

Criminals, Idiots, Women and Minors

Frances Power Cobbe

Table of Contents

<u>Criminals, Idiots, Women and Minors</u>	1
<u>Frances Power Cobbe</u>	1
<u>CRIMINALS, IDIOTS, WOMEN, AND MINORS</u>	1

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CRIMINALS, IDIOTS, WOMEN, AND MINORS. IS THE CLASSIFICATION
SOUND?
A DISCUSSION ON THE LAWS CONCERNING THE PROPERTY OF
MARRIED WOMEN.

CRIMINALS, IDIOTS, WOMEN, AND MINORS.

THERE was an allegory rather popular about thirty years ago, whose manifest purpose was to impress on the juvenile mind that tendency which Mr. Matthew Arnold has ingeniously designated "Hebraism." The hero of the tale descends upon earth from some distant planet, and is conducted by a mundane cicerone through one of our great cities, where he beholds the docks and arsenals, the streets and marts, the galleries of art, and the palaces of royalty. The visitor admires everything till he happens to pass a grave-yard. "What is that gloomy spot?" he asks of his companion.

"It is a cemetery," replies the guide.

"A what did you say?" inquires the son of the star.

"A grave-yard; a place of public interment; where we bury our dead," reiterates the cicerone.

The visitor, pale with awe and terror, learns at last that there is in this world such a thing as **Death**, and (as he is forbidden to return to his own planet) he resolves to dedicate every moment left to him to prepare for that fearful event and all that may follow it.

Had that visitor heard for the first time upon his arrival on earth of another incident of human existence namely, **Marriage**, it may be surmised that his astonishment and awe would also have been considerable. To his eager inquiry whether men and women earnestly strove to prepare themselves for so momentous an occurrence, he would have received the puzzling reply that women frequently devoted themselves with perfectly Hebraistic singleness of aim to that special purpose; but that men, on the contrary, very rarely included any preparation for the married state among the items of their widest Hellenistic culture. But this anomaly would be trifling compared to others which would be revealed to him. "Ah," we can hear him say to his guide, as they pass into a village church, "What a pretty sight is this! What is happening to that sweet young woman in white, who is giving her hand to the good-looking fellow beside her; all the company decked in holliday attire, and the joy-bells shaking the old tower overhead? She is receiving some great honour, is she not? The Prize of Virtue, perhaps?"

"Oh, yes," would reply the friend; "an honour certainly. She is being Married." After a little further explanation, the visitor would pursue his inquiry:

"Of course, having entered this honourable state of matrimony, she has some privileges above the women who are not chosen by anybody? I notice her husband has just said, 'With all my worldly goods I thee endow.' Does that

Criminals, Idiots, Women and Minors

mean that she will henceforth have the control of his money altogether, or only that he takes her into partnership?

"*Pas précisément*, my dear sir. By our law it is **her** goods and earnings, present and future, which belong to him from this moment."

"You don't say so? But then, of course, his goods are hers also?"

"Oh dear, no! not at all. He is only bound to find her food; and, truth to tell, not very strictly or efficaciously bound to do that."

"How! do I understand you? Is it possible that here in the most solemn religious act, which I perceive your prayer book calls "The Solemnization of Holy Matrimony," every husband makes a generous promise, which promise is not only a mockery, but the actual reverse and parody of the real state of the case: the man who promises giving nothing, and the woman who is silent giving all?"

"Well, yes; I suppose that is something like it, as to the letter of the law. But then, of course, practically "

"Practically, I suppose few men can really be so unmanly and selfish as the law warrants them in being. Yet, some, I fear, may avail themselves of such authority. May I ask another question? As you subject women who enter the marriage state to such very severe penalties as this, what worse have you in store for women who lead a dissolute life, to the moral injury of the community?"

"Oh, the law takes nothing from them. Whatever they earn or inherit is their own. They are able, also, to sue the fathers of their children for their maintenance, which a wife, of course, is not allowed to do on behalf of **her** little ones, because she and her husband are one in the eye of the law."

"One question still further your criminals? Do they always forfeit their entire property on conviction?"

"Only for the most heinous crimes; felony and murder, for example."

"Pardon me; I must seem to you so stupid! Why is the property of the woman who commits Murder, and the property of the woman who commits Matrimony, dealt with alike by your law?"

Leaving our little allegory, and in sober seriousness, we must all admit that the just and expedient treatment of women by men is one of the most obscure problems, alike of equity and of policy. Nor of women only, but of all classes and races of human beings whose condition is temporarily or permanently one of comparative weakness and dependence. In past ages, the case was simple enough. No question of right or duty disturbed the conscience of Oriental or Spartan, of Roman or Norman, in dealing with his wife, his helot, his slave, or his serf. "*Le droit du plus fort*" was unassailed in theory and undisturbed in practice. But we, in our day, are perplexed and well nigh overwhelmed with the difficulties presented to us. What ought the Americans to do with their negroes? What ought we to do with our Hindoos? What ought all civilised people to do with their women? It seems very easy to go on driving down the "high *à priori*" road of equal rights for all human beings, but, as it is quite clear that children and idiots cannot be entrusted with full civil and political rights, the question always resolves itself into the further one; where shall we draw the line? When has a human being fairly passed out of the stage of pupilage, and attained his majority?

At the head of this paper I have placed the four categories under which persons are now excluded from many civil, and all political rights in England. They were complacently quoted last year by the *Times* as every way fit and proper exceptions; but yet it has appeared to not a few, that the place assigned to Women amongst them is hardly any longer suitable. To a woman herself who is aware that she has never committed a crime; who fondly believes that she is not an idiot; and who is alas! only too sure she is no longer a minor, there naturally appears

Criminals, Idiots, Women and Minors

some incongruity in placing her, for such important purposes, in an association wherein otherwise she would scarcely be likely to find herself. But the question for men to answer is: Ought Englishwomen of full age, in the present state of affairs, to be considered as having legally attained majority? or ought they permanently to be dealt with, for all civil and political purposes, as minors? This, we venture to think, is the real point at issue between the friends and opponents of "women's rights," and it would save, perhaps, not a little angry feeling and aimless discussion, were we to keep it well in view, and not allow ourselves to be drawn off into collateral debates about equality and abstract rights. Let us admit (if it be desired) that the pupilage in which women have been hitherto kept has been often inevitable, and sometimes salutary. The question is, should it be prolonged indefinitely?

In the present paper we shall attempt to consider the most striking instance wherein the existing principle presses upon women, and where its injustice appears most distinctly, namely, in the regulation of the Property of Married Women under the Common Law. We shall endeavour to do this with all possible fairness and equanimity. The acrimony which too often creeps into arguments on this subject is every way needless and mischievous. Of course it is not pleasant to women to be told they are "physically, morally, and intellectually inferior" to their companions. Nevertheless, they are foolish to be angry with the man who in plain words says straightforwardly that, in his opinion, such is the case. After all, he pays them a better compliment than the fop who professes to adore them as so many wingless angels, and privately values them as so many dolls. In any case all such discussion is beside our present aim. We shall endeavour, in these pages, neither to talk with one party, as if all instinct and feeling were the creatures of law, and could be altered by "An Act to Revise the Constitution of Human Nature;" nor with another, as if the particular sentiment of our age and country about "Woman's Sphere" were the only possible standard of legislation for all time. If, as Pope said, "the world were inhabited by men, women, and Herveys," we should endeavour to write like a Hervey, to do justice to both the other parties!

Mr. G. Shaw Lefevre last summer carried through two readings in parliament, and obtained a favourable report upon, "A Bill to Amend the Law with respect to the Property of Married Women." Let us briefly state what is the existing law which it is proposed to amend; what may be urged in its behalf; and what may be said against it.

By the Common Law of England a married woman has no legal existence, so far as property is concerned, independently of her husband. The husband and wife are assumed to be one person, and that person is the husband. The wife can make no contract, and can neither sue nor be sued. Whatever she possess of personal property at the time of her marriage, or whatever she may afterwards earn or inherit, belongs to her husband, without control on her part. If she possess real estate, so long as her husband lives he receives and spends the income derived from it; being only forbidden to sell it without her consent. From none of her property is he bound to reserve anything, or make any provision for her maintenance or that of her children. This is the law for all, but practically it affects only two classes of women, viz., those who marry hurriedly or without proper advisers, and those whose property at the time of marriage is too small to permit of the expense of a settlement; in other words, the whole middle and lower ranks of women, and a certain portion of the upper ranks. Women of the richer class, with proper advisers, never come under the provisions of the common law, being carefully protected therefrom by an intricate system elaborated for the purpose by the courts of Equity, to which the victims of the Common Law have for years applied for redress. That system always involves considerable legal expenses, and an arrangement with trustees which is often extremely inconvenient and injurious to the interests of the married couple; nevertheless it is understood to be so great a boon that none who can afford to avail themselves of it, fail to do so.

What, then, is the principle on which the Common Law mulcts the poorer class of women of their property and earnings, and entails on the rich, if they wish to evade it, the costs and embarrassment of a marriage settlement? There is, of course, a principle in it, and one capable of clear statement. There are grounds for the law; first of Justice, then of Expediency, lastly (and as we believe) most influential of all, of Sentiment. Let us briefly describe them as best we can.

First, the grounds of Justice.

Criminals, Idiots, Women and Minors

Man is the natural bread-winner. Woman lives by the bread which man has earned. Ergo, it is fit and right that the man who wins should have absolute disposal, not only of his winnings, but of every other small morsel or fraction of earnings or property she may possess. It is a fair return to him for his labour in the joint interest of both. He supports her, pays any debts she has incurred before or after marriage, and provides for the children which are hers as well as his. For all this, it is but just he should receive whatever she has to give. The woman's case is that of a pauper who enters a workhouse. The ratepayers are bound to support him; but if he have any savings they must be given up to the board. He cannot both claim support and keep independent property.

Then for Expediency. "How can two walk together except they be agreed?" says the Bible. "How can they walk together except one of them have it all his own way?" says the voice of rough and ready John Bull. Somebody must rule in a household, or everything will go to rack and ruin; and disputes will be endless. If somebody is to rule it can only be the husband, who is wiser, stronger, knows more of the world, and in any case has not the slightest intention of yielding his natural predominance. But to give a man such rule he must be allowed to keep the purse. Nothing but the power of the purse in default of the stick can permanently and thoroughly secure authority. Besides, for the good of the whole family, for the children and the wife herself, it is far more expedient that all the resources of the family should be directed by a single hand, and that hand the one that can best transact business of all kinds. Equally then, as a matter of Justice to the husband, and of Expediency for the interests of the family at large, the law of England has decreed, as aforesaid, that all a woman's present and prospective property becomes on marriage the property of her husband.

But where women are concerned, English law ceases to be a dry system, regardful only of abstract justice and policy. Themis, when she presides at the domestic hearth, doffs her wig, and allows herself to be swayed by poetical, not to say romantic, considerations. We are rarely allowed, in debate, it to examine accurately the theory of conjugal justice. We are called upon rather to contemplate the beautiful ideal of absolute union of heart, life, and purse which the law has provided for, and which alone it deigns to recognise. If it so happen that happy married couples do not want the law to provide for them, and that the troubles of unhappy ones are greatly aggravated by the law **not** providing for them, we are told that it is an inconvenience to be regretted, but that it is counterbalanced by the great public benefit of the existing system. That the legislative judgment of England should hold up before the world a perfect picture of what it understands that married life **ought** to be, is affirmed to be of much more consequence than that it should try to mend cases which must be bad at the best.

Now, let us admit heartily that there is much sense in these arguments of justice and expediency, and much beauty in this ideal of absolute union of interests. In what may fairly be taken as typical marriages, where the man labours all day in the field or the office, and the woman provides for the household at home, the woman **has** no earnings independently of her husband, and what she has earned or inherited before marriage is employed for some purpose common to the family. There is no injustice here. When we remember the thousands of husbands and fathers who thus labour all their lives long for their wives and children so commonly that it is only the exceptional selfishness we notice, never the rule of manly unselfishness it may appear the plainest justice, that he on whom all depends (the "houseband," as our ancestors well called him,) should have all the power as well as the toil. True that men have other motives for work beside the love of their families; they have interest in their pursuits, ambition, and pride. Many a bachelor, with none to come after him to inherit his store, labours as sedulously to increase it as the most devoted of parents. But with how many hundreds and thousands is it otherwise! How many men long and pine to cast down the spade or the pen, to leave the bleak field for the fireside, the gloomy shop or office for the streets and the hills; and **could** do so in a moment and live in comfort with a quarter of their present toil, were it not for the thought of the wife who is sitting at home rocking the cradle, or the young daughters who are asking for all the luxuries and flipperies of fashion! We have heard a boy remark, that when he grew up he would never marry, because he noticed that when men married their wives enjoyed everything, and they had only to work harder than before. There was a good deal of truth in the remark; as doubtless the *Saturday Review* would readily corroborate. In the large sense and the common run of life, men are wonderfully unselfish towards women; and the general feeling of society has actually constituted it a rule that they should be expected to be so. Is it not, then, plainly just that he who plants the vineyards should eat or at least

Criminals, Idiots, Women and Minors

have the distribution of **all** the fruit thereof?

Then, again, for Expediency. How ignorant are most women in money concerns! How little they understand the commonest transactions, and how liable they are to be cheated, when they flatter themselves they do understand them! In the lower classes, as a general rule, women are more stupid than men; the feminine brain, such as it is, less well bearing rough usage, and the education of girls being inferior to that of boys. For the benefit of both husband, wife, and children, is it not every way expedient to make the wiser of the two keep the common purse?

Lastly, for the Sentimental view. How painful is the notion of a wife holding back her money from him who is every day toiling for her support! How fair is the ideal picture of absolute concession on her part of all she possesses of this world's dross to the man to whom she gives her heart and life! How magnificent in its unreserve is Portia's endowment of Bassanio, as quoted by Mr. Lefevre:

Myself and what is mine, to you and yours
Is now converted. But now I was the lord
Of this fair mansion, master of my servants,
Queen o'er myself; and even now, but now,
This house, these servants, and this same myself
Are yours, my lord!

And in the humbler ranks, how sweet is the corresponding idyllic picture! The young man and maiden, after years of affection, and careful laying by of provision for the event, take each other at last, to be henceforth no more twain, but one flesh. Both have saved a little money, but it all now belongs to the husband alone. He lays it out in the purchase of the cottage where they are henceforth to dwell. Day by day he goes forth to his labour, and weekly he brings home his earnings, and places them in his wife's lap, bidding her spend them as she knows best for the supply of their homely board, their clothing which her deft fingers will make and many a time repair; and at last for their common treasures, the little children who gather around them. Thus they grow old in unbroken peace and love, the man's will having never once been disputed, the wife yielding alike from choice and from necessity to his superior sense and his legal authority.

Surely this ideal of life, for which the Common Law of England has done its utmost to provide, is well worth pondering upon before we attempt to meddle with any of its safeguards? Who will suggest anything better in its room?

Alas! there are other scenes besides idylls of domestic peace and obedience promoted by the law we are considering. We must look on the dark side as well as on the bright, before we determine that its preponderating influence is beneficial. But of these we shall speak hereafter. Before doing so we must traverse once more, and a little more carefully, the ground we have gone over. Is the Justice, is the Expediency, is the Sentiment of the Common Law all that appears at first sight?

What, in the first place, of the Justice of giving all a woman's property to her husband? The argument is, that the wife gets an ample *quid pro quo*. **Does** she get it under the existing law? That is the simple question.

In the first place, many husbands are unable, from fault or from misfortunes, to maintain their wives. Of this the law takes no note, proceeding on reasoning which may be reduced to the syllogism:

A man who supports his wife ought to have all her property;

MOST men support their wives;

Criminals, Idiots, Women and Minors

Therefore, **ALL** men ought to have all the property of their wives.

Let us suppose the managers of a public institution to engage with a contractor, to pay him £1,000 on the nail for the supply of the institution with provisions for a year. At the end of a month the contractor has spent the £1,000 on his own devices and is bankrupt. The institution starves accordingly. What, in such case, do we think of the managers who gave the £1,000 without security for the fulfilment of the contract, and what do we think of the contractor? But are not hundreds of husbands in the position of the contractor, yet rather pitied than blamed by public opinion? And is not the law in such cases precisely in the position of the reckless managers? When all that a woman possesses in the present and future is handed over unreservedly by the law to her husband, is there the smallest attempt at obtaining security that he on his part **can** fulfil that obligation which is always paraded as the equivalent; namely, the obligation to support her for the rest of her life? Nay, he is not so much as asked to promise he will reserve any portion of her money for such purpose, or reminded of his supposed obligation. If he spend £10,000 of her fortune in a week in paying his own debts, and incapacitate himself for ever from supporting her and her children, the law has not one word to say against him.

But waiving the point of the **inability** of many husbands to fulfil their side of the understood engagement, one thing, at all events, it must behove the law to do. Having enforced her part on the woman, it is bound to enforce his part on the man, **to the utmost of his ability**. The legal act by which a man puts his hand in his wife's pocket, or draws her money out of the savings' bank, is perfectly clear, easy, inexpensive. The corresponding process by which the wife can obtain food and clothing from her husband when he neglects to provide it, what may it be? Where is it described? How is it rendered safe and easy to every poor woman who may chance to need its protection? When we are assured that men are always so careful of the interests of the women for whom they legislate, that it is quite needless for women to seek political freedom to protect themselves, we might be inclined to take it for granted that here, if anywhere, here where the very life and subsistence of women are concerned, the legislation of their good friends and protectors in their behalf would have been as stringent and as clear as words could make it. We should expect to find the very easiest and simplest mode of redress laid open to every hapless creature thus reduced to want by him to whom the law itself has given all she has ever earned or inherited. Nay, seeing the hesitation wherewith any wife would prosecute the husband with whom she still tries to live, and the exceeding cowardice and baseness of the act of maltreating so helpless a dependant, it might not have been too much had the law exercised as much severity in such a case as if the offender had voluntarily starved his ass or his sheep, and the Society for the Prevention of Cruelty to Animals were his prosecutors.

But this is the imaginary, what is the actual fact? Simply that the woman's remedy for her husband's neglect to provide her with food, has been practically found almost unattainable. The law which has robbed her so straightforwardly, has somehow forgotten to secure for her the supposed compensation. Since 1857, if the husband altogether forsake his home for years together, the wife may obtain from the magistrate a Protection Order, and prevent him from seizing her property. But, if he come back just often enough to keep within the technical period fixed as desertion, and take from her everything she may have earned, or which charitable people may have given her, then there is absolutely no resource for her at all. The guardians of her union, if she ask to be admitted into the workhouse, may, if they please, receive her, and prosecute her husband, at the petty sessions, for putting the parish to the expense of supporting his wife. But the guardians are not obliged to admit her, and the trouble and cost of prosecution is an argument which frequently weighs with them against doing so. Then, as if to add insult to injury, when the poor wretch, driven from the shelter of the workhouse, and perhaps on the point of bearing a child to the man who is starving her, goes to the magistrate to implore protection, what answer does she receive? She is told that he cannot hear her complaint; that she cannot sue her husband, as he and she are one in the eye of the law.

"Dear Sir, I have to-day seen Mrs. Seymour. I found her in a wretched weak state. She is nursing a baby, which office she is not able to perform effectually from her exhausted condition. Her husband, she says, does not allow her the necessaries of life, which he, in his position, could find if he liked. Without some means be taken to

Criminals, Idiots, Women and Minors

provide her with good diet, &c., or to make her husband do so, she must die of starvation at no very distant period. If you could, in your official capacity, help the poor creature, you would confer a great blessing on the poor woman, and oblige yours faithfully, "J. C. SMALLMAN."

The clergyman found, however, that he had no power as a magistrate to take cognisance of the case, unless the guardians would give the wife relief, and prosecute the husband; and this they declined to do. In vain did the poor half-starved wretch appear before them, and pray to be admitted into the workhouse. She was refused admission on the ground that her husband earned good wages; and so she went home, and, after lingering a while, probably fed now and then by her neighbours, she died. The husband escaped without any punishment whatever. The jury who tried him [**men**, of course!] gave him the benefit of a doubt as to the cause of his wife's death, and acquitted him *Illustrations of the Operations of our Laws*, p. 8.

Again, the common law fails to secure justice to the wife, not only during her husband's life, but after his death. The following story was published many years ago in the *Westminster Review*, as having then recently occurred. We cannot vouch otherwise for its veracity, and must quote from memory, but, if it be only taken as a hypothetical case, what a lesson does it convey! A gentleman, of landed estate, in the north of England, became involved in debt, and finally ruined, and reduced to actual want. His wife, a lady of ability and spirit, finding him incapable of any effort for their joint support, opened a little shop for millinery in the county town. Her old friends gave her their custom, and her taste and industry made it a thriving business. For many years she maintained her husband and herself, till at last having realised a small competency, and grown old and feeble, she sold her shop, and retired to spend, as she hoped, in peace with her husband, the remaining years of her life. After a short time, however, the husband died, duly nursed and tended to the last by his wife. When he was dead he was found to have left a will, by which he bequeathed every shilling of his wife's earnings to a mistress he had secretly maintained. Either the wife had originally married without a settlement, or her settlements had not contemplated so singular a fact as her earning a fortune. The husband's will, therefore, was perfectly valid, **and was executed**.

So much for the Justice of the Common Law. What now shall we say to its Expediency? The matter seems to lie thus. Men are usually more wise in worldly matters than women; more generally able and intelligent, and their wives habitually look up to them with even exaggerated confidence and admiration. Such being the case, it would naturally happen, were there no law in the case, that the husband should manage all the larger business of the family. The law, then, **when the husband is really wise and good** is a dead letter. But for the opposite cases, exceptions though they be, yet alas! too numerous, where the husband is a fool, a gambler, a drunkard, and where the wife is sensible, frugal, devoted to the interests of the children, is it indeed Expedient that the whole and sole power should be lodged in the husband's hands; the power not only over all they already have in common, but the power over all the wife can ever earn in future? Such a law must paralyse the energy of any woman less than a heroine of maternal love. How many poor wives has it driven to despair, as one time after another they have been legally robbed of their hard won earnings, who can calculate? One such hapless one, we are told, when her lawful tyrant came home as usual, drunk with the spoils of her starving children, took up some wretched relic of their ruined household and smote him to death. She was a murderess. In former times she would have been burnt alive for "petty treason" for killing her lord and master. But what was the law which gave to that reckless savage a power the same as that of a slave-holder of the South over his slave? Another case, still more recent, will be in the memory of many of our readers. Susanna Palmer was indicted on the 14th of January, 1869, at the Central Criminal Court, for wounding her husband in a struggle, in which it appeared he had, while drunk, endeavoured to wrench a table knife from her hand at supper. The evidence, which has since been carefully sifted and amply corroborated, showed Susanna Palmer to be a most industrious and sober woman. For twelve years since her marriage with James Palmer she has managed to support herself and her four children, having received from him during that period the sum of **five shillings** for the purpose. He has been four or five times in gaol for beating her, knocking out her teeth, and nearly killing her boy. Each time he returned from prison only more brutal and rapacious, and seized whatever money or furniture she had managed to obtain, breaking up her home over and over again. She applied to the magistrates at Clerkenwell for a Protection Order, to enable her to retain her

Criminals, Idiots, Women and Minors

earnings, but was refused it as her husband had not "deserted" her; and, of course, had not the slightest intention of doing so. The law, as it at present exists, has absolutely no help to offer, and the charitable persons who desired to aid her have been compelled to place their contributions in the hands of the Ordinary of Newgate, in trust for her benefit. (See *Times*, Jan. 15th and 16th, 1869.) Such cases, we believe, might be multiplied by scores; but it is rare that the woman's sobriety and industry do not break down under such trials, and the whole family go to ruin together.

It is continually repeated *in this connection only* that laws cannot take note of exceptional cases; they must be laid down to suit the majority, and the minority must do as best they can. But is there any other department of public justice in which the same principle is applied? What else is law **for**, but to be "a terror to evil doers"? always, as we trust, in a minority in the community. The greater number of people are honest, and neither steal their neighbour's goods nor break into their houses. Yet the law takes pretty sharp account of thieves and burglars.

Setting up an ideal of perfect marriage union sounds very well. But what would it be to set up an ideal, say, between rich and poor, and to assume that what ought to be their relation in a Christian country actually is so? A new Poor Law based on the hypothesis that the Sermon on the Mount forms the rule of English life, to which the exceptions are too trifling to be regarded, would be at all events a novelty in legislation. Or rather, would it not correspond in spirit with the law we have been considering? The poor woman whose husband has robbed her earnings, who leaves her and her children to starve, and then goes unpunished because the law can only recognise the relation of husband and wife as it ought to be and he and she are one before the law; such a woman's case would resemble closely enough that of a pauper who should be told that the law can only recognise the relation of rich and poor as it ought to be; and that, as every one who has two coats must be assumed to give to him who has none, and from him that would borrow nobody can be supposed to turn away, the striking of a Poor's Rate in a Christian land must be wholly superfluous.

It is one of the numerous anomalies connected with women's affairs, that, when they are under debate, the same argument which would be held to determine other questions in one way is felt to settle theirs in another. If, for instance, it be proved of any other class of the community, that it is peculiarly liable to be injured, imposed on, and tyrannised over (*e.g.* the children who work in factories), it is considered to follow as a matter of course, that the law must step in for its protection. But it is the alleged helplessness of married women which, it is said, makes it indispensable to give all the support of the law, **not** to them, but to the stronger persons with whom they are unequally yoked. "Woman is physically, mentally, and morally inferior to man." Therefore it follows what? that the law should give to her bodily weakness, her intellectual dulness, her tottering morality, all the support and protection which it is possible to interpose between so poor a creature and the strong being always standing over her? By no means. Quite the contrary, of course. The husband being already physically, mentally, and morally his wife's superior must in justice receive from the law additional strength by being constituted absolute master of her property. Do we not seem to hear one of the intelligent keepers in the Zoological Gardens explaining to a party of visitors: "This, ladies and gentlemen, is an inoffensive bird, the *Mulier Anglicana*. The beak is feeble, and the claws unsuited for grubbing. It seems to be only intelligent in building its nest, and taking care of its young, to whom it is peculiarly devoted, as well as to its mate. Otherwise it is a very simple sort of bird, picking up any crumbs which are thrown to it, and never touching carrion like the vulture, or intoxicating fluids like the maccaw. Therefore, you see, ladies and gentlemen, as it is so helpless, we put that strong chain round its leg, and fasten it to its nest, and make the bars of its cage exceptionally strong. As to its rudimentary wings we always break them early, for greater security; though I have heard Professor Huxley say that he is convinced it could never fly far with them, under any circumstances."

But the great and overwhelming argument against the Expediency of the common law in this matter, is the simple fact that no parent or guardian possessed of means sufficient to evade it by a marriage settlement, ever dreams of permitting his daughter or ward to undergo its (alleged) beneficial action. The parent who neglected to demand such a settlement from a man before he gave him his daughter, would be thought to have failed in the performance of one of his most obvious and imperative duties. Even the law itself in its highest form in the realm

Criminals, Idiots, Women and Minors

(that of the Court of Chancery) always requires settlements for its wards. How then can it be argued that the same rule is generally considered Expedient, yet invariably evaded by all who are able to evade it?

Again. There is the test of experience. Are married couples with settlements obviously less harmonious, are they less united in affection, are their children less well brought up than those who undergo the action of the law? When a woman has money of her own, so settled that she really has it for her separate use, do we find her always opposing her husband, and do her children seem to suffer from parental dissensions? Nay, let us go to the countries where no common law like ours exists at all, or where it has been repealed. In Russia marriage makes no difference in a woman's possession of property, to which also are attached the same political and municipal rights as belong to male proprietors. All that we know of Russian households is their peculiar harmony and mutual good feeling. And in the State of New York, where the Common Law was repealed in 1860, in Vermont, where it was changed in 1847, in Pennsylvania, where it was changed in 1848, and in Massachusetts, where it was changed in 1855, the report of the action of the new law, whereby the woman holds her own property and earnings, is entirely satisfactory. The following are some of the testimonies to the fact, collected by the Parliamentary Committee:

"Mr. Washbourne, formerly Governor of Massachusetts, and now Professor of Law at Harvard University, and who allows that he viewed the change with apprehension that it would cause angry and unkind feelings in families, and open the door for fraud, now admits that he is so far convinced to the contrary, that he would not be one to restore the common law if he could. Any attempt to go back to it would meet with little favour at this day. The oral evidence we have received from members of the Vermont and Massachusetts bars, from Mr. Cyrus Field, of New York, and from the Hon. J. Rose, Finance Minister of Canada, is to the same effect. They state that the change has given entire satisfaction; that it has not caused dissension in families; that the benefit has chiefly accrued to women of small means. Mr. Wells, Judge of the Supreme Court of Massachusetts, says: 'That for which the law seems to me most commendable is the power which it gives to women of the poorer classes to control the fruits of their own labour. Many women of that class are left to struggle against the hardships of life, sometimes with a family of children, abandoned by their husbands, or, still worse, with a drunken, thriftless, idle vagabond of a man, claiming all the rights of a husband, and fulfilling none of the duties of the relation. When such men could take the hard earnings of their wives from service in the mills, and waste it upon their indulgences, no woman could have courage to struggle long in such a hopeless effort. In our manufacturing towns there are a great many women thus situated, who are saved from the most hopeless poverty and slavery by this most just provision, which gives them the right to receive and to hold the wages of their own labour. The misfortune has been, that the more ignorant and degraded men were, the more rigorously they insisted upon and exercised their marital rights.... The law, by this change in the relative rights of husband and wife, has brought to the women of the poorer class a relief which touches the spring of hope and energy.' Mr. Dudley Field says of it, 'Scarcely one of the great reforms which have been effected in this State have given more satisfaction than this.'"

With such examples before us, it truly seems impertinent to talk of Expediency. The only persons for whom the existing law is expedient are fortune-hunters, who, if they can befool young women of property so far as to induce them to elope, are enabled thereby to grasp all their inheritance. Were there no such law as the cession of the wife's property on marriage, there would be considerably fewer of those disgusting and miserable alliances where the man marries solely to become possessed of his wife's money.

But, as we have said already, there is an argument which has more force in determining legislation about marriage than either considerations of Justice or of Expediency. It is the Sentiment entertained by the majority of men on the subject; the ideal they have formed of wedlock, the poetical vision in their minds of a wife's true relation to

her husband. Legislators talk in parliament with a certain conviction that the principles of fairness and policy are the only ones to be referred to **there**. But whenever the subject is freely discussed, in private or in a newspaper, there is sure to burst out sooner or later the real feeling. Nothing can be more amusing than to watch such spontaneous outbreaks of the natural man in the dignified columns of the *Times*, or the hard-hitting periods of a well-known writer in the *Pall Mall Gazette*. Let us try to fathom this sentiment, for till we understand it we are but fighting our battles in the dark. Is it not this: that a woman's whole life and being, her soul, body, time, property, thought, and care, ought to be given to her husband; that nothing short of such absorption in him and his interests makes her a true wife; and that when she is thus absorbed even a very mediocre character and inferior intellect can make a man happy in a sense no splendour of endowments can otherwise do? Truly I believe this is the feeling at the bottom of nearly all men's hearts, and of the hearts of thousands of women also. There is no use urging that it is a gigantic piece of egotism in a man to desire such a marriage. Perhaps it is natural for him to do so, and perhaps it is natural for a great number of women to give just such absorbed adoring affection. Perhaps it is a tribute to the infinite nature of all love, that for those who know each other best, as a wife knows her husband, there is no limit to human affection. At all events it seems a fact that the typical man (if we may call him so) desires such love, and the typical woman is ready to give it to him. He is impatient at the notion of a marriage in which this conception of absolute absorption of his wife's interests in his own shall not be fulfilled; and, so far as legislation can create such an ideal, he is resolved that it shall do so.

So far all is plain, but the question is this: Supposing such marriages to be the most desirable, do men set the right way about securing them, by making such laws as the Common Law of England? Is perfect love to be called out by perfect dependence? Does an empty purse necessarily imply a full heart? Is a generous-natured woman likely to be won, and not rather to be alienated and galled, by being made to feel she has no choice but submission? Surely there is great fallacy in this direction. The idea which we are all agreed ought to be realised in marriage is that of the highest possible Union. But what **is** that most perfect union? Have we not taken it in a most gross commercial sense, as if even here we were a nation of shopkeepers? Let us go into this matter a little carefully. It is rather instructive.

Husband and wife, in the eye of the poet, the divine, and shall we say, the Judge of the Divorce Court? are "not twain, but one flesh." I know not whether Mr. Darwin will sanction that theory concerning the Origin of Species, which tells us that

Man came from nothing, and by the same plan
Woman was made from the rib of a man;

or whether Dr. Carpenter and Professor Huxley have verified the anatomical doctrine held by our nurses, that in consequence of Adam's sacrifice of his rib, men have ever since had one rib fewer than women. Still, however learned physiologists may decide this obscure problem we shall all agree that it is a noble oriental metaphor, to describe a wife's relation to her husband as "bone of his bone, and flesh of his flesh." But the union of two human beings may, as preachers say, be considered three ways. Firstly, there is the sort of union between any friends who are greatly attached to one another; a union oftenest seen, perhaps, between two sisters, who each have full liberty to come and go, and dispose of their separate resources, but who yet manage commonly to live in harmony and affection, and not unfrequently to bring up a whole batch of little nephews and nieces in their common abode. Two such we know, who for many years have kept the same account at their banker's, and say that they find only one serious objection to the plan they can never make each other a present!

Secondly, there is the union of the celebrated Siamese twins, who are tied together not by Mother Church but by Mother Nature so effectually that Sir William Fergusson and Sir William Wilde are equally powerless to release them. Each of them has, however, the satisfaction of dragging about his brother as much as he is dragged himself; and if either have a pocket, the other must needs have every facility of access thereto.

Criminals, Idiots, Women and Minors

Lastly, for the most absolute type of union of all, we must seek an example in the Tarantula spider. As most persons are aware, when one of these delightful creatures is placed under a glass with a companion of his own species, a little smaller than himself, he forthwith gobbles him up; making him thus, in a very literal manner, "bone of his bone" (supposing tarantulas to have any bones) "and flesh of his flesh." The operation being completed, the victorious spider visibly acquires double bulk, and thenceforth may be understood to "represent the family" in the most perfect manner conceivable.

Now, of these three types of union, it is singular that the only one which seems to have approved itself, in a pecuniary point of view, to the legislative wisdom of England should be that of the Tarantula. Unless a man be allowed to eat up the whole of a woman's fortune, there is apparently no union possible between their interests. Partnerships, limited liabilities, and all other devices for amalgamation of property are here considered inadmissible. The way in which brothers and sisters settle their affairs when they reside under the same roof, would never suffice, it seems, to keep things straight between those who hold a yet more tender and trustful relationship.

Englishmen have, perhaps beyond all men, generous hearts and chivalrous natures. They delight in such glorious lines as that of their own poet:

Yet were life a charnel, where
Hope lay confined with Despair;
Yet were Truth a sacred lie,
Love were lust if Liberty
Lent not life its soul of light,
Hope its iris of delight,
Truth its prophet's robe to wear,
Love its power to give and bear.

Is it possible that one of them, whose eye kindles over such words, seriously believes that his own mother, sister, daughter, is made of such different clay from himself, as that for **her**, abject dependence is calculated to create and foster love, while for **him** it would be gall and wormwood, turning his affection into bitterness and revolt?

Truly I am persuaded it is not **thanks** to the Common Law, but in **spite** thereof, that there are so many united and happy homes in England.

To sum up our argument. The existing Common Law is not **just**, because it neither can secure nor actually even attempts to secure for the woman, the equivalent support for whose sake she is forced to relinquish her property.

It is not **expedient**, because while in happy marriages it is superfluous and useless, in unhappy ones it becomes highly injurious; often causing the final ruin of a family, which the mother (if upheld by law) might have supported single-handed. It is also shown not to be really considered expedient by the conduct of the entire upper class of the country, and even of the legislature itself, in the system of the Court of Chancery. Where no one who can afford to evade the law fails to evade it, the pretence that it is believed to be generally expedient is absurd. Further, the classes which actually evade it, and the countries where it is non-existing, show in no degree less connubial harmony than those wherein it is enforced.

Lastly, it does not tend to fulfil, but to counteract, the sentiment regarding the marriage union, to which it aims to add the pressure of force. Real unanimity is not produced between two parties by forbidding one of them to have any voice at all. The hard mechanical contrivance of the law for making husband and wife of one heart and mind is calculated to produce a precisely opposite result.

Criminals, Idiots, Women and Minors

The proposal, then, to abolish this law seems to have in its favour Justice, Expediency, and even the Sentiment which has hitherto blindly supported the law. As the Parliamentary Committee report, they are strongly of opinion "that the Common Law of this country, which gives the wife's property to her husband, should be repealed, and that the wife should have control over her property and earnings; and that her disability to contract and sue and be sued in respect of them should be removed."

That certain difficulties must arise in carrying out so extensive a change is obvious, yet they are probably less than might be supposed; and a brief trial of the working of a new law would enable the legislature to find out the weak point (if any) of their present Bill. As the committee remark: "Questions of importance arise in settling details of such a matter. Whether, for instance, the poor law liability of the father for the maintenance of the children should be extended to the mother; whether the change should be confined to future marriages only, or should be applied to existing marriages where other property is acquired, &c.

One thing, however, was unanimously agreed upon, and it is an important point in question: "It does not appear to be necessary to make any alteration in the liability of a husband to maintain his wife in consequence of such a change in the law with regard to the property of married women. A married woman, living apart from her husband, can only bind him for what is necessary, and the possession of property of her own, *pro tanto*, negatives the authority arising from necessity. A married woman, living with her husband, has an authority which, in spite of some fluctuations and uncertainty of judicial decisions, seems to be regulated by the general principle of the law of agency. Agency is a mixed question of law and fact, and the courts will give due weight to such a fact as the possession of property by a married woman, without any express statutable direction." That such a change could not entail injurious consequences is guaranteed by two facts: First, there follow no injurious consequences to the richer classes in England, by whom the law is practically set aside; second, there have followed no injurious results, but very beneficial ones, to the lower classes in the American States, by whom the law has been repealed. We have already cited the testimony of the distinguished American lawyers, Mr. Dudley Field, Judge Welles, Governor Washbourne, and others, to this point.

Justice, Expediency, a truly guided Sentiment, and such experience as is yet attainable all these, then, point unanimously to the repeal of the existing Common Law, as it touches the property of married women.

But leaving this special, though typical case of the Property of Married Women, may we not for a moment try to answer, if it be but vaguely, the larger question in which it is involved: What ought to be the general tone of legislation, the general line of policy pursued in these days by English men towards English women? It is clear enough that we have come to one of those stages in human history which, like a youth's attainment of majority, makes some change in the arrangements of past time desirable, if not imperative. There is no use reverting, on the one side with pertinacious dogmatism, and on the other with scorn and indignation, to old Eastern, or Classic, or Feudal relations between men and women. Any one who has lived in southern and eastern lands can perfectly understand, from the nature of the women of those passionate races, how such states of things arose at first, and have been maintained ever since without blame or cruelty. In Feudal times, also, the blended chivalry and tyranny of men towards women was rather to be admired, for the chivalry then condemned for a tyranny which probably fell more lightly on women than on any inferior class of men in the social scale. But all these things are changed for us. Our Teuton race, from the days of Tacitus, has borne women whose moral nature has been in more than equipoise with their passions; and who have both deserved and obtained a freedom and a respect unknown to their sisters of the South. As the ages of force and violence have passed away, and as more and more room has been left for the growth of gentler powers, women (especially in England) have gradually and slowly risen to a higher place. It is indeed quite possible still to point out thousands who are unfit for any important exercise of freedom, who are mere dolls, or something worse. Half the discussions which go on about women would be stopped at the outset, if the speakers could settle what women they are going to talk of; the women of strong characters, or the women who have as little character as their own looking-glasses. One woman lives for affection, for duty, for elevated and refined pleasures of taste and intellect; not incapable of devoted love, yet not living with love alone in her thoughts; pleased to adorn her person, yet not dreaming and chattering of dress from morning till night.

Criminals, Idiots, Women and Minors

Another woman lives for admiration and passion, for low pleasures of vanity and sense; having for her sole ambition to befool the men who surround her, and for her sole serious employment to deck herself for their gaze. To one the society of men and women is equally interesting, provided each be equally intelligent. To the other, the presence of a man, be he almost an idiot, is so exciting and delightful that every woman in company is forgotten, and the most ludicrous changes of tastes and opinions are effected at a moment's notice, to fall in with his pleasure, as if they were the furniture of a lodging-house, to be moved to suit a new lodger. As George Sand says: if the minds of such women have received any impression over night, it is carefully smoothed down next morning, like a gravel walk, *avec le rateau*, to be quite ready to receive a fresh impression from the next visitor.

Such are the differences, the contrasts rather, between two orders of women; and it is not unnatural that when "women's rights" are under discussion and one interlocutor is thinking of one sort of woman, and the other of the other, they should not readily agree to what is either just or expedient to be done for them. It seems equally out of question to withhold the franchise from Florence Nightingale when she asks for it, or to grant it to the "Girl of the Period." Unfortunately, as strong minded women are apt to associate only with the strong of her own sex, and as men are apt to be a good deal more familiarised with the man-adoring type of women than with them, it is common when they argue for each to go on contradicting the other without the slightest hope of coming to an understanding.

But it must be granted, we think, that the numbers of those of whom Pope could affirm that

Most women have no characters at all,

has a tendency to diminish year by year; and the numbers of women with characters to increase. How much faster the alteration will go on under improved education, if such splendid schemes as that of Miss Davies' and Madame Bodichon's College can be carried out, is hard to judge. Already the classification of which we have already spoken, with the "idiots" and the "minors," seems hardly such as the scientific intellect would be satisfied with in other departments of zoology. Shall we say it resembles the botanical scheme of the governess who informed her pupils that "plants are divided into Monandria, Bulbous Roots, and Weeds?"

We wish that we could persuade men more often to try and realise for themselves what is actually the life of a woman. Not as an appeal for compassion. It is very much to be questioned whether the warm affections and simple hearts of the better sort of women do not make life sweeter to them than to most men. "Happiness," says Paley, "is to be found no less with the purring cat than with the playful kitten." Enjoyment is a hardy little plant which grows at all altitudes above the level of actual starvation. There are glories of the nursery and ambitions of the kitchen which fill human hearts no less than the contests of the senate and the triumphs of the battle field. To the majority of men the life of a woman with its narrow household cares, its small social emulations, and its slightly flavoured pleasures, seems dull and insipid to the verge of disgust. Very few would hesitate to repeat the thanksgiving of the Rabbins for "being born of the human race, and not a brute; a Jew, not a Gentile; a man, and not a woman." Yet happiness is quite sufficiently elastic to shrink into the narrow circle of domestic life even while it is capable of stretching itself to the wide bounds of imperial power. Maria Theresa, and Catherine the Great might have made themselves content, the one perhaps as the mistress of a well frequented inn, or the other as an actress at a provincial theatre. Women who are not utterly ground down by the sordid cares of poverty, are quite as cheerful and a good deal more resigned to the decrees of Providence than their lords. It is, therefore, with a pity not dashed with compassion, but partaking of the tenderness wherewith we watch a child pleased with its doll and its baby-house, that men usually regard the lives of those dearest to them in the world. Were they ever to ask themselves how such an existence would suit **them**, they might perhaps be startled at the reflections which would suggest themselves. Any way I believe they would thenceforth carefully endeavour that none of the little patrimony of women's pleasures should be retrenched, none of the bounds of their interests and duties made narrower than nature herself has drawn them by the laws of their physical constitutions and their domestic affections.

Criminals, Idiots, Women and Minors

Last summer the *Times* remarked that "when working men desired to have votes **they** threw down the park palings, but that women have not shown their wish for the same privilege by any such proceedings." Were we not on that same enchanted ground whereon all arguments are turned topsy turvy, we should have supposed that the mob who attacked the police and spoiled the public park, and the women who stopped at home and signed Mr. Mill's petition, had respectively shown the one their **un**fitness, the other their fitness for the franchise of a law-respecting nation. But, in truth, women very rarely throw down **any** palings, either material or only imaginary; and they generally hurt themselves cruelly when they do so. Not for that reason ought men to refuse to them whatever rights may seem for them fairly established. Among these I trust, in the present paper, I have placed that of Married Women to the use of their own earnings and inheritances.

In conclusion, I would make one remark on the general question. Much time and more temper have been lost in debating the sterile problem of the "equality" of men and women, without either party seeming to perceive that the solution either way has no bearing on the practical matters at issue; since civil rights have never yet been reserved for "physical, moral, and intellectual" equals. Even for political rights, among all the arguments eagerly cited last year against extending the franchise, no one thought it worth while to urge that the class proposed to be admitted to them was, or was not, physically, intellectually, or morally inferior to the classes which already possessed it. As for civil rights the right to hold property, to make contracts, to sue and be sued no class, however humble, stupid, and even vicious, has ever been denied them since serfdom and slavery came to an end. If men choose to say that women are their inferiors in **everything**, they are free and welcome then to say so. Women may think that they are the equivalents, if not the equals of men; that beauty is as great a physical advantage as the strength which man shares with the ox; that nimble wits and quick intuitions are on the whole as brilliant, though not as solid intellectual endowments as the strong understanding and creative imaginations of men; and finally, that for morality, that aged man is happy whose conscience as lie leaves the world is as void of grave offence as that of the majority of aged women. But whatever a woman may think on these subjects, she has no need to argue, much less to grow shrill and angry about it. "Granted," she answers to all rebuffs; "let me be physically, intellectually, and morally your inferior. So long as you allow I possess moral responsibility and sufficient intelligence to know right from wrong (a point I conclude you will concede, else why hang me for murder?) I am quite content. It is **only** as a moral and intelligent being I claim my civil rights. Can you deny them to me on that ground?"

Women and Community Punishment: The Probation Hostel as a Semi-Penal Institution for Female Offender March 2004 • The Howard Journal of Crime and Justice. Alana Barton. Semi-penal institutions (for example reformatories, asylums and refuges) were originally developed during the late 18th and early 19th Century, their primary aim being to reform "deviant"™ women back to acceptable and appropriate standards of femininity. Crime has declined over the past several years, renewing the belief that punishments such as imprisonment are useful mechanisms for deterring criminal activity. This article assesses this claim by examining data on U.S. crime and imprisonment trends from 1972 through 1993, a period that saw a continuous increase in levels of incarceration.