headline, "Elopes." *Platinum Blonde*, however, depicts the problems of a marriage in which a wealthy woman supports her husband, but he cannot accept living on her income or under her rule. He is, for Ann, "an experiment," but she becomes jealous when she learns that his "pal" Gallagher is a woman. Ultimately, their marriage breaks because of the financial accusations, that he is a "Cinderella Man," as the newspapers label him, and he returns to his female friend Gallagher, who seems the appropriate choice. The triangle represented by Stew, Gallagher and Ann Schuyler presents an interesting variation on a man's decision to choose a mate. While Ann is glamorous, blond and wealthy, Gallagher is presented as a "pal" dressed in men's clothing. At one point early in the movie, Stew tells her to stop "talking like a woman," and he warns her not to "turn female on me." After their marriage, Ann treats Stew almost like a pet, instead of a companion. When Gallagher dresses like a woman, Ann's jealousy emerges and Stew is also confused. After this confrontation, Stew becomes increasingly agitated as he rejects the label that he is trapped in a

gilded cage, and eventually he moves out of the Schuyler house and accepts that he truly loves Gallagher. Ann and Stew have a physical interest in each other, often on display during their short courtship, but it is unclear if they have any other interests to sustain their relationship. Gallagher and Stew, on the other hand, start off as friends and only develop a romance after he marries and rejects the rich and beautiful Ann.

*I'm No Angel*, written by Mae West, vindicates the jilted woman who uses a breach of promise suit to prove her love and good intentions, but it also showcases the intense scrutiny focused on a woman's reputation when she enters the courtroom. Though she has all the evidence necessary to prove a breach of promise, the trial begins with the assumption that this proposal is authentic, but the woman filing the case, Tira, has a "colorful past," which becomes the trial. As she notes at the beginning of the trial, "I don't see what my past has got to do with my present," but as the men line up as witness to her character, her lawyer starts to sweat, commenting, "all those men… it's curtains!" In true Mae West fashion, the heroine parades before the judge and jury, flirting with each in turn, but decrying the villainy played out against "a good, honest and innocent woman." The trial makes it clear, however, that most men who pursue her use false names, or have wives at home, and she is not foolish enough to do anything with them that they couldn't tell their "grandson about." Clayton, her ex-fiance, was honest with her, and this earned her respect for him. Her confession of love is touching to all, and Clayton immediately settles the case. Though she wins, Mae West is comfortable with her role in front of the jury and plays up her audience with skilled verbal parleys quite beyond the ability of a young, jilted bride. Only a woman with courage and wonderful speaking skills could hope to engage in this case, and contractual evidence was not enough for a woman to face the assault on her reputation.

Her courtroom win might hint at female agency, but this same agency, the ability to win over a male jury with cries of goodness, a tear, and a sexy leg, was decried by those who attacked heartbalm law. Grossberg, in *Governing the Hearth*, makes it clear that reputation was always an important element in the settling of breach of promise cases: "the nearer to the society's ideal of a proper lady, the greater her injury and the higher her damages" (43). As noted earlier, Grossberg ends his study of breach of promise law in 1900, so he does not explore the effect of the changing definition of a "proper lady" into the 1930s. For some, West might embody this new standard of female propriety, but for others, her transparent attempts at mesmerizing the men who judge her was a central problem. In "The Love Racket," a pamphlet published in 1930, the author, Mary Day Winn, launches on an extended attack of the misapplication of breach of promise suits.

> With tears of pity in their eyes, jurors have computed that the agony suffered by a lovely damsel because of a broken vow is worth anywhere from $5,000 to $600,000 — depending on various contributing factors, but chiefly on the beauty of the damsel. For it is a well recognized fact in legal circles that the prettier the plaintiff, the larger the award she will get from a masculine jury—a highly uneconomic basis of decision, because it is obvious that the more alluring the woman, the smaller are the chances that her hopes of love have been eternally blighted. (4)

Winn, who published many tracts advising women on marriage and divorce, including the book *Marriage in the Modern Manner* (1929), worked closely with writing partner Dr. Ira S. Wile. This tract agrees with many of the sentiments in their book, in which they argue that marriage should no longer be about economics and traditional gender roles. Instead, "[m]odern life, to an even greater degree, allows each of us to make full use of the masculine and feminine elements

in our make-up without being embarrassed by the feeling that it is unwomanly or unmanly not to stay on the so-called masculine and feminine side of the fence" (*Marriage* 129).

The legal arguments that ended heartbalm once and for all are discussed at some length in Rebecca Tushnet's article "Rules of Engagement," published in the *Yale Law Journal*. As she notes there:

> The hybrid nature of heartbalm actions and the blackmail they invited were particularly offensive because only women, in practice, could bring such suits. Finally, reformers argued that heartbalm torts reflected a misunderstanding of marriage, which was a relationship incapable of measurement in monetary terms. This last claim, the "anticommodification" argument, became increasingly important as the antiheartbalm laws were interpreted by courts.

As lawyers and lawmakers made the decision to strike these laws from the books, the rhetoric used echoes with the modern interpretation of love and marriage we continue to idealize today.

> As the reformers understood it, marriage had once been an almost entirely economic relationship. As women became more free to choose their own life plans, marriage increasingly became an affective relationship. Eliminating the economic aspect of the legal regulation of marriage would modernize this area of the law. Any remaining economic incidents of courtship, such as engagement gifts, were purely symbolic, removed from the realm of the market because they had been transferred on account of love.

As a result, engagement, including the exchange of rings and promises of love, were no longer legal contracts. In conjunction with the new sexual liberation afforded courting couples, the removal of heartbalm opened the way for another problem which plagued the twentieth century,

the question of society's responsibility to the growing number of unmarried mothers, but that is the topic for another dissertation.

**Contracts, Consequences and a Conclusion**

As this dissertation has demonstrated, heartbalm and its depiction as either positive or negative agency, corresponds directly to the reinforcement, and later the demise, of the engagement contract. This reversal also coincides with developments in the definition of marriage at the end of the nineteenth century and beginning of the twentieth. Whereas marriage had always been a contractual relationship, its status as such was often overshadowed, particularly in "marriage novels," by discussions of social and financial compatibility. Before women could control their own finances at the end of the nineteenth century, parents and women focused on a potential husband's ability to support his future wife's standing in society, and were less concerned with issues of compatibility and love, while contract was conflated with the rhetoric of honor and sentiment—a man's honor, and a woman's heart (and also her reputation).

The novels of William Dean Howells provide a window into nineteenth century family discussions that asked questions of the patrilineage, finances and reputation of potential partners. The manner and attractiveness of a woman, as in the case of Irene Lapham in *The Rise of Silas Lapham* (1885), was considered the primary quality to catch a man of good social standing, like Tom Corey; other qualities, such as the couple's common interests and conversational compatibility, were considered secondary, so that Penelope is overlooked as a potential mate for Tom. Howells' forward-thinking resolutions, however, delineate that compatibility should be equally considered, as when he depicts Lemuel Barker in *The Minister's Charge* (1886), for instance, and his failed romance with Statira. Tom Corey chooses the more mature Penelope instead of the young and beautiful Irene, and the marriage of Marcia and Bartley Hubbard in *A*

*Modern Instance* (1882) fails because they marry on impulse and do not share interests or see themselves as equals or friends.

Howells also downplays the potential agency that heartbalm provided women, though he is quite aware of its potential impact on a couple, most notably in the case of Lemuel Barker. Statira's agency locks Lemuel into his responsibility for her, even without a proper proposal. Howells already sees the dangerous potential of contractual engagements, and uses his character minister David Sewell to express these doubts. As Sewell tells his wife, "'[s]o far from urging the fulfillment of even a promise, in such a case, I would have every such engagement broken, in the interest of humanity—of morality.'" (175) Though Howells emphasizes the negative agency of breach of promise laws, other writers in the late nineteenth century, such as Mary E. Wilkins Freeman and Herman Whitaker, who depict breach of promise cases, see this law as a form of positive agency for women, empowering them to make decisions about their future spouses. Compatibility is brought up as a concern, in the story "A New England Nun" (1891), for instance, and Whitaker's "A Stiff Condition" (1905), but in each of these representations the contractual obligation on a man to follow through on his verbal commitment to a woman is more important, and becomes the deciding factor in the couple's decisions. The decision to release a man from this obligation lies completely in the hands of a woman, as historically, she was emotionally dependent on her lover and suffered excessively from jilted expectations.

By examining a wide variety of writers and source material, the full debate about heartbalm becomes clearer. While heartbalm cases flooded the courtrooms and headlines of newspapers, the Howells' camp of Realist writers sought to avoid sensationalist depictions of stories which might be considered trite or common. Freeman, Whitaker and Howells all depict situations which show characters negotiating their way through the accepted channels of society,

and do not radically challenge the social order imposed by the legal system. Howells in particular sought a discreet and genteel way of depicting the effects of breach of promise, and in the face of growing anxiety about women's agency and heartbalm lawsuits, Howells represented couples moving around delicate engagement problems without weighing in on the rightness of jilted women taking their lovers to court. Howells' depictions of the courtroom, as in the divorce of Marcia and Bartley, reveals that he is less interested in female agency, and still represents women as outside the male arguments about the law. It is not suitable, in his mind, for a woman to take the stand in her own defense, but rather to defer to her father or other men around her. This delicate handling of women and social order is also reflected in the novels of Edith Wharton. Though she draws attention to the negative effects of breach of promise on couples, she also depicts women's reluctance to use the law, partly because of the damage such use still has on the reputation of a woman. Edith Wharton's men likewise are reluctant to take any radical steps that disrupt social order, and are instead, at times, paralyzed into inaction.

Wharton's tragic marriages, one of the thematic "train wrecks" of the early twentieth century, also focused on the question of the purpose of marriage. Though her women cling to nineteenth century ideals of class and financial suitability, her women, such as Lily Bart in *The House of Mirth* (1905) and Charity Royall in *Summer* (1917), and even Susy Branch in *The Glimpses of the Moon* (1922), want something more out of marriage and consider, at least, the possibility of marrying a companion instead of an established, financially secure husband who will value his wife for her good looks and youth, instead of her intellectual or personal compatibility. Wharton problematizes the notion that a woman will be satisfied as a trophy wife for a socially and financially well-positioned husband. The agency provided by breach of promise laws is decidedly negative, as her women are unwilling, and seemingly incapable of

taking up their legal rights. Heartbalm, especially in the case of Lily Bart, has already been connected to predatory women, and what seemed in the nineteenth century as completely natural, that a woman would seek to marry "up" in society, has been questioned—a trend which also appears in the fiction of Robert Herrick. The "agenda" of a woman who seeks to improve her social position is no longer acceptable, and instead dangerous.

Margaret Deland, on the other hand, does not find agency in breach of promise, but her characters bypass long engagements for other reasons. They elope because families and society interfere with young couples who don't fit the conventions of small town life. Deland, who has been labeled both a Modernist and a "local color" Realist, defies both labels in various stories, and is one of the few writers in this study to represent characters who challenge the accepted social order. Elopement is one representation of this challenge, and another comes through the dialogues of her "hero," Dr. Lavendar, a preacher who speaks about conservative religious values, but acts out in ways which challenge his own conservative rhetoric. At times, as in "An Encore" (1904), the couple seeks compatibility, yet at other times, it is merely passion or impulse that leads them to marry ("The Promises of Dorothea" (1898)). Her women are sometimes acting with a sense of agency, but in other stories, they submit to the will of strong men. Deland's representations foreshadow the actions of others who wished to avoid the contract of engagement. The husbands of Peggy Hopkins Joyce, for instance, knew that a contractual engagement was best avoided, and if a woman wanted to marry a man, it should be done immediately. This suited women with a past to hide, as well as men concerned that a long engagement might end in a court of law, instead of the wedding chapel. An engagement, even as a contract, was not enough to secure a woman's future, and breach of promise, though potentially a financial boon for a woman, was not as great of a "win" as a marriage. The term "gold digger"

was born, and its attachment to a woman could devastate a woman's reputation more than any financial gain it might accompany.

The movies discussed in this chapter coincide with the demise of breach of contract, just as the notion of contractual marriage comes under ridicule—even those like Lorelei, who marry for money, plan further exploits after marriage, and are not content to be a mere sidekick to their husband. For those who still negotiate their looks for financial gain, heartbalm is no longer a viable solution—they enter either a state similar to prostitution, or they marry, with all of its rights and privileges. Men are likewise divided into two camps—the wealthy, and the rest. Wealthy men are often quite content to pay for access to women's bodies, as long as they can actually access those bodies, either with or without marriage—what they resent are those women who feign interest, take gifts, but deny their bodies. Some wealthy men adopt another tactic—masking their wealth until they can determine if a woman is interested in them as a person first, and then they are willing to propose. The argument for compatibility suits men without wealth, as it creates a level playing field. In fact, as films like *Platinum Blonde* (1931) illustrate, it is also possible for a man to offer compatibility to a wealthier woman, though again, he might run the risk of becoming her "boy toy" instead of a real companion.

The demise of heartbalm and contractual engagement also coincides with changes in gender expectations. Under the new conditions of "companion," couples come together not because one supports the other, but because they wish to stay together with the legal benefits of a married couple. Even Pateman's "sexual contract" is no longer valid because couples can enjoy sex without marriage. It is no wonder that America today stands on the verge of legalizing same sex marriage, as that was the path Americans laid out before them in the 1920s. Both men and women often want to marry a "pal," and not a "sponsor" or a sex toy. The benefits of marriage

are not always (or only) weighed by the ability of a partner to conform to specific gender roles, but instead to provide emotional support and intellectual companionship, and modern marriage, as an institution, is a way to enjoy tax benefits, shared insurance policies and inheritance security.

This dissertation's recovery of heartbalm, or breach of promise laws, and the study of these laws in relation to literature and media are important because they inform the texts of this era with an added understanding of the contractual restraints placed on couples. For a period of roughly fifty years, America struggled to justify the continued existence of these laws as a form of agency for women, but ultimately these laws were deemed too restrictive for the engaged couple, committing them to a legally protected relationship when both partners still wanted to test and potentially opt out of the relationship. The nineteenth century texts are informed by the laws, even when the laws themselves are not addressed. Characters act and react with knowledge of the consequences of their actions, but modern readers are not privy to the same knowledge because of our historical distance from the situation. Certain texts then emerge as important for their negotiation of these covert problems. Lemuel Barker emerges as an important character in this study because he establishes a tradition of men trapped by love that continues through the novels of Herrick and the film *Heartbalm* by Mack Sennett (1922), where it becomes most obvious. Other canonical texts, such as *House of Mirth*, reveal a new set of concerns that do not radically challenge earlier readings, but contribute to our collective understanding of the text as the tragic tale of a woman, unfairly judged by the world around her where "heart balm" plagues the newspaper headlines.

The knowledge of this pressure on engaged couples also adds a new dimension to stories of elopement and gives power and credence to the undervalued texts of Margaret Deland. Deland

emerges as more radical in her expressions of female agency than Mary E. Wilkins Freeman, who has enjoyed much celebration as a strong, female voice in the Howells' camp of Realist writers. Every elopement story from this period, in fact, benefits when readers have an understanding of heartbalm, which few contemporary readers possess. Deland's characters are not merely rebellious and unconventional, but they are, instead, reacting to a crisis and attempting, in their own way, to challenge the conventions of social order on their way to matrimony. While parental characters in her texts clearly lay out the expectations of who should and should not marry, and the processes necessary to delicately and acceptably negotiate these social rules, her characters frustrate these delicate concerns and choose personal fulfillment as a path to challenge these rules. Deland's early depictions inform the elopements in silent or early "talking" movies. These marrying "rebels" creative narratives that are not merely funny escapades, duping parents and guardians, but instead they register as serious attempts to curtail a potential legal disaster as well as asserting personal decision-making instead of patiently trying to win over skeptics and conservatives in the family or community. Clandestine courtships and secret proposals become subversive, covert operations, and premarital pregnancies, even in comic silent short movie, might lead to a shotgun wedding, but that is only because the poor father and daughter cannot afford the court costs that might otherwise leave a man in debtor's prison.

1935 marks an important end date for breach of promise cases, but occasionally these lawsuits still emerge. A 2008 *New York Times* article "If Things Fall Apart, Who Gets the Ring?" by Nadine Brozan, for instance, focuses on a number of recent lawsuits involving broken engagements. The article notes that usually the ring is the only item that might be disputed because "an engagement ring is a conditional gift." Furthermore, "trying to establish fault can be

tricky at best and painful at worst," so judges do not wish to hear these cases. Prenuptial agreements have been created as supplemental contracts for modern marriages, and likewise there is a new legal option for engaged couples. For those who wish to restore the engagement to its contractual status, there has been a legal movement towards "Facilitated Engagement Planning," described in an article by Emily A. Hinderliter as "the opportunity to create enforceable agreements should the engagement be broken" (4). After pointing out the many problems with modern engagements, including the high cost of planning a wedding, the potential sacrifice of one partner's career and the result of extensive background checks, Hinderliter goes on to conclude that "No matter what a couple brings to the FEP session, the facilitator can provide an environment to discuss financial and economic interests and expectations and allow the couple to create an agreement that will address their concerns and serve their needs" (8). This is because "jurisdictions will most likely return the engagement ring, but little else" (10). The document even addresses the modern movement towards compatibility, and justifies FEP this way. "If couples that are becoming engaged are testing their compatibility, it makes sense for them to protect as many of their assets as possible, especially given the probationary status of their relationship" (10). Though it doesn't appear that this new contract is very popular, wealthy men and women might find it comforting as a way of protecting their assets, as mentioned in the article.

As a result of this study, it is now possible to move forward to discover other texts from this period which further complicate the engagement relationship as a space for class warfare and women's agency. Rising to the surface are Bayard Veiller's play "Within the Law" (1910) and the movie *I'm No Angel* (1933), which register in complex ways as commentary not only on female agency and heartbalm, but on women in the courtroom, as well as society's fear of legally

knowledgeable women, women gangsters and ex-convicts. Veiller's play, and its many incarnations, also reminds us that men have used and abused the law as a way of gaining power and wealth, and that women have learned these hard lessons. His commentary on corruption is mirrored in many of the later texts, including Anita Loos' *Gentlemen Prefer Blondes* (1925). The root cause of Lorelei Lee's rootlessness in society grows from the abuse she suffered at the hands of another man in her past, and Mary Turner ("Within the Law" and *Paid* (1930)), though not a blonde, seduces men to secure her revenge on a system that empowers men. Tira, the Mae West heroine of *I'm No Angel*, is likewise depicted as beset upon by men who lie to her and exploit her. The trial, which should be focused on the man's breach of promise, instead turns against her and puts her reputation and good name at the center.

West was also the writer of *I'm No Angel*, and in conjunction with the other women writers in this study, her writerly concern pushes back against the negative stereotypes surrounding women deemed "gold diggers," despite their legitimate right to use the law. West, like the other women writers, was responding as a reader to texts both fictional and journalistic, and proposing other solutions to the problems of female agency. West's movie in particular strikes many as a female fantasy as her character plays out the metaphor of a lion-tamer who likewise puts men in their place. Deland likewise plays out a fantasy for her female readers in which they can escape the confines of their conservative small towns and restrictive families to act out on their own and find happiness. Deland and West were both endorsing risky forms of behavior, but other writers like Loos, Freeman and Wharton found solutions that mediated social concerns and perhaps made readers sympathetic to those women who negotiated their way through engagements and marriages in a modern world, despite the fact that their heroines were "old-fashioned girl[s]" (Loos 106). These women avoid heartbalm because they are aware of the

negative results to their character, and they also embrace modern values despite their upbringing in a world of contractual relations.

The path covered by this study also shows that attitudes towards women and wives could radically change in a short period of time. When the law surrounded women for their own good, men and society, social order, existed to protect women from men. Women, however, were not considered intelligent enough, or well-informed enough, to understand and use the law, and certainly not capable of challenging the law. As they were granted more legal rights, men discovered that women could understand the law, and when women began to use the law, to question the law and to gain from the law, which had been the purview of men for centuries, suddenly there was a great deal of anxiety. That some women could use the law to their advantage led to a widespread demonization of those women who did use the law, which kept most women in abeyance until the law could be rescinded in favor of "free play" for courting couples. This is not a wholly new discovery, that men control the law, but hopefully this study has fostered a greater understanding of how America as a society has developed its definitions of marriage and gender roles that are still with us today. Furthermore, whereas heartbalm was a form of agency for women, this study illustrates how agency can be contained to the point where those given agency refuse to use it because of the negative labels associated with it. Once agency is contained, the legal system is therefore justified in removing it altogether. Both men and women agreed that heartbalm was no longer necessary, despite other problems that resulted when women lost its protective qualities. The next phase of research would necessitate a study of literature in the 1930s and 40s to explore how women's loss of agency during engagement played out in films and literature, leading up to the next crisis, unwed mothers, which is still

considered a social problem today. This focus might lead to the rediscovery of other important texts in a period when other social problems have helped shape the canon.

Likewise, further research in the period covered in this dissertation will hopefully recover other important, non-canonical texts that can inform us about the evolving ideology of what marriage is and what it should be in the future. As marriage is one of the basic foundations of society, its study can only help us understand who we are as people, and how the study of narratives, literary, journalistic and cinematic, reflect and inform our changing beliefs about this institution, its legal function and the relation between the sexes.

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