

Marital Violence: An English Family History, 1660–1857

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This study connects the experience of domestic abuse to the historical development of family life from the Restoration until the passage of the Divorce Act 1857. A critical mass of examples drawn from a variety of sources, including 220 cases of separation or restitution from the London consistory court, peculiars of the Archbishop of Canterbury, the Court of Arches, the High Court of Delegates, and the Judicial Committee of the Privy Council provides the empirical foundation for the discussion. Printed law reports from 1754–1855, cases reported in the London *Times*, and sixty-seven cases involving child or spousal custody heard by the King's Bench between 1738 and 1800 extend the range of the study. The analysis of these materials adds substantially to our knowledge of domestic violence during the eighteenth century, bridging the gap between studies of the early-modern period and those that focus on the Victorian period. In doing so, the book offers a revision of our understanding of the changing legal and cultural status of domestic violence, arguing that the increasing disapproval of a husband's physical correction of his wife that James Hammerton (1) and Martin Weiner (2) placed in the later-nineteenth century actually developed much earlier.

The first stage of Foyster's analysis focuses on how contemporaries defined violence and how resistance to violence expressed itself. The discussion usefully complicates the concept of violence, pointing out that the inclination of historians to focus on murder as a surrogate for violence overlooks the 'every day' element of non-lethal violence and perhaps overstates the extent to which violence has declined over time (p. 34). Based upon her reading of the depictions of violence in the range of cases under study, Foyster concludes that the understanding of the experience of violence expressed by litigants could include 'physical, verbal and sexual' (p. 35) acts. Not surprisingly, given the contentious nature of marital litigation, the identification of violence always remained contested, and neither judges nor litigants ever reached consensus about exactly what marked unacceptably violent behaviour.

Foyster then takes up the range of responses to a violent husband, assessing the treatment of domestic violence by prescriptive literature, violent responses to domestic violence, and the development of additional options of resistance to cruelty. Foyster shows that courts expressed concern for the emotional consequences of marital violence, predating the change in judicial attitudes in the nineteenth century documented by Hammerton. She also gives examples of women engaging in verbal 'violence', arguing that verbal anger increasingly came to be associated with working-class women and became less acceptable for middle- and upper-class women during this period. Foyster identifies the emergence of nervous illness as 'a new form of protest and a way of responding to marital violence' (p. 123) during the eighteenth century. Foyster refines Martin Wiener's claim that toleration for male violence declined during the nineteenth century, contending that the decline in judicial tolerance for male violence began earlier than previously thought, but that it did not necessarily lead to concomitant changes in popular attitudes.

The next stage in the analysis examines the familial and the community context of violent behaviour. In a chapter entitled 'Children and marital violence', Foyster attempts to '...reintegrate the stories of children and married adults into new histories of the family' (p. 131) by considering the impact of domestic violence on children in the household. Children could act as witnesses; they also might try to protect their mother or call for help. Foyster shows that the use of children as pawns in struggles between their estranged parents is not a contemporary innovation. In this period, however, the legal rights of fathers over the custody of their children gave husbands an especially powerful weapon, and wives might stay in violent marriages rather than give up their children. In addition, critiques of parenting could play a role in courts endeavouring to assess the worthiness of the husbands and wives who brought their cases for adjudication. Foyster concludes this chapter with a discussion of the passage of the Custody of Infants Act 1839, highlighting the role of Caroline Norton in achieving this modest reform.

Foyster's analysis then expands its focus to examine a larger social space, arguing that the evidence of these cases shows that domestic violence remained in a public realm well into the nineteenth century. Foyster counterposes the continued importance of community and kinship ties exhibited by these cases to the views of Alan Macfarlane and Keith Thomas on the timing of the rise of individualism and the erosion of communal relations. Foyster gives vivid examples of the different ways in which parents would intervene in violent domestic disputes involving their children, showing that parental involvement 'in terms of nurture and responsibility for care, clearly did not end with the marriage of children' (p. 173). A wife's parents might confront a violent son-in-law directly or might try to control his behaviour using their financial influence. Wives might return home for refuge, and family members commonly served as witnesses in court proceedings. Servants not only served as witnesses, they might also actively intervene to protect a wife, although servants and parents might also side with a husband against a wife. In Foyster's view, such interventions by both friends and neighbours argue against understanding the eighteenth- and early-nineteenth-century marriage relationship as conducted in an isolated private space.

In the third and concluding phase of her argument, Foyster examines mid-nineteenth-century transitional developments. She suggests that the emergence of the helping professions served to isolate married couples, by reducing the role of parents, servants, friends, and neighbours in monitoring and mediating between violent spouses. Foyster surveys the limited but growing role of clergymen, the police, and medical doctors in instances of domestic violence. George Behlmer's work has taken up this part of the story for the late-

nineteenth and early-twentieth centuries, although my own work on separations in early-twentieth-century magistrates' courts suggests that family members and neighbours continued to be an important presence in marital litigation (3). Finally, Foyster considers the passage of the Divorce Act 1857 as the culminating event of the period encompassed by her study. In her view, the terms of the Act and the debates surrounding its passage evidence the extent to which male authority in marriage continued to include the presumed right of husbands to utilize physical correction against their wives. The debates also show that the link between violence and class status identifying domestic violence with the lower classes had already been forged. Caroline Norton again figures in Foyster's analysis of these legislative developments, and Foyster repeats the commonly-held view that the passage of the Divorce Act, although it improved the status of separated or divorce wives, delayed the reform of married women's property law for over another decade.

Foyster's book joins a growing body of work based on a diligent mining of court records and archival materials, along with a range of other kinds of sources, to uncover the lived experience of family life. Foyster's work shows the progress made in this scholarly enterprise since Margaret Hunt's 1992 essay on domestic violence in eighteenth-century London, based on only ten cases, and the pioneering, and much cited, 1978 essay by Nancy Tomes, which was based on 100 cases of violence between men and women in London, selected from those reported during two months out of every five years between 1841 and 1875 (4). The nature of the sources, the practical difficulties of surveying them, and the unevenness of their preservation hampers any attempt to examine systematically large numbers of cases across the entire British Isles. Consequently, this endeavour continues to be both collective and incremental. Foyster has painstakingly accumulated a significant body of evidence and subjected it to a systematic and nuanced analysis that links the experience of violence between spouses to the larger community on the one hand and to the institutions of law and justice on the other. With this book, coupled with the recent work on domestic abuse reported in Joanne Bailey's *Unquiet Lives* (5), we have a much more detailed and nuanced picture of violence and family life during the eighteenth century.

Foyster intends her work on marital violence to have a significant impact on the historiography of family history by revising the chronological framework of our understanding of the development of family life; a chronological framework that has been in contention since the publication of Lawrence Stone's ever-controversial *The Family, Sex and Marriage in England 1500-1800* (1977). She also seeks to link the experience of family violence in the past to the contemporary experience of family violence, exposing the origins of our own misconceptions about the social roots of such violence. Her approach and her conclusions raise important issues that need further attention by scholars interested in gender, family, and social change. These issues include: the tension between quantitative and qualitative analysis; the evaluation of Caroline Norton's role in the 1839 and 1857 legislative landmarks in the treatment of the family and marriage; and the ways in which historical research on family violence might bear on the contemporary understanding of domestic abuse.

Foyster deliberately eschews quantitative analysis, observing that 'domestic violence does not yield evidence that can be readily translated into reliable numbers or statistics' (p. ix). As Foyster points out, no historical records exist that could form the basis for a comprehensive survey of the extent of domestic violence—too much of this behaviour escaped any kind of record. And the records that do exist manifest many problems that Foyster conscientiously weighs. In light of these obstacles, Foyster proceeds by the use of example, using particular examples to frame her discussion. Foyster begins her study by contrasting the experience of two women, Rachael Norcott in 1666 and Mary Veitch in 1837, who both applied to the Court of Arches, seeking separations on the grounds of their husbands' cruelty. The author repeatedly returns to the commonalities and contrasts exhibited by these two cases in order to frame her discussion of the changes over time in the meanings attributed to marital violence.

Examples serve both as especially dramatic illustrations and as a way to summarize the salient elements of other cases. For instance, in her discussion of the role of servants, Foyster refers in the notes to eight examples from years ranging from 1666 to 1837 (pp. 184–6). But are these all the examples of this nature in the cases she collected? Do eight cases over a period of approximately 170 years provide a sufficient foundation for the claims that Foyster wishes to advance? Similarly, for the role of friends Foyster lists some

ten cases between 1717 and 1847, and for the role of neighbours she refers to six cases between 1662 and 1853 (pp. 190–6).

The use of examples, in so far as it suggests a representativeness of some kind, avoids directly grappling with a quantitative analysis while relying on implicitly quantitative inferences. To assert that the cases of Rachael Norcott and Mary Veitch were ‘typical’ (p. 234) implies such representativeness. The book does not include any summary tables of the cases, which might clarify the basis for determining typicality, although publishers often resist the inclusion of such supporting apparatus in order to keep down the cost of production. Other quantitative aspects of a qualitative analysis also beg for attention. Establishing a developmental scheme for changes in the nature of family life requires distinguishing between uncommon and common behaviour. Even the analysis of discourse, often concerned with the differentiation between predominant voices and contesting or resisting voices, has a quantitative aspect. As the archival work on gender and family life proceeds, the need to bridge the bifurcation between qualitative and quantitative analysis becomes more pressing.

Foyster’s treatment of Caroline Norton’s role in the passage of the Custody of Infants Act 1839 and the Divorce Act 1857 depends upon Norton’s published pamphlets and some of the standard treatments of Norton’s life. Foyster describes Norton as ‘upper-middle-class’ (p. 156) and finds her role in the debates on custody and divorce legislation limited to that of a ‘suitable figurehead ... because of her antifeminism and unwillingness to confront many of the realities of women’s and children’s lives who endured marital violence, she represented the conservatism of her age’ (p. 157). This understates both the complexities of Norton’s social identity as well as her political acumen and influence. Norton, in her writings, famously claimed protection from men rather than equality to men, a stance that put her at odds with Barbara Leigh Bodichon’s approach to the same issues at the centre of an emerging feminist organisation in the 1850s. But behind the scenes Norton operated as a political force within the Whig elite in ways reminiscent of the methods adopted by aristocratic women interested in politics and political issues (6). And her pamphlets on the Divorce Bill had a decisive effect on the course of the Parliamentary debate, leading to the appointment of a Select Committee that broadened the grounds for divorce recognized by the proposed Bill.

Foyster repeats the claim, associated with the scholarship on married women’s property law reform, that the passage of the Divorce Act delayed the reform of the law of married women’s property (7). The first Married Women’s Property Bill fell by the way-side during the debate over the Divorce Bill, and the recognition of the property rights of divorced and separated wives by the Divorce Act seemed to relieve the most pressing inequities of the law. But in 1857 those working on behalf of divorce law reform had been seriously contesting in the Parliamentary arena since 1844—a period of thirteen years. The introduction of a bill was a common tactic to raise a topic for discussion, and that is how the law reform community regarded the introduction of that early married women’s property measure, since there was no realistic prospect that any such reform could pass into the law the first moment it was proposed. When the statutes reforming the law of married women’s property were passed in 1870 and 1882, a comparable period of discussion, debate and lobbying had by then elapsed. A thorough reconsideration of Caroline Norton’s life and political career would have been far beyond the scope of Foyster’s study, but such a reconsideration, long past due, would significantly advance our understanding of this transitional period.

Historians differ among themselves on the question of the extent to which the fruits of historical study bear on the present. In this instance, Foyster wishes to set her work on marital violence in a chronological continuum that speaks to the present day. For instance, she sees the linkage between class and a purported tendency towards domestic violence being forged during the period under study. More problematic, however, is the slippage between defining verbal abuse as 'violence,' because that is how contemporaries regarded it, and generalizing that definition because the 'distress' suffered by wives subjected to verbal abuse serves to answer the tendency to regard verbal abuse as '...less serious, alarming or damaging in its consequences than physical violence' (p. 38). But is verbal abuse violence or not? To record the disagreements about that question in the eighteenth and the twenty-first century, and to note the changing trajectory of the consensus about this question, do not, by themselves, actually produce a definitive answer. That would depend upon an extended discussion of a rather different kind than the one offered here.

Foyster's conclusions, which underline the commonalities in the experience of marital violence across the past 350 years, draw additional power from the cover illustration of the book; a George Cruikshank woodcut of 1847 entitled 'The Bottle.' The image depicts a drunken husband, gripping his wife by the front of her dress, poised with clenched fist about to unleash a blow. Two children grapple with the enraged husband and father desperately trying to protect their mother, while a woman, perhaps a servant, calls out from the doorway. The horrific intensity conveyed by this image poignantly echoes the voices that Foyster recovers, powerfully reminding us of the humanity of the myriad individuals whose eventful lives form the basis for our attempts to discern the social and cultural dynamics of those past lives.

Notes

1. A. J. Hammerton, *Cruelty and Companionship: Conflict in Nineteenth-Century Married Life* (London and New York, 1992). [Back to \(1\)](#)
2. M. J. Weiner, *Men of Blood: Violence, Manliness, and Criminal Justice in Victorian England* (Cambridge, 2004). [Back to \(2\)](#)
3. George C. Behlmer, *Friends of the Family: The English Home and its Guardians, 1850–1940* (Stanford, CA, 1998); G. Savage, "'The magistrates are men": working-class marital conflict and appeals from the magistrates' court to the divorce court after 1895', in *Disorder in the Court: Trials and Sexual Conflict at the Turn of the Century*, ed. G. Robb and N. Erber (New York, 1999), 231–49. [Back to \(3\)](#)
4. M. Hunt, 'Wife beating, domesticity and women's independence in eighteenth-century London', *Gender and History*, 4 (1992), 10–33; N. Tomes, "'A torrent of abuse": crimes of violence between working-class men and women in London, 1840–1875', *Journal of Social History*, 11 (1978), 328–45. [Back to \(4\)](#)
5. J. Bailey, *Unquiet Lives: Marriage and Marriage Breakdown in England, 1660–1800* (Cambridge, 2003). [Back to \(5\)](#)
6. E. Chalus, 'Elite women, social politics, and the political world of late eighteenth-century England', *Historical Journal*, 43 (2000), 669–97. [Back to \(6\)](#)
7. See especially L. Holcombe, *Wives & Property: Reform of the Married Women's Property Law in Nineteenth-Century England* (Toronto, 1983), 102–3 and Olive Anderson's revision of this reading of the Parliamentary debates on the Divorce Act 1857 in 'Hansard's hazards: an illustration from recent interpretations of married women's property law and the 1857 Divorce Act', *English Historical Review*, 112 (1997), 1202–12. [Back to \(7\)](#)

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