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**PART I**

## CHAPTER I

## ‘Wrying but a little’: marriage, law and sexuality in the plays of Shakespeare

In the second act of *Cymbeline*, Jachimo, emerging stealthily into Imogen’s bedchamber, suddenly remembers a fellow-countryman: ‘Our Tarquin’, who even thus, ‘Did softly press the rushes, ere he waken’d / The chastity he wounded’ (II.2.12–14). Jachimo does not wake Imogen. He merely records the particulars of her room – its arras, figures, paintings, the adornment of the bed and physical features of its sleeping occupant. Only at the end does he notice Imogen’s book, Ovid’s *Metamorphoses*, with its page turned down at that point in the tale of Tereus ‘Where Philomele gave up’ (II.2.45). Of no conceivable use to him in the incriminating account destined for the ears of Posthumus Leonatus, this culminating detail is far more than an ironic comment on Imogen’s choice, on this of all nights, of the Tereus/Philomel story as something with which to read herself asleep. It focusses attention on the blurred and contradictory nature of the sexual signals given out by this bedroom, and Jachimo’s activities in it, as a whole.

That his voyeuristic intrusion upon the unconscious Imogen constitutes a symbolic rape is obvious. But what kind of rape? Tarquin’s victim Lucrece, in all versions of the legend, was a wife whose marriage with Collatine had been consummated some time before. Tereus violated a virgin. Imogen’s position is far less clear. Shakespeare sends his heroine to sleep in a chamber where (as Jachimo reveals when he returns to Italy) the heady spectacle, in the arras, of Cleopatra acquiring yet another Roman lover on the river Cydnus seems implicitly rebuked by the chimney-piece on the south wall: ‘Chaste Dian bathing’. Ethereal ‘golden cherubins’ suspended in the fretwork of the roof exist in a similarly uneasy relationship with the pair of blind cupids in the fireplace, each leaning on a hymeneal torch (II.4.82, 88). Imogen herself reminds Jachimo of Venus (‘Cytherea’), but she is also a ‘fresh lily, / And whiter than the

sheets' (II.2.14, 15–16). Lilies are flowers linked with marriage, through their association with the goddess Juno, who wears a diadem of them in Jonson's wedding masque *Hymenaei* (1606). They connote motherhood as well, because they sprang from the milk that spilled from Juno's breast when the infant Hercules, laid there in secret, was taken away. Rather less cheerfully, Rabbinic commentators discovered their origins in the tears of Eve when she realized, after the expulsion from Eden, that she was pregnant.<sup>1</sup> But lilies also, of course, symbolize the unsullied purity of the Virgin Mary in countless representations of the Annunciation, an idea exploited by Cranmer at the end of *Henry VIII*, when he prophesies of the infant Queen Elizabeth that 'yet a virgin, / A most un-spotted lily shall she pass / To th' ground, and all the world shall mourn her' (v.3.60–3).

Imogen's bracelet, the 'manacle of love' (I.1.122) her husband gave her when they parted, slides with surprising ease from her arm: 'As slippery', Jachimo notes in an arrestingly oblique comparison, 'as the Gordian knot was hard!' (II.2.34). The Gordian knot, whose intricacies could be severed by violence, but never untied, had become an emblem of Christian marriage. 'Come faire *Emelia* the preeste is gon', Polidor says in *The Taming of A Shrew* (?1589):

And at the church your father and the reste,  
 Do stay to see our marriage rites performde,  
 And knit in sight of heaven this *Gordian* knot,  
 That teeth of fretting time may nere untwist.<sup>2</sup>

But it could also be used, as it is (for instance) in *The Duchess of Malfi* (1614) or in the manuscript play *Tom a Lincoln*, now available in a Malone Society reprint, and very close to *Cymbeline* in date, of an unsolemnized *de praesenti* handfast in a chamber.<sup>3</sup>

Finally, Jachimo's discovery of the 'mole cinque-spotted' under Imogen's breast is 'a voucher, / Stronger than ever law could make' that 'I have pick'd the lock, and ta'en / The treasure of her honor' (II.2.38–42). Imogen and Posthumus, as we are informed at the start, are 'married' (I.1.18). That word has a very precise significance in

<sup>1</sup> Ernst and Johanna Lehner, *The Folklore and Symbolism of Flowers, Plants and Trees* (New York, 1960), pp. 32–3.

<sup>2</sup> Anon, *The Taming of A Shrew*, in *Narrative and Dramatic Sources of Shakespeare's Plays*, ed. Geoffrey Bullough, 1 (London, 1957), scene xiv, p. 98, lines 71–5.

<sup>3</sup> John Webster, *The Duchess of Malfi*, ed. John Russell Brown (London, 1964), I.1.480. *Tom a Lincoln*, prep. G. R. Proudfoot (Oxford, 1992), p. 82, line 3023.

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Shakespeare, although not always for his contemporaries. When Don Pedro, at the end of *Much Ado About Nothing*, misuses it after the handfast that officially betroths Beatrice and Benedick – ‘How dost thou, Benedick the married man?’ – he is instantly corrected: ‘I do *purpose* to marry’, Benedick replies (v.4.99, 105). ‘Treasure’, on the other hand, frequently refers in the period to a maiden’s physical virginity. Laertes uses it in this sense when expressing concern for Ophelia’s loss of ‘honor’ should she believe Hamlet’s vows, and ‘your chaste treasure open / To his unmast’red importunity’ (1.3.29, 31–2). Conjoined, as it is by Jachimo, with the notion of picking a lock, ‘treasure’ in *Cymbeline* suggests an illicit penetration of the hymen. At the same time, it transforms Posthumus’ bracelet into a very particular kind of manacle: a chastity belt cunningly pried open by someone other than the husband who, after the wedding night, made his wife put it on.

After several decades of critical squabbling, the exact nature and implications of the precontracts in *Measure For Measure* – Claudio’s with Juliet, Angelo’s with Mariana and, one might add, Lucio’s with Kate Keepdown – at last seem clear, even if the question of just what the Duke is doing with them remains no less problematic than before. That this should be the case is primarily thanks to the social historians: to the continuing investigation of spousal and related matrimonial and sexual litigation, as preserved in the still largely uncatalogued, archival records of ecclesiastical courts all over early modern England, which has been undertaken by Ralph Houlbrooke, Martin Ingram, G. R. Quaipe, R. G. Emmison, Charles Donahue, Jr, and others. Like the particular case histories assembled in Lawrence Stone’s *Broken Lives* and *Uncertain Unions* (although these are mainly post-Restoration) this work demonstrates the complexity of the relationship in the period not only between theology and canon law, but in the vexed relation of the latter to civil law, to its own interpretation in the church courts, and (finally) to actual social behaviour.<sup>4</sup> Much of the latter clearly was swayed by popular

<sup>4</sup> See, in particular: Charles Donahue, Jr, ‘The canon law on the formation of marriage and social practice in the later Middle Ages’, *The Journal of Family History* 8 (1983), 144–58; F. G. Emmison, *Elizabethan Life: Morals and the Church Courts* (Chelmsford, 1973); John R. Gillis, *For Better, For Worse: A Political and Social History of British Marriage 1600 to the Present* (1985); Ralph Houlbrooke, ‘The making of marriage in mid-Tudor England: evidence from the records of matrimonial contract litigation’, *The Journal of Family History* 10 (1985), 339–51, *Church Courts and the People During the English Reformation* (Oxford, 1979) and *The English Family 1450–1700*, chs. 4 and 5 (London, 1984); Martin Ingram, *Church Courts, Sex and*

tradition: unsanctioned beliefs given licence by the fact that even distinguished canon lawyers like Henry Swinburne, let alone individual church courts, often failed to agree among themselves about points that may to us seem nice, but were in practice consequential.

They managed things better in Catholic Europe – at least after the Council of Trent in 1563 had ruled that clandestine marriages and *de praesenti* contracts no longer constituted valid matrimony. The situation in England remained ambiguous, and this despite the partial success of the church courts in discouraging unsolemnized precontracts by increasingly finding, in such cases, against the plaintiffs. The ambiguities of English matrimonial law were productive of a good deal of real-life heartache. Not surprisingly, they also found their way into contemporary drama, to an extent, and with a seriousness and richness of effect that (despite recent work by Margaret Ranald, David Bevington, Ann Jennalie Cook and others) has yet to be fully grasped.<sup>5</sup> Indeed Swinburne's treatise *Of Spousals or Matrimonial Contracts*, composed shortly after 1600, often reads, despite its formidable legal phraseology, like a collection of scenarii. Many of its illustrative imbroglios actually turn up in the drama of the period. With others, like the case of that unhappy King of Cyprus who found he had married by proxy the wrong princess of Milan, and that she was every bit as furious as he once she had learned about the mistake (plucking the 'Nuptial Ring from her Finger' and hurling it into the fire, 'swearing and protesting with many Damnable

*Marriage in England 1570–1640* (Cambridge, 1987); Alan Macfarlane, *Marriage and Love in England 1300–1840* (Oxford, 1986); G. R. Quail, *Wanton Wenches and Wayward Wives: Peasants and Illicit Sex in Early Seventeenth-Century England* (London, 1979); R. M. Smith, 'Marriage processes in the English past: some continuities', in *The World We Have Gained: Histories of Population and Social Structure*, ed. Lloyd Bonfield, Richard M. Smith and Keith Wrightson (Oxford, 1986). Also Lawrence Stone's *Road to Divorce: England 1530–1987* (Oxford, 1990) and its companion volumes, *Uncertain Unions: Marriage in England 1660–1753* (Oxford, 1992) and *Broken Lives* (Oxford, 1993). For the fullest and most persuasive account of the situation in *Measure For Measure*, see Karl Wentersdorf, 'The marriage contracts in *Measure For Measure*: a reconsideration', *Shakespeare Survey* 32 (1979), 129–44.

Among older works, George Elliott Howard's monumental three-volume *A History of Matrimonial Institutions* (London, 1904), the two volumes of John Cordy Jeaffreson's *Brides and Bridals* (London, 1872), and Chilton Latham Powell's *English Domestic Relations* (New York, 1917) remain invaluable.

<sup>5</sup> David Bevington, *Action is Eloquence: Shakespeare's Language of Gesture* (London, 1984); Ann Jennalie Cook, *Making A Match: Courtship in Shakespeare and his Society* (Princeton, 1991); Margaret Loftus Ranald, "'As marriage binds and blood breaks": English marriage and Shakespeare', *Shakespeare Quarterly* 30 (1979), 68–81 and *Shakespeare and his Social Context* (New York, 1987).

Execrations' that she would never acknowledge the King of Cyprus for her husband, but would 'presently marry another Man') one can only regret that no one, apparently, thought to write the play.<sup>6</sup>

Because Shakespeare is Shakespeare, far more attention has been paid to the questions raised by the precontracts in *Measure For Measure* than to those surrounding (for instance) the analogous situation of Jane Russell in Middleton and Rowley's *A Fair Quarrel* (1617), let alone that of Radagon and Ariadne in the anonymous *Thracian Wonder* (1599), a play that hovers tantalizingly in the background of both *Cymbeline* and *The Winter's Tale*. There are plays – Wilkins' *The Miserieis of Enforced Marriage* of 1606, William Sampson's *The Vow-Breaker* of 1625 (almost certainly a re-doing of the lost Henslowe property *Black Bateman of the North* of 1598),<sup>7</sup> or Ford's less polemical *The Broken Heart* (1629) – in which the intricacies and contradictions of contemporary marriage law have always been too central for readers to ignore. Recent scholarship may have heightened awareness of such questions in Shakespeare. Yet there remain within the canon a surprising number of points at which troth-plights have been ignored, or their emotional and theatrical subtleties gone unrecognized. In the case of *Cymbeline*, we misunderstand the central human relationship of an entire play by not being sufficiently alert, as Shakespeare's audience was, to the diverse ways by which, in early modern England, one could set up, legalize (and sometimes enforce or destroy) a marriage.

Because the ecclesiastical records for Stratford-upon Avon during Shakespeare's lifetime are incomplete – they extend, as E. R. C. Brinkworth has established, with gaps, from 1590 to 1608, with a single session reported in 1616<sup>8</sup> – it is impossible to know if Shakespeare's patently rushed marriage to Anne Hathaway in 1582 was the result of insistence by a church court to which the bride's pregnancy had been reported that their precontract must be solemnized without delay. Let alone whether they were threatened (as not infrequently happened in such cases) with public penance or a fine for anticipating their marriage. We don't, for that matter, know if they had any extenuating precontract. What is clear is that

<sup>6</sup> Henry Swinburne, *A Treatise of Spousals, or Matrimonial Contracts* (London, 1686), pp. 65–77.

<sup>7</sup> The case is argued persuasively by Kathleen Tillotson in 'William Sampson's *Vow-Breaker* (1626) and the lost Henslowe play *Black Batman of the North*', *Modern Language Review* 35 (1940), 377–8.

<sup>8</sup> E. R. C. Brinkworth, *Shakespeare and the Bawdy Court of Stratford* (London, 1972), p. 117.

for the young Shakespeare to obtain his special licence, dispensing with the normal threefold calling of the banns, two substantial citizens of Stratford, Fulke Sandells and John Rychardson, were obliged to enter into a bond for the not inconsiderable sum of £40 that neither bride nor groom had a potentially disabling precontract with anyone else: in effect, that the sort of 'lawful let' by a disappointed partner which costs Master Gallipot, in the sub-plot of Middleton and Dekker's *The Roaring Girl* (1608), such anguish, not to mention cash, wasn't (so far as the guarantors knew) ever going to rear its head.<sup>9</sup>

This was far from being Shakespeare's only brush with the complexities of matrimonial law. In 1610, he gave evidence in London in the Mountjoy/Belott case: a dispute over financial arrangements made at a handfasting he seems himself to have witnessed.<sup>10</sup> His death in 1616 may have been hastened by the impact of public scandal when Thomas Quiney, to whom his daughter Judith was betrothed, was accused and then, after the Shakespeare marriage had been celebrated, actually convicted in the local church court of having got one Margaret Wheeler with child. In March Margaret died in childbirth and, shortly thereafter, Shakespeare changed his will, in ways that reflect a lack of trust in Quiney.<sup>11</sup> Interestingly, the overseer of that will, Thomas Russell, had himself been guilty of a spousal irregularity, neatly illustrative of the gap between English canon and civil law. In 1600 Russell entered into a precontract before witnesses with Anne Digges, a widow. They moved in together, while the lawyers worked out an arrangement whereby Anne's son by her previous union agreed to reimburse his mother for the annuity she would forfeit by re-marriage, in exchange for her releasing his inheritance before he reached twenty-four. As soon as it had all been agreed, late in 1603, Thomas and Anne got married, in the carefully chosen obscurity of a church about twenty miles from Stratford. Clearly, their only reason for delaying the ceremony was that civil law, which controlled matters of inheritance and property, paradoxically refused to recognize as legal any union not solemnized openly in church. As soon as Anne Digges gave her

<sup>9</sup> Samuel Schoenbaum, *William Shakespeare: A Documentary Life* (Oxford, 1975), pp. 62–5.

<sup>10</sup> Samuel Schoenbaum, *William Shakespeare: Records and Images*, 2 vols. (London, 1981), II, pp. 20–9.

<sup>11</sup> Brinkworth, *Shakespeare and the Bawdy Court*, pp. 78–84; Schoenbaum, *Documentary Life*, pp. 233–41.

hand again to Thomas Russell, this time in Rushock church, before a priest, and according to the service set down in *The Book of Common Prayer*, she lost her annuity. Yet as far as canon law was concerned, she and Russell had been husband and wife – although of course they shouldn't have been cohabiting – ever since the precontract of 1600.<sup>12</sup>

'Husband' and 'wife' were not words used idly in such a context. Shakespeare's Richard II is not, as it might seem, being culpably redundant when he speaks of his 'married wife' (v.1.73), nor should Autolycus necessarily be supposed to mean 'widow' or 'woman' generally when he confesses to having 'married a tinker's wife' (iv.3.97). The Old Testament, as both canon lawyers and divines were continually pointing out, was full of contracted couples who were so designated – as when Jacob (as William Perkins noted) 'speaking of *Rahel* who was onely betrothed unto him, said to *Laban*, "Give me my wife"<sup>13</sup>. The most august example of all was the Virgin Mary, 'betroathed to Joseph', as Swinburne remarks, 'but neither solemnly married with him, nor secretly known by him, at the Conception of Christ; and yet nevertheless termed Wife in the Holy Scriptures'.<sup>14</sup> Shakespeare's grandfather was perfectly correct when, in a legal document of 1550, he described his daughter Agnes as 'now the wife of Thomas Stringer', even though the two did not actually marry until three months later.<sup>15</sup> Thomas and Agnes themselves were less correct, because they were clearly living together at the time, on the basis of their precontract. Like Anne Digges, however, she was a widow, and the courts tended to be less perturbed about their sexual misdemeanours than about those of spinsters, partly because they were less likely to leave a child upon the parish.

Behind the customary use of 'husband' and 'wife' to describe couples affianced on a *de praesenti* basis – and of the word 'adultery' to describe the carnal coupling of either with a third person – lay more than just the authority of Scripture, backed up by Augustine, Gregory, Chrysostom, Origen, etc. Canon lawyers and divines in England, whether Catholic or Protestant, including Puritans, found

<sup>12</sup> William Empson first drew attention to the relevance of the Russell case in *The Structure of Complex Words* (London, 1951; 3rd edn 1979), p. 286. For a full account, see Arthur Scouten, 'An historical approach to *Measure For Measure*', *Philological Quarterly* 54 (1975), 69–70.

<sup>13</sup> William Perkins, 'Of Christian oeconomic, or household government', in *The Works of that Famous and Worthy Minister of Christ in the Universitie of Cambridge, Mr. William Perkins*, 3 vols. (Cambridge 1616–18), III, p. 672.

<sup>14</sup> Swinburne, *Treatise of Spousals*, p. 14.

<sup>15</sup> First pointed out by Halliwell-Phillips. See John Semple Smart, *Shakespeare, Truth and Tradition* (London, 1928), p. 78.



it uniformly difficult to relinquish the idea that mutual consent between a man and woman was the essential part of marriage, that it alone made them man and wife in the sight of God. Thomas Watson, the last Catholic bishop of Lincoln, went so far as to claim in 1558, in *The Seven Sacraments of Christ's Church*, that a couple might do everything they were supposed to do in terms of parental consent, plus a proper church ceremony with nuptial mass and priestly blessing and yet, though of course they could not forsake one another or take other partners,

they be not husband and wyfe nor married before god, and that is because they did not wyll and consent in their hartes so to be when they sayde the wordes of matrimonie. And therefore yf these two persones do use carnall companie together, then the partie which did not consent doth commyt fornication and sinneth deadlie in so doynge the duetie of mariage, as longe as he continueth in the same wyll and mynde that he had when he was insured, be it the man or the woman.<sup>16</sup>

A powerful warning, not least to parents who pressured their children into repugnant marriages, it made perfect sense in England even among those who did not, like Watson, regard matrimony as a sacrament. It helps to explain why the entirely rational legislation introduced under Henry VIII in 1540, making it impossible to overthrow a solemnized and consummated marriage by proving a previous un-solemnized, unconsummated *de praesenti* contract, lasted barely nine years before being overthrown in the reign of Edward VI. Even Swinburne, long after the Council of Trent, was certain that the repeal of this law in England had been right because 'a present and perfect Consent ... alone maketh Matrimony, without either Publick Solemnization or Carnal Copulation; for neither is the one, nor the other of the *Essence* of Matrimony, but *Consent* only'.<sup>17</sup>

Shakespeare required no formal legal training to make a creative and highly individual use of things that for him and his audience were matters of common knowledge. Certainly he tended from the start to elaborate contractual material only hinted at in his sources, or to invent it when it was not there. In *The Taming of the Shrew*, for instance, his careful discriminations between Kate and Petruchio's *de praesenti* handfast in the presence of her father and two witnesses,

<sup>16</sup> Thomas Watson, *The Seven Sacraments of Christ's Church* (London, 1558), fo. clxxvii.

<sup>17</sup> Swinburne, *Treatise of Spousals*, p. 14.

followed (after banns have been called) by a properly solemnized church marriage; another *de praesenti* contract in a chamber, that of Bianca and the disguised Tranio, to be legitimized this time by a scrivener and clergyman as well as the two fathers, and finally that clandestine marriage in church, by an old priest willing to proceed without banns, which unites Bianca and Lucentio, are nowhere to be found in Gascoigne's *Supposes*. He evinces the same kind of scrupulosity in *Twelfth Night* when distinguishing Olivia's 'contract of eternal bond of love' (v.1.156), complete with clergyman and exchange of rings, in a private chapel, from her actual marriage (and that of Viola and Orsino) at the end.

In play after play, Shakespeare evokes the specifics of marriage contracts and solemnizations along familiar contemporary lines, regardless of whether the setting is Catholic, Protestant, or pre-Christian.<sup>18</sup> The early church, of course, had essentially taken over Roman law on betrothal and marriage (although not on divorce), something of which the canonists were entirely aware. In Shakespeare's time, moreover, as in Chaucer's, the classical world was widely believed, on the basis of works such as Ovid's *Heroides*, to have entertained basically the same distinction between private contracts and public weddings as contemporary English society. Both Chaucer and Dante regarded Dido as Aeneas' lawful wife, as a result of their contract and its consummation in the cave, even though Virgil's own attitude is carefully ambiguous.<sup>19</sup> The comedies of Plautus are full of betrothals, although most of these are effected, in accord with New Comedy conventions, in the absence of the girl. There was material available too in Horace and Cicero, Juvenal and Pliny. Ovid's tale of

<sup>18</sup> In *Titus Andronicus*, Shakespeare's first classical play, where Tamora's sons actually do what Cloten only imagines doing in *Cymbeline* – killing a woman's husband before her eyes, and then raping her in the presence of his corpse – all the Andronici, with the significant exception of Titus himself, regard the troth-plight of Bassianus and Lavinia as legally and morally binding. Saturninus, however, although careful to betroth himself publicly to Tamora before his own wedding in the Pantheon, finds it both convenient and possible (like Titus, if for different reasons) to ignore his brother's precontract.

<sup>19</sup> See the excellent essay by Henry Ansgar Kelly, 'Clandestine marriage and Chaucer's "Troilus"', in *Viator* 4 (1973), 434–57. For Ovid's *Heroides* as a fifth-form grammar school text, used for the study of letter-writing, and Erasmus' particular recommendation of the Acontius/Cydyippe epistles, see T. W. Baldwin, *William Shakespeare's Small Latine & Lesse Greeke*, 2 vols. (Urbana, 1944), II, p. 239. Carol Gesner, in *Shakespeare and the Greek Romance* (Lexington, 1970) notes a number of parallels between the lovers in *Cymbeline* and in the *Aethiopica* of Heliodorus, including the fact that 'both pairs are married, but in each case the consummation of their union has been with-held' (102). She believes, however, that Imogen and Posthumus only have 'a handfasting', not a clandestine marriage.