CLASS, GENDER, AND LIBERALISM IN PARLIAMENT, 1868–1882: THE CASE OF THE MARRIED WOMEN’S PROPERTY ACTS*

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ABSTRACT. The class and gender identities created by male politicians are vital to a proper understanding of how and why parliament increased women’s legal rights in the nineteenth century. An examination of the parliamentary debates on the Married Women’s Property Acts of 1870 and 1882 reveals that it is misleading to divide men into supporters and opponents of women’s rights, because even some of those who supported the most radical reform did so in the belief that the gender hierarchy should be left intact. At the same time, politicians were reluctant to accept that their own homes should be affected by changes to women’s rights, both because they feared that these changes would reduce their domestic authority and create discord in their homes, and because they did not think that the critique of male behaviour which justified the reforms should apply to them or their class. Their ability to confine both charges of abuse and the effects of the acts to the poor was essential to the successful passage of the Married Women’s Property Acts. Rather than see this as the defeat of a liberal individualist vision, it was in fact the victory of an alternative strand of Victorian liberalism.

The role that men played in supporting the women’s movement has recently received a great deal of interest from historians, and nowhere is this issue more important than when considering the parliamentary response to feminism.1 After all, in Britain before 1919, as in many other countries in that period, it was an exclusively male legislature which stood between demands that women’s rights

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should be increased and legislative change. This article argues that neither the form nor the timing of changes in women’s legal rights can be explained until historians devote closer attention to the gender and class identities constructed by male politicians.

The parliamentary debates on the Married Women’s Property Acts of 1870 and 1882 provide a useful place to begin. Historians have usually explained these measures as a result of the interplay between three factions in parliament: feminists inspired by John Stuart Mill’s liberal individualism, the ‘antis’ who opposed women’s rights, and a group of social reformers who proposed to ameliorate the abuses suffered by poor women under the common law doctrine of coverture. Indeed Mary Shanley, in a pioneering study, has argued that politicians used such ‘practical’ arguments about the suffering of the poor because they offered a means of avoiding any engagement with a liberal individualist ‘feminism’. But this interpretation requires revision on a number of points.

In the first place historians have tended to assume a greater degree of coherence among the pro-feminist and anti-feminist camps than is warranted by the evidence. The case of Sir Charles Adderley, who at various times voted both for and against married women’s property rights and women’s suffrage, suggests that men’s positions were more fluid than is often recognized. Several important studies of nineteenth-century feminism have argued that the involvement of the same women across a range of campaigns for women’s rights demonstrates the existence of a coherent and unified feminist movement. However, by its very nature, the surviving source material for those involved in the women’s movement records only the activities of the most committed activists: a study of male politicians tells a very different story and draws attention to more moderate positions. For example, three of the ten MPs who sat on the executive committee of the extra-parliamentary Married Women’s Property Committee in 1868 opposed women’s suffrage, including George Shaw-Lefèvre, who sponsored the bill in 1868. On the other hand, men like Alexander Staveley Hill and William Charley strongly supported giving women the vote but also opposed giving married women property rights. Alternatively, a group including Anthony Mundella supported both women’s suffrage and married women’s property rights, but opposed proposals to give mothers the same child custody rights as fathers. We are therefore confronted with the

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4 The other two were Charles Buxton and Bernard Samuelson.

5 This paragraph is based on an analysis of parliamentary voting patterns on women’s suffrage, married women’s property, and child custody bills in my unpublished PhD thesis ‘Women’s rights and male legislators in Britain, 1866–1886’ (Cambridge, 2003).
difficulty of using the word ‘feminism’; not only is it anachronistic but it seems to cover too broad a range of positions to be useful in describing men’s behaviour.

Mary Shanley has noted how men connected with the women’s movement seem to have enjoyed considerable autonomy in terms of drafting legislation and guiding its course through parliament.6 For these reasons the behaviour of politicians deserves to be treated not simply in terms of deviation from a ‘feminist’ course which they ought to have followed, but as intelligible actions deserving explanation in their own right. In this context we cannot explain the ambivalent positions men occupied in relation to ‘feminism’ simply in terms of their attitudes towards women: men’s attitudes towards masculinity were also a vital factor in conditioning their response to demands for women’s rights. In particular, Shanley’s observation that parliamentary compromises reflected ‘the reluctance of legislators to abandon the patriarchal model of the family’ deserves closer analysis.7

This article suggests that the justifications for male authority in marriage were being undermined by a growing awareness that men were abusing this authority, and that politicians sought to exclude themselves from this critique by constructing the figure of the negligent and abusive husband in their debates as exclusively working class. In this context it is not sufficient to interpret parliament’s discussions about the poor as a means of avoiding discussing ‘feminism’. This would be to ignore the fact that these ‘practical’ arguments depended on a recognition that, as George Melly said in the House of Commons, ‘protection against dishonest and reckless husbands was urgently required’.8 The arguments presented in favour of married women’s property rights were in effect a critique of the behaviour of

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6 Shanley, Feminism, marriage and the law, pp. 15, 108, 110–14, 140–1. For example, the 1884 Guardianship of Infants Bill was introduced at the instigation of Elizabeth Wolstenholme Elmy but she did not approve of the way in which the bill was drafted. See Elizabeth Wolstenholme Elmy, The Infants Bill 1884 (Manchester, 1884), p. 5. An account of contact between the Married Women’s Property Committee and MPs can be found in the committee’s Annual reports. The role of the Social Science Association in mediating between parliament and popular political movements has recently been explored by Lawrence Goldman, and is particularly important in the case of the agitation for married women’s property rights. See Lawrence Goldman, Science, reform, and politics in Victorian Britain: the Social Science Association, 1857–1886 (Cambridge, 2002), pp. 46–51 and ch. 4. On the connection between the women’s suffrage movement and parliament see Helen Blackburn, Women’s suffrage (London, 1902); Barbara Caine, ‘J. S. Mill and the women’s movement’, Historical Studies, 18 (1978), pp. 52–67; Jane Rendall, ‘The citizenship of women and the reform act of 1867’, in Catherine Hall, Keith McClelland, and Jane Rendall, eds., Defining the Victorian nation (Cambridge, 2000), pp. 119–78. Some groups were criticized by ‘feminists’ for paying too much attention to lobbying parliament, Judith Walkowitz, Prostitution and Victorian society: women, class, and the state (Cambridge, 1980), p. 137.

7 Shanley, Feminism, marriage and the law, p. 16.

8 Times, 11 June 1868, p. 6, col. b. Melly was the Liberal MP for Stoke on Trent, 1868–74. As Olive Anderson has recently reminded us, Hansard is an unreliable source for parliamentary speeches before 1909 because it relied for the most part on editing together different newspaper accounts. Consequently, I have used the original newspaper sources, and in particular the Times, Daily News, and Morning Post rather than Hansard. See Olive Anderson, ‘Hansard’s hazards: an illustration from recent interpretations of married women’s property law and the 1857 Divorce Act’, English Historical Review (November 1997), pp. 1202–15; see also H. Donaldson Jordan, ‘The reports of parliamentary debates, 1803–1908’, Economica (1931), pp. 437–49. Where references to Hansard are given, they all refer to the third series.
British husbands, and male legislators had to deal with the fact that they were implicated in that critique by virtue of their sex.9

In addition, the role of ‘the poor’ deserves more critical attention. As many historians have told us, the language of class is not tied to any objective social referent, and representations of the social structure were repeatedly contested as men tried to identify which social groups mistreated their wives and which did not.10 The final section of this article argues that where an identity which protected the ‘higher’ classes from ‘feminist’ critiques of male behaviour could not be created, as happened in the debates on infant custody law in the 1880s, politicians were less willing to change the law. Moreover, the ‘practical’ arguments about the poor, which displaced John Stuart Mill’s liberal individualism, were not in fact alien to liberalism. They were part of an alternative strand of liberal discourse which was instrumental in legitimating a project to privilege the wealthy over the poor and men above women.

I

The grievance that women presented to parliament was simple; before the Married Women’s Property Acts became law all of a woman’s personal property passed to her husband when she married, as did any property she subsequently acquired, and the husband gained a life interest in any freehold land. The only way around this rule of the common law – the legal doctrine of coverture – was to be found in the courts of equity, where property could be placed in the hands of trustees for the separate use of a woman. However, this procedure was so expensive as to be only available to the rich. In the 1850s a group of women had campaigned for the law to be amended with no success, but in 1868 the attempt was revived and in that year a Married Women’s Property Bill was introduced into parliament which proposed that married women should have the same property rights as unmarried women.

The most striking feature of the debates on the Married Women’s Property Bills is how little time was spent discussing the principle of sexual equality, and how much time was spent discussing the idea that giving married women property rights would cause discord in the home. Philip Muntz, for example, was clear that the proposed reform ‘would certainly cause great difficulties in all the domestic arrangements of life. It would cause antagonism between those who we were taught to believe were one.’11 This issue was central to parliamentary discussion of a wide range of proposals affecting women’s rights, including child custody legislation, bills to reform the family maintenance laws in the 1870s and 1880s, and the

9 A similar tension in nineteenth-century discussions of prostitution has been examined by Judith Walkowitz in her excellent book *Prostitution and Victorian society*, ch. 2 and passim.
10 The literature on this subject is huge, but a useful introduction is James Thompson, ‘After the fall: class and political language in Britain, 1780–1900’, *Historical Journal*, 39 (1996), pp. 785–806.
women’s suffrage bills of the period. But why did men think that giving women rights would cause discord in families?

The problem for the politicians was that there was no way of conceptualizing marital conflict within separate spheres ideology.\textsuperscript{12} Consider a typical extract from a marriage advice manual of the period, a book entitled \textit{How to be happy though married}, published in 1886: ‘If the wife cannot make her home bright and happy, so that it should be the cleanest, sweetest, cheerfulest place that her husband can find refuge in – a retreat from the toils and troubles of the outer world – then God help the poor man, for he is virtually homeless!’\textsuperscript{13} There was no place in the Victorian home for disputes between husbands and wives if the home was to be the ‘sweetest, cheerfulest place’ that the husband could find refuge in. Within the terms of separate spheres ideology, this household harmony could only be achieved by the total subordination of women to their husbands. It could not be otherwise: not only did male authority have scriptural support, but as both John Tosh and James Hammerton have recently shown, ‘To be head of a household, and to be visibly head of it, was essential to masculine status.’\textsuperscript{14} As a result women were allowed to exercise ‘influence’, but decision-making was to be left to their husbands.\textsuperscript{15} If a woman was to be allowed to assert her will then disagreements would follow and the precious order of the home would be torn asunder. Consequently, as Mary Poovey has written, ‘The illusion that freedom and autonomy existed for the man within the home … depended on the illusion that within the home no one was alienated – and this depended on believing that the woman desired to be only what the man wanted her to be.’\textsuperscript{16} This is why, as Mary Shanley has noted, ‘very few Members of Parliament believed that two independent wills could exist in one household without inviting disaster’.\textsuperscript{17} Even as the century progressed, and husbands were enjoined to exercise their authority in more companionable ways, marriage advice literature continued to assert that ‘it is the right of the husband to rule, and the duty of the wife to obey’\textsuperscript{18}.


\textsuperscript{13} E. J. Hardy, \textit{How to be happy though married} (London, 1886), p. 223.

\textsuperscript{14} Tosh, \textit{A man’s place?}, pp. 60–1; Hammerton, \textit{Cruelty and companionship}, pp. 75–6, 113 and part II passim. Hammerton has recently explored how the problem of domestic authority was worked out among the lower middle class in ‘Pooterism or partnership? Marriage and masculine identity in the lower middle class, 1870–1920’, \textit{Journal of British Studies}, 38 (July 1999), pp. 291–321.

\textsuperscript{15} Davidoff and Hall, \textit{Family fortunes}, pp. 116–17.


\textsuperscript{17} Shanley, \textit{Feminism, marriage and the law}, p. 46. This is also why Mill’s critique was so radical, see Mary Shanley, ‘Marital slavery and friendship: John Stuart Mill’s “The subjection of women”’, in Mary Shanley and Carole Pateman, eds., \textit{Feminist interpretations and political theory} (Cambridge, 1991), pp. 164–80.

The idea that a married woman might have a legal right she could enforce against her husband ran totally against the perceived need for male authority. Edward Karslake’s outburst in the property debates was quite typical, and deserves to be quoted at length:

The law … was founded upon the assumption that the husband and wife were one person – that position was denoted by the word ‘coverture’ – that there should be but one head of the family, and that the husband should be that head … The result of only one person being the head of the family involved, according to text writers on law, ‘supremacy’ on the one hand, and ‘subjection’ on the other, or, as he would say in modern language, authority on the one hand and obedience on the other. But the hon. gentleman desired to alter the law … and to make two heads of the family, instead of one, which could have no other effect than that of introducing discord and confusion into family life.19

The former president of the Divorce Court, Lord Penzance, made clear how the question of property rights raised this matter when he told the House that the Married Women’s Property Bills ‘involved the question whether the husband should rule in his own household; for if the wife had coequal power over the property she would obviously have a considerable share in the management’.20 These worries are reflected most clearly in the common argument – which must have seemed a reductio ad absurdum to contemporaries – that a woman would be able to throw her husband out of the house if she owned it, or would be able to get a job without his permission if she were given the ability to contract.21

It is no surprise then that a regular feature of debates on women’s rights was the desire to confine the extension of legal rights solely to unmarried or separated women, because domestic harmony could not be threatened where people were not cohabiting with a spouse.22 Lord Penzance was very clear that property rights should not be given to married women, but he was prepared to consider the claims of separated women. He said that:

Where harmony was now maintained there was clearly no necessity for a change of this kind; and he supposed it was hardly necessary to say that by the very terms of marriage the husband ought to be the paramount authority in his own home … If it was right that in a harmonious home the husband should support and protect the wife, there was no reason why when harmony ceased and the home was broken up the law should not step in and strip him of rights which had become a tyranny.23

Supporters of the Married Women’s Property Bills therefore spent a great deal of time reassuring their colleagues that reform would not promote discord in the

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19 Times, 11 June 1868, p. 6, col. b. Karslake was the Conservative MP for Colchester, 1867–8.
21 Married women’s inability to contract for their employment is described in Tomkinson v. West (1875), 32 L.T. 462. See also Lord Patrick Fraser, Treatise on the law of husband and wife (Edinburgh, 1877), II, pp. 554, 1513.
22 For a discussion of this issue in relation to women’s suffrage see Shanley, Feminism, marriage and the law, pp. 109–14, 124–30.
household, and the select committee considering the 1868 bill went to extraordinary lengths to establish this point. The fact that wealthy women had been given separate property without causing discord was a powerful argument to this end. In many cases, however, a reassurance that there would be no discord was also a reassurance that men would retain their authority. When questioned by Acton Ayrton, one of the bill’s foremost opponents, John Westlake conceded that ‘it will always be necessary to preserve to the husband some degree of authority’. This is important because Westlake was one of the staunchest champions of the idea that married women should have the same property rights as men. We cannot assume that those men who were prepared to change the law were by definition supporters of an undiluted ‘feminist’ position, because many of them believed that any reform should still leave male authority in place.

Although most politicians accepted that a husband should have some degree of authority over his wife, in many cases they were prepared to accept some limitation of this power because it could not be guaranteed that men would always exercise their privileges in a just and responsible way. George John Shaw-Lefevre, who had charge of the Married Women’s Property Bill in 1868, said that under the current law: ‘If the marriage turned out well, if the husband were prudent, trustworthy, sober and kind, no harm resulted; but if he proved reckless, improvident, vicious, self indulgent, [or] drunken … everything the wife had would be swallowed up, and her position would become one of great hardship.’ This was a constant refrain throughout the debates. There was also a worry that the theft of a wife’s property would be accompanied by violence. In a letter read to the House of

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24 Special report from the select committee on the Married Women’s Property Bill, Parliamentary Papers 1867–8 Vol. VII (hereafter referred to as 1868 select committee). References are to the number of the question rather than page numbers. On household discord see Hobhouse, q. 686; Hastings, q. 787–8; Mansfield, q. 1229; Wybergh, q. 1422; Todd, q. 1470; Mundella, q. 1531; Fowle, q. 1356; Fisher, q. 426; Rose, q. 578; Field, q. 978, 984; letter from Dudley Field, appendix 1, p. 83; letter from Emory Washburn, appendix 1, p. 83; letter from E. Atkinson, appendix 1, p. 87.


26 See, for example, Baggallay and Westlake, 1868 select committee, q. 291–2; Hastings, q. 338–9; Rose, q. 579.

27 1868 select committee, Ayrton and Westlake, q. 190–3. Ayrton was the Radical MP for Tower Hamlets, 1857–74. Westlake was Professor of International Law at Cambridge, and chairman of the National Association for the Promotion of Social Science’s jurisprudence division. He would later sit as MP for Romford, 1885–6.

28 The Rev. Septimus Hansard and Arthur Hobhouse were both strong supporters of the bill who expressed support for maintaining male authority. See 1868 select committee, Ayrton and Hansard, q. 1155–7; Hobhouse, ‘Is it desirable to amend the present law, which gives the personal property and earnings of a wife to her husband?’, Transactions of the National Association for the Promotion of Social Science (hereafter Transactions) (1868), p. 247.

29 Times, 22 Apr. 1868, p. 5, col. f. Shaw-Lefevre was the Liberal MP for Reading, 1863–85, and MP for Central Bradford, 1886–95. He held a large number of minor government posts in his career and was elevated to the peerage as Baron Eversley in 1906.
Commons by Shaw-Lefevre, the rector of Bethnal Green – the Rev. Septimus Hansard – wrote:

Cases come before me constantly of idle and profligate men taking the earnings of the industrious wife for their own selves. Not long ago I had to help a poor woman through her confinement, who had saved from her earnings a little money to meet this emergency. Her husband was a drunkard, and finding she had a supply, ascertained the source, and beat her in her weak condition in the most brutal manner until she delivered up her money.30

The extent to which legislators were prepared to support reform of the matrimonial property laws depended largely upon the extent to which they accepted claims made about husbands neglecting or abusing their wives. But their engagement with this critique was clearly influenced by considerations of class. In short, most politicians accepted that negligent or abusive husbands were often found among the ‘lower’ classes, but denied that there was any such problem higher up the social scale, and so denied any need to interfere with the existing property holding practices or patriarchal authority of the ‘higher’ classes to which they belonged.

II

By the time of the debates on the Married Women’s Property Bills in the late 1860s the groundwork for this concern about negligent or abusive husbands among the working classes had been well laid. Press interest in domestic violence among the working classes created a ‘moral panic’ in the late 1840s which eventually resulted in the 1853 Aggravated Assaults on Women and Children Act.31 In the mid-1850s a group of MPs who had become disillusioned with the criminal justice system sought to bring back corporal punishment.32 The issue on which they attempted to build a consensus was wife beating among the working classes, which they thought unquestionably deserved to be punished by flogging. Bills to amend the 1853 Act to this effect were introduced in 1857, 1860, 1861, 1863, 1872, and 1882. In this context parliament ordered statistics on assaults on women in London every year between 1854 and 1860. The fact that these debates were focused on abuses among the working classes should be signalled not only by the punishment they proposed – flogging – but also by the fact that the statistics on this issue were drawn from the metropolitan police courts. These discussions helped to establish the idea

30 Daily News, 11 June 1868, p. 2, col. c. The Times corroborates this, Times 11 June 1868, p. 6, col. c. Septimus Hansard became an executive member of the Married Women’s Property committee in 1871, see Third annual report of the executive committee for promoting the Married Women’s Property Bill (Manchester, 1870) p. 21.


that ‘the majority of those assaults were committed by husbands upon their wives’, even when the official statistics showed that this was not the case.\textsuperscript{33}

By 1868 this sequence of parliamentary debates and investigations had firmly established the notion that working-class men were prone to abuse their authority, and this idea became the major argument in favour of the Married Women’s Property Bills. The influence of the select committee appointed to scrutinize the 1868 Married Women’s Property Bill was particularly important in forging this association. The committee was presented with abundant evidence that working-class men were neglecting a wide range of their responsibilities by a group of witnesses who appear to have been selected by Shaw-Lefevre to give exactly this impression. Two vicars from the East End of London were called to give expert opinion on the state of the working class, as were a lady visitor from Belfast, a magistrate’s clerk, a London police magistrate, the owner of a large textile factory, and even the president of the Rochdale Pioneers co-operative society. The committee were presented with cases where husbands had taken ‘children’s clothes bought by … [the wife’s] own savings to pawn them’, and where men had deserted their wives and seized their earnings, ‘so that the women have been compelled to come upon the rates’.\textsuperscript{34} Even those who were not ‘experts’ on the poor focused heavily on the problems that the law caused working-class women. George Hastings, who was a barrister and honorary secretary to the Social Science Association, thought that ‘one of the most frequent cases of hardship is that of women of the weekly wage class … who have saved money previous to their marriage … their husbands sweep it away immediately’.\textsuperscript{35} Arthur Hobhouse, a barrister at the Chancery bar, agreed that there were ‘many such cases among the lower classes’.\textsuperscript{36}

But why would a man turn his back on his family? The answer was simply drink. This was absolutely central to Victorian social explanation, of course, and when looking around for a cause of widespread neglect of ‘male’ duties, alcohol immediately suggested itself.\textsuperscript{37} Sir John Simeon was typical when he said that once women were given property rights ‘their earnings would go … to support the family, and save them from a state of starvation, instead of going to minister to the drunken habits of the husband’.\textsuperscript{38}

\textsuperscript{33} L. L. Dillwyn, \textit{Times}, 13 Mar. 1856, p. 6, col. d. The 1860 returns for convictions in the Thames and Bow Street police courts show that twice as many men were convicted for assaults on women that they were not married to as were convicted for assaults on wives. Parliamentary Papers 1860 LVII, pp. 305–8.

\textsuperscript{34} 1868 select committee, Fowle, q. 1343; Hansard, q. 1146.

\textsuperscript{35} Ibid., Hastings, q. 364. Hastings would sit as Liberal MP for Worcestershire East, 1880–92.

\textsuperscript{36} Ibid., Shaw-Lefevre and Hobhouse, q. 694; Hobhouse, q. 692–3.

\textsuperscript{37} See Brian Harrison, \textit{Drink and the Victorians} (2nd edn, Keele, 1994), pp. 141, 239, and 280–9; J. B. Brown, ‘The pig or the stye: drink and poverty in late Victorian Britain’, \textit{International Review of Social History}, 18 (1973), pp. 380–95. For examples of the use of drink to explain male abuses see 1868 select committee, Fowle, q. 1343, 1373; Shaw-Lefevre and Fowle, q. 1348; Mundella, q. 1523, 1547; Tod, q. 1455–8, 1511.

\textsuperscript{38} 1868 select committee, Simeon, q. 1198. Simeon was MP for the Isle of Wight, 1847–51, 1865–70.
Alcohol also often served to explain violence directed against wives, which was also associated with ‘brutalization’. John Stuart Mill’s views on this point are particularly interesting because he too thought that there were thousands ‘among the lowest classes in every country … [who] indulge the utmost habitual excesses of bodily violence towards the unhappy wife’. In the most naturally brutal and morally uneducated part of the lower classes, the legal slavery of the woman, and something in the merely physical subjection to their will as an instrument, causes them to feel a sort of disrespect and contempt towards their own wife which they do not feel towards any other woman, or any other human being, with whom they come in contact; and which makes her seem to them an appropriate subject for any kind of indignity.

There is a persistent tension in the debates between the Millian idea that wife beating was the product of an artificial deformation of the character which could be remedied, and the idea that wife beaters were irredeemable violent brutes. Both strands of explanation had their supporters in parliament, but the implications of the two were very different for arguments about the Married Women’s Property Bills.

By supporting reform of the law on the grounds that some husbands were brutal or irresponsible, the reformers left themselves open to an obvious criticism: why would drunken, brutal men change their behaviour if women were given property rights? In other words, would the bill work? If one believed that abusive husbands were naturally brutal it was unlikely that one thought that the bill would make any difference. This became obvious when the committee discussed the case of the man who had stolen money that his wife had saved for her confinement when pregnant. Ayrton suggested that it was ‘a rather nice speculation of a psychological character, to suppose that a man who, knowing that his wife was going to be confined … [and who] would be guilty of such an obvious act of atrocity, would, nevertheless, be restrained by an abstract consideration of the rights of property’. He did ‘not see how a man who is so totally devoid of the most obvious natural feelings of

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42 1868 select committee, Ayrton, q. 1174.
paternity and of marital duty should be moved by any mere considerations of property which are still more feeble influences.

Septimus Hansard, who attributed male ‘brutality’ to a remediable deformation of character, disagreed with Ayrton’s pessimistic conclusions. Hansard said that he did ‘not think that it is a question of the rights of property that would have restrained him so much as the general feeling of respect towards the woman which would have grown up within him’. The husband, he said, ‘would feel that woman was not the mere drudge that she is now so often among the working classes if she was a woman who had an independent existence and independent rights’. He agreed with Sir John Simeon’s suggestion that ‘even men of a savage nature have a certain respect for the law’, and that ‘if a woman’s earnings were invested with the sanction of the law they would have a certain amount of sacredness, even in the eyes of the class of men to whom we have been alluding’. The Rev. Thomas Fowle, rector of a parish in London’s East End, also thought that the poor would ‘always yield’ to the law ‘if it expresses the best feelings amongst them, even although those feelings are very much higher than the average feelings’. John Wybergh, a magistrate’s clerk from Liverpool, and A. J. Mundella, the future Liberal minister, both shared this view. This mode of explanation also offered a means of tackling concerns that giving women legal rights would cause disputes between husbands and wives. Given that he believed that men’s behaviour would not change, Ayrton thought that women would have to assert their new property rights against their husband’s will, and that this would create discord. But if one believed that men’s behaviour would change, then one could argue that the issue would simply not arise.

Property law reform was therefore part of an attempt to reform the morals of the poor by using the law to establish a moral standard, and as such is typical of mid-Victorian liberalism. It is therefore no surprise that the bulk of the supporters of the Married Women’s Property Bills were to be found in the Liberal party: indeed, it is striking that support for the bills came from all sections of that uneasy coalition. The role of convinced feminists like Jacob Bright, the academic liberals influenced by Mill, and the technocratic legal reformers connected to the National Association for the Promotion of Social Science are familiar to historians of women’s rights, but these groups alone would not have been sufficient to carry the bill. Among the

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43 Ibid., Ayrton, q. 1175. 44 Ibid., Hansard, q. 1174, also q. 1195. 45 Ibid., Simeon and Hansard, q. 1188, 1191; Hansard, q. 1190–1. 46 Ibid., Fowle, q. 1360. 47 Ibid., Wybergh, q. 1419–21; Mundella, q. 1531. 48 Ibid., Ayrton, q. 1176–7. 49 See Jonathan Parry, Democracy and religion: Gladstone and the Liberal party, 1867–1875 (Cambridge, 1986); idem, The rise and fall of Liberal government in Britain (London, 1993); Boyd Hilton, The age of atonement: the influence of evangelicalism on social and economic thought, 1785–1865 (Oxford, 1988); Stefan Collini, Public moralists: political thought and intellectual life in Britain, 1850–1950 (Cambridge, 1991); and Eugenio Biagini, Liberty, retrenchment and reform (Cambridge, 1992). 50 On the role of the Social Science Association see Lee Holcombe, Wives and property; Goldman, Science, reform, and politics, pp. 46–51 and ch. 4. Among the academic liberals the circle surrounding Henry Fawcett was particularly important in voting for the Married Women’s Property Bills: they included...
men who voted in favour of reform we can also find Christian socialists such as Thomas Hughes; temperance enthusiasts like Sir Wilfred Lawson; the Peelites Thomas Acland, John Walter, and C. S. Parker; utilitarians like Robert Lowe and J. A. Roebuck; provincial industrialists such as M. A. Bass and Henry Bruce; a long list of nonconformist radicals including Edward Miall, Henry Richard, Alfred Illingworth, and Edward Baines; as well as whigs like Hartington. In many ways women’s rights were a secondary consideration to many of the men debating the property laws; more important was a consciousness of the immorality that seemed to pervade the working classes, and a desire to encourage men along the path of righteousness.

It might be thought that these debates on drunkenness, negligence, and brutality would be marked by a desire to separate the ‘rough’ from the ‘respectable’ working man, but this was not the case. Instead, the 1868 committee were clearly aware of the permeability of the barrier between the ‘rough’ and the ‘respectable’, with drink given as the usual cause of what might be a temporary transgression.\(^51\) Theft of women’s earnings, domestic violence, and drunkenness were not just characteristics of the ‘residuum’ – the criminal class – they were thought to pervade all aspects of the ‘lower classes’, as indeed they probably did. Thomas Fowle told the select committee that his parishioners, among whom there were many cases of drunkenness and husbands squandering their wives’ money, were not ‘among the very lowest in London’, but were ‘the average class of working men’.\(^52\)

The inability to confine charges of abuse or negligence to what Mill called the ‘lowest classes’ most clearly collapsed in the evidence which John Wybergh gave to the 1868 select committee. He told the committee that the women who applied for protection orders for their earnings under the 1857 Divorce Act were not cases where ‘the wife is making small earnings’, but cases in which the wife was ‘of a higher class than labouring persons’.\(^53\) Wybergh distinguished these from ‘the cases of cruelty and assault’ which were ‘in the lower class, and they are very numerous indeed’.\(^54\) However, his attempt to link cases of cruelty to ‘the lower class’ collapsed when he started discussing ‘a very large class of women above the working classes’, ‘the class of small traders’, who he agreed were ‘in a higher class of life than the poor’.\(^55\) In this group he said that ‘Very frequently cases have come before the court in the form of assaults of persons in that class where the husband has laid waste the property of the wife, and ill-treated her and turned her out of the house’.\(^56\) Clearly it proved impossible to map behaviour straightforwardly on to any sociological scheme.

\(^{51}\) See 1868 select committee, Ormerod, q. 1313; Fowle, q. 1346–8.
\(^{52}\) Ibid., Shaw-Lefevre and Fowle, q. 1341. On the question of drunkenness and theft see q. 1343, 1346–50.
\(^{53}\) Ibid., Shaw-Lefevre and Wybergh, q. 1392–3.
\(^{54}\) Ibid., Wybergh, q. 1395.
\(^{55}\) Ibid., Bright and Wybergh, q. 1403, 1405–7.
\(^{56}\) Ibid., Wybergh, q. 1405.
Although bad husbands could not be confined to a tightly defined social group, most politicians were sure that wealthy women were not at risk from their husbands. Only a handful of the most radical supporters of married women’s property rights were prepared to fight against the tide to argue the opposite case. George Osborne Morgan gave the example of a young heiress who was married without any settlement, with the result that ‘in three years, after spending nearly the whole of her fortune, the husband [whose social origin is unclear] decamped with the rest of her money to America, and the heiress died in a workhouse’. One of the concerns here is a fear of downward social mobility, and giving married women property rights could be seen as a way of reducing the permeability between social orders. Even when it was accepted that wealthy women faced a threat from their husbands, these men were usually presented as posing a less dangerous threat than that faced by working-class women. A fear that wealthy women might lose their property to their husbands’ creditors weighed just as large as a fear that their husbands might be drunken spendthrifts. Men of these classes were not the ‘brutalized’ wife beaters found among the lower classes, but simply unlucky in business. The usual explanations of spousal abuse – natural brutality and lack of moral education – would have been thought of as simply inapplicable to members of the ‘higher’ classes, and drunkenness was seen as occurring predominantly among the poor. A woman might be liable ‘to the persuasion of her husband to part with the estate’, but he was thought to be unlikely to beat her. Moreover, it was assumed that because the property of wealthy women was held by trustees with a restraint on anticipation it could not be wasted by their husbands, so abuses rarely occurred in the upper classes. There are good reasons, however, for believing that both of these assumptions were tendentious.

The suggestion that trusts were not an effective means of securing married women’s separate property runs contrary to one side of an ongoing debate among historians as to whether or not women’s lack of property rights was really as oppressive as has usually been assumed. In an important article Maxine Berg has argued that trusts facilitated ‘widespread female decision-making, and the equal, if
not disproportionately favourable, situation of female members of the family’. 62 However, this view has been powerfully challenged by Alastair Owens, who has found that ‘when one looks in more detail at ... the operation of trust arrangements, it is difficult to sustain the view that the evidence presents a picture of proprietorial independence and freedom among the spouses of male property owners’. 63 This ‘pessimistic’ case has received further support from Carole Shammas’s recent study of women’s property in the USA. 64 In addition, Susan Staves’s study of legal theory has demonstrated that settlements were neither developed nor used ‘to bestow new rights on wives or to increase the autonomy of wives’. 65 Staves has also drawn attention to the severe legal restrictions imposed on the use of different kinds of married women’s property. 66

With the exception of Susan Staves, however, the participants in this debate have been more interested in studying the role of trusts in transmitting property between generations than power differentials within marriage, and we still know very little about how effective trusts were at protecting women’s property from their husbands. 67 The famous case of Caroline Norton should give us reason to doubt the optimistic assertions made in parliament. The fact that her property was held in trust did not dissuade her upper-class husband from exercising ‘physical and emotional brutality’ in order to gain control of her belongings. 68 John Stuart Mill

66 For example, pin money deserves to be treated separately from other forms of married women’s separate estate. The courts did not consider that wives could spend pin money as they pleased, but determined that it was to be spent primarily ‘to dress the wife so as to keep up the dignity of the husband, not for the accumulation of the fund’. Howard v. Digby [1834], 11 Clark & Finnelly 657. Wives could not claim arrears of pin money for more than a year, unlike other forms of separate property, ibid. Nor was it clear that women could keep any real property bought with their personal property, Staves, Married women’s separate property, pp. 148–58. Pin money was not therefore ‘a sum which the wife might do what she pleased with’. Jodrell v. Jodrell, 9 Beav. 54–5.
67 In an important article Margot Finn has recently addressed the question of power differentials within marriage, arguing that a wife’s right to pledge her husband’s credit gave wives a greater degree of independence from their husbands’ control than has usually been acknowledged. Finn, ‘Women, consumption and coverture in England, c. 1760–1860’, Historical Journal, 39 (1996), pp. 703–22. However, this argument ignores the fact that husbands had the right to revoke their wives’ authority to pledge their credit. Manby v. Scott (1663), 1 Mod. 131–9; Montague v. Benedict (1837), 3 B. & C. 635; Reneaux v. Teakle (1839), 8 Ex. 681–2; Jolly v. Rees (1864), 15 C. B. [N. S.] 641; Debenham v. Mellon (1880), 6 H.L. (E.), 31. In addition, Dr Finn’s study relies heavily on the experience of separated, rather than cohabiting couples, and the law for separated couples was very different from the law for cohabiting couples. See Bacon’s Abridgement (7th edn, 1832), p. 719; Smith’s Leading cases (1832) Vol. II, pp. 422–30. Dr Finn’s work draws attention to the way in which the county courts often failed to implement the letter of the law in this matter. This point is explored in more detail in Griffin, ‘Male legislators and women’s rights’, ch. 4.
68 Poovey, Uneven developments, p. 63.
also drew attention to the fact that placing property in trust only protected a woman if she lived apart from her husband, ‘but if she were living with him the money immediately became the husband’s income, and he had a right to take it from her the moment she received it’.69 Indeed the evil husband in Alexander Beresford Hope’s novel Strictly tied up was far from discouraged by the strictness of his wife’s settlement, treating the annual payments made to her as ‘a merciful dispensation which would be pouring into his lap, year by year’.70 The problem was compounded by the fact that it was extremely difficult to prove that a husband had exercised undue influence in forcing his wife to hand over her property, assuming that she could be persuaded to come to court in the first place. As if this were not enough, ‘one of the most commonly named trustees was … the husband of the woman whose property was in trust’.71 As Amy Louise Erikson has written, ‘Most women, even those with a marriage settlement, were largely at the mercy of their husband’s good will, both during and after marriage.’72 This fact was ignored by everyone but Mill. It was simply asserted that upper-class women were already protected, and that all that was needed was to extend this same protection to the poor.73 In the process the question of the morality of upper-class husbands was sidestepped and replaced as the subject of scrutiny by the behaviour of the poor.

Although many politicians believed that trusts served to protect women’s property, very few were prepared to accept the idea that women should be free to spend that property as they pleased. Once again, both supporters and opponents of married women’s property rights thought the existence of married women’s separate estate compatible with retaining some degree of male authority. Russell Gurney, one of the leading supporters of married women’s property rights, observed that ‘it was objected that the Bill would introduce discord into families, and would depose the husband from his headship’.74 He asked if ‘such a result [had] followed upon the system of marriage settlements, and, if not, was it more likely to occur in the cases which would be affected by the Bill?’75 His argument rested upon the idea that marriage settlements had not interfered with male

69 Times, 11 June, 1868, p. 6, col. d.
71 Davidoff and Hall, Family fortunes, p. 277. Technically the assent of a trustee was not needed for a woman to bind her separate property unless it was rendered necessary by the terms of the trust (Essex v. Atkins [1808] 14 Ves. Jun. 547), but not all trustees followed the letter of the law in this respect, see Davidoff and Hall, Family fortunes, ibid. The fact that not all trustees were trustworthy was pointed out by Mrs Arthur Arnold at the annual meeting of the Married Women’s Property Committee in 1879, see The eight and ninth annual report of the Married Women’s Property Committee (Manchester, 1879), p. 22.
73 See for example the speech of Thomas Headlam, Times, 11 June 1868, p. 6, col. b.
74 Conservative MP for Southampton, 1865–78. Gurney was the recorder of the City of London and a strong supporter of women’s rights.
75 Times, 10 May 1870, p. 6, col. d; Morning Post, 10 May 1870, p. 2, col. e; Daily News, 10 May 1870, p. 2, col. d. The same point was a favourite of John Hinde Palmer: see his speeches in Daily News, 20 Feb. 1873; Times, 20 Feb. 1873, p. 6, col. a; Morning Post, 20 Feb. 1873, p. 2, col. a; also Morning Post, 10 June 1880, p. 2, col. a.
authority. Opponents of the bill agreed with this, but objected to the bill because they thought it would give women greater powers than they enjoyed under the system of settlements. According to Henry Lopes the property settled to a woman’s separate use was not for her exclusive use but existed to support the family.\textsuperscript{76} For the same reason the earl of Harrowby ‘could not admit that there would be any analogy between the position of a woman of the upper classes with a marriage settlement and that of a poor woman under this Bill’.\textsuperscript{77} Lord Penzance further claimed that ‘the husband in the large majority of settlements, retained control of the income during the lives of both’.\textsuperscript{78} This echoed the judicial line expressed by Lord Chancellor Cottenham in 1849. He said that:

In ninety-nine cases out of a hundred separate property, which is introduced as a protection to the wife, does not take effect: all things going right, and no distinction being made, the question of separate property does not arise; the property is used as a common fund for the benefit of the family, and in that way naturally falls under the control and management of the husband.\textsuperscript{79}

This idea that married women’s separate property was compatible with male authority can be illustrated by the case of Sir John Simeon, who suggested that a woman who was ‘inclined to spend largely upon her dress, and upon dissipation and amusements’ would be encouraged in her spendthrift ways by being given full property rights, but that this state of affairs ‘would be prevented by a settlement’.\textsuperscript{80} Cyrus Field, a supporter of the Married Women’s Property Bill, replied that even if she had a settlement the woman would spend her property as she wished, but the important point here is that many politicians thought that she would not.\textsuperscript{81} For example, Dr Anderson Kirkwood, an eminent Scottish solicitor, told a select committee in 1881 that in most cases husbands had control over the income from their wives’ property.\textsuperscript{82} Although marriage settlements were certainly intended in part to protect daughters against unwise marriages, they were not intended to do so at the expense of what was seen as the divinely ordained and necessary relationship between husband and wife. Settlements provided some means of maintenance for women who were forced to separate from their husbands, but were not seen as

\textsuperscript{76} Times, 15 Apr. 1869, p. 6, col. d; Daily News, 15 Apr. 1869, p. 2, col. c. Lopes was recorder of Essex, and Conservative MP for Launceston, 1868–74, and for Frome, 1874–6. He was appointed justice of the Supreme Court of Judicature, 1876.

\textsuperscript{77} Daily News, 31 July 1869, p. 2, col. b.

\textsuperscript{78} Times, 22 June 1870, p. 6, col. a; Daily News, 22 June 1870, p. 2, col. a.

\textsuperscript{79} Caton v. Rideout [1849], 1 Mac. & G. 603. In the case of pin money Lord Brougham said that a husband might rely on ‘that influence which the law supposes him legitimately to have over his wife … [in order to see] that the fund is duly expended for its proper purposes’ of keeping up the dignity of the husband. Howard v. Digby [1834], 11 Clark & Finnelly 677.

\textsuperscript{80} 1868 select committee, Simeon, q. 991. A similar argument was made by Lord Westbury, Times, 22 June 1870, p. 6, col. b; Daily News, 22 June 1870, p. 2, col. a.

\textsuperscript{81} 1868 select committee, Field, q. 991.

\textsuperscript{82} Report of select committee on Married Women’s Property (Scotland) Bill, Parliamentary Papers 1881 Vol. ix (hereafter referred to as 1881 select committee); Peddie and Kirkwood, q. 793–4.
providing women with a means of challenging their husbands’ authority while the couple cohabited normally. In this context it is easier to understand the appeal of claims that the Married Women’s Property Bill would simply extend to those labouring under the harsh common law a remedy similar to that granted by equity. This rhetoric also located the bill within a broader current of legal reform which played an important part in the development of mid-century social policy. Parliament was well aware of the many areas of conflict between the common law and the law of equity, and was sympathetic to promoting the latter. In 1867 a royal commission had been appointed to investigate the issue, and in 1873 parliament passed the Judicature Act, which proceeded on the basis that where the common law and equity came into conflict, the rules of equity were to prevail.

Given the high cost of proceedings in equity, it was not difficult to describe the distinction between equity and the common law in terms of rich and poor. In this way distinctions between ‘rough’ and ‘respectable’, or labourers and shopkeepers, were submerged in a dichotomy which only distinguished between those who could afford marriage settlements and those who could not. The essential problem, as Thomas Headlam defined it, was that ‘The poorer classes … could not afford to go to the Court of Chancery, and were exposed therefore to the full hardship of the Common Law.’ Men as different as George Jessel, Lord Penzance, and Jacob Bright could all agree that the bill was ‘emphatically a poor woman’s Bill because the rich were already protected’. This line of argument was repeated constantly and made irresistible the crude dichotomy between rich and poor which dominated the debates on the English law: not only did it remove the upper-class male from scrutiny, it also removed the need to explain precisely either the behaviour of bad husbands or their social location.

A consensus therefore developed among all but the most radical supporters of reform that there were many cases of negligence or abuse among the poor, and that the rich were already protected from such threats. Although arguments about injustices faced by upper or middle class women who had to work for a living had been a staple of the agitation of the 1850s, these were effectively drowned out by the

83 Goldman, Science, reform, and politics, pp. 33–9, 49.
84 Amy Louise Erickson has found that settlements of some kind were more common among the poor than was thought, but that ‘Most of these settlements had to do with the rights of widows, rather than separate estate during coverture.’ Erickson, Women and property in early modern England, p. 150.
85 Times, 11 June 1868, p. 6, col. b; Daily News, 11 June 1868, p. 2, col. b. Headlam was the Liberal MP for Newcastle upon Tyne, 1847–74; judge advocate general, 1859–66.
86 For Jessel see Daily News, 15 Apr. 1869, p. 2, col. b; Morning Post, 15 Apr. 1869, p. 2, col. b; Times, 15 Apr. 1869, p. 6, col. c. For Penzance see Daily News, 31 July 1869, p. 2, col. a. For Jacob Bright see Morning Post, 11 June 1868, p. 2, col. a; Times, 11 June 1868, p. 6, col. c. George Osborne Morgan also agreed with this, see Morning Post, 15 Apr. 1869, p. 2, col. c; Daily News, 15 Apr. 1869, p. 2, col. d. See also the speech of Thomas Headlam, Times, 11 June 1868, p. 6, col. b. George Jessel was the Liberal MP for Dover, 1868–73, Master of the Rolls, 1873–5, and a judge of the High Court, Chancery Division, 1875–81. Bright was the advanced Liberal MP for Manchester, 1867–74, 1876–85, 1886–95. He was heavily involved with the women’s suffrage movement.
volume of evidence about the suffering of poor women produced by the 1868 select committee. The report and evidence of the committee were quoted extensively in parliament, the Social Science Association, and the articles and pamphlets produced by the women’s movement. The speech of Lord Cairns, no supporter of sexual equality, clearly showed the influence of the committee when he said that:

It had been established by evidence of the clearest kind – the heartrending details of which it was happily unnecessary to enter into, that in most of the manufacturing districts, especially in the North of England, there were abundant instances in which poor and industrious women, who had exerted themselves to maintain their families, had been exposed to the evil of having their small earnings pounced upon from time to time by intemperate, idle, or dissolute husbands, for purposes entirely foreign to the support of the family.

But if reform was needed to protect the poor, and the rich were already protected by settlements, then to many men it seemed that the bill was more radical than was needed. Alexander Beresford Hope’s speech was typical:

Mr Beresford Hope, dividing the question into two imputed grievances – the one that of the needy and the other that of the easy class – remarked that everyone admitted and was ready to remedy the former … The question was, however, whether this Bill would remedy it, or whether it would not … import a new element into the relations of married life among the easy classes.

Edward Karslake agreed, saying that

Anyone would suppose … that the Bill was intended to amend the law with regard to the property of the poorer classes; but for every pound’s worth of their property affected by the Bill there would be hundreds of thousands of pounds worth of property affected belonging to those classes upon whom … the law did not press harshly in any way whatever.

In this respect the rhetorical strategy used by the reformers had proved too successful: no longer were all married women to be given property rights, only poor married women. Only the most radical were prepared to consider that married women should be given property rights as a natural right, or that wealthy women needed property rights to protect themselves against their husbands.

There were three major proposals suggested as more moderate alternatives to the position of total equality proposed by the bill. The first was simply to extend the system of marriage settlements to the poor, but the 1868 select committee was

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88 See for example Frances Power Cobbe, ‘Criminals, idiots, women and minors’, Fraser’s Magazine, 78 (1868), esp. pp. 785–90; the SSA discussion in Transactions (1868), pp. 276–81; see also Sessional proceedings of the National Association for the Promotion of Social Science (1868–9), pp. 397–401.
89 Cairns was twice Conservative lord chancellor, and had been chairman of the Royal Commission whose work led to the Judicature Act of 1873. He was also a devout evangelical.
90 Times, 22 June 1870, p. 6, col. a; Morning Post, 22 June 1870, p. 2, col. a.
92 Times, 11 June 1868, p. 6, col. b.
convinced that this would be unworkable. Not only were trusts too expensive and too legally complex to be appropriate for the poor, but the poor needed to liquidate their capital regularly and, it was argued, the poor would have difficulty finding trustees. Above all, trusts were designed to protect a corpus which would produce an income, and this was simply not appropriate for the case of those with limited resources.

The second alternative was to extend the system established by the 1857 Matrimonial Causes Act, whereby women deserted by their husbands could apply to a court for an order giving them the same property rights as unmarried women. The objections to this scheme were more complex, but not least was the fact that, the ‘case … when the husband was cruel and tyrannical, would be just the case where he would have, through his cruelty and tyranny, the greatest power of preventing the application being made’. Moreover, there was a great aversion to airing private disputes in public: women, it was believed, would not be prepared to discuss such things in public, and the men of the committee did not want them to. Most importantly, these orders would only protect property against future thefts. If a woman saved before marriage and her husband squandered her savings she would then be entitled to a protection order, but by then the money would have been spent.

Finally, there were some who argued that protection should be extended to a married woman’s earnings only. The witnesses before the committee left them in no doubt that this would not work, because it was difficult to establish what property was a woman’s earnings; and protecting earnings only would still require a married woman to be given full capacity to enter into contracts. Moreover, protecting earnings would not help protect savings which women brought to marriage, and which were often carried off.

Rather than simply dividing people into supporters and opponents of women’s rights we can therefore distinguish a number of different factions. The important point is that what distinguishes these factions is the degree of reform which they considered compatible with retaining some degree of male authority. First, there were the radical reformers who wanted to give married women the same rights as the unmarried. But we have seen that some of this group, like Westlake, did so convinced that this reform would not remove the authority of a husband over his wife. They were supported by evidence from the USA, and from the experience

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93 1868 select committee, Hobhouse, q. 673–4; Westlake, q. 126; Isabella Tod, q. 1478; Fowle, q. 135; Ormerod, q. 1301–2. See also the speeches of Shaw-Lefevre in the Times, 22 Apr. 1868, p. 5, col. f; also Russell Gurney, Times, 15 Apr. 1869, p. 6, col. b.
94 1868 select committee, Westlake, q. 145; Tod, 1461.
95 Ibid., Shaw-Lefevre, q. 145; Hastings, q. 371; Hobhouse, q. 760–1; Hansard, q. 1148; Mansfield, q. 1224; Ormerod, q. 1318; Wybergh, q. 1350; Tod, q. 1461–3.
96 Ibid., Shaw-Lefevre, q. 1211; Mansfield, q. 1225–6; Ormerod, q. 1315; Wybergh, q. 1382–3; Mundella, q. 1535–6.
97 Ibid., Westlake, q. 134–6; Shaw-Lefevre and Hastings, q. 364.
98 Ibid., Hastings, q. 364.
of what happened when wealthy women were given property under marriage settlements. As George Jessel said: ‘That which had not done harm among the wealthy would do no mischief to the poor.’ Then there were those who supported extending marriage settlements to the poor – a less radical step than giving married women the same property rights as men, but one which had proved not to cause household discord. Next we have a group who thought that a husband’s authority ought to be limited, but only when he abused it – they supported extending protection orders. Some of these last two more moderate groups were convinced by the 1868 select committee that their proposed remedies were unworkable, and so supported the radical proposal as the only viable option. They could take this risk having been reassured by the 1868 select committee that the reforms would not affect household harmony, and with the security that marriage settlements would continue to regulate the property of their own social order. It was this coalition which allowed the bill to pass through the House of Commons. Finally, we have those who thought that no changes could be made without threatening a husband’s authority, and so opposed all reform.

But reform was usually only contemplated with regard to women of the working classes. When it came to women with landed wealth the concern of many MPs was not to protect wealthy women against the arbitrary will of their husbands, but to make sure that women had to submit to the will of their husbands. This is evident from the amendments proposed, which sought to insulate the rich from the effects of the Married Women’s Property Bill. For example, R. P. Amphlett, who supported women’s suffrage, managed to insert an amendment into the Married Women’s Property Bill in 1869 which said that ‘no married woman shall have power to alienate her freehold or copyhold estates … except … with the consent of her husband’. But perhaps the best sign of nervousness is Henry Cecil Raikes’s bill in 1870, which would have made every husband trustee for his wife’s property until he was deemed unfit by a court, or until his wife could prove that for the previous six months she had been the family’s main breadwinner. This bill declared that the trustee should pay the annual income from the wife’s property to her without power of anticipation. This clearly has nothing to do with the working classes, whose property would not generate an income. It would also have required a judge’s permission every time a woman wanted to dispose of her property – he was clearly thinking of disposal of land or investments rather than a poor woman.
spending her earnings on bread, yet the clause would have applied indifferently to each.\textsuperscript{103}

Amphlett and Raikes represent the more cautious element in the Commons, but many of the men who supported the Married Women’s Property Bill in 1870 shared their concerns. They did not want the bill to affect the wealthy, but were able to support it because they did not think that it would. They had good grounds for believing this, because the bill left the law of settlements untouched. The governing classes would still have been able to tie up a married woman’s property in trust, thus continuing a system which many believed posed less risk to a husband’s authority over his wife than that proposed by the bill.

It was a common claim, especially among those supporting the most radical reform proposals, that women would continue to have their property placed in trusts. So, for example, Shaw-Lefevre said in 1868:

The change might seem a startling one, but it would not really be very great. He believed it would make very little difference with the wealthy; it was not proposed to interfere with the power to make marriage settlements … It was with the humbler classes that the change would be the greatest, and it was there the change was most needed.\textsuperscript{104}

The radical reformers argued that the effect of a change of the law on the wealthy ‘would be very slight unless it is found that the alteration of the law is so good as to induce people to abandon marriage settlements’.\textsuperscript{105} Alexander Staveley Hill agreed that ‘the Bill would leave a wife in the upper classes in pretty much the same position as she was in now, as it did not interfere with settlements’.\textsuperscript{106} Pat Jalland’s work has confirmed that ‘while the legal situation concerning the property rights of married women was reformed during this period, in fact this had little impact on upper- and upper-middle-class families. The reform was more symbolic than real.\textsuperscript{107} In effect the politicians were gambling with someone else’s chips – instituting a system for the poor which many believed might endanger domestic harmony by threatening to unleash female autonomy, while ensuring that the upper classes would be able to opt out of it, and this is true of both the 1870 and the 1882 Married Women’s Property Acts.

The debates are full of references to abstract notions of fairness and justice, but the question we have to ask is ‘fairness and justice to whom’? Lord Cairns said that ‘It had always appeared to him impossible to defend the existing law as regarded the earnings acquired by married women through their industry and talents. It was inconsistent with justice that she should have no voice in the disposition of those

\textsuperscript{103} A detailed critique of Raikes’s bill can be found in the appendix to Arthur Hobhouse’s pamphlet ‘On the forfeiture of property by married women’ (Manchester, 1870).

\textsuperscript{104} Times, 22 Apr. 1868, p. 5, col. f–p. 6, col. a.

\textsuperscript{105} 1868 select committee, Hobhouse, q. 677.


By claiming that property should belong to whoever had earned it, the claims of women who did not work were automatically precluded. Since very few middle- or upper-class women would have property in the form of earnings the double standard between rich and poor could be maintained. The *Morning Post*’s report of Lord Cairns’s speech makes this explicit when it says that ‘he had no objection to confine the operation of the Bill to the classes which most needed a change in the present law, and leave out of consideration altogether property left by will or by settlement’.109

So when the Lords, led by Cairns, amended the 1870 bill to limit its provisions to earnings, their position was not as far from the House of Commons as might appear to be the case – they were just a little more cautious. Under the scheme drafted by the Lords, women were to be allowed to own their wages and earnings, certain investments, and property inherited as the next of kin of an intestate. Similarly, they were allowed to inherit personal property of a value of less than £200 under a deed or will, but no more.110

Once the 1870 act was passed interest in married women’s property rights waned because the bill had been passed as a response to the needs of the poor, and this need had apparently been met. The fact that the bill of 1873 failed to muster a quorum of forty in the House of Commons no fewer than six times is eloquent testimony to this. Moreover, large numbers of men who had voted for the bill in 1870 voted against it in 1873 because they were satisfied with the measure of reform that had been passed. Why then was the law changed again in 1882?

In the first place, a string of judicial decisions showed that the 1870 act was not working as intended.111 In particular, a magistrate in Manchester decided that a wife could not sue her husband for stealing her property, even when they had received a judicial separation.112 This immediately allowed John Hinde Palmer, who had by this stage taken over as leader of the reformers in parliament, to claim that half-measures could not protect ‘poor married women whose earnings were wasted by drunken and dissolute husbands’.113 Secondly, creditors were lobbying intensively for changes in the law, as it was proving difficult to recover debts from married women.114 Third, as we shall see, the 1873 Judicature Act was

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112 *Manchester Evening News*, 13 Nov. 1878; *Salford Chronicle*, 23 Nov. 1878. The Married Women’s Property Committee reported that the woman concerned was also protected by a marriage settlement which had failed to restrain her husband, but this point was not picked up or developed by subsequent commentators. *The eight and ninth annual report of the Married Women’s Property Committee* (Manchester, 1879), p. 7.
113 *Times*, 10 June 1880, p. 6, col. a. Hinde Palmer was a barrister and Liberal MP for Lincoln, 1868–74 and 1880–4.
inevitably going to force changes in the common law’s treatment of married women’s property, and some coherent statement of the law would be useful. Finally, with a Liberal majority in the House of Commons and a government in which sympathizers like John McLaren were prominent, another dose of reform was sure to be passed by the House of Commons. The only question was, how radical would the reform be?

The 1882 Married Women’s Property Act extended the rules of equity to all married women’s property, and was therefore a triumph for the argument that the protection offered to the rich should be offered to the poor. But this was not the same as giving women the same rights as men, which did not happen until 1935. Parliament was bound to adopt this course because its hands were tied by the Judicature Act of 1873, which held that wherever equity and common law came into conflict the rule of equity should prevail. This meant that there was no point in parliament setting up a new rule of common law, because it would only be overridden by the rules of equity. An idea of what politicians would have done if their hands were not tied by this act can be gained from their reform of the Scottish law where this was not a problem.

Scottish law gave a husband two rights over his wife’s property: first the *jus mariti*, by which the title to personal property vested in him, and secondly, a right of administration over real property. The 1881 Married Women’s Property (Scotland) Act simply removed the *jus mariti*, giving a wife control of her personal property, but leaving the husband’s control over his wife’s land intact. This principle can be seen from a clause introduced by the select committee examining the 1881 bill which stated that ‘Any income of such estate shall be payable to the wife … and to this extent the husband’s right of administration shall be excluded; but the wife shall not be entitled to assign the prospective income thereof, or, unless with the husband’s consent, to dispose of such estate.’ John McLaren, the lord advocate explained:

> It had not been thought desirable that the control of the husband should be entirely withdrawn, or that such a measure of independence should be conceded as would be likely to cause dissensions or variance between husband and wife; and it was accordingly provided that the husband’s consent should be necessary to any sale or assignment of the wife’s property. In this way his legitimate authority was preserved.

Although the reform of the English law in 1882 appears radical, the reform of the Scottish law shows that parliament remained devoted to protecting male domestic authority among the wealthy. Yet, despite this, between 1870 and 1882

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115 McLaren was the Liberal MP for Wigtown, 1880, MP for Edinburgh, January–August 1881. He was lord advocate of Scotland, January–August 1881, before leaving parliament to become a judge. His mother was Priscilla Bright, who was an important member of one of the leading radical feminist networks of the time.


118 *Times*, 26 Apr. 1881, p. 6, col. a.
parliament removed one of the oldest doctrines of the common law. The law no longer gave husbands all their wives’ property as of right, and women’s ability to own and manage property was greatly increased, especially among the working classes. This was possible because it was assumed that the reform would not significantly erode the power of the husband, and because MPs were satisfied that the reforms would not affect their own households, given that the system of trusts remained unchanged.

However, it is important to realize that although politicians were anxious to preserve a husband’s authority they had firm ideas about the way in which that authority should be exercised. James Hammerton has shown that the second half of the nineteenth century saw mounting criticisms of men’s tyrannical behaviour, and that the advent of the Divorce Court drew the behaviour of middle-class men into this critique, leading to an assertion of a more ‘companionate’ (but no less patriarchal) ideal. The debates on the Married Women’s Property Bills show politicians trying to protect themselves from this developing critique. The violent exercise of male authority among the poor was condemned, but the mode in which authority was exercised among the ‘higher’ classes was protected and endorsed.

A crucial part of this process of self-defence was an attempt to distance the ‘higher’ classes from charges of abuse. This may help to explain why arguments about the poor dominated the debates in the way they did when alternative strategies were available. Arguments could have been made about the needs of middle-class women working as teachers, or writers; or of wealthy women who found themselves without settlements; or even the problems facing women with settlements. But to adopt such arguments would have required the men in parliament to engage with the idea that men of their own social class were neglecting or abusing their wives. Moreover, it would have justified altering the property-holding practices of the wealthy, with the attendant risks of disturbing the gender hierarchy and bringing discord into the homes of respectable Englishman. The emergence of a social model which simply compared the poor (where male behaviour was a problem) with the rich (where it was not) legitimated producing a measure of reform that left the wealthy relatively untouched. In this respect, in the short term at least, the Married Women’s Property Acts were a remarkable success for the men of the governing classes.

We have seen that by preserving the system of trusts the wealthy classes were able to opt out of a reformed common law which gave married women considerably more freedom than they had hitherto enjoyed. In this way rich and poor continued to be governed by different legal systems, yet MPs were able to present the Married Women’s Property Bills as removing class differences. This was because the debates were dominated by the claim that upper-class women were already protected (no matter how questionable this assumption), and that all that was needed was to

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119 Hammerton, Cruelty and companion ship, passim.
extend this same protection to the poor. Legislators sought to give the same protection to the poor that the courts of equity gave to the wealthy (albeit protection from different threats), and this did not necessarily involve offering the same legal procedures to all classes as long as women were equally protected. Focusing on the equal degree of protection afforded to women by these procedures, rather than the degree of female autonomy conferred by them, concealed the fact that the reforms created a two-tier system which was believed to safeguard male authority among the wealthy more effectively than among the poor. Paradoxically, then, politicians were able to present the continuation of class-differentiated law as the removal of class distinctions.

In this sense the debates on married women’s property were drawing on one of the dominant themes of popular liberalism: the idea that there was one law for the rich and another for the poor, and that liberalism would bring equality before the law. The form and passage of the Married Women’s Property Acts owed far more to this strand of liberalism than to a liberal individualist concern for women’s natural rights: indeed the one undermined the other. In this way the Married Women’s Property Acts offer a striking example of the complexity of the relationship between the women’s movement and liberalism, which has recently been the subject of studies by Jane Rendall and Martin Pugh. A recognition of the importance of this liberal rhetoric is essential in explaining the support that the Married Women’s Property Acts enjoyed from all sections of the Liberal party.

III

In the debates on married women’s property we see the men in parliament constructing melodramatic narratives in which they were the selfless heroes protecting women against brutal, drunken husbands. But when politicians could not construct such narratives they were less likely to pass radical reforms, and this can be seen by comparing debates on the Married Women’s Property Acts with the debates on the 1886 Guardianship of Infants Act. This measure was the result of one of the major feminist campaigns of the 1880s, and the original bill proposed to give mothers the same rights over their children as fathers, both during and after marriage. Once again the opposition was based on the idea that, as William Fowler

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121 See the references in n.73 and n.86.

122 This is an important qualification to Paul Johnson’s recent work; see Paul Johnson, ‘Class law in Victorian England’, Past and Present, 141 (1993), pp. 147–69.


125 A detailed examination of the debates on this act can be found in my unpublished MPhil thesis ‘Women’s rights, the family, and male legislators, 1880–1890’ (Cambridge, 1999), held in the Seeley Library, Cambridge.
said, the bill ‘declared that there should be two authorities in the household, equal and co-ordinate’. ‘That’, he said, ‘was the very way to create dissensions and disputes without end.’

That politicians were fearful of the effect that the bill could have on their own social order is obvious from the comments of men like John Walter, who feared that it might allow a wife to interfere with a father’s wish that his son ‘be sent to a public school such as Eton or Harrow’.

Unlike the matrimonial property laws, however, there was no obvious way to exclude the wealthy from the operation of the bill. This became clear when parliament had to discuss which courts should be able to make child custody orders that might limit paternal rights. In the first draft of the bill this jurisdiction was restricted to the High Court in England and Ireland, and to the Court of Session in Scotland. However, when James Bryce proposed to extend jurisdiction to the county courts and the sheriff courts, ‘to meet the case of poor persons who would be unable to afford the expense and time necessary to make applications to the Superior Courts’, he met with massive opposition.

Sir Farrer Herschell warned that though Bryce had said that his amendment ‘was to meet the case of poor persons, it could not be limited to that case. Every father under the bill might be dealt with by the County Court’. He therefore proposed that either party should be able to move the case to a superior court.

The county courts had been created to cater for the poor, and many MPs distrusted the quality of the judges and lawyers who practised there. Herschell’s plan betrays a clear awareness that men of wealth would find themselves in such a court fighting for custody of their children. Horace Davey and Charles Hopwood objected that, because a man would normally have greater resources than his wife, it would be possible that he could deprive her of justice by transferring their case to the more expensive superior court. However, such objections were rare. These discussions clearly reflect fears that women of the ‘higher’ classes might use the powers conferred by the bill to challenge the will of their husbands.

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128 Hansard, 291, col. 601 (25 July 1884). Despite the reservations expressed about the usefulness of Hansard in n. 4, in some cases Hansard is a superior source. Newspapers did not regularly report sessions when the House of Commons went into committee, whereas from 1878 Hansard employed a reporter specially to cover such proceedings. Jordan, ‘The reports of parliamentary debates’, p. 448. Bryce was the Liberal MP for Tower Hamlets 1880–5, MP for South Aberdeen, 1885–1906, and Regius Professor of Civil Law at Oxford.
129 Hansard, 291, col. 601–2 (25 July 1884). Herschell was the Liberal MP for Durham 1874–85; he was appointed lord chancellor, 1886.
130 See for example the remarks of Henry Ince, Hansard, 291, col. 1020 (29 July 1884).
131 Hansard, 291, col. 1021, 1022 (29 July 1884). Davey was the Liberal MP for Christchurch, 1880–5, MP for Stockton on Tees, 1886–92. He was appointed solicitor-general by Gladstone in 1886 and 1892 before becoming an appeal judge. Hopwood was the Radical MP for Stockport, 1874–85.
confronted with such a possibility, the needs of poor women were sacrificed and Herschell’s proposal was adopted.

The pamphlets promoting changes to the laws of infant custody are full of accounts of fathers abusing their privileges by depriving mothers of any contact with their children, often out of spite, and occasionally to blackmail the mother.¹³² But such tales of bad husbands, though also the staple of the parliamentary debates on property, are almost entirely absent from parliament’s discussion of the Infants Bill. Such topics appear to have been ignored in the House because, unlike the debates on married women’s property, it was not possible to argue that such abuses were found only among the poor. Not the least of the problems was that the debates took place shortly after two highly publicized cases of men abusing their rights involving Annie Besant, who was firmly middle class; and Harriet Agar-Ellis, whose father was a lord and whose husband was a former MP who would be known to many of the participants in the debates.¹³³

It is possible, every now and again, to see politicians attempting to re-establish the voice which had allowed them to comment disinterestedly on the Married Women’s Property Bills. Lord Brabourne urged the House of Lords ‘not to consider the question now before them as if it was one affecting only or principally the class to which they themselves belonged’.¹³⁴ ‘In that class’, he agreed, ‘the clause [extending the court’s ability to make custody orders] might, indeed, not be required.’ His example of a father who went on a drunken spree, leaving his wife to support the children before returning to blackmail the wife’s earnings out of her, was said to be exactly the sort of case which would affect the working classes.¹³⁵

But MPs could not escape the fact that, as W. E. Forster said, cases in which husbands abused their power occurred ‘often enough among persons in the position of life of Members of the House’.¹³⁶ John Ramsay started his speech by complaining that ‘the discussion had largely taken the form of reference to a class of persons who were in the position of members of the House’, and said that he desired to talk about the working class, but he then went on to discuss how the bill might complicate passing on real estate to a child – not a very working-class concern.¹³⁷

The inability to shield men of the upper classes from either accusations of abuse, or the proposed legal changes, could explain why parliament refused to remove the

¹³³ *In re Agar-Ellis, Agar-Ellis v. Lascelles*, 10 Chancery Division 49, 24 Chancery Division 317; *In re Besant*, 11 Chancery Division 508.
¹³⁴ Edward Hugessen Knatchbull-Hugessen, a former Liberal MP, lord of the Treasury and under-secretary of state for the Home Department.
¹³⁵ Hansard, 297, col. 1090 (30 Apr. 1885).
¹³⁶ *Times*, 27 Mar. 1884, p. 7, col. f. Forster was the Liberal MP for Bradford, 1861–83. He was vice-president of the council in Gladstone’s first ministry and chief secretary for Ireland, 1850–2.
¹³⁷ *Times*, 27 Mar. 1884, p. 8, col. a. Ramsay was the Liberal MP for Stirling, 1868, MP for Falkirk, 1874–86.
common law’s presumption that a father should have total control over his child’s upbringing. The House of Commons voted by 43 to 19 to remove the clause giving mothers the same rights as fathers during marriage. Rather than give women equal rights, parliament instead increased the courts’ discretion to make custody orders during the course of an ongoing marriage. Wives would therefore only be able to challenge the will of their husbands in exceptional circumstances, when a court agreed that there was a serious abuse to remedy and when it served ‘the welfare of the infant’. A small group of die-hards in the Commons tried to block even this change, while Earl Beauchamp, in the House of Lords, tried to limit the power to impose custody orders to cases where couples had separated – a move which was only narrowly thwarted by two votes. Even so, this clause was only acceptable to some because people like Thomas Collins, for example, thought that ‘the Judges, in nine cases out of ten, would side with the father’. Similarly, the bill’s original proposal to entitle a mother to appoint a guardian for her children after her death was amended so that such an appointment was only valid if a court was ‘satisfied that, having regard to the character or habits of the father or other grave cause, such appointment is desirable in the interests of such infant’.

In the case of married women’s property, parliament had been prepared to overthrow the guiding principle of the common law, safe in the knowledge that the ‘higher’ classes were protected from the effects of that change. When, in the case of infant custody, they could not privilege that group, the principle of male authority was left intact in all but the most exceptional circumstances.

IV

To conclude, then, male legislators opposed giving married women the same legal rights as men because they believed that male authority in the household was an essential component of masculine identity and was essential to preserving the home as a refuge from the public sphere. Simply dividing men into supporters and opponents of women’s rights conceals the widespread agreement on this point. Politicians agreed that husbands should not use their power tyrannically, but were also anxious to defend what they regarded as a crucial component of their masculinity. Whether they supported giving married women full property rights over other reform schemes depended on which measure they considered most consistent with retaining some degree of male authority.

At the same time, politicians were reluctant to accept that their own homes should be affected by changes to women’s rights, both because they feared that these changes would reduce their domestic authority and create discord in their homes, and because they did not think that the critique of male behaviour which

138 On the important question of ‘the welfare of the infant’ see Griffin, ‘Women’s rights, male legislators, and the family’, pp. 66–9.
139 Earl Frederic Beauchamp was a very high church Conservative peer.
140 *Times*, 27 Mar. 1884, p. 7, col. e. Collins was the Liberal Conservative MP for Boston, 1868–74, and MP for Knaresborough, 1881–4.
justified the reforms should apply to them or their class. Their ability to confine both charges of abuse and the effects of the acts to the poor was essential to the successful passage of the Married Women’s Property Acts. When they could not perform this trick – as happened in the debates on child custody – they were less likely to pass a substantial measure of reform.

Ironically, it was a liberal political discourse that to a great extent facilitated the abandonment of a liberal individualist proposal giving women equal rights, in favour of a measure confined to the poor. The Married Women’s Property Bills were more palatable to many politicians than they might otherwise have been because they meshed so well with Victorian liberalism’s interest in improving the morals of the poor. In addition, presenting the Married Women’s Property Acts in terms of removing legal inequalities between rich and poor both masked the fact that they upheld class differentials in the law, and helped to mobilize support for the reforms. This translation of demands for women’s rights from one liberal idiom into another was not without costs for the women’s movement, but it proved an essential condition for legislative change if the class and gender identities constructed by legislators were not to be an insuperable obstacle.