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JOHN CLELAND'S REPRESENTATIONS OF CRYING OUT AND FEMALE

SELF-OWNERSHIP IN *MEMOIRS OF A WOMAN OF PLEASURE*

by

MELLISSA BLACK

A THESIS

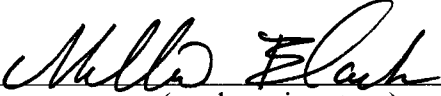
Submitted in partial fulfillment of the requirements
for the degree of Master of Arts
in
The Department of English
to
The School of Graduate Studies
of
The University of Alabama in Huntsville

HUNTSVILLE, ALABAMA

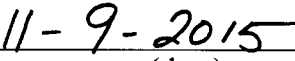
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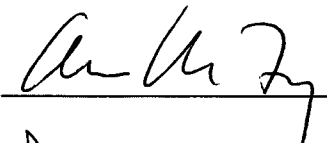


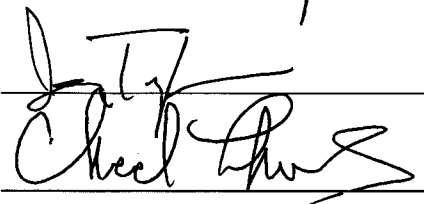
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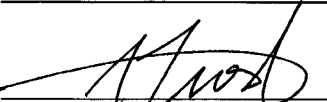
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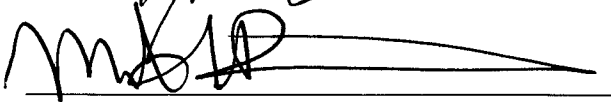
Submitted by Mellissa Black in partial fulfillment of the requirements for the degree of Master of Arts in English and accepted on behalf of the Faculty of the School of Graduate Studies by the thesis committee.


We, the undersigned members of the Graduate Faculty of The University of Alabama in Huntsville, certify that we have advised and/or supervised the candidate on the work described in this thesis. We further certify that we have reviewed the thesis manuscript and approve it in partial fulfillment of the requirements for the degree of Master of Arts in English.

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ABSTRACT

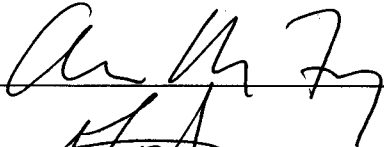
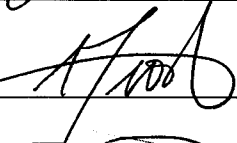
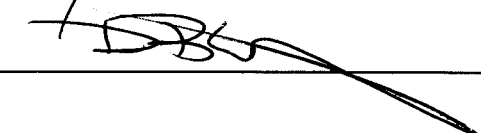
The School of Graduate Studies
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Degree Master of Arts College/Dept. English

Name of Candidate Melissa Black

Title John Cleland's Representations of Crying Out and Female Self-Ownership in
Memoirs of a Woman of Pleasure

This work posits that *Memoirs*, although often viewed as simple pornography, pointedly reveals the failings of eighteenth-century rape law to protect women. Cleland's sex scenes not only titillate his readers, but also represent the markers of consent, force, and penetration typical of common law. Fanny Hill describes the victim's ability to make utterance and the volume of each sound, mirroring the common law's need for women to demonstrate active resistance by crying out. Thus, Cleland troubles the prevalent eighteenth-century notion of silence as consent. Furthermore, I argue that Cleland ties a woman's ability to resist actively sexual advances, through utterance, to her perception of self-ownership, because a woman must own her body to claim a right to her own sexual agency. Sexual agency gives Fanny Hill the ability to enter into marriage as an equal to her male partner, Charles.

Abstract Approval: Committee Chair 
Department Chair 
Graduate Dean 

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Without my family's support this project would not have been possible. Thank you to my children, because you always believed in me and my dream.

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TIMELINE: JOHN CLELAND AND *MEMOIRS OF A WOMAN OF PLEASURE*

1710- John Cleland born to William Cleland and Lucy DuPass Cleland

1715- Robert Walpole becomes 1st Lord of the Treasury and Chancellor of the
Exchequer

1717- Walpole leaves the Sunderland/ Stanhope administration

1719-*Robinson Crusoe* by Daniel Defoe published

1720- Walpole becomes the paymaster general

1721-Cleland enrolls at the Westminster School

Walpole becomes first Prime Minister of Great Britain

1722- *Moll Flanders* by Daniel Defoe published

1723-Cleland withdraws from Westminster School (unknown reasons)

1726-*Gulliver's Travels* by Jonathon Swift published

1728-Cleland arrives in Bombay as soldier in service of British East Indian Company

The Dunciad by Alexander Pope published

1730-Cleland begins writing *Memoirs* in collaboration with Charles Carmichael

1733-Death of Charles Carmichael (24 July)

1734-2 Legal Cases:

William Boag (decided in favor of Cleland in September 1735)

Henry Lowther and Robert Cowan (decided in favor of Cleland 1736)

1740- Samuel Richardson's *Pamela* published

1741- Cleland arrives in London

Henry Fielding's *Shamela* published

1748- Cleland arrested and Imprisoned for debt to Thomas Cannon

Samuel Richardson's *Clarissa* published

1749- *Memoirs of a Woman of Pleasure* published

8 November- Cleland confined to Samuel Gray's house

1759- *Candide* by Voltaire published

1789- John Cleland dies

1791- James Boswell's *The Life of Samuel Johnson* published

1963- Peter Quennell's edition of *Memoirs* published

1966- The Supreme Court of the United States deems *Memoirs* legally publishable

CHAPTER ONE

INTRODUCTION

When I first encountered *Memoirs of a Woman of Pleasure* (1749),¹ known as *Fanny Hill* in popular culture, the novel appeared on the syllabus for an intellectual history of free speech class. John Cleland's work sat under the section heading of obscenity with other erotic texts, such as *Venus in the Cloister* (1725).² Studying this novel's pornographic nature is not a new endeavor, nor is it invalid; however, the way a syllabus categorizes a work guides the reader's interpretation of the material. Thus, quite naturally, the sex scenes in *Memoirs* drew my focus. After all, *Memoirs* is pornography.³

¹ For brevity, *Memoirs of a Woman of Pleasure* will appear as *Memoirs*. To avoid confusion, I will only refer to the main character as Fanny Hill and not the novel. However, critics that are engaged may refer to the novel as *Fanny Hill*.

² *Venus in the Cloister* is an erotic dialogue in which an older nun schools a younger nun in sexuality.

³ "Pornography" is a term anachronistic to the eighteenth-century. However, many have applied the term to this novel. The *Oxford English Dictionary's* first entry is dated to 1842 and is "[t]he explicit description or exhibition of sexual subjects or activity in literature, painting, films, etc., in a manner intended to stimulate erotic rather than aesthetic feelings; printed or visual material containing this" (def. 1a). Furthermore, "pornography" more simply is a "study of prostitution" (def. 2).

But upon closer inspection, Cleland's text does not match the language of titillation and pleasure commonly expected of an erotic text, and this mismatch troubles reading *Memoirs* as simply an obscene story with not much else to offer. Along with reoccurring violent language, Cleland pays particular attention to female utterance during each sex scene. In a move that mimics the language of rape trials in eighteenth-century London, Fanny gives testimony to instances of crying out in her own sexual liaisons and those of fellow prostitutes.⁴ To the eighteenth-century courts, crying out is a sign of active nonconsent and emphasizing crying out helps Cleland narrate the problematic nature of the common law's reliance on active resistance of rape victims. Violence and nonconsent are associated usually with assault and pain, and likewise, consent with pleasure. Thus, by eighteenth-century standards, Fanny's crying out should indicate her nonconsent and pain, but rather, often indicates her consent and pleasure.

Throughout Fanny's sundry sexual adventures from lesbianism, voyeurism, sadomasochism, to male-male intercourse, violent language remains ever present—from scenes that modern readers have no trouble labeling rape to those scenes that supposedly present a loving encounter. In an especially troubling moment, Fanny gives herself freely to Charles, a man whom she professes to love, while she refers to the sex act as an assault:

Being now too high wound up to bear a delay, he
unbutton'd, and drawing out the engine of love-assaults,
drove it currently, as at a ready-made breach: then! Then!
For the first time did I feel that stiff horn-hard gristle,
battering against the tender part; but imagine to yourself his
surprise, when he found, after several vigorous pushes,

⁴ *Memoirs* is an epistolary novel, and thus, Fanny gives testimony to her life's events to the recipient of the letters that make up the novel's text.

which hurt me extremely, that he made not the least impression. (Cleland 40)

This is a love scene, and yet, Charles's "love-assaults" give Fanny no pleasure (40). The encounter is couched in terms of pain. Not only does Charles assault Fanny, but also he batters against her, waging in a sexual war of conquest. Fanny is not hurt a small amount, but she is "extremely" hurt, and all the while, Charles seems to not even consider his supposed love's condition, making "not the least impression" (40). The violent language surrounding Fanny's loss of virginity causes the moment to evoke more pain than pleasure and appears at first less like a truly consensual act than a moment of pure conquest. Fanny goes further and describes her utterances during the act:

I complain'd, but tenderly complain'd; "I could not bear it—" Indeed! he hurt me—still he thought no more than that being so young, the largeness of his machine (for few men could dispute size with him) made all the difficulty, and that possibly I had not been enjoy'd by any so advantageously made in that part as himself; for still, that my virgin-flower was yet uncrop'd never once enter'd into his head, and he would have thought it idling with time and words to have question'd me upon it. (40)

Fanny complains about the painful intercourse, but she says she tenderly complained. The text is ambiguous. In one way, Fanny negates the pain by tenderly complaining, but in another way, Fanny may point to the fact that she did not complain loudly enough to make Charles stop his assault. If this second reading is the case, Charles takes Fanny despite her complaining. This persistence despite Fanny's pained utterances troubles the idea that this is a depiction of loving sex between two consenting partners. Charles never once thought of Fanny as a virgin, or as a flower "uncrop'd," and he never took the time to even ask (40). This is how Charles became the "murderer of my [Fanny's] virginity"

(41). Again, this language is violent and not as tender as one might expect from a consensual sexual encounter by two lovers.

In a similar episode, one much easier from our modern perspective to call attempted rape, violent language marks in the encounter between Mr. Crofts and Fanny. Their meeting comes before Fanny meets Charles in the novel, but the language is comparable, and Fanny obviously does not wish to have sex with Mr. Crofts. When Fanny's virginity is first sold, while living in Mrs. Brown's brothel, to an "ugly, and disagreeable" Mr. Crofts, Fanny resists his attempts to take that for which he has paid (15). In a manner like Charles's "love-assault," Fanny calls Mr. Crofts' attempt to mount her an "attack" (19). Fanny does not wish to have intercourse with Mr. Crofts, but the language of attack remains the same as that used with the man she supposedly gives herself to freely. Furthermore, with Mr. Crofts, Fanny has "not the power to speak, or cry out," and she is reduced, at first, into a state of compliance and silence (18). As with Charles, Fanny feels she "could have skream'd out," but stuffs a petticoat into her mouth to avoid the crying out (41). In the end, with both Charles and Mr. Crofts, Fanny ends up screaming out. This screaming or crying out represents a moment of resistance to sex in the eighteenth-century, but Cleland uses this type of excited utterance to trouble what is usually defined in literary sexuality—a separation of rape from consensual sex.

These parallel uses of violent language and of crying out challenge common conceptions of *Memoirs* as being a novel of mere titillation. This violent language subverts the expectations that sex scenes will only include pleasurable language. Moreover, *Memoirs'* focus on the utterances of women, most specifically Fanny, point to Cleland being an author interested in exploring the perspectives of women. I argue that

Memoirs is a feminist text that promotes the equality of women. Instead of this violent language leading to the degradation of women, often it appears to illustrate the failings of the eighteenth-century legal system and society to protect these women from harm by showing that rape is not so easily defined as presented in the common law. These complicated sexual encounters prompt an inquiry to uncover what Cleland attempts to show with his use of violent language.

Pushing this idea one step further, Cleland appears to comment on the common law's flawed use of evidence in matters of rape by representing situations in which the expectations of evidence are subverted. An example of this is the crying out. If Fanny gives herself to Charles willingly and she uses the language of resistance that she uses with Mr. Crofts, a man who does try to take Fanny's virginity without consent, perhaps, Fanny's utterance in each circumstance illuminates a problem in one of the most important pieces of evidence that rape courts require. This problem of crying out as evidence harms women who bring their cases to trial, for consent and active nonconsent begin to appear the same when described in the same language and makes providing proof during trial more difficult. To have the ability to consent or resist, Fanny must have ownership of her own body. Since Fanny is a prostitute and of course a woman, ownership is not evident as readily in eighteenth-century England as in the twenty-first century. Cleland's text shows a way for a woman to own her own body; because in the end of the novel, Fanny finds her way to independent wealth and therefore, power through property. By depicting a woman who owns herself and who owns property, Cleland touches on the natural rights of women and what these natural rights should look like in practice in eighteenth-century England.

Cleland is not expressly interested in presenting a male sexual fantasy in his novel, as scholars such as Anne Robinson Taylor and Patsy S. Fowler posit, and he also demonstrates the traits of an author intensely interested in the plight of women. Not only is the text feminist, but it also advocates for social and political change in the treatment of women. Cleland illumines the law's failure to adequately protect women, and these same failures are up for current debate in this country's move to change rape law to better serve victims. By reading the text in this manner, Cleland's ideas of property challenge the common eighteenth-century perceptions of patriarchal property. In addition, perhaps surprisingly, Cleland's critique of rape common law anticipate and reflect current moves by feminist rape victim advocates to change the rape law in the United States.

Chapter Two presents *Memoirs*' scholarly history. It lays out a brief history of the text's battle with obscenity laws and surveys the text's scholarly reception during the last forty years. Feminists find themselves split on the novel's depiction of sex—some finding the text as phallogentric while others touting the novel's tendencies toward female empowerment.

Through close reading, Chapter Three highlights Cleland's conceptions of rape through his use of violent language in scenes of sexual pleasure and sexual pain. Cleland uses crying out to show the problematic nature of the way the eighteenth-century raped law actually worked. Women were expected to show active resistance by crying out. Cleland shows the ways that this crying out does not work properly as a standard. Anticipating modern rape reform, Cleland shows that consent, force, and penetration are evidentiary standards that are flawed and are detrimental to women.

Chapter Four offers an examination of the way *Memoirs* follows Fanny through a journey of self-ownership. She begins the novel as an orphan, owned by no one, goes through a period of being owned by the men in her life, to a place where she has agency and ownership of her own mind and body. Reading the text as a journey of self-ownership makes the “tail-piece of morality” an empowering end for Fanny, showing the text to not be a phallogentric fantasy but a feminist commentary on patriarchal eighteenth-century England (187).

CHAPTER TWO

THE RECEPTION OF *MEMOIRS* AS OBSCENE MALE FANTASY

John Cleland is most famous and infamous for writing a novel entitled *Memoirs of a Woman of Pleasure*, commonly known as *Fanny Hill*.⁵ Many scholars have debated whether Cleland's novel about the adventures of a young prostitute's sexual journey offered more than sexual titillation. For some decades, legal battles drove the discourse on the work. Nine months after Volume Two of *Memoirs* was published Cleland was arrested for obscenity (Gladfelder 52). When the expurgated edition of *Memoirs* was published in 1750, Cleland found himself once again arrested. While Cleland was never prosecuted officially for obscenity, *Memoirs* made a name for itself as an obscene text (xi). *Memoirs* is an epistolary novel, in two volumes, professed to be written by a reformed prostitute about her sexual adventures that led her from a life of vice to a life of virtue. Recently orphaned, Fanny Hill a fourteen-year-old country girl travels to London

⁵ Since the unexpurgated version of *Memoirs* spent many years out of legal publication, the text is often known by its expurgated name of *Fanny Hill*.

to seek her “fortune” (Cleland 3). While in London, Fanny meets a bawd named Mrs. Brown, who hires Fanny under false pretenses. Instead of working as Mrs. Brown’s maid, the bawd initiates Fanny into the sex trade. Fanny finds herself indebted to this way of life and unable to leave it for more legitimate professions. Through a plethora of sexual adventures, from lesbianism, voyeurism, sadomasochism, to gay male sex, Fanny learns to find her own form of pleasure, becoming independently wealthy in the process. In the end, Fanny reunites with her one true love Charles, whom she marries.

While the story may seem innocent enough when described in simple terms, Cleland writes Fanny’s sexual adventures with copious amounts of detail. These sexually explicit scenes are the reason courts deemed *Memoirs* obscene, especially the male-male sex scene. In many expurgated editions, this scene of male intimacy is removed.⁶ Despite this troubled history, the work and the author survived. Not once has the novel (in one of its various versions) been out of print since its first coming on the market in 1749.⁷ Labeled as nothing more than pornography and obscenity, *Memoirs* was “[f]or over two hundred years . . . widely read but scarcely considered in formal criticism” (Sabor,

⁶ For a thorough examination of the way sodomy laws affected *Memoirs* legal standing, see Gladfelder 81.

⁷ *Memoirs* has a long publishing history, in various versions and incarnations, and as Sabor tells us, “Several hundred editions have been published” and in several languages (German, Italian, Portuguese, Spanish, Dutch, Danish, Hungarian, and Slovene) (vii).

Introduction xiv).⁸ During the twentieth century, an age dominated by discussion of the Anglo-American canon, these labels of obscenity caused many critics to ignore the book except in cases where the legality of such works was up for debate. Scholars have overlooked the book in part because they could not obtain unexpurgated editions of the text and in part because many, in uncritical moralization, condemned pornographic texts as not worthy of study. This chapter will survey the main areas of criticism relating to *Memoirs*' pornographic and obscene history in order to trace how scholarship continues to move past the debate of legality. I will begin with a review of eighteenth-century reception of the work, before concluding with a feminist overview of Cleland's depictions of sexuality.

Original Reception

Penned from inside the walls of the Fleet Prison, wherein Cleland resided for failure to pay debts, *Memoirs* began life as a text troubled with legal problems, and those troubles continued into the twentieth-century. The picture is clear that from the start legal

⁸ The words "pornography" and "obscenity" do not mean the same thing and cannot be used interchangeably, though pornographic texts are often found by courts to be obscene. The trend to define works by these categorizations is a relatively new concept. People in the eighteenth-century would not necessarily have used these terms the same way that we do now. To contemporaries living in the eighteenth-century, pornography would have meant a text about prostitutes. In a more modern conception, Julie Peakman defines "pornography" as "that which is prohibited" (5). Pornography then carries a social stigma. In the same token, "erotica" are works in which "the authors and publishers had in mind to provide the reader of their wares with sexual stimulations" (5). Pornography thus becomes a part of erotica, and erotica the overarching term. Subsequently, Geoffrey R. Stone defines "pornography" as "material that excites sexual arousal," and "obscenity" as "pornography that is made illegal because of its sexual content" (65). See Stone for a thorough examination of obscenity through the centuries.

proceedings and value judgments plagued this novel. Despite Cleland's effort to write *Memoirs* without use of blatant sexual language, the sex scenes remain graphic.⁹ As William Epstein, biographer of Cleland, points out that "in the circumlocution of Cleland's euphemistic style, is perhaps the key to why the principals involved were not apprehensive of the 'danger of the Law' when they published *Memoirs*" (Epstein 77). Whether Cleland used euphemistic language to circumvent prosecution is beyond knowledge currently, but we do know that he was not able to avoid trouble with the courts. In November of 1749, Thomas Newcastle, Secretary of State, issued a warrant for Cleland and, his publisher, Griffiths for obscenity because of the male-male anal intercourse scene (75). As Gladfelder remarks, "Virtually every moral commentator on the supposed growth of sodomy in the early to mid-eighteenth-century justifies the campaign against it on the basis of the danger it poses to Britain: it is a crime not just against nature but nation" (57). Shortly afterward, Lovel Stanhope, a friend of Cleland's and Newcastle's law clerk, paid to have Cleland released from jail. The following March the expurgated version of *Memoirs* was published. In February and March of 1749/50, actual earthquakes shook London. This prompted the bishop of London, Thomas Sherlock, to strike out at those whom he thought had brought on this "divine retribution" in the form of earthquakes (Epstein 80). As a result, Sherlock wrote in a letter to Newcastle that *Memoirs* was "the Lewdest thing [he] ever saw" (qtd. in Epstein 80). Furthermore, Sherlock asked Newcastle "to give proper orders, to stop the progress of this vile Book, which is an open insult upon Religion and good manners, and a reproach

⁹ Cleland wrote *Memoirs* as a copy of the French erotic dialogue *L'École des filles*, which had coarse language. For information about the origins of *Memoirs*, see Epstein 77 and Gladfelder 16.

to the honour of the Government, and the Low of the country” (qtd. in Epstein 80). On the sixteenth of March, Cleland and Griffiths were again arrested for publishing a version of *Memoirs*. The records are not clear about what happens to the pair after their arrest, but Cleland ends up with a pension, supposedly given to stop him from writing such works due to his poverty again (Epstein 82). The earthquakes and the bishops of London changed the face of obscenity law, directing attention at those who produced bawdy books (80). *Memoirs* definitely found harsh criticism from those installed in religious and political positions.

Cleland’s book did find some favor amidst all the turmoil. Peter Sabor, editor of Oxford’s unexpurgated version of *Memoirs*, tells us that during Cleland’s lifetime the work only received two official reviews. Not surprisingly, the first review (and most glowing) came from Ralph Griffiths, himself. Griffiths reviewed the expurgated version “which he contrasted favourably with the ‘very loose’ original version” (Sabor, Introduction xiv).¹⁰ Not only did Griffiths have a stake in making money from the book, he also wanted to remain out of prison. Griffiths published this review to show how much cleaner the expurgated version was and how he denounced the original edition. Claude-Pierre Patu, a friend of Cleland’s and a French dramatist, also gave the book a favorable review in 1755. Patu, who translated the text into French, says that “for imagination, painting, force, and heat of style, few others have it over the *Memoirs*,” but on the other hand, some excerpts are “not very suitable for extracting much less for translating” (qtd. in Sabor, Introduction xv). These two male critiques may of course be disregarded as

¹⁰ Although “G. Fenton” appears on the book’s title page, scholars agree that Griffiths was the publisher. See Gladfelder 50.

biased reviews; however, there are some women from the period that thought highly of the work as well.

Men ran the governmental proceedings, were installed in positions of religious authority, and even wrote most of the literary reviews. In a work about a woman's sexuality, the reviews of women living contemporary to Cleland are as important or more important in a discussion about *Memoirs*' merits. Brigid Brophy wrote in the *Mersey Sound* in 1750 that "the most remarkable thing about these 'memoirs of a woman of pleasure' is that the pleasure concerned is Fanny's." Brophy's acknowledges the text's attention to a woman's sexuality (xvii). Similarly, in *The Observer*, Marghanita Laski "admires Cleland's success in depicting 'a woman's sexual feelings'" (xvii). At least two women found Cleland's representation of female sexuality refreshing. Cleland himself, however, found *Memoirs* was "a Book [he'd rather] disdain to defend, and wish, from my [his] Soul, buried and forgot" (qtd. in Gladfelder 143). Since the book caused him numerous legal problems, the attitude is not hard to understand. Perhaps, these words found in a letter to Stanhope reveal a man who wished to distance himself from a work that might incarcerate him, but there is no way to know definitively. Despite the way many, including Cleland himself, viewed *Memoirs*, the novel failed to go unpublished and has never been out of print in one form or other since its first edition.

***Memoirs* as a Banned Text**

The novel's circulation, especially expurgated editions, remained healthy, while criticism on the work evaporated, leaving the text undisturbed by academia for many

years. *Memoirs* was banned in England and America until the twentieth-century.¹¹

Before scholars examined *Memoirs*' content specifically, academics had to make a case for the work's literary merit. *Memoirs* was banned in America, so scholars had to use expurgated versions of the novel to analyze until a critical 1966 Supreme Court decision deemed the unexpurgated version legal. Three decades prior, in 1935, Ralph Thompson published his article "Deathless Lady," in which he tackled the idea of longevity as evidence of literary merit.¹² Thompson writes, "Literary longevity is often accepted as the test of literary merit . . . Yet *Fanny Hill* should serve to show that quality and permanence do not always go hand in hand" (207). Thompson's view reflected a general feeling that the novel was not fit to be read, and yet by the end of the article he seems to praise the popularity of the text. Since the book was banned, Thompson most likely used an expurgated edition. And Thompson notes that "the first edition ha[d] never been positively identified" (209). Furthermore, Thompson illuminates a major problem in studying *Memoirs*: "For the very reason that the novel still flourishes, the information necessary to a thorough study is not available" (220). The sexual nature of the book at once stimulates public consumption and hinders academic examination. Lamenting the enemies of the novel—the law, the repentant purchaser, and time—Thompson concludes

¹¹ For a full history of *Memoirs* banning, see Reno and Sabor, "From Sexual Liberation" 562. See Rembar 21 for a thorough examination of the precedence setting Comstock Act of 1873 on standards of obscenity in America.

¹² Thompson's article includes a biographical sketch of Cleland's life and a history of the novel's travels to America. While there is not a clear cut reason for the book's arrival in America, its publishing history is "connected with one of the most respectable literary figures of the post-Revolutionary period—Isaiah Thomas of Worcester, Massachusetts" (215). Somewhere between 1786-1814, Isaiah Thomas published an edition of the novel, and in 1818, two were arrested for selling an edition of *Memoirs* in America (215, 218).

by saying, “the book has won its long life not because professors praise it in classrooms and critics acclaim it in the press, but because a vast and heterogeneous reading public, despite official discouragement, has for generations found it delectable” (220).

Purposefully, Thompson avoids moralizing about the book’s contents and instead tackles only its ability to stay alive due to the appetites of readers.

Just three years after Thompson’s article, Huntington Cairns, assistant general counsel for the Treasury Department (1938), published an article that would forever link *Memoirs* with the fight for freedom of expression. For *Memoirs* to be openly available on the market, the book had to be readily available and free from the stigma and illegality of obscenity. The movement to allow free expression in literature began in the 1930s, it met significant opposition. In his article, Cairns argues that a line must be drawn between what is obscene and what is mundane, and “if the line must be drawn—and in practical politics the task is inescapable—we can draw it around only pornography with the largest possibility of minimum damage and maximum effectiveness” (87). Cairns, then, specifically attacks the merits of *Memoirs*, strangely critiquing its style rather than decrying its displaying of sex, Cairns find *Memoirs* “is too dull to be read in its entirety even by students” (87). Furthermore, Cairns goes on to argue that “there is no difficulty in distinguishing between those books the impulse behind which is literary and those whose impulse is pornographic” (87). My intention is not to enter into this debate in a general sense at this time, only to show its existence. Whether one agrees or disagrees with Cairns’ article, it shows that conversations were beginning to blossom on the nature of free expression in art, and these conversations led to a cultural climate where *Memoirs* found unfettered publication.

Decades passed until *Memoirs* sparked a public and legal debate on what it means for a work to be obscene. American publisher Putnam's produced a commercial *Memoirs* edition, edited by Peter Quennell in 1963 (Sabor, "From Sexual Liberation" 562). The edition appeared before the New York State Supreme Court in August of 1963, and was finally cleared by the Supreme Court's ruling in March of 1966 (562). For the first time since its first publishing, *Memoirs* found the freedom to be printed and read by the general public in America. England was however a different story. In 1963, the director of public prosecutions ordered all unexpurgated copies of the novel seized (Sova 45). A year later, British courts deemed the book obscene and all copies destroyed (46).

Turning Point in Scholarship

Two scholars changed the scope of scholarship on *Memoirs*, elevating the text beyond its obscene label. In 1970, Leo Braudy boldly claims that "Cleland through Fanny is transmuted into the first feminist" (37). Braudy argues that Cleland uses the world of sexuality to make men and women equal; and, as the voice of Fanny, Cleland transforms into a being with the exuberant sexual nature usually associated with women (37). Braudy examines Cleland in light of French natural philosopher Julien Offray de la Mettrie's *l'Homme machine*. In this approach, Braudy insists that Fanny is not only an attack on Samuel Richardson's moralism, in his popular epistolary novels, but also a

“defense of the materialist view of human nature” as espoused by La Mettrie (22).¹³ To La Mettrie, the mind and body compose one substance, and Braudy sees this mind-body combination echoed in *Memoirs*. Braudy also sees La Mettrie’s philosophic naturalism reflected, for example, in Fanny’s use of the word “machine” to refer to the penis (29). Cleland uses pornography as a “didactic form to stand beside both satire and the novel” (32). Braudy recognizes Cleland’s purposeful use of pornography as a genre instead of as a device for pure titillation, and he recognizes the problem with analyzing such a sexually explicit text:

Fanny Hill presents an uncomfortable problem to both the theorist of pornography and the historian of literature; it has too broad a sense of social milieu and literary tradition of the writer interested in describing the “pure” elements of pornography as a literary genre, and it has too much erotic content for the literary historian to treat it with much seriousness. (21)

The inability to place this novel solely in one category caused scholars at this point in history to fail, not knowing how to examine the text. Thus, obscenity becomes the sole focus. Braudy recognizes *Memoirs*’ tendency to follow many “above ground” trends in eighteenth-century fiction than previously observed (21).

Michael Wilding offers another turning point by linking *Memoirs* to *Paradise Lost*. Wilding argues that Cleland’s use of the phrase “nothing loth” echoes the same usage by Milton for Adam’s speech on the beauties of Eve (14-15). This link is important because, for Wilding, it elevates the novel’s status to the same category as Milton’s highly regarded work of literature, and “epitomizes Cleland’s new standing; within less

¹³ Samuel Richardson is the author of *Pamela*, *Clarissa*, and many other works. His novels represent a tradition of glorifying virtuous women. Scholars have traditionally placed *Memoirs* in a category with other anti-Pamelist works. Anti-Pamelists being those who mock Richardson’s heroines allegedly feigned virtue. See Epstein 99-101.

than ten years *Memoirs of a Woman of Pleasure* had moved from being an underground text to one that could keep company with Milton” (Sabor, “From Sexual Liberation” 563). In less than ten years since the Supreme Court deemed *Memoirs* legal, Wilding puts *Memoirs* in line with a canonical text, elevating its status to that of a work of literature.

Feminist Criticism of *Memoirs*

Current feminist critics of *Memoirs* base their work heavily on other feminist work in the area of pornography. Behind many scholarly readings of Cleland are questions raised by feminists about pornography and its effects on women. Pornography is a topic with a spectrum of viewpoints, ranging from those who denounce the exploitative nature of the genre to those who advocate appropriation to further the feminist cause.¹⁴ Generally, those who find pornography a valid form of expression do so because pornography offers a way to empower women sexually. Those opposed to pornography usually cite the negative effects of a genre built for denigrating women in exploitative fashions. Feminists who oppose pornography often read *Memoirs* as a phallogocentric text, reinforcing patriarchal and heteronormative modes of sex and marriage. On the other hand, feminists who advocate for the use of pornography often read *Memoirs* as advancing the cause of women.

As part of the opposition to the genre, Andrea Dworkin and Catharine MacKinnon represent the basis for the feminist critique of pornography, because they

¹⁴ For more on feminists and pornography, see Diamond, Dworkin, Griffin, King, Kotash, and Stoltenberg.

redefined the term “pornography.”¹⁵ In an extensive piece, “Questions and Answers,” the pair gives an overview of the harmful nature of pornography. They remain steadfast in their argument that “there is massive evidence that pornography is not only a symptom of misogyny but an active agent in generating woman-hating acts and second-class status for women” (Dworkin 83). Thus, pornography degrades women and generates hatred toward them. These feminists back the idea of making pornography illegal to protect women from violence, from submission, and from losing their femininity completely.

As an advocate for the genre, Nadine Strossen re-appropriates the definition of pornography and defines it as “a depiction of erotic behavior designed to cause sexual excitement,” removing Dworkin and MacKinnon’s additions of subordination of women (18). Strossen quotes Sallie Tisdale’s words to further her own thoughts on pornography:

Catherine MacKinnon and Andrea Dworkin . . . are themselves prurient, scurrying after sex in every corner. They look down on me and shake a finger: *Bad Girl. Mustn’t touch.* That branch of feminism tells me my very thoughts are bad. Pornography tells me the opposite: that *none* of my thoughts are bad, that anything goes . . . The message of pornography . . . is that our sexual selves are real. (qtd. in Strossen 161)

Strossen celebrates the sexual materials that show females participating in sexual acts with men equally because the women want to have sex (162). Furthermore, pornography allows women to attain sexual gratification on their own without men (166). Strossen argues that women can and do distinguish between real rape and imagined rape, allowing for fantasy experiences for women as well as men. Furthermore, pornography serves a

¹⁵ In a 1983 Minneapolis ordinance, Dworkin and MacKinnon redefined pornography as “the sexually explicit subordination of women, graphically depicted, whether in pictures or in words.” They go on to say that pornography “is a form of discrimination on the basis of sex.” See Burstyn 206-208.

political purpose “allowing viewers to express rebellion and individuality” and may empower women who want power instead of powerlessness (174).

Kathleen Lubey takes up this argument of pornography as a “constructed image” as well (116). Performers enact sexual acts in pornography, and there is “no such thing as a ‘full,’ ‘natural,’ or private sex act” in pornography (117). The viewer is exterior to the sex act, and he (or she or they) is the one consuming the pleasure (118). Pleasure is only gained by the viewer if that viewer knows they are removed from the action (121). To Lubey, pornography is not sex, and the subject can only get an erection by knowing that fact. Thus, sex in pornography can out heterosexual sex acts that are a “spurious charade of maleness and femaleness” (128). Furthermore Lubey expresses the need to not dismiss pornography as a “site of cultural expression simply because it is centered primarily around the sex act,” for “the ways in which that arousal is sanctioned explain the conditions, the debates, the settings, and the stories that mobilize desire” (128). In other words, to understand culture pornography must be examined and studied and making pornography illegal would hinder this endeavor. Strossen and Lubey push the feminist viewpoint farther than their predecessors, showing that pornography promotes female sexuality, empowers women, and depicts the sanctioned modes of arousal within a given society. Thus, the feminist debates covers all territory between hate and love for pornography—from those who want to illegalize the genre, to those who want to appropriate it, to those who wish to celebrate it. These complex and various views on pornography slant the way feminists treat John Cleland and *Memoirs*.

Similar to the feminist debate on pornography’s merits as a genre, feminist readers of Cleland form two distinct groups—those who see *Memoirs* as a phallogentric

(in some cases misogynistic) text that promotes the patriarchy, and those who see *Memoirs* as a text that empowers women. Thomas Alan Holmes critiques Cleland's descriptions in *Memoirs* of the passive attitudes of women after sexual conquest. To Holmes, women in *Memoirs* function sexually as either a willing sacrifice to nature or as "a passive creature who cannot later express enough appreciative gratitude to her ravisher," making assault a heteronormative experience that cannot be avoided (124). Holmes feels that Cleland privileges male-female sex in an attempt to idealize patriarchal culture (125). Furthermore, Holmes asserts "there can be no doubt that Fanny prefers the male-superior position during intercourse," and feels that Fanny submits to Mr. Crofts and her other male lovers accepting "patriarchal culture through her submissive, reclining attitude" (126, 138). In a novel where a penis is essential for sexual satisfaction coupled with Fanny's view that the penis provides sustenance, for Holmes, the novel operates as a promotion of patriarchal attitudes (132, 137). Much like Holmes, Nancy K. Miller posits that "the memoirs of this woman of pleasure is the celebration of a familiar privileged signifier" (53). To Miller, Cleland's impersonation does not mirror female desire but celebrates phallic pride of place, asking readers to "visualize the signifiers as to grasp their common signified and thus to wonder . . . in awe, to admire what is larger than life" (54). As Miller argues, pleasure then is largely masculine in *Memoirs* and this reinforces patriarchal dominance (54). Thus, the only pleasure that matters is masculine pleasure.

In a similar but slightly different fashion, Felicity Nussbaum reads *Memoirs* through a post-colonial lens and finds that "Cleland's *Memoirs* inscribes whores in the timeless other space where it 'is always bedtime'" (19).¹⁶ Nussbaum cites Cleland's time

¹⁶ Here, Nussbaum quotes Steven Marcus. See Marcus.

in Bombay as the reason for her post-colonial reading of the text. Descriptions of Fanny as a ship and as territory point to the female body being something to trade and own (25). *Fanny Hill* becomes an “apocalyptic vision of the tumescent white male member controlling the known world” (26). This glorification of the male member “displaces female body parts” (26). In conclusion, Nussbaum sees *Memoirs*’ liberation of “female sexual desire as a way to channel it away from autoeroticism and homoeroticism toward bourgeois heterosexual pleasure” (27). In addition, Nussbaum argues that the colonizing force established by Cleland’s impersonation of a woman (Fanny Hill) mimics the taking over the female body as property, and that marriage is touted by Cleland as a moral superiority over economic freedom that comes with a social price. Patricia Meyer Spacks examines this female impersonation as well, finding that “Although Fanny tells her own story, the reader encounters her more as object than as subject: as collection of qualities whose changeless sum equals the gratification of male need, the alleviation of male anxiety” (275). Inevitably, Fanny is only gratified by gratifying men (275). Like Holmes, Spacks points to Fanny’s passivity as a form of submission to patriarchy of eighteenth-century sexual relations.

Taking the criticism one step further, feminists openly attack the novel as misogynistic. Anne Robinson Taylor finds her own “strong undercurrent of dislike for women” (93). Taylor fails to see how this novel might be significant for gay and lesbian readers (Sabor, “For Sexual Liberation” 569).¹⁷ Taking Taylor’s findings one step further, Patsy S. Fowler is less sympathetic to Cleland than her predecessors; she openly attacks *Memoirs* as “a traditional pornographic text objectifying women and focusing only on

¹⁷ Sabor gives a thorough treatment in his article on the various feminist views about *Memoirs*. See “From Sexual Liberation” for more information.

male power and gratification” (50). Fowler contends that it is through the sex scenes that the power struggle between men and women is at its most basic level (51). Furthermore, to Fowler, the penis is an instrument of pain and, thusly, of male domination (54). Desire then becomes a hegemonic apparatus that negotiates the power relationships in the novel (77). Fowler goes on to say, “Cleland offers a glimpse of the sexual injustice inherent in the patriarchy and teases his reader with alternative ideologies, only to reestablish the original phallogocentric power dynamic” (77). From patriarchal to misogynistic, *Memoirs* has been read by feminists to do nothing for the promotion or the empowerment of women.

While feminists have read the text as a phallogocentric endeavor, many have also read the text as a positive work for women, reminiscent of the early reception of *Memoirs* by women like Brigid Brophy. Janet Todd notes the novel’s use of female mentorship to bring women up into sexual maturity. Mrs. Cole guides Fanny in the ways of appropriately acting as a prostitute, and this sexual maturity “is political and may be manipulated” (72). Female achievement of position and happiness is brought on by female understanding (taught to women by women), but “Fanny must both climb and spurn a ladder of women to achieve success in a male world” (72). Women like Fanny and Mrs. Cole use sexuality as an “economic commodity” (96). Thus, Fanny Hill has to adapt to the male system to survive and prosper (99). To Todd, the novel then is a commentary on the patriarchal world and not a promotion of this male-centered society. Carol Houlihan Flynn tries to identify Cleland’s place among the libertines and the sentimentalists of the period. Flynn states, “Fanny Hill proves herself to be not only a woman of pleasure, but a sentimental woman of feeling” (284). For Houlihan, Cleland’s

“ironic exploration of these ‘irksome sensations’ makes him not a feminist, but a spur to feminism, as diligent as Fanny Hill herself, one who confounds didactic principles as he lays bare the pains, pleasures, and costs of civilization” (294). Houlihan examines the text in such a way as to read Cleland as not quite the opposite of misogynist, but as someone who does not hate or exploit women. Cleland wanted to represent women and help them find a voice. In much the same manner as Houlihan, Erica Jong enjoyed the “healthiness and bounciness of its approach to physical love” (qtd. in Sabor, Introduction xvii). Jong’s sentiments also echo those of Brophy.

To further explain how the novel promotes women, and in a complementary fashion to those feminists who see *Memoirs* merits as a text that does not promote the patriarchy, Ralph Trumbach and Franz Meier read the novel in light of Fanny’s feminine voice. Randolph Trumbach asserts that “Cleland’s book becomes one of the easier demonstrations of the new conjunction of eroticism and matrimony . . . part of the history of the romantic, companionate marriage” (69). For most of the novel, Fanny’s prostitution is a rather private affair, and it only breaks the public sphere when she has sex with the sailor in the street. Trumbach theorizes that “Cleland’s fantasy is excited by sex that is safe, comfortable and accompanied by love” (72). This rationalization does not explain all the coercive sex scenes or the flagellation scene. However, Trumbach goes on to say that prostitution changed in the eighteenth-century due to shifts in gender roles for men and women (73). Women were no longer viewed as all being prostitutes. This rise in power for women led to a new, more open, kind of prostitute; however, they were never able to reclaim their former respectability. This indicates that women, once their virginity was taken, had very little recourse in the eighteenth-century world. Women might not

need to be branded prostitutes, but their virginity was always the thin hymen line between living a married life and living as a prostitute. Fanny is a rare case, and it took her years to find a way into marriage.

Franz Meier examines the way Richardson's *Pamela* and *Memoirs* negotiate the same gender boundaries or the way that each novel offers a different way to mediate a readers' own gender identity (46). In the beginning, as Franz Meier tells us, sentimental novels were categorized as feminine while pornography was masculine. Women were also linked to emotion, and men to reason. Women were also seen as having a dual sexual nature—saint and prostitute (47). Sainthood is linked with sentimental fiction and prostitutes to pornography. Though most often written by men, sentimental fiction is usually narrated by a female voice (49). This means that Cleland writes *Memoirs* in a style reminiscent of sentimental fiction. As Meier warns, “the authorial construction of a female point of view tends to veil the masculinist gender bias of the values presented,” and this is particularly true in *Pamela* (49). To Meier, the virtue in sentimental novels is preserved for men. In other words, a woman keeps her maidenhead as a gift to her husband. The virtue is not necessarily for the woman herself. Pornographic novels tend to operate in the opposite, with the loss of innocence bringing reward (50). Meier then conducts a reader response experiment. For women readers, *Memoirs* causes them to explore the nature of their sexuality and what it means to be a woman (53). Male readers experience the world through a woman's eyes. This is bound to confuse gender performance, and this disturbs rather than affirms “hegemonic masculine identity” (54). This opens a wide range of possible mediations of gender, today and in the eighteenth-century (55). Perhaps, as Meier argues, men and women may find it easier to identify

with each other after reading a work like *Memoirs*. Cleland played with this gender troubling to promote and condemn certain ideas. Again, he wanted men and women alike to feel Fanny's frustrations, pain, and powerlessness in the coercive sex scenes.

With all of this work on *Memoirs*, no one has yet attempted an analysis of the text in relation to the contemporary rape common law.¹⁸ Inherently wrapped up in the novel's coercive sex scenes are ideas about gender, sexuality, and self-ownership of both sexes in eighteenth-century England, more specifically London. Fanny's journey ends with her fully the equal of Charles in a relationship in which the two become "one body and soul" (Cleland 184). Fanny is no longer subservient, showing that her sexual escapades have not harmed her but have promoted her to the same level as a man. While Fanny does become a wife in a heteronormative relationship, she chooses this life and finds pleasure in the sex, ejaculating along with Charles. *Memoirs* is an example of a novel that gives women a voice in sexual situations instead of taking it from them, placing my work in opposition with feminists who argue that all pornography and this text specifically operate only to promote male interests. In the next chapter, I will give an account of Cleland's own history with the common law and how the rape law differed in letter and practice. I will examine more closely what Simon Dickie meant by stating that "modern readers must be surprised that these authors did so little to challenge the widely shared opinion that, with the exception of obviously horrific cases that the law took care of, there was no such thing as genuinely nonconsensual sex." At the same time, I will challenge feminist critics who feel that Cleland's text is nothing more than male fantasy and will show that, as Braudy stated, Cleland is a feminist (213). Using the words of

¹⁸ This type of reading has been done with Samuel Richardson's *Clarissa*. See Swan and Wagner. These works will serve as a model for my own.

Marcus again, *Memoirs* is not simply a “pornotopia,” but a work that seeks to deepen the understanding of the plight of women in a patriarchal English world.¹⁹ Cleland gives voice to the pained utterances of women in situations where they could not even find their own voices.

¹⁹ Steven Marcus coins the term “pornotopia.” This word results from the combination of pornography and utopia, as Marcus seeks to define common characteristics of pornographic works. Marcus feels that pornography, much like utopian literature, exists in a fantasy land where the time never changes. In pornography, it’s always “bedtime” (269). He also asserts that that the penis is the “object of worship” in pornography (272). Pornography offers a world where all men are always potent, and women are overflowing with lust (273). This is not so in *Memoirs*, as Cleland offers a world with impotent men and women who are constantly faced with whether they can consent or whether they should actively resist. See Marcus.

CHAPTER THREE

CLELAND, CRYING OUT, AND RAPE COMMON LAW

John Cleland's use of coercive sex scenes proves to be complex in *Memoirs*.²⁰ What appears at first to be blatant and unadulterated rape, to modern audiences, when examined more thoroughly and in light of English common law is not so obviously delineated as such. In each of these sex scenes, attention deliberately is paid to the utterances of the woman involved, whether that is Fanny or other prostitutes. Not only do these moments of female utterance bring to mind crying out as evidence in rape prosecution, but also they represent an author who takes the female voice seriously. This means that what has been called a "pornotopia" by some is in fact not a misogynistic rape

²⁰ I am choosing to use the phrase "coercive sex scene" here to talk about what previously was labeled, by contemporaries of the twentieth and twenty-first century, strictly as rape. I want to change the terminology to forge a new reading of the text. Coercive sex scenes are those where a women appears to engage in intercourse against her will or without her consent. Rape will strictly be a legal term, applied to instances where sexual intercourse meets the requirements to be labeled rape as laid out by William Blackstone and Giles Jacob.

festival, but a work that advocates for the feminine voice (Marcus 266).²¹ Cleland would not have interest in cataloging women's words or feelings during these coercive sex scenes if they were simply for male titillation and gratification, because only the male voice or point of view would matter. The relegation of this text to the category of pornography, and nothing but pornography, has stifled discourse. In this chapter, ultimately, I will show Cleland's link to the common law and his conscious use of legal language in his work, while also providing a historical background pertinent to a closer examination of the text. The difference between sex and rape (in the eighteenth-century and twenty-first centuries) hinges on the consent of the female, and this is why the utterances of women are of utmost importance in the text. Contemporaries living in the eighteenth-century viewed consent differently than we do today, for nonconsent was an active, resistive utterance made by women. Court proceedings of the period reflect this attention to crying out as a woman's active nonconsent. I will argue that by providing the utterances of women in each of these coercive sex scenes Cleland directly challenges the common law's need for crying out as evidence, seeking to identify its weak points. Fanny herself says, "My countenance expressed, no doubt, my surprise, as my silence did my

²¹ Both William H. Epstein and Leo Braudy quote this term from Steven Marcus. Both of these authors, as do I, feel the term does not fit *Memoirs*. A pornotopia is a combination of pornography and utopia, creating a place that an imaginary place of perpetual sex. This pornotopia Marcus envisions is a place where men are always potent and women full of lust. See Marcus 273.

acquiescence” (Cleland 113).²² In the eighteenth-century, a woman’s silence was her consent.

Reading the text in this manner allows us to breach the barrier imposed by the categorization of this text as only pornography and allows us also to see how the common law treated women in practice as well as letter during the eighteenth-century.

Furthermore, my argument illustrates the ability of a male author to commiserate with the plight of women like Fanny Hill and shows that he anticipates feminist causes that seek to redefine rape law in the twentieth and twenty-first centuries.

Memoirs opens with Fanny’s call to proof and truth as she recounts the various stages of her life to Madam the recipient of her letter:

I sit down to give you an undeniable proof of my considering your desires as indispensable orders: ungracious then as the task may be, I shall recall to view those scandalous stages of my life, out of which I emerg’d at length . . . Truth! stark naked truth, is the word, and I will not so much as take the pains to bestow the strip of a gauze-wrapper on it, but paint situations such as they actually rose to me in nature, careless of violating those laws of decency, that were never made for such unreserved intimacies as ours; and you have too much sense, too much knowledge of the *originals* themselves, to snuff prudishly, and out of character, at the *pictures* of them. (1)

The word “proof” is reminiscent of the evidence produced at trials, and in this manner, Fanny testifies through her letter to the various events of her life. Fanny’s testimony privileges her voice over the voice of other characters in the text. These events are not only a truth for Fanny, but also they are a bigger Truth for all women. The text shows the

²² Crying out as evidence in rape has a long literary tradition. Some of the first examples are in two biblical stories: Dinah (Genesis 34) and Potiphar’s Wife (Genesis 39). Reliance on Hebrew Law is why the English common law relies so heavily on crying out as a first line of evidence.

problematic nature of rape and law in eighteenth-century England. Fanny's truth may violate the laws of decency, and will indeed include graphic descriptions of all her sexual adventures; however, these laws of decency are the laws imposed by patriarchal society, teaching women that chastity is the virtue to be treasured above all others. Fanny comes to her truth by experience. This move and call to truth through experience is reminiscent of John Milton's words in *Areopagitica* (a text where Milton calls for a leniency in printing so that Truth is not hindered): "I cannot praise a fugitive and cloister'd virtue, unexercis'd & unbreath'd, that never sallies out and sees her adversary, but slinks out of the race, where that immortall garland is to be run for, not without dust and heat" (213). Experience teaches Fanny "how spurious, how low of taste, how comparatively inferior its joys are to those which Virtue gives sanction to" (Cleland 187). If not for her education in vice, Fanny would not find Truth and would not gain agency in sex or in politics.

In each of the coercive sex scenes involving Fanny, Cleland gives us an instance in which Fanny makes utterance or thinks of making utterance. Fanny's first sexual encounter is with Mrs. Phoebe Ayers, a "tutress" employed by Mrs. Brown, a bawd (Cleland 9). At first Fanny is surprised by Phoebe's touches, and Fanny makes note that she "should have jump'd out of bed, and cried out for help against such strange assaults" (11). Fanny calls Phoebe's advances "assaults," and since this is an epistolary novel, an older Fanny, who tells the story, recognizes she should have cried out. But why? Fanny lies there "tame and passive" at first, and by the end, enjoys the encounter (11).

In like manner, Fanny's first heterosexual encounter focuses on her ability to make utterance. When Mr. Crofts begins his unwanted attack, Fanny tells us, "I endur'd

all without flinching, till embolden'd by my sufferance, and silence, (for I had not the power to speak, or cry out) . . . and I felt his hand on the lower part of my naked thighs, which were cross'd, and which he endeavour'd to unlock" (18). Again, Fanny is not able to cry out. Then with Charles the man Fanny loves, she is finally able to cry out. At first, Fanny complains, however tenderly; but when Charles finally becomes the "murderer of [her] virginity," she "screamed out" (77, 78, 78). With Mr. H, a man who makes her a mistress, Fanny begs him not to have sex with her the first time, but once he penetrates her, she feels that she has "no longer a right to refuse" (61). Once again, Cleland depicts Fanny's awareness of what she should or should not say in certain instances, excusing the moments when she does not speak. Thus, Fanny appears to prioritize her own speech in sexual situations, as much as does her author.

The moments where women decide to cry out or not cry out seem to trouble what is or is not rape according to the written letter of the law. Female utterance is almost as important to the other prostitutes in *Memoirs* as it is to Fanny. When Fanny wants to know more about sexual intercourse and how the vagina can accommodate an erect penis, Phoebe takes Fanny to a peep hole to spy on Polly with her beau. During intercourse with Guido, Polly says, "Oh! Oh!—I can't bear it—It is too much.—I die.—I am going" (31). Polly is said to have been in "extasy," but that sentence can be read in two ways (31). At once the excited statement appears as impassioned and pleasurable utterance and as a real cry of pain. This is not the only moment where consensual and nonconsensual appear confused. During a dalliance between Fanny's maid and Mr. H, Fanny spies on the pair as they engage in intercourse. As Mr. H leads the maid toward a couch, Fanny remarks, "the girl made only a sort of an aukward hoidening resistance, crying out so loud! That I

who listen'd at the door could scarce hear her" (68). Fanny's sarcasm is biting, and she does not move to help the maid, despite the maid's asking to be left alone by Mr. H (68). Fanny thinks the maid makes no real attempt to cry out for help, but the maid's words offer the suggestion that she might indeed be attempting to forestall Mr. H. Is this an act of rape for Fanny or for eighteenth-century readers? Perhaps, but the situation needs further examination. The notion of utterance confuses the facts in this instance.

Two more women make utterance during coercive sex. When Fanny joins Mrs. Cole's bawdy house, the prostitutes have a round table discussion about how each of them lost their virginity. First, Emily tells of running away from home and pretending to be married to a young man she met on the road. When the couple find themselves in the same room over night, the young man moves to have intercourse with her. Emily says the pain made her "cry out," but quickly the pain turns to pleasure (99). The second to give her story is Harriet, who claims that she swoons and awoke to find a man on top of her. Much like Fanny, Harriet feels she has "neither the power to cry out, nor the strength to disengage" (103). All of these utterances complicate our modern assumptions about sex and about rape. To truly find out what Cleland was trying to do with this language in his text, we must travel back in time to understand how those in the eighteenth-century viewed rape and rape law. Using eighteenth-century views and law to distinguish between consensual sex, coercive sex, and rape illuminate what crying out meant during the period to contemporary readers. Cleland's narrative deliberately mimics the crying out established as an essential part of rape by the common law.

Defining Rape

Throughout the centuries definitions of rape have changed. The *Oxford English Dictionary* defines rape as “the act of taking something by force, especially the seizure by violent means,” and the “act of carrying off a person by force, especially the abduction of a woman, usually for the purpose of sexual violation” (def. 1, 3). While modern readers may not think of rape in terms of abduction, they would recognize the sexual violation aspect of the second part of the definition. In her article on the intersection of rape common law and *Clarissa*, Beth Swan agrees with these definitions and adds “‘to possess’ is particularly relevant to attitudes throughout the eighteenth-century towards women: ‘to be master of; to enjoy; to have power over’” (117). Swan's emphasis is on the power dynamic between men and women—men exploiting power over women. Rape occurs when someone fails to get consent before sex; consent being, according to the *OED*, the “voluntary agreement to or acquiescence in what another proposes or desires; compliance, concurrence, permission” (def. 1a).²³ Still, these definitions are not really legal definitions, and they are quite a patchwork of the past and present conceptions of the concept. In the eighteenth-century, definitions of rape rely much more on active resistance than on the concept of consent. To truly understand what Cleland attempts in *Memoirs*, we need to define rape in eighteenth-century legal language.

Two sources legal sources stand in prominence over others during the eighteenth-century: Giles Jacob's *New Law Dictionary* (1729) and William Blackstone's

²³ *OED* is an abbreviation for *The Oxford English Dictionary*.

Commentaries on the Laws of England (1765-1769).²⁴ After a brief introduction stating that Sussex calls parts of its county rapes, Jacob says that rape is “taken for the violent Deflowering a Woman against her Will, whether she be young or old, which Offence by our Low is Felony without Benefit of Clergy” (*The new law-dictionary*).²⁵ Deflowering is sex in the general sense here and not only the taking of virginity. Jacob also lays out lines of evidence that are necessary for proving rape, which we will examine alongside the text later in this chapter. Blackstone follows Jacob in declaring rape a felony, punishable by death. Extending the law a bit, Blackstone declares that forcible marriage is also rape. In the same manner as Jacob, Blackstone writes, “our English law does not entertain quite such sublime ideas of the honor of either sex, as to lay the blame of a mutual fault upon one of the transgressors only: and therefore makes it a necessary ingredient in the crime of rape, that it must be against the woman’s will” (211).

These are letter of the law definitions of rape; however, in the eighteenth-century, the word “rape” was a charged term with many connotations and meanings. Cleland represents these societal connotations and nuances about rape in *Memoirs*. As Simon Dickie tells us, “It meant at once much less than it does today—nonconsensual

²⁴ See Kilburn. Giles Jacob (1686-1744) was an author of diverse writings. Kilburn states, “The dictionary had taken nine years to research and write, and set a new precedent by being the first published guide to English law that combined an abridgement of statute law with a dictionary of legal practice and terminology.” Pope included Jacob in *The Dunciad* in book three as a scourge of grammar. See Prest. William Blackstone (1723-1780), a judge and legal writer, published his *Commentaries on the Laws of England* was published in four volumes and lay out the common laws of England in an easy to read manner by the masses. According to Prest, twenty-three editions had appeared by 1854.

²⁵ I have transcribed Jacob’s text substituting “s” for “f” to make the reading easier. All other spelling and punctuation is a direct replication of how it appears in the original text.

intercourse in any situation—and much more” (210). Some of the connotations, all representing rape, Dickie offers are: a woman caught in bed with a lover and crying out to protect her reputation; to some a woman of modesty, while to others, someone unchaste; a lower-class woman trying to extort money from a social superior; and the most troubling: even in consensual situations women used the word to display a suitable level of reluctance and their seducers accepted accusation (210). In other words, “rape” meant many things to many people, and many views of rape were tainted against the woman and not the man. Cleland plays with both rape's legal definition and its perceived societal connotations.

Campaigns against sexual assault today take up the slogan, “No means no.” This phrase did not necessarily hold meaning during Cleland's day. No only meant no if a woman cried out loud enough to be heard by the nearest neighbors. A common English proverb was: “a woman's nay's a double yea” (206). Even if a woman said no, the expectations were this still meant yes. How would a woman ever be able to display nonconsent? There had to be active resistance (crying out along with physical resistance), and this is why the cries were necessary. Even if a woman did cry out, how was a man supposed to know this was an actual form of nonconsent? Proverbs like this one confuse men and women alike and downplay the serious nature of rape.

Looking back to the letter of rape law, Blackstone's wording keeps the act from always being a crime by the man, whether the woman was willing or not. In the past, Roman law found the man guilty whether the woman consented or not based on the honor of women as a sex. The man always led the woman astray. English law, by contrast, makes active nonconsent by crying out an essential part of rape. Also important

to note, since Cleland writes not of a virtuous girl such as Richardson's Pamela but of prostitutes, Blackstone says, "the civil law seems to suppose a prostitute or common harlot incapable of any injuries of this kind" (213). He goes on to say, "But the law of England does not judge so hardly of offenders, as to cut off all opportunity of retreat even from common strumpets, and to treat them as never capable of amendment" (213). Therefore, it is unlawful to force concubines and harlots into sexual acts. Forcing a woman into sexual intercourse was theoretically against the law no matter the profession of the woman and no matter her level of virtue. Since prostitutes could be raped, this means that each scene in *Memoirs* has the possibility of depicting sex to which the prostitute has not consented. The proverb above reflects a different attitude among eighteenth-century subjects. When Blackstone mentions crying out, he cites a specific case and says, "Although a harlot formerly, she surely was not then, when by crying out she showed herself unwilling to consent to his wickedness" (213).²⁶ Blackstone demonstrates an expectation that women, maidens or prostitutes, who are taken against their will sexually, should cry out to show their unwillingness to consent. The burden is then placed on the women to make sure it is known she does not wish to have intercourse.

Blackstone probably speaks to this idea that prostitutes can indeed be raped because society's expectations were that unchaste women could not be raped. In Anna Clark's opinion, "The notion that prostitutes cannot be raped, of course, stems from a patriarchal notion of a woman's consent as shaped by her relation to men rather than her own free will;" and furthermore, "The fact that many women who did not meet strict

²⁶ Blackstone quotes Lord Bracton here, and this is a translation of the Latin, "licet meretrix fuerit antea, certe tunc temporis non fuit, cum reclamando nequitiae ejus conjentire noluit."

standards of chastity prosecuted their assailants indicates that they did not accept such a definition of consent” (33). Importantly, Blackstone does not mention reasons why a woman might not cry out such as her mouth being covered. The law does not provide for any contingencies as it is written. The courts place a higher priority on this crying out than other types of utterance made by women, such as their testimony during a trial. How far testimony was to be believed was “intirely left to the Jury on the trial” (Jacob). In this reliance on the Jury to rule in rape cases, the letter of the law only plays a part in the trial. The jury makes a ruling based on law and based on the culture’s expectations. As Dickie points out, the patriarchal culture favors the male side of rape cases and finds ways to excuse male behavior. Cleland's use of crying out in *Memoirs* reflects the letter of the law's reliance on crying out as a form of nonconsent, but he pushes the boundaries of this issue to demonstrate that relying on this crying out as evidence of rape reveals the flawed aspects of this law.

Testimony is a crucial component of rape trials and forms the basis of evidence. Witnesses must speak the evidence into being. There are no slide shows or DNA reports. All evidence stands as spoken words about what has been witnessed, prioritizing utterance. On both sides of the proceedings, testimony tests the credibility of both victim and accused. Evidence is the demonstration of truth, and must be brought forward to sway the jury in a certain direction. In *The Trial of John Hunter* (1747), the Council for the Crown states, “the Evidence that must be laid before you, is of such a Nature in order to enable you [the jury] to give your Verdict) that it is absolutely necessary it should be publickly given, but Decency requires it should not be publickly repeated no oftener than is necessary.” He goes on to say that the evidence will come from the mouths of

witnesses. This testimony or utterance is a necessary part of the trial process, but there is one form of female utterance prioritized above the rest—crying out during the assault.

In most of the trails that I have read via my search on the *Old Bailey Online*, one of the first if not the first question, after a brief introduction to the incident, is whether or not the prosecutrix cried out.²⁷ Here is where Cleland’s text and reality intersect. Crying out during rape or attempted rape is privileged over testimonial utterance in the trial. This crying out is a way to show that the woman actively resisted the attempt at coercive sex. For a woman to not consent, she must be impassioned in her crying out. During Fanny’s initiation into the seraglio that Mrs. Cole has put together, Fanny says, “My countenance expressed, no doubt, my surprise, as my silence did my acquiescence” (Cleland 113). Silence becomes consent in the novel just as it does in the reality of eighteenth-century rape trials. As early as 1698, in *The Trial of Henry Simpkins*, Grace Prince “owned in Court that she cried out, but that he bid her hush.” In 1749, Mary Batty is asked, “Why

²⁷ This testimony was gathered from the *Old Bailey Online*, a digital humanities project that seeks to create a searchable database of all the trials held at the Old Bailey Courthouse. There are no page numbers as the proceedings are presented as web pages. Before this website was created, the Old Bailey proceedings were printed in bound editions. Be aware that the proceedings are not full transcripts of everything said in court (Emsley, “About the Proceedings”). While these documents are not full transcripts, much is learned from what is said and not said in the records. With the approval of the Lord Mayor of London in 1679, *The Proceedings* was first published as an official account of the trials held at the Old Bailey. From the 1720s on, the trail accounts used more verbatim testimony, and the accounts became longer and more detailed, detailing crimes involving sex or violence especially (Emsley, “Trial Procedures”). As the eighteenth-century moved toward the nineteenth-century, the language of sexual offenses was “radically curtailed” (Emsley, “About the Proceedings”). These incomplete records do offer problems when examining the trails for detail; however, they do offer a way to read what has been deemed worthy and of importance in the testimony during the trials. The fact that recorders of the trials included certain phrases in the testimony shows its importance in the actual trial. Thus, the Old Bailey records offer an edited version of the court proceedings of the period, but they do give us an idea of how rape trials operated within the period.

did you not cry out?” (*The Trial of James Penoroy*). Batty gives testimony that Penoroy put a hand to her mouth and that’s why she was incapable of crying out. She had to show a reason why she should could not make that utterance. Time and again this crying out is testified to and witnesses asked to back up that testimony.²⁸

Cleland and the Law

Cleland’s use of legal language in combination with crying out cannot be overlooked throughout the text. Coupling the crying out with the permeation of other words associated with the courts adds credence to the belief that this crying out reflects the same crying out used as evidence during rape trials. The very nature of *Memoirs* as an epistolary novel implies a sort of testimony by an “undeniable proof,” or in other words, evidence of her “trial[s]” (1, 17). Fanny speaks her truth about the events of her life just as a rape victim would have given testimony at trial. Fanny judges and is judged over the course of the novel: Mrs. Brown and Phoebe “judged” Fanny; we hear of “our men the sovereign judges”; and that “Mrs. Brown “judged”; Fanny admits in one scene that “neither was I then a judge”; and later sees herself “with a grave judge-like countenance”; Fanny’s escape goes unnoticed “as Charles had rightly judg’d”; and Mrs. Jones see Fanny and Charles as lovers “which she rightly judg’d” (Cleland 9, 14, 23, 48, 48, 50, 52).

²⁸ See also (the following are all trials from the *Old Bailey Proceedings Online* Version 7.2 accessed 02 April 2015): *The Trial of Richard Smith* (1694), *The Trial of Henry Burt* (1717), *The Trial of Michael Kelly* (1727), *The Trial of Edmund Togwell and Peter Matthews* (1735), *The Trial of Phillip Brown* (1735), *The Trial of William Mac Carrol* (1740), *The Trial of William Duel* (1740), *The Trial of William Remue* (1742), *The Trial Thomas Kill* (1743), *The Trial of John Sutton* (1745), *The Trial of John Hunter* (1747), *The Trial of William Page* (1748), *The Trial of William Garner* (1748), and *The Trial of Richard Knibb* (1750)

There is also talk of “justice,” an “eye-witness,” “objection,” “sealed” bargains, “evidence of his senses,” and of “the lawyer” (4, 24, 36, 36, 40, 49). The permeation of legal language does not end there. When Charles goes to Mrs. Brown to pay Fanny’s debts and take charge of her, he takes a lawyer with him to threaten Mrs. Brown, for seduction of women by bawds is a more heavily prosecuted offense than prostitution itself.²⁹ The lawyer scared Mrs. Brown with talk of Newgate prison, the “Old Bailey,” and “indictments for keeping a disorderly house, pillory, and carting” (49).³⁰ Cleland shows a propensity for using legal language in the text.

Writing *Memoirs* taught Cleland two things: how to be a working writer and how to be a prisoner. But Cleland’s knowledge of the law began much earlier than his time in the Fleet in 1748. In the 1730s, Cleland found himself promoted to attorney in the

²⁹ For a thorough discussion of the law and bawds, See Simpson, “Mouth of Strange Women” 8-9 and Trumbach 76-79. Prostitutes were usually arrested for disturbing the peace. Not until the end of the eighteenth-century did Westminster magistrates make “a practice of organizing massive sweeps of whores for the purpose of extorting bail-money from them,” and for this reason, “conviction rates . . . were very high, but for reasons most closely related to the desire of magistrates to protect the arresting officer (Simpson, “Mouth of Strange Women” 7). Some of these roundups were also to help rescue these victims of prostitution, and “the fact is that prostitutes were not treated harshly by the courts” (8 and 9). Brothel-keepers were seen as much worse than the prostitutes themselves, and brothel-keeping was a misdemeanor under the Common law (9). However, bawds did see prosecution for the seduction of young girls, twenty-six women to be exact between 1730 and 1830 (11). Some bawds were even tried for rape but few found guilty (11).

³⁰ The Old Bailey, named after the street on which it sits, is a courtroom located close to Newgate prison, and allowed for easy transport of criminals to the courtroom (Emsley, “Historical Background”). Newgate sits between the City of London and Westminster, providing a suitable location for trials involving subjects who lived throughout the metropolis of London (Emsley, “Historical Background”). Fanny Hill and the other women in the novel all reside in London. The Old Bailey Courtroom and Newgate prison would have been their hometown location for all things relating to the law, such as rape trials.

Mayor's Court in Bombay. At the age of eighteen, Cleland arrived in Bombay as a soldier for the British East India Company. By August of 1730, Cleland had worked his way up to attorney of the Bombay Mayor's Court. Cleland appears to have taken both the position of barrister and attorney in the Mayor's Court, for he gathered the evidence for the trials, prepared the legal documents, and argued at the bar on behalf of his clients.³¹ Most likely this is because personnel was limited in Bombay, and barristers were either not present or in limited supply. This experience as an attorney certainly demonstrates Cleland's knowledge of the law and that he was competent enough to find a profession in it.

The details of a rape case (in 1734-1735) that involved Cleland in Bombay show that Cleland had a working knowledge of the rape common law, and he was willing to give voice to a woman who was underrepresented by that same law. While there are not many records that survive to give us an accurate portrait of how often Cleland did appear in court, Gladfelder recounts two cases that are important to Cleland's writing of

³¹ Barristers and attorneys were not in the exact same profession in eighteenth-century England nor today. Walter M. Bastian states, "The barrister was called to the Bar by the benches of the Inns of Court and was under relatively little control of the court;" whereas, "[t]he attorney . . . was admitted directly by judges of the court in which he sought to practice, and the courts controlled his examination before admission and the rules for conduct after admission" (818). This meant that the judges in Bombay's Mayor's Court had to admit Cleland to the profession. Bastian goes on to say those attorney's, because of their solicitation background, were dedicated to mainly the clerical side of the law. The education of barristers and attorneys was also quite different. Attorneys apprenticed to learn the "construction and use of the common forms and processes of the legal machine" (818). Barristers trained in "mooting and discussion, reading and reporting from which he learned the substantive and adjective principles of the law" (818). Robert Robson points out that attorneys had to be deemed well practiced in "soliciting of causes" and to be found "skilful and of an honest disposition" (5). As Bastian explains, "the attorney stressed the practical side of the law while the barrister the theoretical" (818). In most cases, the attorney did all the physical work, while the barrister argued the case at trial (818).

Memoirs. Only one of these cases was previously known before Gladfelder released his biography—that of Cleland’s feud with Henry Lowther. The other, Gladfelder states, is one that he “discovered in the India Office archive”— the case of one John Cleland helping a slave girl, Marthalina, escape from William Boag (10). The case with Boag speaks directly to Cleland’s use and knowledge of the common law. Cleland used his knowledge of the legal system to aid Marthalina in gaining her freedom from Boag, promoting her independence as a woman. The case shows clearly that Cleland was interested in giving voice to those underrepresented by the law.

Cleland displayed the desire to champion the cause of women, specifically in this rape case with William Boag.³² Cleland began as an attorney but ends as a defendant himself. William Boag, a sea captain, wanted to bring suit against a man named King, who Boag claimed raped his slave, Marthalina. When Boag told Cleland that he would soon be at sea, Cleland advised that Boag had to be present for the case. As Cleland writes in his public consultations record, he told Boag, “there cou’d be no remedy or Punishment of the Crime without he [Boag] prosecuted himself, as he [Cleland] believed the person that had sustain’d the Injury was a Slave, and consequently depriv’d of the right of suing, prosecuting, or doing any Legal act” (qtd. in Gladfelder 26). Upon hearing this advice, Boag swore to Cleland that he set Marthalina free. In requiring Boag to set Marthalina free, Cleland gave the alleged slave back her self-ownership. Understanding

³² A thorough understanding of Cleland’s life would not be possible without Hal Gladfelder’s 2014 biography, *Fanny Hill in Bombay: The Making and Unmaking of John Cleland*, and this biography reveals the extent of Cleland’s familiarity with the common law and Cleland’s relationship with underrepresented groups such as those of different ethnicities and sexes. My work is greatly indebted to Gladfelder’s biography, and if not for it, might not even be possible. Gladfelder opened up new ways to study John Cleland and *Memoirs*. For thorough reviews, see Haslanger and Lubey.

that the girl is no longer a slave, Cleland agreed to take Marthalina as his client.

Marthalina had to be a free woman to prosecute her own rape, for had she not been free, Boag would have been the injured party and not Marthalina since Boag owned her body as property. The suit could not wait until Boag returned from sea, because there is a forty day limit to accusing someone of rape in the court system.³³

Subsequently, Cleland took Marthalina in to live as part of his household, and he states this was at the insistence of Boag who feared those who had rape Marthalina would break in and kill her (Gladfelder 27). Cleland recounts, “moved with the account [Boag] gave of the distress and danger of the unhappy Creature” he offered her a place to stay under his protection” (qtd. in Gladfelder 27). In the course of events, Marthalina refused to return to Boag’s house when he arrived home from his voyage, and Cleland refused to make her go. Now, the case turns as Cleland is accused of rape in the sense that he abducts Boag’s property (Gladfelder 27).³⁴ Cleland argued that as a free woman, Marthalina had every right to choose where she lived. Thus, Cleland examined through the court system what it means for a woman to own herself and what it means for a person to be free. In this way, he championed the cause of a woman. As a result, Cleland was vindicated from the charge of rape and the stealing of Boag’s property—Marthalina. The fact that this case happens concurrently with the time he wrote *Memoirs* links the two events—one an actual case where Cleland helps a woman gain her freedom and her voice, and the other a representation of Fanny Hill’s, the character’s, inability to match her reality of being raped with the legal system’s definition of being rape.

³³ Stated in Blackstone 211.

³⁴ Rape and abduction are closely related in the law.

Crying Out in *Memoirs*

Cleland uses moments where women make utterance during sex in the novel to undermine the legal expectations of crying out. In legal terms, the crying out represents a woman's active nonconsent, but in *Memoirs*, crying out does not necessarily mean that the sex is rape. Requiring consent and resistance as a standard, places the burden on the victim during an attack. Thus, juries had to look at the level of resistance employed by a woman during an alleged rape to determine if she resisted enough to further determine if she consented to the sex act. Gregory Durston shows that courts had an interest in crying out during rape trials:

Linked to this doctrine was an intense suspicion of women who failed to make an "outcry" *during* the assault, especially when within earshot of potential witnesses. This was always considered a strong indication that no attack had occurred, and something about which the courts would also vigorously examine complainants. ("Part 2" 25)

Cleland shows the problematic nature of this model by showing moments when crying out does not mean resistance, by showing moments when crying out is negated by its volume, and by showing force does not necessarily indicate rape. Cleland's commentary on the legal system and society's views on rape are expressly seen in the fact that Fanny and the other women, victims of assault, have their own opinions about the events that do not often match what coincides with the law.

Cleland shows that crying out does not necessarily indicate a woman's active nonconsent during a sexual encounter. Turning once again to Fanny's first sexual encounter with Charles, the reading takes on new meaning when held up to the rape law's standards:

Being now too high wound up to bear a delay, he unbutton'd, and drawing out the engine of love-assaults, drove it currently, as at a ready-made breach: then! Then! For the first time did I feel that stiff horn-hard gristle, battering against the tender part; but imagine to yourself his surprize, when he found, after several vigorous pushes, which hurt me extremely, that he made not the least impression. (Cleland 40)

Charles commits “love-assaults,” or in other words, he assaults Fanny, “battering” against her vagina (40). These are not the tender touches of soft love, but violent pushes against her genitalia. Fanny does not feel pleasure, and she is hurt “extremely” (40). The important part of this passage comes in the next description of Fanny’s utterance:

I complain'd, but tenderly complain'd; “I could not bear it—” Indeed! he hurt me—still he though no more than that being so young, the largeness of his machine (for few men could dispute size with him) made all the difficulty, and that possibly I had not been enjoy'd by any so advantageously made in that part as himself; for still, that my virgin-flower was yet uncrop'd never once enter'd into his head, and he would have though it idling with time and words to have question'd me upon it. (40)

Fanny is lying with the man that she says she loves, and yet, when Charles hurts her, she complains out loud. In quotes, Fanny says, “I could not bear it” (40). The quotation marks mean that Fanny says these words out loud to Charles, but he does not stop. Fanny does not consent; she does not remain silent; her words signify that she objects to the pain. Is this rape? No, or at least not yet, because “He tries again, still no admittance; still no penetration” (40). As Jacob says in his definition of rape, “there must be *Penetration* and *Emission*.” Charles does not stop with the assaults; he eventually gains entrance into Fanny’s vagina, and the resulting image is not that of a pleasurable encounter:

At length, the tender texture of the tract giving way to such fierce tearing and rending, he pierc'd something further into me: and now, outrageous, and no longer his own

master, but born head-long away by the fury and over-mettle of that member, now exerting itself with a king of native rage, he breaks in, carries all before him, and one violent merciless lunge, sent it, imbrew'd, and reeking with virgin blood, up to the very hilts in me: then! Then! All my resolution deserted me: I skream'd out, and fainted away with the sharpness of the pain; and (as he told me afterwards) on his drawing out, when emission was over with him, my thighs were instantly all in a stream of blood, that flow'd from the wounded torn passage. (Cleland 41)

Fanny is left in a stream of blood. She screams out and then passes out, but neither her utterance nor her unconsciousness stop Charles. He tells Fanny afterwards that when he had ejaculated and pulled out that is when blood streamed out of her vagina and onto her thighs. This image is violent, and the love seems to be absent from the conquest of Fanny's maidenhead, because the language is that of conquered acquiescence instead of mutual admiration:

When I recover'd my senses, I found myself undress'd , and a-bed, in the arms of the sweet relenting murderer of my virginity, who hung mourning tenderly over me, and holding in his hands a cordial, which coming from the still-dear author of so much pain! I could not refuse: my eyes, however moisten'd with tears, and languishingly turn'd upon him, seem'd to reproach him with his cruelty, and ask him if such were the rewards of love? But *Charles*, to whom I was now infinitely endear'd by his compleat triumph over a maidenhead, where he so little expected to find one . . . I presently drown'd all sense of pain in the pleasure of seeing him, of thinking that I belong's to him, he who now was the absolute disposer of my happiness, and in one word, my fate. (41)

When Fanny finally wakes, she finds herself “undress'd, and abed, in the arms of the sweet relenting murderer of my [her] virginity” (41). The man she professes to love murders that “darling treasure, that hidden mine, so eagerly sought after by the men, and which they never dig for but they destroy” (39). Fanny cries at the sight of Charles and as

a result of all the pain she suffered at his hands. The way that Fanny feels about Charles is also indicative of her consent to the painful intercourse. While the text depicts a rough and bloody sexual episode that might appear to be rape, Fanny acquiesces to Charles. Acquiescence is not necessarily an act of love either. Fanny's language is that of someone now obligated to love a man because he triumphed over her virginity and not because of previous or original affection. Seemingly Fanny gives herself because she cannot imagine being able to do otherwise—ownership being claimed by the taking her maidenhead. Fanny is conquered and therefore, not in an equal partnership with Charles at this moment.

Men destroy virginity in *Memoirs*. Not only do they destroy virginity, but Fanny also finds herself intimately close to the man that she calls “murderer” (41). Screaming out or crying out offers no protection from the penetration. Charles does not stop when he hears the cries, and if this does not give pause to a man in love with the woman that cries out, why would it stop an unknown attacker who has no emotional attachment? When Charles ignores Fanny's cries, a weakness in the rape common law is exposed. Crying out or in this case, screaming, only helps a woman if she chooses to prosecute the crime. No one in the inn came to Fanny's rescue when she screamed out—the only protection crying out offers is legal. Legal protection in letter that is, because in practice the courts function under different constraints. Fanny does not find her own pleasure with Charles until she learns to stifle her cries, admitting she “belong'd to him, he who now was the absolute disposer of my happiness” (41). This first sexual encounter with Charles appears to not even consider Fanny's happiness at all, but Fanny's view of the sex is really all that matters. She accepts Charles as her lover, so that despite all the violence, despite the

screaming, she consents to his conquest. The fact that Fanny has her own emotions and her own views in these coercive sex scenes means that Cleland acknowledges the agency of women in the sex act.

Matching Fanny's calling Charles a murderer, women testify at the Old Bailey to not only crying out, but they cry out murder. In the *The Trial of John Hunter* (1747), the prosecutrix, Grace Pitts testifies that "I said if he did not let me alone, I would cry Murder." When asked why she did not cry out, Pitts answers, "Because he threatened me, and I was afraid." In like manner, Elizabeth Smith testifies that she "cried out Murder," in the *Trial of Michael Kelly* (1727). Crying out protected neither of these women, much like no one came to Fanny's aid. Juries acquitted both men.

In a similar moment, alluded to earlier, Polly, Fanny's fellow prostitute, cries out when she has sex with her lover. Phoebe, Fanny's "tuterness" in Mrs. Brown's bawdy-house, takes Fanny into a room to observe Polly with her young Italian lover so that Fanny can see how the mechanics of sex with a man really work. Previously, Fanny feared a vagina could not accommodate a penis. Polly is with her lover and not attacked, but her utterances are much like Fanny's with Charles:

"Oh! Oh!—I can't bear it—It is too much.—I die.—I am going—" were Polly's expressions of extasy: his joys were more silent; but soon broken murmurs, sighs heart-fetch'd, and at length a dispatching thrust as if he would have forced himself up her body, and then the motionless languor of all his limbs, all showed that the die-away moment was come upon him, which she gave signs of joining with, by the throwing of her hands about, closing her eyes, and giving a deep sob, in which she seem'd to expire in an agony of bliss. (Cleland 31)

While this young Italian does not actually force himself on Polly, the picture Fanny paints is likened to force. Polly's cries have a dual meaning: one is the rapture of ecstasy

and the other is as a real problem with the sex happening to her. Cleland uses this moment to show that what the law would write as a clear and simple statement cannot always be understood. If Polly's utterances indicate her displeasure and her actual inability to accommodate the penis, no one around her understands her words as a true expression of displeasure or of nonconsent. Polly even sobs at the end, and there is no way to know if this is a sob of pleasure or of pain. The imagery of death and orgasm also create a dual meaning with cross purposes. Rape becomes unknowable with reliance on crying out as nonconsent when so many women cry out during consensual intercourse. These same problems happen in the eighteenth-century courts. The language given in testimony is unable to clearly depict what happened in the alleged moment of attack. In this confusion, patriarchal juries acquit men, because they cannot completely understand the language of female nonconsent.

Along with making this language of crying out as nonconsent problematic, Cleland demonstrates that the use of volume as an indication of nonconsent is as ludicrous a concept. This confusion of language becomes even clearer in a moment when Fanny finds her then "master," making advances on her maid. Fanny, a woman herself, makes a judgment on the language used by the maid that may or may not be the correct assumption:

The first sight that struck me, was Mr. *H*—pulling and hauling this coarse country-strammel towards a couch that stood in the corner of the dining-room; to which the girl made only a sort of an aukward hoidening resistance crying out so *loud!* That I who listen'd at the door could scarce hear her, "Pray, Sir, don't—let me alone—I am not for your turn.—You cannot, sure, demean yourself with such a poor body as I—. Lord, Sir, my mistress may come home. —I must not indeed. I will cry out—" All of which did not

hinder her from insensibly suffering herself to be brought to the foot of the couch; upon which a push of no mighty violence serv'd to give her a very easy fall . . . she no doubt thought it was time to give up the argument, and that all further defence would be vain . . . indeed all his motions shew'd he was lodg'd pretty much at large. (68)

As the sarcasm indicates, Fanny does not believe the maid resists Mr. H enough. In this instance, Fanny takes the place of a jury. She does not believe that the maid cries out loudly enough. As Stephen M. Constantine argues, “[F]ailure to cry out loudly enough to be heard by others was taken as a sign of consent on the woman’s part” (9). But the maid does cry out loudly enough to be heard, and Fanny ignores this cry because she deems it to have not been loud enough. This same thing happened in court cases where the woman cried out but her assailant was acquitted based on the volumes of her cries. This demonstrates further that crying out did not aid women during rape and in many cases, not even after the attack. To illustrate this with a real example, during the *Trial of John Motherhill*, Catherine Wade testifies, “I screamed out but I did not see any body” (31). Later on, during cross-examination to disparage her testimony, she is asked:

I should think, that if you had called out pretty much in earnest somebody must have hear you—To account for your not being heard, you said before, that he stopped your mouth with his hand; but you don’t mean that he stopped your mouth when he was following so far behind; you might easily have called out then? (39)

Wade answers, “I was too much frightened to call out” (39). The defense attacks her credibility by directly questioning her ability to cry out. The assumption here is that the defense thinks she should have called out at some point and loudly enough to be heard by the people on North Street. The defense questions her again on this point: “Why did not you continue crying out till somebody heard you—You cried out at your father’s door?”

(39). Wades answers, “Yes”(39). The same sorts of thing happen in America in the twentieth-century. In *Brown v. State*, “the Wisconsin Supreme Court reversed a rape conviction on the grounds that the victim, who had struggled and screamed, had not resisted vociferously enough” (Spohn 123). The same eighteenth-century problems with rape law plague twentieth-century courts, and Cleland critiques the system’s failures years before modern feminists have a chance to enact rape reform laws. In the same way that courts question the resistance of real prosecutrixes, Fanny critiques the maid’s use of crying out. To Fanny, the fact that the maid barely cried out meant that the maid consented. But the maid’s resistance cannot be ignored, for she does beg Mr. H to not lower himself to having sex with a maid. The maid also threatens to cry out louder, but she never does. Once again, readers are left with an image that cannot be defined as rape or consensual sex—the best term being to call it coercive sex, and this hangs on our inability to understand the cry.

As much as *Memoirs* illustrates crying out, silence was used in the narrative to speak to the same problem in the law. As Kathryn L. Steele argues, “The absence of speech, or more specifically the absence of a denial, can look like acceptance” (8). Silence does not always represent consent in the text, and for Steele, “Silence leads to misinterpretation” (1). The fact that silence is not always consent upsets assumptions made by the common law and illuminates the dangers common societal perceptions are to young men and women. When a woman was unconscious, she cannot consent. Sounds simple enough; however, swooning, or feigning to faint, to allow a woman to give into a man's advances while protecting her modesty is a common trope of seduction literature of the period. As Dickie says, “The mutual role-playing involved in ravishing a woman

while she sleeps is still more bizarre, yet this situation also shows up in every permutation” (202). Women cannot consent when they are actually knocked out cold, but how are young men supposed to know when a woman is really passed out or when she is feigning so that she might give herself to him? The answer is there was no way to know. Men as well as women are victims in this instance of societal norms and the expectations of the law. Societal norms tell the man that the woman might pretend to pass out so that he might take her while protecting her and the law tells him that consent is silent. An unconscious woman does not cry out. Cleland shows this paradox in the story of Harriet the prostitute. When Fanny goes to work for Mrs. Cole, she meets the other prostitutes employed by the madam. The women sit around and share stories about the way they lost their virginities. Harriet shares that she saw a man swimming naked and thought he cramped and might drown:

I flew to the door, open'd it, ran down to the banks of the canal, guided thither by the madness of my fears for him, and the intense desire of being an instrument to save him All this took up scarce the space of a few moments where wildly looking round for the young man, and missing him still, my fright and concern sunk me down in a deep swoon, which must have lasted me some time
(Cleland 103)

Harriet swoons into unconsciousness and falls silent to the world. She has no way to actively resist any attacker by crying out. Harriet finds herself in the midst of being taken and in great pain when she wakes:

which must have lasted me some time; for I did not come to myself, till I was rouz'd out of it by a sense of pain that pierced me to the vitals, and awak'd me to the most surprising circumstance of finding myself not only in the arms of this very same young gentleman I had been so solicitous to save; but taken at such an advantage in my unresisting condition that he had actually completed his entrance into my body so far, that weakened as I was by all

the preceding conflicts of mind I had neither the power to cry out, nor the strength to disengage myself from his strenuous embraces, before, urging his point, he had forced his way into me, and completely triumph'd over my virginity, as high might now as well see by the streams of blood that follow'd his drawing out, as he had felt by the difficulties he had met with in consummating his penetration. (103).

Because Harriet swooned, the young man felt he had the right to have sex with her, and Harriet had no way to cry out until she woke. When she does finally wake, Harriet feels that she is at such a disadvantage already that she has no power to complete the actual crying out. The young man has already won over her virginity and attained his goal through conquest. Again, Harriet is left in a bloody state much like Fanny was when she lost her virginity to Charles. Is this rape? Our modern notions say “yes,” but Harriet does not cry out, and the swooning adds another dimension where eighteenth-century societal expectations say she asked for the rape. *Memoirs* demonstrates the problematic nature with relying on silence as consent, for women incapable of crying out may be taken sexually without pause. The young man begs for Harriet’s forgiveness, for he did not realize until she woke that she did not want to have sex with him. Eighteenth-century societal expectations set this young man up to be a rapist. Not only did this man take Harriet’s virginity, he changed the course of her life, sending her into prostitution instead of marriage. Through this strange narrative, Cleland shows that the law is absurd to depend upon a woman crying out to show her non-consent, and that society's notions about swooning women are equally as ludicrous and dangerous, leading and allowing men to rape. The young man did not know any better, which means the society’s heteronormative expectations that a man is always at fault in rape was not always correct.

Force also presents a problematic standard for rape evidence. As shown previously, Fanny loses her virginity in what appears to be bloody violence. Harriet in much the same manner ends up in the pool of blood, but she does not have the power to disengage physically. Despite the blood, rape is still hard to definitively prove when these scenes are held up next to the rape law. The truth is that force does not always mean rape, as some find force sexually stimulating. Fanny encounters a Mr. Barville who is only able to achieve arousal in extremely forceful, sadomasochistic, sex:

Seizing now one of the rods, I stood over him, and , according to his direction, gave him, in one breath, ten lashes with much good-will, and the utmost nerve and vigour of arm that I could put to them, so as to make those fleshy orbs quiver again under them, whilst himself seem'd no more concern'd, or to mind them, than a lobster would a flea-bite: in the mean time, I view'd intently the effect of them, which to me at least appear'd surprisingly cruel: every lash had skimm'd the surface of those white cliffs, which they deeply redden'd, and lapping round the side of the furthest from me, cut, especially into the dimple of it, such livid weals, as the blood either spun out from, or stood in large drops on; and from some of the cuts I pick'd out even the splinters of the rod, that had stuck in the skin . . . which thereby took place the more plum, and cut into the quick. (147)

Obviously, Fanny uses much force in this scene with Mr. Barville, but she is a woman.

Under the law, women were never tried for rape or even thought to be capable. The most she could be charged with was assault, but Mr. Barville wants to be beaten, so Fanny has his consent to perform the act. Barville thanks her extremely for the pleasure (148).

However, Mr. Barville turns the tables on Fanny and whips her:

All my back parts naked half way up, were now fully at his mercy . . . he made my poor posteriors pay for the ungovernableness of it; for now shewing them no quarter, the traitor cut me so, that I wanted but very little of fainting away, when he gave over; and yet I did not utter

one groan, or angry expostulation; but in my heart I
resolv'd nothing so seriously, as never to expose myself
again to the like severities. (150)

Fanny does not want to ever be beaten again, and she does not enjoy this exercise; but she forces herself to not utter a sound, signaling her compliance and her consent. Mr. Barville uses force, but force is not enough to definitively call this situation rape when it is held up to eighteenth-century rape definitions or societal expectations of the period. *Memoirs* demonstrates that the requirement of rape law for force is as problematic as its need for consent through silence or its nonconsent through crying out.

Moreover, *Memoirs* shows that vaginal penetration is not necessary for sex to be rape. In Fanny's first sexual encounter, her partner is not a man but a woman, who takes her without consent. This female-female sexual encounter proves that men are not the only sex that can rape, contrary to the expectations of the law. With the expectation that penetration must happen for sex to be rape, women inherently do not have the capability of raping men or women. Cleland, through Fanny's voice, expresses what it is like to desire men, giving readers long drawn out descriptions of "stiff staring truncheon[s]" and "may-poles" (63, 72). This exploration of female criminality is most readily seen in Fanny's initiation by Phoebe into Mrs. Brown's brothel. Female criminality here is sexual coercion and not lesbianism. Trumbach argues that "Cleland was, however, fascinated by the question . . . of whether relations between women were not as criminal as those between men" (75). Cleland uses the scene of lesbian intimacy to show that women can rape other women, further showing that men are not the only sex that can rape. This opening scene sets the tone of undermining common expectations when reading a pornographic text, men usually being the dominant and sexually aggressive sex.

During her first night under Mrs. Brown's roof, Fanny is not ruined by a libertine or an old pervert, as is common in seduction stories, but by her roommate, Phoebe. Phoebe grooms Fanny for entrance into the sex trade and takes Fanny's innocence. As Phoebe probes and penetrates Fanny with her fingers, Fanny remains passive not completely understand Phoebe's embraces:

I lay then all tame and passive as she could wish, whilst her freedom, raised no other emotion but those of a strange, and till then unfelt pleasure: every part of me was open, and exposed to the licentious courses of her hands, which like a lambent fire ran over my whole body, and thaw'd all coldness as they went. (11)

Fanny really does not know what Phoebe's touches mean, but she does know that they feel good. Not knowing what the touches mean stops Fanny from being able to identify these first caresses as sexually motivated. In a moment of clarity about the situation, Fanny recalls, "I should have jump'd out of bed, and cried out for help against such strange assaults," and yet she makes no utterance (11). This phrase shows that Fanny knows she should have actively resisted Phoebe's probing advances. Fanny allows the caresses to continue, but she recognizes that Phoebe has taken unwanted liberties, calling the touches "assaults" (11). The fact that Phoebe is a woman coupled with Fanny's innocence stops Fanny from raising the alarm; however, Fanny acknowledges that "the acquaintance and communication with the bad of our own sex is often as fatal to innocence, as all the seductions of the other" (13). The text challenges the assumption that men are the only sex that can commit assault upon the other. Whether Fanny cries out or not, Phoebe gives Fanny sexual pleasure and Phoebe finds a way to stimulate Fanny sexually without penetrating Fanny with a penis. The Common Law is written only to attend to men assaulting women, and society at large does not want to

acknowledge lesbianism let alone female on female rape. Cleland shows that this type of assault is as detrimental as a man raping a woman, as this incident leads Fanny into a life of prostitution. In both cases, it is a violation. He challenges the way the common law defines rape, and this in turn highlights the lack of recourse for Fanny to bring a case against Phoebe. Cleland focuses on breaking down common stereotypes and shows that the blatant prejudice in how the law is written.

Memoirs illustrates problems with the common law that are still pertinent today, because using consent, force, and penetration as evidence to show rape prove problematic and often times are dangerous to women in a larger societal sense. These lines of evidence focus on a woman's behavior and not her state of mind, and rape occurs because of not how a woman acts but because she does not will to have sex. Even if a woman confirmed all of these lines of evidence in the eighteenth-century, rape was still a case hard to corroborate. As Matthew Hale once said rape is a charge "easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent" (qtd. in Blackstone 215).³⁵ Susan Estrich explains Hale's comment with, "If it is so difficult for the man to establish his innocence, far better to demand that a woman victim prove hers" (5). Even if these women took their cases to trial, women like Fanny or Harriet, the odds were that they would fail to acquire conviction. Despite using crying out as evidence, the testimonies of men were privileged over women. Durston posits that

³⁵ See, Cromartie. Matthew Hale (1609-1676) was a judge and writer. Cromwell himself "appointed Hale a justice of the court of common pleas in January 1654" (Cromartie). According to Cromartie, Hale sat for Oxford University in Richard Cromwell's parliament. In 1661, Hale was knighted. The important thing to note about Hale is that he sat on the bench for almost 20 years, and that William Blackstone in his *Commentaries* is fond of including quotes from Hale. Hale wrote "the standard English criminal law textbook" (Cromartie).

“Complainant credibility went to the heart of rape cases” (“Part 2” 15). Making it incredibly difficult for women, like Fanny, who were prostitutes or associated with prostitution to effectively prosecute their attackers. Durston goes on to explain that men usually claimed women consented to the act as defense for the rape, and that rape without consent was often believed to not even be possible (22, 25). The truth of the matter is that rape’s largely went unreported and those that were reported ended most often in acquittal.³⁶ There are many reasons why rape cases were not pursued. Rape cases involving wealthy men rarely came to court, and there is no one reason; one reason being that cases were often solved out of court for monetary exchanges (Simpson, “Popular Perceptions” 45). Also, men could sue the prosecutrix of a rape case if he was found not guilty for malicious prosecution (46). Guilty verdicts in rape trials were also exceedingly rare (52). Women had a hard time affording counsel as well (57). Rape trials would have also been more embarrassing and detrimental to the woman than to the man, because the victim would have been asked to provide proof during testimony during the trial (Wagner 316). This meant that the sexual agency and pleasure of women were under scrutiny. Despite Blackstone’s ideas that prostitutes could be raped, women with sexually free pasts were not given equal treatment during actual trials. Their reputations went on trial with their bodies, and the expectation was that women who had sex freely were not able to be raped. These are some of the many reasons why women did not report rape. The patriarchal court system was stacked against these victims. Not only did the courts not operate in the favor of women, but also society complicated the views and evidences of

³⁶ For statistics, see Simpson. From 1730-1750, out of 65 rape cases prosecuted, 15 were found guilty and 8 executed. That is 0.25% guilty and 0.53% of those guilty that were executed.

rape. Eighteenth-century Juries were made up of men, and despite the way the law appeared in letter, rape was defined by societal expectations. Furthermore, these juries were men and did not understand or care to understand the flaws of the system as related to women.

By confusing nonconsent and consent in crying out, Cleland points to the problematic nature of using consent as a defining attribute of evidence in rape trials, and he anticipates the changes that feminist reformers of rape law call for currently in America and other western countries. Cassia C. Spohn describes problems in the current iterations of rape law as being due to the flaws in the essential elements of its definition: force, absence of consent, and vaginal penetration (122). This traditional model, which existed in eighteenth-century common law, does not take into account: attacks on males, acts other than sexual intercourse, sexual assaults with an object, or sexual assaults by spouses (39). Cleland illustrates some of these same problems throughout *Memoirs*. Force, consent, and penetration, while significant, are no longer considered viable standards in rape cases. Rape shield laws offer a more humane treatment of victims in today's society.³⁷ Their reputations are no longer up for debate. Movements for rape reform also push for yes means yes, which would make consent the verbalized form instead of nonconsent.³⁸ A yes would have to be given in order for lawful sex to proceed. This would eliminate confusion of the part of both parties engaged in sexual activities, and silence would always mean no. More importantly, Spohn notes, "The rape law reforms may have started a process of long-term attitude change that is difficult to

³⁷ See Spohn 127.

³⁸ See Medina.

measure in a legal impact study but may ultimately lead to instrumental change” (130).

Both Cleland and Spohn note a need to change society’s attitudes and the law. While

Cleland does not directly spell out his thoughts on rape law and society’s treatment of

rape victims, he does present cases where sexual scenarios directly conflict with the letter

of the law and the attitudes of eighteenth-century society.

CHAPTER FOUR

FANNY AND SELF-OWNERSHIP

Memoirs' critique of the common law does not stop at a discussion of crying out and other forms of evidence. Inherent in the eighteenth-century rape law was a notion that ownership of a body is required to claim harm from rape. Women must have ownership over their own bodies to claim that they have suffered injury by rape, but the law has not always allowed for women to claim this type of injury, and therefore takes away the ownership of their own bodies from a legal standpoint. There are moments in *Memoirs* where Cleland demonstrates the ownership of women by men, and this is another tactic he uses to commentate on the plight of women during the eighteenth-century, for despite how the law sees these women, the importance lies in how they see themselves. By reading Cleland's text as a commentary on the ownership of women, the "tail-piece of morality" that so many critics have difficulty explaining, finds meaning as a fitting end to a woman's travel to self ownership and agency (Cleland 187). In this tail-piece, Fanny has been reunited with her love, Charles, and finds that virtue surpasses vice in pleasure. The heteronormative patriarchal act of marriage is Fanny's end. While many

scholars read this moment as an unfitting paradox, because Fanny has committed herself to the pleasure of what some people call “vice” throughout most of the novel, Cleland’s tail-piece offers a place where Fanny finally has power and exercises her natural rights as a human. Through her sexual journey, Fanny finds a way at the end of the novel to own herself, and in this ownership, she is able to find happiness in a companionate marriage in a state equal to that of her husband. Cleland rejects the patriarchal nature of the law and of John Locke’s treatises on property, and Cleland opens up ownership to both sexes.

Fanny’s Un-owned Roots

In the beginning of the novel, Cleland chose to make Fanny Hill an orphan. Fanny, therefore, begins the novel as an un-owned commodity. Using an orphan allows Cleland to fully explore what it means for someone to be owned, because the preconceived ownership of inheritance law is gone.³⁹ Fanny is not a slave, but there is some question of her self-ownership. Through English inheritance law, the ownership of women passed through male hands. First they are owned by their fathers and later their husbands.⁴⁰ These men owned and protected their reproductive rights through this ownership. If Fanny's father were alive, the property rights of her body would belong to him, but since he was dead and Fanny walked away with her inheritance (what little there is). Cleland is then able to explore later in the novel what it means for Fanny to own herself. Fanny thinks about her options and what it means to seek a fortune:

³⁹ Cleland also made Fanny an orphan to follow a common convention of the coming of age story, or *bildungsroman*. This does not negate in any way my reading of the fact that Fanny is an orphan, but only adds to it. See Scott.

⁴⁰ For a more thorough discussion on inheritance law, see Swan 117.

As I had now nobody left alive in the village who had concern enough about what should become of me, to start any objections to this scheme . . . I soon came to the resolution of making this launch into the wide world, by repairing to *London*, in order to *seek my fortune*, a phrase, which, by the bye, has ruined more adventurers of both sexes, from the country, than ever it made, or advanced. (3)

The important things to notice here are that Fanny has no one, and she is about to go to London to “seek her fortune,” should have come from her father, but Fanny already exhibits the notion that she will go out and make her own way.⁴¹ She does this later in the novel when she receives a sum after the death of the elderly gentleman who keeps her for some time. During the course of the eighteenth-century, there is an “emergence of an independent female, one whose father had died or one who did not marry,” and rape gradually moves from being a crime against a male to the female being the injured party (Brownmiller 23).³³ Moreover, Fanny puts herself into the same situation as men who leave the country. This orphaned state may mean that she owns herself or that no one owns her. Within this eighteenth-century view, Cleland sets up the opportunity to examine both a woman being owned and owning herself.

Women have not always owned their bodies, and “throughout history wives have been the property of their husbands” (Geddes and Lueck 1079). Men, fathers and husbands, were at one time the injured parties in rape trials. Restitution would have been made to these men, because their property (daughters and wives) would have been stolen. Durston points out that by “the eighteenth-century, it was the complainant who was the crime’s victim,” but ““medieval’ attitudes and practices lingered” (“Part 1” 169).

Lingering attitudes mark the eighteenth-century as a turning point for the valuation of the

⁴¹ See “fortune.” Her fortune is a “stock of wealth, accumulated by an individual or received by inheritance.”

ownership of women. The law had already begun to change, seeing women as the injured party in rape trials, but attitudes about the ownership of women remained. Juries in these trials would have had various viewpoints and attitudes about the ownership of women, and since these juries were made up of men, many remained attached to old patriarchal ideas. The woman's ability to own herself is also important because a woman needs agency to be a full contributing individual politically. As Katherine O'Donovan argues, "To be a full individual in liberal society one must be an appropriator, defined by what one owns, including oneself as a possession, not depending on others" (194). John Locke,⁴² philosopher of property, theorized that "natural rights are powers to fulfill the fundamental duty of natural law" (Haakonssen 55). For Locke, natural law was given to all human beings and could be understood through reason (57). One of these natural rights of man is the right to own property. As Alice Tay posits, "Property is that which a man has a right to use and enjoy without interference; it is what makes him a person and guarantees his independence" (10). Personhood is then inherently tied up in the ability to own property. At least, property makes the man. Women, under Locke's theories, were not included in the category of self-ownership.⁴³

The Question of Fanny's Ownership

Fanny's self ownership is tied up in her own beliefs and her profession as a prostitute. Prostitutes have to have ownership of their bodies to sell them on the market,

⁴² John Locke was a philosopher, born on 29 August 1632. His most notable works were *Essay Concerning Human Understanding* (1689) and *Two Treatises of Government* (1690). See Milton.

⁴³ To learn more about Locke's patriarchal conception of property, see Walsh.

but Fanny does not always see her body as hers to own. She gives her body up to those who she feels have some claim to her as a possession. The first person that Fanny admits to as an owner is Mrs. Brown. Cleland uses market language to introduce Mrs. Brown and Mr. Crofts. This language represents the move from “obligatory customary social roles, determined at birth, and thought to arise from nature” to contract theory (Naffine 196). Contract theory is important to this study because it relies on consent just as does a determination of rape.⁴⁴ This market language also encases Fanny’s feelings about being owned by Mrs. Brown. Fanny feels she has been purchased by the bawd. This purchasing means that Mrs. Brown has a right to dispose of Fanny’s body in any manner she sees fit, and more importantly, that Fanny gives consent or in the least, acquiescence to the use of her body. Fanny has to give this consent. Mrs. Brown cannot take Fanny as property without this consent. Mrs. Brown in essence purchases Fanny’s body when she provides Fanny room, board, and clothing. These are not free items, and Mrs. Brown makes this quite clear to Fanny. From the text, Fanny is highly aware of the business relationship as it develops. Fanny describes the purchasing of her newer, better garments as the “industry of the good Mrs. Brown;” after which, Fanny tells readers that her maidenhead is a “perishable commodity,” and she is dressed out for “market” (Cleland 14). This language makes it quite clear that this arrangement is a business one, and Fanny’s maidenhead is the commodity which is being bartered. Mrs. Brown feels as if she owns Fanny’s

⁴⁴ Here, contract theory is the ability of an individual to give up certain rights to those over him (or her) for the purposes of government or rule. These rights cannot be taken from individuals but have to be given consensually, and these rights can be taken at will from the source that they were given if the one they were given to is deemed a tyrant. See Haakonssen for a thorough history of contract theory through the centuries.

virginity because of all she provides the girl, and in a sense, she has already purchased it. Mrs. Brown in turn sells the maidenhead to Mr. Crofts.

This sounds a lot like sexual slavery, but how can women be slaves? There are two reasons that prostitution is not actual slavery. One, the mind and body are considered separate at this point in history—the mind or person is “separated in some way from their laboring body” (Owens 119). The second is that women are not considered autonomous agents in the legal system, or as Owens concludes, “Woman is only ever her sexed body,” and a woman’s natural and sexed bodies keep her from entering into the market (120, 131). Thus when a woman becomes a sex worker she denies the natural, procreative role of her body (135). All of this means that the sex worker’s body becomes a thing, a commodity. Mrs. Brown sells Fanny’s maidenhead as if it were an actual commodity; she does not sell Fanny herself, so this is not slavery, but Mrs. Brown sells goods that she feels she has purchased. Now Mr. Crofts does not buy Fanny from Mrs. Brown but buys the maidenhead, which is a perishable commodity—once taken, it is gone forever. After this encounter, Fanny remains Mrs. Brown’s property. The importance here is not whether Fanny is truly owned, but if she believes she is owned. Fanny says, “so much did I think myself her’s [Mrs. Brown’s], soul and body” (Cleland 19). Fanny believes both her mind, what makes her a person, and her body belongs to Mrs. Brown. The fact is Mrs. Brown and Fanny both believe that Mrs. Brown has a right to sell Fanny’s maidenhead. This means no consent is needed from Fanny in the moment, and this is why she has no power to cry out.

If Mrs. Brown has a right to sell Fanny’s maidenhead, Mr. Crofts does not attempt to rape Fanny, because he has purchased the right through Mrs. Brown to use Fanny’s

body. Furthermore the encounter does not meet all the criteria of evidence as needed to prove rape, despite its appearance as rape to modern readers:

But long I was not suffered to remain in this state of stupefaction: the monster squatted down by me on the settee, and without farther ceremony, or preamble, flings his arms about my neck, drawing me pretty forcibly towards him, oblig'd me to receive, in spite of my struggles to disengage from him, his pestilential kisses, which quite overcame me: finding me then next to senseless and unresisting, he tears off my neck-handkerchief . . . still I endur'd all without flinching till embolden'd by my sufferance, and silence, (for I had not the power to speak, or cry out) he attempted to lay me down on the settee, and I felt his hand on the lower part of my naked thighs, which were cross'd, and which he endeavour'd to unlock. (18)

Previously mentioned, Giles Jacob's definition of rape states that "To make this Crime [rape], there must be *Penetration* and *Emission* . . . Where there is neither Penetration nor Emission, an Attempt to ravish, be it never so outrageous is deemed only an assault."

This meeting with Crofts fails to meet this standard. Crofts does have an emission, but Fanny's "thighs and linen received the effusion" (19). Crofts is never able to penetrate Fanny, and therefore, according to the law, he never rapes her. Since Crofts paid money, it would be difficult for Fanny to prosecute Crofts for attempted rape or even assault.

Through property ownership, Fanny cannot legally deny Mr. Crofts entrance because he has rented her vagina from Mrs. Brown. Fanny ends up on the floor with a bloody nose, but only because she does not surrender the goods that Mr. Crofts paid to use. In the eighteenth-century view, what to our modern eyes see to be attempted rape is thusly dissolved into only a failure to turn over purchased goods. Owens thinks a man "can take the prostitute's consent to sex for money to mean an absolute availability for his use . . . In prostitution law sees her only in terms of her value to men" (144). Fanny even thinks

that she “had been the criminal, and she [Mrs. Brown] the person injur’d” (Cleland 21). Mr. Crofts is not the last person to buy Fanny’s services.

Fanny’s match with Charles appears to be a love match, but Cleland’s text complicates this notion, showing that Charles buys Fanny for use from Mrs. Brown. Fanny does call Charles her “master,” after seeing him all sprawled out and beautiful, and the couple does strike a “bargain,” which indicates Fanny barter a bit before giving herself to Charles (36-37). The problem lies in the fact that Fanny does not own herself at this point, and Charles has to “clear any debt” of Fanny’s owed to Mrs. Brown (37). After the couple make their escape, Fanny states that she “was still mistress of that darling treasure, that hidden mine, so eagerly sought after by the men, and which they never dig for but they destroy” (39). Fanny gives Charles her maidenhead and sees it as hers to give. This is where Cleland makes a statement. Fanny, despite being bought and sold like a commodity, still feels she has possession over her own body. The girl has quite a different view than the world around her. Fanny holds on to her natural right to own her own body, despite being bought and sold as a commodity. When the matter is one of love, Fanny possesses herself and gives everything, but when it is a matter of sex for pleasure and money, she sees it differently. Readers have no way of knowing Charles’s real thoughts on the matter, but to the law and to society, his are the only emotions and desires that matter. Charles does clear Fanny’s debts, so he may feel he has purchased the maidenhead, or in the least Fanny’s sex. He does seem to love her as much as she loves him, so this may indicate something outside of ownership. These two types of sex, for love and for money, become distinct from one another to Fanny.

Fanny's time with Charles is fleeting, and once again Fanny finds herself owned. Upon Charles' departure, Mrs. Jones, her landlady, brings up bills that Fanny owes for being sick (from depression and losing Charles' child) and general room and board. She asks Fanny for payment. Since Fanny has no money, Mrs. Jones sets up a meeting between Fanny and Mr. H, so that Fanny might find her "market" while she may (58). Mr. H disposes of all Fanny's debts to Mrs. Jones and thereby, purchases Fanny. Fanny even admits to the purchase by saying, "I sat stock-still; and now looking on myself as bought by the payment that had been transacted before me, I did not care what became of my wretched body" (60). By admitting she is owned by Mr. H, she gives up ownership of her body to him. Fanny separates who she is from her laboring body. She also thinks she has "no longer a right to refuse the caresses of one that had go that advantage over me, no matter how obtain'd . . . what [she] suffer'd, [she] suffer'd out of a kind of gratitude" (61). Their first time having sex, might be viewed as rape, but becomes problematic when Fanny's ownership is considered:

The gentleman, however, no novice in affairs of this sort, drew near me, and under the pretence of comforting me, first with his handkerchief dried my tears as they ran down my cheeks . . . I suffer'd tamely whatever the gentleman pleased, who proceeding insensibly from freedom to freedom, insinuated his hand between my handkerchief and bosom . . . he took me in his arms, and bore me without life or motion to the bed, on which laying me down, and having me at what advantage he pleas'd, I did not so much as know what he was about, till recovering from a trance of lifeless insensibility, I found him buried in me, whilst I lay passive and innocent of the lease sensation of pleasure: a death cold corpse could scarce have had less life or sense in it. (60)

Fanny does not cry out here. She does not cry out, because she symbolically has given over ownership to Mr. H. Her passivity is a result of her acceptance of her plight. Mr. H

tries to have sex with Fanny again, and she “did not think [herself] enough [her] own mistress to refuse it” (63). These statements show that Fanny understands herself to be owned by Mr. H. Yet, when Mr. H has intercourse with Fanny for the first time, she lies there not only passively, but also like a “death cold corpse,” her selfhood dying with the intercourse (60). Fanny does not give active consent, showing that failing to resist actively does not mean a woman is not raped or taken against her will. No matter what Fanny thinks, Mr. H sees Fanny as his property.

Mr. H’s view of Fanny as property is more evident than in the situation with Fanny and Mr. H’s servant. In Chapter Two, I showed how Fanny sarcastically depicted the maid’s attempts to forestall Mr. H’s advances. The maid does indeed have sex with Mr. H, or Mr. H rapes the maid, depending on the reading. Whatever the reading of that situation may be, the events that follow show Mr. H’s view of his mastership of Fanny. Fanny begins her own affair with a young man for revenge against Mr. H. When Mr. H finally finds out about Fanny’s indiscretion, he dismisses Fanny, much like one would dismiss an employee:

Mr. H—, on hearing what I said, hung his head a little; but instantly recovering himself, he said to me, as near as I can retain, to the following purpose:

“Madam, I take shame to myself, and confess you have fairly turn’d the tables upon me. —It is not with one of your cast of breeding and sentiments that I should enter into a discussion of the very great difference of the provocations: be it sufficient that I allow you so much reason on your side, as to have changed my resolutions, in consideration of what you reproach me with: and I own too, that your clearing that rascal there is fair and honest in you: renew with you I cannot; the affront is too grow; I give you a week’s warning, to go out of these lodgings: whatever I have given you, remains to you; and as I never intend to see you more, the landlord will pay you fifty pieces on my account, with which, and every debt paid, I hope you will

own I do not leave you in a worse condition than what I took you up in, or than you deserve of me. —Blame yourself only that it is no better.” (86)

Mr. H points to a “difference in provocations” as to why the events of indiscretion are not the same. Fanny is Mr. H’s property, but Mr. H is not Fanny’s property. Mr. H, therefore, is the only injured party in this affair. Once Mr. H dismisses Fanny, she finally can reclaim ownership of her body. From this point onward, she enters into a state of self-contraction with Mrs. Cole, another bawd, but this time, Fanny keeps the rights of her body to herself.

This brings us to the end of the novel where Fanny finds a companionate marriage with Charles the man she loved all along. To many, this scene feels like an awkward addition, but it is the perfect ending to Cleland’s novel about female property ownership. Right before Charles returns, Fanny finds herself in a relationship with an older gentleman, who teaches her that “the pleasures of the mind were superior to those of the body,” and he leaves Fanny with a fortune after he dies (175). This man brings back Fanny’s mind and couples it with her body. Fanny will no longer need to work in an industry where her mind and body operate as separate entities. She is no longer only a sexed body being bought and sold on the market. Moreover, the gentleman leaves her “at the head of so large a fortune” that she is independently wealthy—no longer needing a man’s money to sustain her life (176). Fanny takes the place of a man as the head of the fortune; she has evolved through the course of the novel to be a propertied person instead of a person that is property. As Naffine states, “The true subject self is the rational mind, the superior part of the person, which should take charge of an object body, and, if it fails

to do so, the person is lost” (202). Fanny wandered lost until the gentleman was able to help her mind take charge of her body, regulating her pleasures.

When Charles arrives back on the scene, he meets a different Fanny than the one he purchased from Mrs. Brown. Fanny takes ownership of Charles from the start, with “Say you are still mine” (Cleland 178). The servant introduced in the text is her woman; Fanny now owns another as she was once owned (180). Then, when Charles and Fanny finally have intercourse, Charles is not the only one to ejaculate; Fanny gives her “liquid contribution” (185). With this female ejaculation, Fanny truly becomes Charles’ equal. This is the moment when the pair can finally become “one body and soul . . . I was him, and he, me” (184). The marriage contract is supposed to make two become one, but when a woman is powerless, she only becomes the subject of the man. Fowler argues that this marriage of Charles and Fanny reestablishes “the original phallogocentric power dynamic in the novel, thereby validating the one prevalent in society” (77). The patriarchal attitude is prevalent in eighteenth-century society, but Cleland uses this “tail-piece of morality” to show that women are capable of being equals of men and have agency and ownership in their own sexuality (Cleland 187). Cleland shows a way that marriage can be a contract making a man and woman one, and that is in their equality. Fanny’s equality with Charles depicts a woman who is capable of being autonomous in the market and able to own property, and it also shows that a woman is capable of being an equal subject of the crown as her male counterparts. *Memoirs* is not a misogynistic text, but a text that illuminates the problems with a patriarchal world and also a text that shows women own themselves. Cleland uses this text to promote the causes of women and therefore, he is a feminist.

CHAPTER FIVE

CONCLUSION

Despite being read as a phallogocentric often misogynistic text, Cleland's *Memoirs* in actuality presents Fanny's empowering journey to self-ownership. Houlihan once wrote that the "ironic exploration of these 'irksome sensations' makes him not a feminist, but a spur to feminism, as diligent as Fanny Hill herself, one who confounds didactic principles as he lays bare the pains, pleasures, and costs of civilization" (294). Braudy pushes Houlihan's assertion one step farther, calling Cleland the first feminist, and showing that in "Cleland's world of class, it is sexuality that makes all men and women equal . . . [t]he naked body implies the naked heart" (37). Cleland is a feminist. Not only did he write *Memoirs*, which promotes a woman's equality in marriage and in life, but also he represented Marthalina, a girl once a slave who is now free because of his efforts. Cleland presented the flaws in the rape common law to illuminate its dangers to women. Women should not have to cry out to stop rape, and their silence cannot always be taken for consent. Throughout Fanny's entire sexual journey, she gradually finds a

way to take possession of her body, finding equality with men. At the end of the novel, she is no longer an object but an individual subject of the crown. Fanny ends her letter by reflecting on her tale, touting Virtue:

You laugh perhaps at this tail-piece of morality, express'd from me by the force, of truth, resulting from compar'd experiences: you think it, no doubt, out of place; out of character: possibly too you may look on it as the poultry finesse of one who seeks to make a devotee to Vice under a rag of a veil, impudently smuggled from the shrine of Virtue; just as if one was to fancy one's self compleatly disguis'd at a masquerade, with no other change of dress, than turning one's shoes into slippers: or, as if a writer should think to shield a treasonable libel, by concluding it with a formal prayer for the king. (187)

To many, this tail-piece has seemed out of place—a novel of pleasure ending in the typical marriage of sentimental novels, but Cleland subverts the common expectations of marriage by making Fanny's marriage to Charles a companionate one, complete with equality of both parties. Fanny has her own wealth and her own ability to purchase property and keep it.⁴⁵ Fanny finds pleasure in her sexual agency, loving Charles with mind and body.

Does *Memoirs* titillate readers? The answer is resoundingly “yes,” but titillation is not the only thing the novel offers. Cleland writes underneath all of the sex a didactic tale of how the law lacks protection for the female subjects of eighteenth-century England. As Erica Jong, editor of a 1978 illustrated edition of *Memoirs*, so adequately illustrates in her Introduction:

Fanny Hill, or (as its author actually titled it) *Memoirs of a Woman of Pleasure*, stands at a curious crossroads between

⁴⁵ This companionate marriage is reminiscent of John Milton's views of marriage in his divorce tracts and of those expressed by Mary Wollstonecraft. This topic needs further examination.

the ancient attitude toward eroticism as a heightened but always significant part of normal life, and the essentially modern puritanical attitude that sex is a thing to be snickered and salivated over in private, but censored and condemned in public. (5)

Cleland put this novel into public circulation. Whatever his intent might have been in doing so, the novel's didactic underlay served to teach both sexes about consent and about the fact that women were capable of pleasure once they gained sexual agency, as Fanny does with the elderly gentleman and Charles. Furthermore, perhaps, modern audiences can still learn about the nature of rape from the novel and see failings in current rape laws.

One question that still needs to be answered is: how does self-ownership play out in the eighteenth-century, not just with *Memoirs*, but across a wider spectrum of literature? To understand Fanny's self-ownership, *Memoirs* needs to be placed amongst other similar works to track attitudes of female sexual agency and to follow women's ability to own their bodies in patriarchal eighteenth-century England. Another question is: how does crying out play a role through the centuries to lead to our current rape laws and societal beliefs? Do Cleland's other texts offer didactic messages as well, and if so, what kinds? Does crying out or self-ownership play out in the text of Cleland's other works? All of these questions still need to be answered.

Pornography must be examined not only according to its explicit nature but in its cultural context. Kathleen Lubey promotes a deeper investigation of pornography as a genre, and thinks that "We must approach it with attention to its formal qualities and to our modes of reading, since it puts into sharp focus the crises that characterize the cultural moment of its production" ("Spectacular Sex" 128). In the future, I would like to

compare *Memoirs* to other pornographic works to investigate the progression of didacticism coupled with titillation to understand this work in comparison with a larger body of Literature and cultural movements. Through this research, perhaps, a greater of understanding of rape and self-ownership might emerge. All of this may lead to a broadening of the canon by recovering more women's voices, and by consequence, further rape law reform. Fanny found a way to own herself and find sexual agency. Now, women must find a way to own pornography to better understand the nature of sexuality in all its incarnations, and they must find a way to appropriate the language of the genre to promote the well-being of women and highlight the failings of rape legislation and cultural biases in our own society.

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