

'Marriage had bastilled me for life'¹: Propertied Women as Property in the Legal Fictions of Richardson, Wollstonecraft and Collins

Abstract: When a woman married during the eighteenth century, according to Blackstone's *Commentaries on the Laws of England* (1765-69), her autonomous identity was removed and she was immediately classed as one with her husband. This consolidation into the husband's own identity means that she is automatically classed as his property, as to incorporate and consolidate implies a taking over of ownership of the item being transferred – and thus, of course, a complete lack of self-governance over mind, body and actions on behalf of the woman. This leads to the perception that the woman has been transformed from a human into a mere thing, whilst still retaining human function. It is this mid-existence of the eighteenth and nineteenth century woman and her entrapment somewhere between human and thing that raises a key question. Is it possible for such a legal phenomenon to own property (thus, another *thing*) itself without repercussions – essentially, if the propertied woman was herself property? This 'work in progress' paper examines the extent to which this may be true, and if so, how it affected her identity as an independent human being in a patriarchal legal system over a specific time period by studying several themes of what are arguably legal fictions. The gendered inheritance of Samuel Richardson's work and the obstacles this incurs due to the female's lack of legal recognition in the eighteenth century are referred to, and explorations are made into the questions about inheritance, identity and what constitutes as property raised by the French Revolution of the 1790s, and the representations of this in Gothic and revolutionary literature, specifically Wollstonecraft's *Maria* (1798). Moreover, I consider the effects of the Gothic upon the development of sensation fiction, positing the latter as a direct descendant rather than subscribing to the notion of them being related but rigidly disparate, with sensation fiction suddenly emerging in the mid-nineteenth century (Hughes, 1980; Thomas, 1994; Herbert, 2008). Within these two genres, the entity of the married woman is well-established, but, I argue, warrants further examination of its representations of the legal entity of woman in her occupation of the domestic sphere as a wife and the social sphere as a single, propertied, legally existing woman in Wilkie Collins's *The Woman in White* (1860-61).

Article

This paper forms part of my ongoing doctoral research, which explores legal fictions and women in the literature of sensibility, the Gothic and sensation fiction between the mid-eighteenth and nineteenth centuries. It examines various examples of canonical literature produced between the late eighteenth and mid-nineteenth centuries in order to show how the confusing issue of female identity within the law is wholly bound up with the notion of the propertied woman as being property herself. William Blackstone put forward this doctrine in his *Commentaries on the Laws of England* in 1753:

By marriage, the husband and wife are one person in law; that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband (430).

This demonstrates that upon her marriage, a woman's autonomous identity is removed and she is classed as one with her husband – as Dolin observed in 1997,

¹ Wollstonecraft 137.

this was a notion that continued until the married women's property laws began to be changed (firstly in 1870, but with little real success until 1882). This consolidation means she is automatically classed as her husband's property, as to consolidate implies a taking over of ownership of the item being transferred – and therefore a complete lack of self-governance over mind, body and actions on behalf of the woman. John Stuart Mill discussed how marriage conferred this 'legal power and control' upon one party over the other, often 'independent of her own wishes and will' (par.99). The woman, then, has been transformed from a human being into a mere thing, while still retaining human function, creating a strange state of mid-existence, and creating one of the main questions that I am seeking to answer – namely, whether it is possible for such a legal phenomenon to own property (another *thing*) without repercussions.

Legal and social discourse surrounding the issues of gendered inheritance and identity are centred on the right of property – and what right women of the eighteenth century had to claim property as their own. As Sue Chaplin points out here, legal and political perceptions of women with regards to property were beginning to alter in the early eighteenth century:

In 1705, a court held that a wife could dispose of her separate income by means of a will without her husband's license. In 1710, a wife's allowance was held not to be subject to her husband's debts as if it were his sole property. In 1725, a wife was held to be entitled to separate income after her father's death in her own right, without the intervention of trustees to hold the legal title to the property for her (34).

As we can see, though, women were not completely free to inherit property with little care for primogeniture, or for the social norms that favoured male inheritance over female where it was possible. Samuel Richardson explored how primogeniture affected a woman's position in his 1748 novel *Clarissa*, where the catalyst is Clarissa's grandfather's decision to make her his legitimate heir by bequeathing a portion of his estate in his will to his "own peculiar child" (3). The elder Mr Harlowe acknowledges that Clarissa is his clear favourite by defying legal convention to leave her a portion of his estate. By doing so, he has made her his legitimate heir 'since, through the bequest, she may legally be regarded as replacing her elder brother in the line of inheritance' (Chaplin 45).

Women possessing any form of landed property, then, was apparently something out of the norm, borne out by Blackstone having said that there was nothing which strikes the imagination and engages the affections of mankind as the right of property. By definitively stating 'mankind' here, he already alienates women from property ownership, turning female property inheritance into a complication rather than a legal norm or quirk. Jennifer Phegley explored how this difficulty affected the marriage itself, custody of children and divorce proceedings in her 2012 book, *Courtship and Marriage in Victorian England*, providing insight into how, on the other hand, propertied bachelors and old maids were also impacted. Similarly, April London observed that 'it is gender that becomes the key complication around which the issue of possession revolves' (London 15). By inheriting part of the familial estate in Richardson's novel, Clarissa gains some independence (as no male member holds the property in trust for her), which her family thinks she should yield, reverting back to the more usual state of male dominance over women. To their minds, this 'strain of natural rights theorising about property reads the female body as itself a kind of property' (18). To build, therefore, on London's observation, we know that a woman's identity is absorbed into her husband's upon the marriage, but unmarried women held little legal identity anyway. Surely, then, this raises the question of

whether it's possible for someone who has next to no legal identity of her own to herself have ownership of something that *creates* identity? Isn't a person who would herself be effectively owned when married unable to own something else? After all, the property cannot be property. Indeed, John Habakkuk's influential *Marriage, Debt, and the Estates System* (1994, published online in 2011) does much to show how landed inheritance was skewed in favour of men, stating that '[t]he strict settlement was biased towards primogeniture; (Habakkuk 30).

Such a line of thought shows the remarkable lack of recognition as autonomous beings that women suffered from under eighteenth century law when it came to the disposal of landed or monetary properties. Something that has no independent identity recognisable in law would have difficulty proving proof of ownership of something. Men, however, face no such obstacles – a husband would be able to pursue and retrieve his wife with little fear of redress from the system that defines him as a superior being to her. Men have almost limitless power, then, over their socially inferior female counterparts. Blackstone asserted that the ownership of landed property, that cornerstone of English law, gave to men a legal identity that allows them to 'establish the rights, to estimate injuries, to weigh the accusations and sometimes to dispose of the life of their fellow subjects' (Blackstone; Chaplin 27). He seems to suggest, therefore, that man is able to act seemingly divinely towards his fellow subjects – namely women – with few legal repercussions.

As this phenomenon continues to occur across an extensive time period, I turn now to the late eighteenth century to see if the injustices raised by such issues are addressed by the literature of the Gothic and revolutionary periods.

In a period of industrialisation and rapid social change, according to Punter, Gothic works consistently betrayed the fears and anxieties of the middle classes about the nature of their ascendancy, returning to the issues of ancestry, inheritance, and the transmission of property: 'Under such circumstances, it is hardly surprising to find the emergence of a literature whose key motifs are paranoia, manipulation and injustice, and whose central project is understanding the inexplicable, the taboo, the irrational' (Punter 127; Watt 2).

It is the French Revolution that Watt and Punter are describing here, with a suggestion that it is because the Revolution caused such paranoia, manipulation and injustice that they in turn become the key tropes of the Gothic genre. Robert Miles went further, suggesting that 'the Gothic vogue fed off the revolutionary anxieties of its readership' (44). Despite this step forward, I argue that Miles does not go far enough. The Revolution strove to rid the monarchy of its powers – that same monarchy that for generations had been believed to be appointed through 'divine right'. By seeking to destroy it, the revolutionaries created an entirely new inheritance issue – what was inheritance now? What counted as property, and how was it kept? By creating such questions, the Revolution rocked the only known social order, leaving paranoia and anxiety behind. It isn't surprising that the Gothic adapted these concerns into its own key tropes – forming the themes of the inheritance of landed estates, primogeniture challenges and the female property issue that began to dominate the genre.

The 1790s texts were not the first Gothic novels because they coincided with a revolutionary period, though – it was a genre that had been developing since the 1764 publication of Walpole's *The Castle of Otranto* (Punter 43). Events occur within that novel that mirror events which occur during the Revolution a scant thirty years later – indeed, it could be read as a study of revolutionary politics, as it celebrates the overthrow of a tyrant. It also introduces some of the most basic Gothic ingredients:

characters – the...bland hero who will inevitably turn out to be the rightful heir; [...] setting – the castle with its secret buried in its past... plot – a story of usurpation, concerned with the issues of succession and inheritance, which flirts with the possibility of incestuous relations, but ends with the rightful distribution of persons and property (Kilgour 18).

Revolutionary fictions were not always overtly gothic, though, as Wollstonecraft's *Maria, or the Wrongs of Woman* (published in 1798) demonstrates. While the text does indeed deal with issues such as inheritance and property, it focuses more on the ways in which women are treated with regards to these issues, both by the law and by the men dominating their domestic and social spheres. The questions raised by the Revolution allowed writers like Wollstonecraft to ask new ones – if the ways in which what counted as property, what inheritance meant and how property was itself inherited were being rewritten, was it not feasible to question how women were treated by the system, whether it was right for them to be inferior in all ways to men, and how this could affect the progression of a social order in an unstable world? Kramer is therefore correct to stress that Wollstonecraft's narratives 'present patriarchal property and legal inheritance as cultural deadweight' that restricts the development of women: 'Unable to rely on history, law or family for identity, women...are perpetually and continuously alienated' (Kramer 184).

Wollstonecraft's text examines this idea of alienation during a discussion of the repercussions towards women who transgress the social norms and attempt to maintain their own identity, even after marriage. She states that '[a] woman...resigning what is termed her natural protector (though he never was so, but in name) is despised and shunned, for asserting the independence of mind distinctive of a rational being, and spurning at slavery' (Wollstonecraft 139). This is a clear attack on the manner in which women were treated (sometimes, as in Maria's case, by their husbands themselves) should they choose to leave or 'resign' their 'natural protectors' and try to assert their independence and freedom of choice as human beings. This proves problematic for Maria, however, as she and Mr. Venables were not divorced – she merely chose to separate herself from the union. In the eyes of the law, she is still a married woman, and is therefore treated as such.

After leaving what the law considers as my home, I was hunted like a criminal from place to place, though I contracted no debts, and demanded no maintenance – yet, as the laws sanction such proceeding, and make women the property of their husbands, I forbear to animadvert. After the birth of my daughter, and the death of my uncle, who left a very considerable property to myself and child, I was exposed to new persecution (172).

Under Blackstone's doctrine, a woman in her position would have no rights, identity or independence, and would therefore not be recognised in law any further than she would if she still co-habited with her husband.

Women were unable to claim an individual identity from history, the law or their families – few husbands of the period would permit their wives to leave the union and take with them any properties they brought into the marriage or received after it occurred, after all (although, intriguingly, little critical attention has been paid to those husbands who did). While the marriage laws were enacted independently of class boundaries, there seems to be some leeway across them in the novel, especially in the character of Jemima, the former prostitute who befriends Maria. The division between social and legal treatment of feminine financial and propertied independence is an interesting one. Jemima earns a living as a prostitute, which grants her some of the financial independence that is denied Maria due to her married status. Jemima's independence is not sacrosanct, though – it is

compromised by her social status as an 'outlaw [...] of society' (113). When Jemima takes control over her own body (as she should be able to, as it is so obviously her own physical property), she is both socially and legally outlawed. When she marries Mr. Venables, both Maria herself and all property (and the money arising from it) attributed to her should automatically transfer to him, as her legal identity has been deconstructed and absorbed into his. The fact that Jemima is unable to maintain her autonomy over her own body without attracting penalties from both the law and society is equally significant – both situations beg the point of what exactly a woman *is* if she does not exist in law. Where do her rights begin, if, indeed, she has any at all? Maria herself makes a similar point at the end of the first volume when she asks 'Why was I not born a man, or why was I born at all?' (123). The 'or' in that question is important, as it suggests that the two questions are essentially the same – being female is equivalent to not *being* at all. Although several critics have examined the marriage plots of the period's literature (McAleavey 2015) and the important role marriage played in a woman's life at the time, this idea of a resultant state of complete non-existence has lacked extensive critical focus.

Maria's madness – or sanity, as the case may be – is an interesting element if we continue to consider her as the property of Mr. Venables rather than her own autonomous self. If we take this alongside Blackstone's doctrine, does Maria's mind itself fall under her husband's jurisdiction? Remember Maria's lament about 'a wife being as much a man's property as his horse, or his ass, she has nothing she can call her own' (140). Surely a human mind counts for more than an animal – but it demonstrates just how little the woman as an autonomous individual actually *matters* in law. Due to this lack of acknowledgement, Maria suffers a double loss – her identity is absorbed into her husband's, along with her property, and, by definition of her being incarcerated into a mental asylum, she is effectively that institution's property, which then has the power to assign her the identity of being insane that she begins the text with. Wollstonecraft, then, shows that it is *ownership*, and not *property*, that she is contesting with regards to women, and that it is the patriarchal legal system that causes the confusion.

Literature's preoccupation with the law and its limits continued well into the nineteenth century, and into the different branches of literature that stemmed from the Gothic novel. Sensation fiction's preoccupation with the laws regulating wills and property inheritance mark the genre as an extension of the Gothic, as both genres revolve around similar themes:

[T]he sensation [novel is preoccupied] with matters legal, and in particular, with the role of the law in organising and controlling the family. This is evident in [its] obsession with complex legal plots to do with wills and the inheritance of property, with the laws of bigamy and divorce, and with issues arising from women's lack of legal identity and rights (Pykett, *The Sensation Novel from The Woman in White to The Moonstone* 10).

Despite these correlations, though, critics have, until fairly recently, tended to highlight (however unwittingly) the boundaries of the two genres, rather than focusing on the fluidity that exists between them. In 1996, however, Botting pointed out in *Gothic* that sensation owes much to Gothic styles of evoking terror, mystery and superstition. It does not merely copy Gothic tropes, though – it transforms and adapts them in order to better fit the domestic environments many sensation novels are set in. Wilkie Collins's *The Woman in White* is often described as the first sensation novel thanks to his adept transformations. He explained away the supernatural elements by presenting the text as a legal case. One of the earliest examples of an event that could be supernatural is the appearance of the woman in

white on Hampstead Heath. This could be a supernatural apparition typical of the Gothic, perhaps more so considering the ghostly and ethereal white clothing worn by the figure. Yet all superstition is quickly explained away by the revelation that the woman has escaped from an asylum. Apprehending the escaped patient is the first key event of the novel's complex plot, and also provides a first glimpse of the way the text engages with the idea of woman as property.

In *The Woman in White*, the diabolic husband Percival Glyde tries to seize his wife's fortune by incarcerating her in a lunatic asylum and claiming she is not herself, but a dead mental patient she closely resembles; this plot expresses a critique of a legal and economic system that robbed women of their social identity by transferring them and their wealth to their husbands' control (Heller 4).

Heller observes the legal significance of this plot, but more can be made of the connection between the facts that Laura Fairlie is incarcerated in an asylum under the identity of Anne Catherick while the latter is buried under Laura's identity, and that this incarceration is one of the novel's main examples of women being defined as property. Incarcerating somebody takes away that most important of basic human rights – liberty, freedom. By removing this, Percival Glyde, Laura's husband, automatically turns her from human being to thing.

It is Glyde's ownership of Blackwater Park (however illegitimate a claim that is, thanks to his bastard birth) that gives him the right to control and to ultimately *own* Laura, who has no landed property. Blackstone would say that this gives Glyde the right to establish Laura's rights, and the right to dispose of her life if he sees fit to do so – with incarcerating her being perfectly valid, by that logic. It is here that we can see how Blackstone's argument extends outside the marital space, as we can assume it's Glyde's ownership of Blackwater that then allows him to dispose of the life of Anne Catherick also, first by incarcerating her and then by burying her under Laura's name – therefore marking the ultimate removal of her *real* identity.

In one respect, Laura defies the legal strictures governing a woman's identity in signing the marriage settlement drawn up by Gilmore, as this shows that she is, however unconsciously, choosing to maintain some semblance of identity by maintaining her monetary assets. On the other hand, we must always remember that Anne is buried under Laura's name, and Laura is in the asylum under Anne's. The death and subsequent burial of 'Laura' effectively wipes out her identity, while that of the real Anne is stripped away altogether by being buried under another's name. This same marriage settlement is one of the most problematic parts of the text in that it could be the catalyst for the disastrous events of much of the story. By drawing it up, Gilmore seeks to protect Laura from the disadvantages accorded to women under common law and allowing her the sole use of her income deriving from her own property during her lifetime. However well-intentioned the settlement is, the very act of trying to defend Laura from the harsh realities of the legal system is what condemns her under that very same system. One of the sensation novel's recurring themes is this uncertainty of the gender positionings (Pykett, *The Sensation Novel from The Woman in White to The Moonstone* 10), which itself circles back to my questioning of the married woman's propertied status – it's Laura's lack of real legal agency as a married woman that Glyde takes advantage of in trying to amend the settlement so that he will inherit all of Laura's fortune upon her death. After Glyde fails to persuade Laura to sign over all her property and fortune to him (the only legal way to get around the settlement), he 'resorts to the substitution plot' of switching the positions of the two women, 'which will remove Laura's legal and social identity; and give him control of all of her property as her heir' (Pykett, *Authors in Context* 40-41).

In conclusion, then, the legal mid-existence of the eighteenth century woman prevents her from ever fully owning landed or monetary properties, regardless of whether or not she inherits them. Her consolidation into her husband's identity upon marriage causes her to lose autonomous control over her own mind, body and actions, and she becomes a *thing* to be owned and used as her proprietor sees fit. A thing cannot own another thing, as ownership implies rational and autonomous thought. However far novelists try to subvert the social norms and strive for justice in their literature's treatment of the eighteenth and nineteenth century propertied woman, she will never be able to fully retain control of her property until she ceases to be the property of her husband, and can maintain her autonomous identity as a single, propertied female. Until this happens, eighteenth century women like Clarissa will have to encounter their families' views when they replace male relatives in the line of succession on the whim of someone choosing not to conform to legal convention. They could echo Maria's actions and flee their marital union in an attempt to maintain what is rightfully theirs (both their property and their own selves), yet still not have any legal autonomous identity because of its prior incorporation into that of their husbands; or else encounter similar situations to Laura Fairlie in her husband's quest to seize control of their property.

The novelist was able to subvert the culture he appeared to support... The novel clearly was socially orientated, a forum for criticism, an advocate for justice, even when it moved toward imaginative areas of particular representation that preclude unrestrained righteous indignation or outbursts of social defiance (Karl 9-10).

As Karl demonstrates, in portraying such scenes, events, characters, and social and political viewpoints as have been discussed here, Richardson, Wollstonecraft and Collins joined the ranks of the many novelists who strove to use their art to campaign for justice in the face of the Gothicised, antiquated, patriarchal legal system. In doing so, they created a vision of the propertied woman that ironically transcended the same legal-historical boundaries that concurrently restrained those same women.

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