Marriage and the Law

H. L. Mencken

NO MORE than a century ago, even by American law, the most sentimental in the world, the husband was the head of the family firm, lordly and autonomous. He had authority over the purse-strings, over the children, and even over his wife. He could enforce his mandates by appropriate punishment, including the corporal. His sovereignty and dignity were carefully guarded by legislation, the product of thousands of years of experience and ratiocination. He was safeguarded in his self-respect by the most elaborate and efficient devices, and they had the support of public opinion.

Consider, now, the changes that a few short years have wrought. Today, by the laws of most American states – laws proposed, in most cases, by maudlin and often notoriously extravagant agitators, and passed by sentimental orgy – all of the old rights of the husband have been converted into obligations. He no longer has any control over his wife’s property; she may devote its income to the family or she may squander that income upon idle follies, and he can do nothing. She has equal authority in regulating and disposing of the children, and, in the case of infants, more than he. There is no law compelling her to do her share of the family labour: she may spend her whole time in cinema theatres or gadding about the shops as she will. She cannot be forced to perpetuate the family name if she does not want to. She cannot be attacked with masculine weapons, e.g. fists and firearms, when she makes an assault with feminine weapons, e.g. snuffling, invective and sabotage. Finally, no lawful penalty can be visited upon her if she fails absolutely, either deliberately or through mere incapacity, to keep the family habitat clean, the children in order, and the victuals eatable.

Now view the situation of the husband. The instant he submits to marriage, his wife obtains a large and inalienable share in his property, including all he may acquire in future; in most American states the minimum is one-third, and, failing children, one-half. He cannot dispose of his real estate without her consent; he cannot even deprive her of it by will. She may bring up his children carelessly and idiotically, cursing them with abominable manners and poisoning their nascent minds against him, and he has no redress. She may neglect her home, gossip and lounge about all day, put impossible food upon his table, steal his small change, pry into his private papers, hand over his home to the Periplaneta americana, accuse him falsely of preposterous adulteries, affront his friends, and lie about him to the neighbours – and he can do nothing. She may compromise his honour by indecent dressing, write letters to moving-picture actors, and expose him to ridicule by going into politics – and he is helpless.

Let him undertake the slightest rebellion, over and beyond mere rhetorical protest, and the whole force of the state comes down upon him. If he corrects her with the bastinado or locks her up, he is good for six months in jail. If he cuts off her revenues, he is incarcerated until he makes them good. And if he seeks surcease in flight, taking the children with him, he is pursued by the gendarmerie, brought back to his duties, and depicted in the public press as a scoundrelly kidnapper, fit only for the knout. In brief, she is under no legal necessity whatsoever to carry out her part of the compact at the altar of God, whereas he faces instant disgrace and punishment for the slightest failure to observe its last letter. For a few grave crimes of commission, true enough, she may be proceeded against. Open adultery is a recreation that is denied to her. She cannot poison her husband. She must not assault him with edged tools, or leave him altogether, or strip off her few remaining garments and go naked. But for the vastly more various and numerous crimes of omission – and in sum they are more exasperating and intolerable than even overt felony – she cannot be brought to book at all.

The scene I depict is American, but it will soon extend its horrors to all Protestant countries. The newly-enfranchised women of every one of them cherish long programs of what they call social improvement, and practically the whole of that improvement is based upon devices for augmenting their own relative autonomy and power. The English wife of tradition, so thoroughly a femme covert, is being displaced by a gadabout, truculent, irresponsible creature, full of strange new ideas about her rights, and strongly disinclined to submit to her husband’s authority, or to devote herself honestly to the upkeep of his house, or to bear him a biological sufficiency of heirs. And the German Hausfrau, once so innocently consecrated to Kirche, Küche und Kinder, is going the same way.

The Ethics of Women

I HAVE SAID that the religion preached by Jesus (now wholly extinct in the world) was highly favourable to women. This was not saying, of course, that women have repaid the compliment by adopting it. They are, in fact, indifferent Christians in the primitive sense, just as they are bad Christians in the antagonistic modern sense, and particularly on the side of ethics. If they actually accept the renunciations commanded by the Sermon on the Mount, it is only in an effort to flout their substance under cover of their appearance. No woman is really humble; she is merely politic. No woman, with a free choice before her, chooses self-immolation; the most she genuinely desires in that direction is a spectacular martyrdom. No woman delights in poverty. No woman yields when she can prevail. No woman is honestly meek.

In their practical ethics, indeed, women pay little heed to the precepts of the Founder of Christianity, and the fact has passed into proverb. Their gentleness, like the so-called honour of men, is visible only in situations which offer them no menace. The moment a woman finds herself confronted by an antagonist genuinely dangerous, either to her own security or to the well-being of those under her protection – say a child or a husband – she displays a bellicosity which stops at nothing, however outrageous. In the courts of law one occasionally encounters a male extremist who tells the truth, the whole truth and nothing but the truth, even when it is against his cause, but no such woman has ever been on view since the days of Justinian. It is, indeed, an axiom of the bar that women invariably lie upon the stand, and the whole effort of a barrister who has one for a client is devoted to keeping her within bounds, that the obtuse suspicions of the male jury may not be unduly aroused. Women litigants almost always win their cases, not, as is commonly assumed, because the jurymen fall in love with them, but simply and solely because they are clear-headed, resourceful, implacable and without qualms.

What is here visible in the halls of justice, in the face of a vast technical equipment for combating mendacity, is ten times more obvious in freer fields. Any man who is so unfortunate as to have a serious controversy with a woman, say in the departments of finance, theology or amour, must inevitably carry away from it a sense of having passed through a dangerous and almost gruesome experience. Women not only bite in the clinches; they bite even in open fighting; they have a dental reach, so to speak, of amazing length. No attack is so desperate that they will not undertake it, once they are aroused; no device is so unfair and horrifying that it stays them. In my early days, desiring to improve my prose, I served for a year or so as reporter for a newspaper in a police court, and during that time I heard perhaps four hundred cases of so-called wife-beating. The husbands, in their defence, almost invariably pleaded justification, and some of them told such tales of studied atrocity at the domestic hearth, both psychic and physical, that the learned magistrate discharged them with tears in his eyes and the very catchpolls in the courtroom had to blow their noses.

Chapter 29 and edited Chapter 41 of H. L. Mencken, In Defense of Women (1920).