

‘Too many restrictions could not be thrown in the way of divorces’: Attitudes to Women’s Petitions for Divorce by way of Act of Parliament 1801-1831

England was a relative latecomer amongst its European counterparts in making full divorce widely accessible. However, the inevitability of matrimonial breakdown meant that a number of remedies for dealing with failed marriages existed prior to the Matrimonial Causes Act of 1857.¹ One of these allowed for divorce to be granted by way of Act of Parliament, with a divorce Bill being introduced and passing through both houses – including committee stages – before becoming legislation.² In doing so, the Act (as it became) completely dissolved the parties’ marriage, allowing them to marry again.³ There were many shortcomings to this process, not least that it could only be used for divorces based on adultery and, moreover, it was a remedy intended only for men. In total only four women successfully applied for divorce by way of Act of Parliament. These were the cases of *Addison* in 1801; *Turton* in 1831; *Battersby* in 1840 and *Hall* in 1850.⁴ This paper analyses the first of these in depth and will also spend a short time discussing the second, *Turton*, and the application that sat between the two chronologically, the unsuccessful case of *Teush*.⁵ It will demonstrate how these three cases fitted into contemporary discourses surrounding divorce and adultery (including how petitioner wives adapted particular narratives and archetypes to their advantage) and explain how and why Parliament sought to limit the number of women seeking to dissolve their marriages via this route.

Historically, the official method for remedying marital breakdown in England was the divorce *a mensa et thoro*. Available from the church courts, it translated literally as ‘a divorce from table and hearth’ and was roughly analogous to a modern judicial separation: the marriage continued to exist but the marital obligations of the parties towards one another were brought to an end. However, because divorces *a mensa et thoro* did not dissolve the marriage contract, neither party was able to remarry whilst their spouse was alive. This brought with it inevitable problems. When comparing divorces *a mensa et thoro* with parliamentary divorce (as this paper will do), it is important to note that the former did not make any gendered distinctions as to who could apply and on what grounds: men and women were equally entitled to bring actions in the church courts – and they could do so for adultery and a range of other issues (including cruelty). Joanna Bailey’s research into marital breakdown in the early eighteenth century suggests that wives were active litigants in the church courts, accounting for forty-three per cent of adultery petitions in the Court of

¹ 20 and 21 Vict c.85. This Act also removed the jurisdiction of the ecclesiastical courts in matrimonial matters, set up the new Court of Divorce and Matrimonial Causes and abolished adultery as a criminal offence.

² The parliamentary process can be found in greater detail in Douglas James ‘Parliamentary Divorce 1700-1857’ *Parliamentary History* (2012) Vol 31 Issue 2 pp.169-189, p.3.

³ The wording of these Acts is illuminating and the phrase ‘as if [she/he] were dead’ points to a cultural understanding of an equivalence between parliamentary divorce and widowhood.

⁴ These are the cases identified by Sybil Wolfram in ‘Divorce in England’ *Oxford Journal of Legal Studies* 5.2. (1986) 155-186, pp.174-175

⁵ Or possibly ‘*Teuch*’, the spelling is inconsistent.

Arches.⁶ This figure rose to fifty-three per cent if petitions based jointly on cruelty and adultery were included.⁷ As well as divorces *a mensa et thoro*, decrees of annulment were available from the church courts. These brought the marriage to an end and allowed the parties to remarry if they wished but were only available in very limited circumstances. Some unions, however, were so flawed that they were considered void *ab initio* (i.e. they had never come into existence). This was only an option in cases of serious irregularity, such as bigamy. In the case of both void and voidable marriages, once a decree had been pronounced the parties were free to contract marriages with new partners.

When it was introduced at the end of the seventeenth century, the new option of parliamentary divorce functioned as an additional, rather than alternative, process to that already available in the church courts. It was initiated in 1670 by Lord Roos and, until the 1857 Act, became the only method of completely terminating an otherwise valid marriage. As the eighteenth century drew on, a number of legal preliminaries were expected before a divorce Bill could be introduced into Parliament. The first was to obtain a divorce *a mensa et thoro* in the ecclesiastical courts. The petitioner then had to obtain a ‘verdict at law’ for criminal conversation (‘*crim. con.*’) in the King’s Bench or an equivalent court. This was essentially an action for monetary damages by the aggrieved husband against his wife’s lover. The wife was not a party to *crim. con.* proceedings and was denied even a right of reply to the allegations made about her, although evidence of bad behaviour or neglect by her husband towards her could reduce the amount of the damages. *Crim. con.* actions were a usual preliminary when applying for a parliamentary divorce but were not mandatory.⁸ They could be waived if it was demonstrated that bringing such a case was impossible or, indeed, if the petitioner was a woman.⁹ *Crim. con.* cases increased throughout the eighteenth century, peaking in the 1790s, before declining in the 1820s and 1830s and eventually being abolished in 1857.¹⁰ Due to the complexity of these various processes, the number of parliamentary divorces was limited and, between 1700 and 1857, only 310 were granted.¹¹

Adultery, therefore, had historically been viewed as a serious breach of the matrimonial contract, against which the injured spouse should have a right of legal redress. However, as well as divorces *mensa et thoro* and *crim. con.* actions (which sought to regulate infidelity within the domestic/private sphere) there was also an appetite for addressing adultery as an issue of public morality. The power to punish those found guilty of marital infidelity lodged with the church courts but, according to Bailey, church court correction case

⁶ *Unquiet Lives: Marriage and Marriage Breakdown in England 1660-1800* (Oxford, Oxford University Press: 2009) p.144 (quoting David Turner, ‘Representations of adultery’ pp.184-5).

⁷ Bailey, *Unquiet Lives* p.144. These figures may, however, demonstrate a metropolitan bias (for a number of economic and other reasons) and Bailey contrasts these figures with those in York and Durham, where they constituted only two out of twenty-five surviving cases.

⁸ This was discussed in the debates in the House of Lords during Jane Addison’s case, as reported in the *Morning Post* on 31st March 1801.

⁹ Wolfram, ‘Divorce in England’ p.157. Indeed, Wolfram asserts it would be impossible for a woman to bring a *crim. con.* action.

¹⁰ Bailey, *Unquiet Lives* p.142. Bailey also discusses a number of alternative remedies for the punishment of adulterers, including quarter sessions and houses of correction.

¹¹ Wolfram, ‘Divorce in England’ p.157.

prosecutions for adultery were virtually non-existent by 1730.¹² This does not appear to have been as a result of increasing societal acceptance of adultery, however. Towards the end of the eighteenth century, in order to contain what were seen as unacceptably high levels of marital infidelity, bills intended to criminalise the act were repeatedly introduced to Parliament. Four (unsuccessful) attempts were made to do so between 1770 and 1809. Concerns about levels of adulterous behaviour were not only expressed through the regulatory powers of the legislative and legal systems. A discourse of hyperbolic rhetoric developed, framing adultery (and, as will be discussed below, other related issues such as divorce) in almost apocalyptic terms. A number of scholars have commented on this so-called ‘adultery hysteria’ which appears to have been prevalent within the legal and political establishment of the time. Gillian Russell, for example, describes a ‘moral’ or ‘sex panic’ in the 1790s, a decade which saw more crim. con. trials than any other.¹³ She references Lord Kenyon, who wondered aloud if adultery should be punished by death.¹⁴ Discussions of such topics were not limited to the ruling elites, either: issues relating to divorce, adultery, marriage and other such subjects were interrogated by newspapers, periodicals and debating societies.¹⁵ Published reports of adultery trials (both crim. con. and divorce cases) also proved wildly popular. Indeed, a number of commentators – including Russell – have analysed the way in which these texts permeated the social and cultural consciousness of the times, effectively becoming their own literary sub-genre, with an accompanying cast of heroes, villains and victims.¹⁶ Overall, adultery appears to have been a subject on which much of eighteenth-century society held an opinion and, moreover, wished to loudly and vociferously express that opinion to anyone who would listen.

It is important to note that much of the debate that focussed on parliamentary divorces and crim. con. cases inevitably foregrounded unfaithful wives rather than adulterous husbands. However, the nature of the litigation and the rules relating to who could bring a claim made this, I would suggest, almost unavoidable: divorce by way of Act of Parliament was a remedy intended for men, as was crim. con. As has been mentioned above, though, divorces *a mensa et thoro* could be initiated by either spouse and there is evidence that blame and censure attached to male adulterers too.¹⁷ Even bringing a suit was risky: Akamatso Junko’s research suggests that adultery litigation could ‘seriously damage the reputation and

¹² Bailey, *Unquiet Lives* p.141. Although Bailey speculates this may be due to a drop in church court activity more generally.

¹³ ‘Killing Mrs Siddons: the Actress and the Adulteress in Late Georgian Britain’ 2012 p.424. See also Donna T. Andrew ‘Adultery a-la-Mode: Privilege, the Law and Attitudes to Adultery 1770-1809’ *The Journal of the Association of History* (1997) Vol. 82 Issue 265 pp.5-23 (particularly p.17) and Katherine Binhammer ‘the Sex Panic of the 1790s’ *Journal of the History of Sexuality* 1991 Vol 6 Issue 3 pp.409-434.

¹⁴ Russell, ‘Killing Mrs Siddons’ p.424.

¹⁵ Donna T. Andrew, ‘Adultery a-la-Mode’ pp.12-17; Bailey, *Unquiet Lives* p.143.

¹⁶ Adam Komisaruk, ‘The Privatisation of Pleasure: “Crim. Con.” in Wollstonecraft’s *Maria*’ *Law and Literature* (2004) Vol 16:1 pp.33-63 p.42 (referencing Lawrence Stone and Susan Staves). Russell also makes the point about the theatricality of crim. con. trials: ‘Killing Mrs Siddons’ p.420. David Turner comments on the fact that the actors in crim. con. cases ‘quickly became subsumed into stereotypical patterns of character and behaviour’: *Fashioning Adultery* p.183.

¹⁷ This is discussed more fully below. See also: Bailey, *Unquiet Lives* pp.143-144. David Turner also discusses this (*Fashioning Adultery* pp.6) and argues that the view of scholars such as Stone and Trumbach, who suggested men could commit adultery with impunity, advocating such interpretations should be treated ‘warily’.

honour of both parties' to the extent that they might never recover.¹⁸ However, it does appear to have been the case that female adultery was generally understood to be the more serious offence, not least because of its implications for patrilineal property inheritance.¹⁹

Whilst some of the cultural understandings relating to adultery may have remained broadly stable others – including gendered archetypes – shifted and changed as the century progressed.²⁰ So, for example, Joanna Bailey argues that earlier in the period, adulteresses were generally viewed as brazen.²¹ However, a few decades later they were characterized in crim. con. cases as the passive victims of male sexual predation.²² Indeed, Donna Andrew's research suggests that, by the end of the eighteenth century, the male seducer was seen in some ways as being more blameworthy than the female seducee.²³ The depictions of wives in such cases portray them as almost entirely passive, helplessly in thrall to the men around them. This was so much the case that, if they were neglected by their husbands, this appeared to automatically put them at risk of succumbing to the wiles of a would-be seducer. To illustrate this point, Andrew cites the case of *Esten v Hamilton*, where Erskine, one of the star advocates of the period, likened wives to pods of Greenland whales.²⁴ It was imperative, he asserted, for a husband to keep his whale under his control. If he did not, she was 'a lose fish [and] any body may strike her'.²⁵ Gillian Russell suggests that these depictions of passivity may be linked to the image of the ideal wife (the so-called angel of the hearth) that was coalescing around that time.²⁶ To complicate this picture, though, it would also appear that the archetype of the brazen adulteress was still a presence at the end of the eighteenth century. Russell argues that the celebrity adulteress – who revelled both in her crimes and her notoriety – was also a recognisable archetype and she locates the public interest in such women within a wider cultural anxiety about the perceived feminization of the public sphere after 1760.²⁷ Through these two contrasting archetypes of the 'passive victim' and the 'celebrity adulteress', one can begin to construct a binary image of female adultery – and both will be important figures when it comes to decoding the imagery that was brought into play by the divorces discussed in this paper.

Intriguingly, these archetypes were not merely passive understandings of female behaviours – they also appear to have been deployed strategically by those involved in legal cases. Tim Stretton argues that in the early modern period appearing in court was not

¹⁸ 'Revisiting Ecclesiastical Adultery Cases in Eighteenth-Century England' *Journal of Women's History* (2016) Vol. 28 No. 1 pp.13-37, p.20.

¹⁹ Bailey, p.143 citing Turner 'Representations of adultery' pp.41-50.

²⁰ Bailey suggests that new methods of punishing adultery, together with shifts in ideas around gender, 'class, manners and status changed the way adultery was perceived' during the eighteenth century: *Unquiet Lives*, pp.140 and 142.

²¹ Bailey, *Unquiet Lives* p.161.

²² Bailey, *Unquiet Lives* p.165

²³ Andrew, *Adultery a-la-mode* p.13.

²⁴ *The Times* 23rd February 1797.

²⁵ Andrew, 'Adultery a-la-Mode' p.19. She uses this evidence to cast doubt on Lawrence Stone's theory of 'affective individualism and legal equality between the sexes', arguing instead that it indicates women were seen, effectively, as male property. She also cites husbands' emotional neglect of their wives as a cause of women's infidelity. Junko also emphasises the need of a husband to properly supervise his wife, otherwise he might be viewed as partly culpable for her affair: 'Revisiting Ecclesiastical Adultery Cases' p.22 '.

²⁶ Russell, 'Killing Mrs Siddons' p.433.

²⁷ Russell, 'Killing Mrs Siddons' p.423.

necessarily considered ‘unfeminine’ but that women and their lawyers ‘[manipulated] images of womanhood...to [their] advantage’.²⁸ David Turner expands on this and suggests that both sexes – whether they were instigating or defending an adultery suit – aligned themselves with particular gendered archetypes, with women specifically portraying themselves as ‘submissive’.²⁹ This appears to have been taken a step further by defendant wives in the church courts, who might even choose to remain silent, both in regard to oral and written testimony.³⁰ It is also interesting to note that women deliberately presented an image of idealised wifedom in legal contexts other than the church courts. Amy Clarke’s research suggests that women on trial in the criminal courts for serious crimes (such as murder) could, potentially, avoid a guilty verdict by portraying themselves as conforming to the Good Wife archetype – even if they were not actually married.³¹

In contrast to wives, much less research has been focussed on husbands and consequently, only fragmentary evidence is available. What there is, however, suggests that archetypes were important here too. As has been mentioned above, there does not seem to have been an assumption that men were free to commit adultery with impunity: Bailey asserts that wives were not expected to tolerate their husbands’ adultery and, further, that there was an understanding that men’s infidelity was disruptive both to the patriarchal structure of society and at a domestic level, where it ‘was believed to spark disagreements so severe that they could end in violence’.³² Akamatsu Junko’s analysis of eighteenth-century church court cases supports this. She argues that ‘husbands’ infidelity was not ignored’ – indeed, within the context of the ecclesiastical courts, it was considered ‘as seriously as that of a wife’ and that less stringent criteria were needed to prove it than was the case for wives.³³ Junko also suggests that husbands needed to present to the courts in appropriately masculine ways, which included being faithful to their wives.³⁴

With regard to those husbands with adulterous wives, it would appear that – just like the adulteress – perceptions of them changed as the eighteenth century wore on. Although the cuckold was a figure of fun during the early part of the century, by the time crim. con. actions were peaking a few decades later, he had transformed into a figure of public sympathy.³⁵ David Turner suggests that this was linked to a new, genteel etiquette which viewed the seduction of one’s friend’s wife as a breach of the rules relating to male friendship. This centring of the male relationships contained within it the model of the classic love-triangle and relegated the matrimonial tie to a secondary, inferior position.³⁶ This

²⁸ *Women Waging Law in Elizabethan England* (Cambridge: Cambridge University Press, 2009) p.227.

²⁹ Turner, *Fashioning Adultery* pp.149 -150. See also Junko, ‘Revisiting Ecclesiastical Adultery Cases’ p.26. For an analysis of how lawyers mediated and constructed their clients’ legal person see Joanne Bailey ‘Voices in Court: Lawyers or Litigants’ *Historical Research* 74.186 (2001) 392-408.

³⁰ Junko, ‘Revisiting Ecclesiastical Adultery Cases’ p.21.

³¹ Amy Clarke, unpublished conference paper: ‘Rethinking marriage: wifely duty as subversive agency in shaping reputation and in the language of excuse’ the *Adventurous Wives* conference, 17th May 2021.

³² Bailey, *Unquiet Lives* p.145. She adds that adding cruelty to an adultery complaint increased a wife’s chances of a *mensa et thoro* divorce.

³³ ‘Revisiting Ecclesiastical Adultery Cases’ p.14, p.16 and pp.20-22.

³⁴ Junko, ‘Revisiting Ecclesiastical Adultery Cases’ pp.21-23.

³⁵ Bailey, *Unquiet Lives* p.163.

³⁶ David M. Turner, *Fashioning Adultery: Gender, Sex and Civility in England 1660-1740* (Oxford: Oxford University Press, 2002) pp.186-7.

relegation may also have helped feed into the perception of wives as passive victims rather than agentic actors.

So, although both men and women could sue for divorce *mensa et thoro* on the ground of adultery in the church courts, parliamentary divorce and crim. con. cases were, essentially, male solutions for dealing with women's adultery. Further, a culture of hysteria and hyperbole had grown up around the issue of infidelity to the point that, for example, Lord Kenyon saw fit to wonder if the death penalty might be used as an appropriate method of punishment. Into this febrile landscape stepped three women: Jane Addison, Elizabeth Teusch and Lucinda Turton.³⁷ This paper, due to the greater availability of primary source material, will focus most of its analysis on *Addison*. However, the two subsequent cases also bring with them some important insights and serve to throw into sharp relief a number of the issues raised by *Addison*. In particular, all three speak of a double-standard in how male and female adultery was regarded and, intriguingly, suggest that the use of gendered archetypes was a crucial tactic for female litigants. This performative signalling – together with the fact that the husbands' behaviour in two of the cases went beyond adultery *simpliciter* – was, I shall suggest, the key to how Addison and Turton achieved that most unwifely of aims – that of dissolving their marriages.

Addison v Addison³⁸

In 1801, Jane Addison became the first woman in England to obtain a full dissolution of her marriage by way of Act of Parliament. However, in doing so she could not risk being viewed as stridently attempting to subvert the patriarchal structures inherent within marriage – indeed, if this had happened it could well have undermined her case. Instead, she was barely present within the pleadings of her own divorce, vanishing almost entirely from their pages. Whether or not this constituted a deliberate strategy cannot be known for sure. However, the evidence that was presented to Parliament on her behalf and – perhaps more importantly – how that evidence was both understood by the legislature and reported in the print media, suggests that this may have been so. Her case also touches on some of the key themes in the adultery debate discussed above, namely: the ways in which archetypes were used to shape the narratives of legal cases (with particular reference to the submissive wife); secondly, whether or not men and women should have access to the same legal remedies and, finally, how the 'adultery hysteria' (which here becomes entangled with the 'morality' of women divorcing their husbands) influenced decision making within the legislature.

The facts of the case were these: the parties married under licence on the 29th April 1788 and resided together in London. There were three children of the marriage of which, at the time of the divorce proceedings, two (a boy and girl) were still living. Between 1794 and July 1796, the husband, Edward Addison, allegedly committed adultery on a number of

³⁷ I can find no existing systematic secondary analysis of these cases although they are mentioned in various publications including Allen Horstman, *Victorian Divorce* (London: Palgrave, 1985) and Jane Addison's divorce is discussed by Danaya C. Wright in 'Well-Behaved Women don't Make History: Rethinking English Family, Law and History' *Wisconsin Women's Law Journal* (2004-9) Vol 19 (2).

³⁸ 41 Geo. III 1801

occasions and in various locations, with his wife's sister, Jessy. Due to their close legal relationship (brother and sister-in-law) this was not merely adultery *simpliciter* but had an incestuous overtone. Following revelations about his affair with Jessy, Edward absconded to Hamburg. At the time of the divorce proceedings he was believed to be living abroad in poverty, his business having collapsed. Addison was granted a divorce *a mensa et thoro* in the Consistory Court of the Bishop of London on 23rd June 1800 and thereafter applied to Parliament for a full dissolution. By the time her case arrived at the House of Lords, her brother-in-law (Jessy's husband), Dr. Campbell, had already completed an action for crim. con. in the Court of the King's Bench and had been awarded five thousand pounds in damages, plus his costs. He too was seeking a dissolution of his marriage by way of Act of Parliament, and his application proceeded more or less concurrently with Addison's. This may possibly have bolstered Addison's chances of success, as it would have been difficult (although, I would argue, not impossible) for the legislature to have allowed his claim but rejected hers.³⁹

In both the pleadings and the hearings in the House of Lords, Addison adopted the role of a submissive, vulnerable and – importantly – *silent* woman. In the hearings, she was represented by her counsel, Mr Adam.⁴⁰ She gave no direct evidence (written or oral) during either the parliamentary process, or during the divorce *a mensa et thoro* which preceded it.⁴¹ Instead, it was servants (as happened often in crim. con. cases) who testified to the acts of adultery committed by her husband and sister. It also fell to the male members of her family to describe the effect the revelations of the affair had had upon Addison herself. Importantly, her silence as a litigant was not by any means an automatic or accepted part of the parliamentary divorce process – at least in so far as her oral evidence was concerned.⁴² There was a debate as to whether or not she should be required to attend the House of Lords in order to be examined in person: The Duke of Norfolk was one of those who thought she should and was concerned that if she did not do so, it could constitute a possible ground for objection by her husband. Lord Loughborough, on the other hand, opposed the suggestion, believing that providing oral testimony would be a 'hardship' for her.⁴³ In the end, the only direct evidence of Addison's reaction to her husband's adultery was contained in the evidence of another brother-in-law, James Cassmajor. He informed their lordships that he had handed her a letter from her father informing her that 'a suit was commenced against [her husband] in the Court of King's Bench, for adultery with her sister.'⁴⁴ He had delayed giving

³⁹ A point made by Wright in 'Well-Behaved Women don't Make History' pp.213-214. Although Wright makes the point that Campbell's action was based on simple, not incestuous, adultery.

⁴⁰ Mr Addison was not represented and did not appear in person, although care was taken to ensure good service of the divorce papers so that he could have defended the action if he had wished.

⁴¹ Doreen M. Slatter asserts that personal appearances were uncommon in the ecclesiastical courts, cases instead being conducted via proctors and advocates on behalf of the parties 'The Records of the Court of Arches' *The Journal of Ecclesiastical History* 4.2 (1953) pp.139-153. However, in contrast, there appears to have been an expectation that litigants should give evidence in Parliamentary divorces, implicit in the debate in the House of Lords as to whether or not Addison should do so.

⁴² Take for example, the case of Mr Williams which was not permitted to progress through parliament because the parties were in India and would not be able to attend to be examined in person. *Morning Post* 19th May 1801.

⁴³ *London Courier and Evening Gazette* 15th April 1801.

⁴⁴ *Journals of the House of Lords* (41 Geo III) p.103.

her this, he said, because he felt he 'ought to avoid communicating it as long as possible, a fact so atrocious and unqualified in vice.'⁴⁵ According to Cassmajor, Addison was initially disbelieving. However, she quickly determined to leave her husband and move back to her father's house in Scotland. His evidence corroborated the facts contained within the petition which stated that Addison:

withdrew herself from the House and Society of the said Edward Addison...as soon as she conceived it possible and was satisfied that a connection of so atrocious a nature...had taken place...and from that time...hath lived apart from her said husband and hath not since cohabited or had any intercourse or conversation with him but hath been ever since and still is under the Protection of...[her] father.⁴⁶

Although absenting herself from her own case might appear a curious tactic, Addison's silence was in fact as very powerful and culturally astute decision. To begin with, it invoked the image of the Good Wife, who was supposed to be quiet, demure and submissive. Moreover, as has been mentioned above, this was a known tactic in the ecclesiastic courts.⁴⁷ Its underlying rationale is easy to grasp: by conforming to the archetype of a respectable, modest – and even possibly timid woman – the petitioner wife encouraged those sitting in judgement to think well of a her and hopefully be more receptive to their cause.⁴⁸ However, I would suggest that it has a second – and even more powerful – tactical advantage: by minimising her own presence in the case, she deflected judicial attention away from herself and focussed it entirely on her errant spouse and his misdemeanours. This would have been of great assistance to Addison, particularly given the novelty of her application and its inherently contentious nature.

As well as the influence of established archetypes from the church courts, there may also have been an attempt to invoke echoes of the crim. con. wife as well. At first, this might seem counterintuitive – why would a woman who needed to appear blameless and innocent associate herself with one of the guilty parties in a crim. con. trial? However, the important factor here is the extreme passivity of crim. con. wives, not their guilt. Anything which negated Addison's agency and located responsibility for the adultery – and thus the divorce application – outside herself would benefit her case by making her appear helpless and vulnerable. Therefore, the archetype of the crim. con. wife who was a passive victim of circumstances may have been a helpful one. Indeed, her case even had its own sexually rapacious seducer in the form of her sister Jessy (this will be discussed in more detail below). Further, the way in which her case was conducted almost suggests a crim. con. trial, rather than a divorce *a mensa et thoro*: James Cassmajor's testimony stated that Addison had not initiated proceedings against her husband; instead, this had been done by her male relatives and she had been informed only after the event. This hints at the male-to-male model of the crim. con. trial. and Addison's legal advisors may have used the similarities to help them

⁴⁵ *Journals of the House of Lords* p.103.

⁴⁶ Parliamentary Archives HL/PO/JO/10/8/15

⁴⁷ The use of archetypes is discussed in Turner, *Fashioning Adultery* at p.149-150. For detail on how this was done, see Junko, 'Revisiting Ecclesiastical Adultery Cases' p. 25-26.

⁴⁸ This is suggested by some of the scholars already cited.

remove Addison as much as possible from the narrative of the case. Either way, the message was clear: the adultery (and therefore the divorce which was its consequence) were being done *to* Addison not *by* her and therefore no blame or censure should attach to her.

There was another consequence of her silence that may have helped to secure a positive outcome. Because Addison herself had only the faintest flicker of a presence within the evidence, this created an empty space in the overarching narrative of the case. The legislature was then able to project the image of her that they wished to see onto that space. The picture they created was one of a vulnerable, innocent creature whom they felt instinctively bound to protect. One of the most impassioned pleas on this subject came from Lord Auckland who declaimed:

We, Lords of Creation, have a remedy within our power, which we are ready to grant to one another in cases of adultery; but as to you, poor, weak, defenceless, women, if you come and complain of your husbands having committed adultery of the most depraved and flagrant kind...we will compel you to remain the wives of such profligate husbands and dismiss you from our door without relief.⁴⁹

Similar sentiments were also expressed in the lower house. The Attorney General, Sir Edward Law, stated that:

It was of the greatest interest to the morality of the country, that females should know, by conducting themselves with propriety under great sufferings, they should be always sure of redress.⁵⁰

What is significant, however, is that at no point does Addison state that she is weak or defenceless. Indeed, the fact that she is (in name at least) petitioning for a divorce in the House of Lords would suggest the opposite. Nonetheless, this is how she is viewed by those with the power to decide her fate and it doubtless assisted her case.

It can be argued, therefore, that *Addison* constructed an image of herself as a silent, passive – indeed virtually invisible – wife. This in turn created a petitioner-shaped-space onto which those deciding her case projected an image of her as a submissive, ideal wife. So, if Addison can be said to have inhabited the role of the Good Wife how are the other parties in the case to be understood? Can any correlations with existing discourses or archetypes be identified? We will begin with an analysis of the other woman in the case, Addison's sister Jessie. It is notable that, even though Jessie (like Addison) did not give any direct testimony, she was nevertheless portrayed in the pleadings as having a great deal of agency, particularly with regard to her various *rendezvous* with Mr Addison. So, for example, it was submitted that whilst staying at the Addison family home, she insisted Mr Addison visit her in her chamber every night before 'he went to that of his virtuous and unsuspecting wife.'⁵¹ This

⁴⁹ Lord Auckland as reported in the *Morning Chronicle* 21st May 1801.

⁵⁰ *London Courier and Evening Gazette* 16th June 1801. As shall be discussed further below, 'morality' was a core issue in adultery cases and was used explicitly elsewhere in to argue against wives being permitted to divorce their husbands. It is significant to see it deployed here in support of Addison's application.

⁵¹ *Morning Post* 14th May 1801.

depiction of Jessy as an agentic, sexually voracious individual has two consequences. The first is that it throws Addison's innocent, silent passivity into sharp relief: emphasising her vulnerability and depicting Jessy as a malicious home-wrecker, knowingly and deliberately destroying her sister's happiness. Secondly, and even more intriguingly, it means that Jessy is constructed as being almost entirely responsible for the affair. As has already been discussed, Joanne Bailey's research argued that the brazen adulteress was a familiar archetype earlier on in the eighteenth century. Moreover, Gillian Russell suggests that the shameless celebrity adulteress was still a recognisable figure decades later. Jessy Campbell's depiction aligns with this model, being described by members of the House of Lords as 'grossly wonton and abandoned' and 'depraved'.

I would, however, suggest that this depiction is more complex than it first appears. On one hand, Jessy is undoubtedly being censured for failing to conform to the ideals of passive female sexuality. If we move beyond the Bailey/Russell 'brazen hussy' archetype, though, and instead examine her portrayal in the light of crim. con. tropes, something very interesting happens. Out of the three available crim. con. *dramatis personae* (passive wife, rapacious seducer and wronged husband), she slots neatly into the role of seducer, particularly given the character traits of agency and sexual appetite that are associated with it. This has the effect of de-feminising her and turning her into an unnatural, quasi-masculine creature. Further, her transgressions are presented as breaching the code of mutual love and trust that should exist between sisters, echoing of the rules of genteel male friendship that were broken by the seducer in crim. con. cases. Indeed, a newspaper report from Jessy's own divorce proceedings casts her behaviour in exactly this light, with Addison herself standing in for the wronged husband:

...the flagitious conduct of Mrs Campbell, who, on her return from India with four infant children, was affectionately received by her sister, and returned that affection by an incestuous commerce with her husband.⁵²

Casting Jessy in the masculine role of seducer would also have assisted those who wished to depict Addison as the epitome of femininity: an idealised example of a wife, mother and sister, she becomes the innocent, passive victim of a scheming sexual predator. The trope works in both directions simultaneously: demonising Jessy, even as it elevates Addison.

The role allotted to Edward Addison is also rather curious. Like Addison and Jessy, he did not appear at any of the hearings, nor did he provide any direct written testimony. However, he appears vicariously in the pleadings through the evidence of the witnesses called to prove his adultery – and because of this, is present within the narrative of the case to a greater extent than Addison herself. During the debates in the House of Lords, though, it was not his behaviour which aroused comment. Instead, he was discussed mostly in relation to the children. Speaking against the divorce, Lord Eldon, the Lord Chancellor, said he wished to protect

⁵² *Salisbury and Winchester Journal* 18th May 1801.

...the rights of innocent and unoffending parties who could have no other protection – he meant the children of Mr and Mrs Addison. A divorce, if granted, would not only sever her from her husband, but also from these children...[and] by depriving her children of a virtuous mother, leave them totally to a father who was guilty of so infamous a crime.⁵³

The use of pronouns here is very telling. His lordship is speaking of ‘*her*’ (i.e. Addison’s) children. The law at the time viewed children solely as the property of their fathers and it would be a number of years before this ceased to be the case.⁵⁴ However, it is worth noting that *Addison* may have been a significant step towards this end, not least because of its acknowledgement that fathers were not always fit to have the care and control of their children. In the end the issue was resolved by making the children wards of court and giving custody of the daughter to Addison, the son (presumably an older boy) already being in a ‘professional situation.’ Whilst their lordships did not take the ultimate step of awarding full, unfettered custody of the children to their mother, this decision (and the language used to discuss the issue) may have been an important precedent going forward.

Overall, then, the tactic of absenting Addison as much as possible from her own case and encouraging a view of her as modest, passive and vulnerable undoubtedly helped her cause. However, this did not mean that the House of Lords believed that women should have equal redress to parliamentary divorce as men – and debates about what precedent (if any) *Addison* should be allowed to set became an important aspect of the case. It was not the case that all citizens of England were entitled to the same remedies and protections under the law – particularly not married women who were already heavily discriminated against through the common law doctrine of coverture. Despite this, some members of the House did call for parity of men and women in access to divorce. Lord Auckland, for example, said it was: ‘rather an unmanly principle to refuse that justice to the wrongs of a wife which it had always promptly yielded to those of a husband.’⁵⁵ However, the overriding feeling was that allowing women equality of redress for husbands’ adultery would be the start of a slippery slope with wide-ranging and dangerous consequences. The Duke of Clarence argued that women divorcing their husbands was a ‘mischief’ which would encourage ‘collaboration’, causing the ‘morals of society’ to suffer.⁵⁶ Whereas Lord Eldon explicitly referenced a gendered double-standard in acceptable male and female behaviours when he stated that the ‘...adultery of a husband was not considered in the same disgraceful light among men as the adultery of a wife’.⁵⁷ Because of this, it was important for many of their lordships that even if Addison’s petition for incestuous adultery was allowed to succeed, it must not function as a precedent for wives whose husbands were guilty of adultery *simpliciter*. Forefront amongst those making this point was the Duke of Clarence, who wanted it as a rule ‘never to give ground of hope of a wife’s being able to obtain a legislative divorce from her husband only

⁵³ *Morning Post* 25th April 1801.

⁵⁴ Following a determined campaign by Caroline Norton, the Custody of Infants Act was passed in 1839.

⁵⁵ *Morning Post* 14th May 1801.

⁵⁶ *Morning Chronicle* 21st May 1801. It should be noted that the noble duke fathered at least ten illegitimate children.

⁵⁷ *Morning Post* 25th April 1801.

on the grounds of adultery.⁵⁸ One should of course remember that women had been litigating in the ecclesiastical courts for hundreds of years using precisely the same grounds as men. Despite some calls to the contrary, though, the members of the House who argued that women should have to prove aggravated grounds for a divorce were triumphant. Indeed, this rule even survived the 1857 Act and it was not until 1927 that women were able to use adultery *simpliciter* as a ground for divorce.⁵⁹

As well as reflecting a broad cultural understanding that male infidelity was less serious than women's, the House of Lords was also seeking to limit the overall number of applications that might be brought by wives. This fear of opening the floodgates was explicitly referenced during the debates, with the Lord Chancellor (amongst others) stating that a consequential 'evil' of granting Addison a divorce would be 'the number of applications which the precedent would give rise to.'⁶⁰ Although the underlying rationale for this probably included the belief already articulated, that male adultery was an innately less-serious offence, the explicit reason given was that their lordships wished to avoid 'the difficulties that would arise in regard to distribution of property'.⁶¹ This presumably related to the need to provide maintenance for divorced wives but may also have referred to the potential adverse consequences of divorce interfering with a husband's rights to his wife's property under coverture.

Another intriguing aspect of the *Addison* debates is that, threaded in between the arguments about vulnerable wives, legal floodgates and property redistribution, one can locate very clear examples of the divorce hysteria described in the secondary historical sources. Indeed, the evidence from the case suggests that these were not merely philosophical musings but that they formed an active part of a public policy discourse which the legislature used to underpin its decision-making. For example, as well as calling for 'adultery to be punished by law' the Lord Chancellor, Lord Eldon, argued during *Addison* that the current high levels of divorces were directly responsible for the moral decline of the country. Moreover, he feared that if this situation was allowed to continue unchecked it 'might lead to the destruction of the whole of our constitution and Government' and 'he could not look at this Bill without fear and trembling'.⁶² In a curiously circular piece of oratory, he went on to speculate that if women were granted the right to obtain parliamentary divorces against their husbands, it might encourage even more husbands to commit adultery, thus destroying 'that great aggregate of families, the public.'⁶³ Aside from being a piece of overly-hyperbolic fear-mongering, the scenario sketched out by the Lord Chancellor demonstrates how revolutionary Addison's petition was: the level of chaos depicted in his speech meant that it was clearly not considered as a discreet private matter – a legal remedy to correct a domestic wrong – but was instead of national importance. Whether or not it would actually result in the collapse of the entire structure of government, is almost beside the point: the consequences that might

⁵⁸ *Morning Chronicle* 21st May 1801

⁵⁹ Although it was not necessary to prove incestuous adultery under the new Act, the adultery still had to be of an aggravated form.

⁶⁰ *Kentish Gazette* 28th April 1801.

⁶¹ The Lord Chancellor as reported in *Bury and Norwich Post* 18th March 1801.

⁶² *Kentish Gazette* 28th April 1801.

⁶³ *Salisbury and Winchester Journal* 27th April 1801.

flow from it were understood to be profound and, because of that, they needed to be contained.

In the end, however, it was the incestuous nature of the adultery – coupled with Addison's image as an ideal (and therefore deserving) wife – which allowed her case to succeed. Given the intensity of the arguments ranged against the petition, and the desire to limit the number of cases that might use it as a precedent, their lordships focussed on this as the key factor in making their decision. However, the incestuous aspect of the adultery was not merely an unusual extra detail which could be used to bolt the floodgates, it had genuine legal implications. One of the points made by Addison's counsel (and echoed by those of their lordships who were in favour of the divorce) was that there was no hope of the couple ever reconciling. This was not just a matter of personal delicacy; the pleadings stated that: Addison 'would consider herself morally guilty of the Crime of Incest, should she have any Intercourse or Connection with the said *Edward Addison*.'⁶⁴ The correctness of this assertion was upheld during a debate on the technicalities of the divorce in the House of Lords. Lord Thurlow stated that:

it was a crime which, if committed [before the Addison's had been married] would have tainted the legitimacy, and affected the competency of that marriage.⁶⁵

Any subsequent marriage between Edward Addison and Jessy Campbell would also be voidable on the grounds of consanguinity.⁶⁶ The incestuous nature of the adultery therefore had a contradictory effect: it supported Addison's case but simultaneously barred the way for a large number of women who would otherwise have followed in her footsteps – and this suited the needs of the legislature perfectly.

The *Addison* case can therefore be seen as bringing together many of the contemporary discourses surrounding adultery and divorce. The most important of these was that Addison succeeded in obtaining her divorce not by transgressing culturally gendered norms but by conforming to them, allowing her silence to stand as an ideal of contemporary femininity. Her absence, both in terms of oral testimony and within the pleadings, had two distinct and powerful effects. The first was that she was able to simultaneously exploit two archetypes: the role of the wife in crim. con. cases (i.e. an absent, passive victim) and the model of feminine virtue from church court litigation. Secondly, by making herself vanish, Addison focussed attention on the actions of her husband and sister, throwing their behaviour into the sharpest possible relief. Finally, this allowed Addison to create a 'wife-shaped space' in her case, which the legislature obligingly filled in with an image of a vulnerable – but still dignified and respectable – woman: exactly the sort of wife whom Parliament should treat with compassion. How much of this was tactical and how much was an inevitable consequence of her unfortunate situation is difficult to judge – but one suspects there was probably an element of both.

⁶⁴ Divorce petition HL/PO/JO/10/8/15

⁶⁵ *London Courier and Evening Gazette* 21st May 1801.

⁶⁶ This point was also used to refuse the next female petitioner, Elizabeth Teush, a divorce. It was stated that in *Addison*, a reconciliation was impossible whereas in Teush's case, it was merely unlikely.

Turton 1831

We have to wait thirty years before another application for parliamentary divorce featuring a petitioner wife was successful. This one was also based on the ground of incestuous adultery and again featured the wife's sister as the co-respondent. Lucinda Turton together with her husband, Thomas, and sister, Adeline, travelled to India in 1822, where Thomas had secured employment as a lawyer. At the time they left England, Turton knew that Adeline and Thomas had been having an affair and that Adeline was carrying his child. The move to India appears to have been undertaken in order to avoid scandal, the plan being for Adeline to give birth there and then return to England. From the evidence that survives, it appears that at the time the trio left for the subcontinent Turton believed the relationship between her husband and sister was over and that this was merely a case of concealing the pregnancy. However, in a reversal of their plans (at least as Turton appears to have understood them) Adeline remained in India as her brother-in-law's mistress and it was Turton who returned home in 1824. Once there, she threw herself under the protection of her father and the process of ending the marriage began. She obtained a *mensa et thoro* divorce on 17th July 1830.

A systematic search of the newspaper archives suggests that the *Turton* case attracted much less press coverage than *Addison*, with only a handful of reports available. However, those which do exist (taken together with the proceedings in Parliament) suggest that, as in the *Addison* case, the character of the petitioner wife was an important consideration for the legislature in establishing whether or not she should be granted a full divorce. How Turton conducted herself in public and whether or not she was regarded as respectable were key themes in the oral evidence presented to the House of Lords. Of paramount importance (given the journey to India and the length of time the parties remained together overseas) was the issue of collusion – i.e. the possibility that Turton may have condoned the adulterous relationship between her husband and sister, or at least did not flee from it at the earliest opportunity.⁶⁷ The Lord Chancellor, invoking somewhat spurious arguments of equality, opined that a woman should not be granted a divorce in circumstances where a man would not, specifically where the injured party 'consented to associate with a paramour of his wife's'. However, against this Lord Wynford argued that this was an extraordinary case and should not be governed by ordinary rules. He accepted the evidence presented to the House that Turton had acted as she did to save her elderly parents from shock and disgrace.⁶⁸ It may also have been the case that Turton, like Addison, used performative silence within her own proceedings to signal her modest, wifely femininity. Certainly, there is no evidence in the parliamentary records to suggest she provided direct oral or written testimony. Further, like Addison, the divorce does not appear to have damaged her reputation. Both women remarried (Turton doing so almost as soon as the divorce was granted). Thomas Turton also remarried, although not to Adeline – this possibility was prevented by the Act of Parliament that divorced him. However, he rose to become Registrar in the Supreme Court of Calcutta so it is debatable whether he suffered much reputational damage.

⁶⁷ This fear of collusion was one which helped fuel the moral panic of the late eighteenth/early nineteenth centuries: Andrew, *Adultery a-la-mode* p.21.

⁶⁸ General Gore Brown (Turton's father) Minutes of Evidence Taken upon the Second Reading of the Bill, *Journal of the House of Lords*, Vol 63 (1830-1831) 20th April 1831 p.6

Teush

Finally, in contrast to these two successful applications, this paper will briefly examine the case that lies in between them chronologically: that of Elizabeth Teush. Teush petitioned Parliament for a dissolution of her marriage on the ground of her husband's adultery. Like Addison and Turton, she had successfully obtained a divorce *a mensa et thoro* in the church courts beforehand. However, Teush's petition was based only on simple adultery. Despite the fact that her husband's offences were on a grand scale – including moving his mistress and their illegitimate children into the family home and throwing the wife out – his relationship with his lover was not incestuous.⁶⁹ As has been discussed above, the aggravated nature of her husband's adultery was one of the most important points in Addison's favour: as well as preventing any possible reconciliation between them, Parliament drew a lot of comfort from the fact that this would necessarily limit the number of cases that could use *Addison* as a precedent.⁷⁰ Despite this, however, arguments were still made in favour of Teush's application, including impassioned pleas for the equal treatment of all before the law. Lord Carnarvon's speech was particularly significant in this regard. It addressed the economic and social reality for wives like Teush, specifically alluding to the difficulties she faced by losing her home and being financially reliant on an impecunious and uncaring husband. This, the noble lord argued, left her without any other option than to barter her virtue for her livelihood. Significantly (in the light of both the *Addison* and *Turton* cases) Teush was also described as 'virtuous' by both Carnarvon and the Lord Chancellor, the latter stating that he had 'never recollected to hear a more favourable representation given of any woman'.

What the case particularly showcases, though, is a series of tortuous arguments around the issue of 'morality'. Echoing the sentiments of the Duke of Clarence in *Addison*, the Bishop of Asaph asserted that the 'morality' – or, rather the *immorality* – of women divorcing their husbands should be considered of greater importance when than how Mr Teush treated his wife. Indeed, direct reference was even made to *Addison*, by way of an assertion that the decision there 'had produced considerable mischief'.⁷¹ These arguments were vigorously and eloquently resisted by Lord Carnarvon but to no avail.⁷² The House of Lords voted 10-3 against granting the application: the hysteria surrounding adultery and divorce proving potent enough to twist the thrust of the debate away from the actual harms inflicted by a husband upon his wife – and, indeed the offence of his adultery – and locate it instead within the hypothetical dangers of allowing women equal access to established legal

⁶⁹ Teush's Divorce Bill *Parliamentary Register 1802-1805* House of Lords Sessional Papers First Series Volume 3 Geo III 45 17th June 1805 p.316.
<https://parlipapers.proquest.com/parlipapers/docview/t70.d75.pr_1802_1805-000890?accountid=13963> (accessed 17th May 2022)

⁷⁰ This fact suggests a degree of cognitive dissonance existed within the House of Lords: as a legislative body it was (and is) not allowed to bind its future self. This was articulated by Lord Carnarvon in the *Teush* debate (17th June 1805) along with the point that each divorce case should be decided upon its own facts and merits.

⁷¹ The speech of the Bishop of St Asaph is not reported but is referred to in detail by Lord Carnarvon in his speech cited below, specifically at pp.315-316.

⁷² Teush's Divorce Bill House of Lords Sessional Papers 17th June 1805 pp.315-319.

remedies. Luckily for Teush, her husband moved to Scotland where, after another protracted legal battle on the issue of domicile, she was granted her divorce.

In conclusion, therefore, these three cases support the generally accepted contention that a gendered double standard existed in relation to adultery – and, by implication, divorce – during the long eighteenth century.⁷³ However, there are also new findings which can be drawn from them. Firstly, it may well be the case that the three women featured in this paper used tactics similar to those deployed by women in the ecclesiastical court – and possibly crim. con, actions and the criminal courts as well. Foremost amongst these was the use of archetypes involving wifely virtue and submissiveness. As well as presenting the applicant as a socially acceptable woman who came to court as a victim rather than an aggressor, these also functioned as a vital piece of psychological misdirection: they camouflaged the fact that these women were engaged in the most unwifely act possible – that of seeking to end their marriages – and focussed attention instead on the wrongdoings of the other parties. Secondly, as the cases of *Teush* and *Addison* demonstrate, the hysteria surrounding divorce and adultery permeated not just cultural and social discourses but also informed the decision-making process of the legislature. These discourses were used by some members of the House of Lords to construct an alternative ‘morality’ that privileged the exaggerated, fictive consequences of permitting women’s access to divorce, over actual, verifiable harms done to them. Finally, flowing from this, whilst there were some who felt it was important to ensure women were afforded equal access to divorce (as indeed they already enjoyed in the church courts) vociferous counterarguments were advanced to ensure that this should not happen.

It was not until the Matrimonial Causes Act of 1857 that true progress towards any sort of equality in matters of divorce were made. The Act removed the day-to-day business of divorce from the hands of the legislature and instead placed it within the control of the judiciary, albeit within a statutory framework approved by Parliament. Even then, the legacy of unease with which men perceived women’s adultery continued and it was not until the twentieth century that women achieved parity with men in being able to petition on the ground of adultery *simpliciter*. Given the details of the three cases discussed in this essay, however, it is not surprising that only four women were able to obtain the dissolution of their marriages before the arrival of the 1857 Act. Indeed, perhaps the real wonder is that any managed it at all.

⁷³ Bernard Capp, ‘The Double Standard Revisited: Plebian Women and Male Sexual Behaviour in Early Modern England’ *Past and Present* (1999) No. 16 2 pp.70-100, p. 70 referencing Keith Thomas, ‘The Double Standard’ *Journal of the History of Ideas* (1959) Vol 20 Issue 2 pp.195-216.