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Women, Marriage, Property, and Law: Contextualizing *The Witch of Edmonton*

Changes in marital property and marriage negotiations, the economy, and personal relations in early modern England form the backdrop for key elements of The Witch of Edmonton. This essay draws on recent scholarship surrounding these changes to provide historical context for analyzing the play. It argues that the commercialization of economic relations and the emergence of trusts facilitated a shift away from customary arrangements (such as dower) towards more contractual ones (such as jointures). Meanwhile, increased reliance on credit and legal instruments, such as bonds, produced record levels of litigation, contributing to legalistic thinking and cynicism about legal agreements.

Recent research into shifting economic realities and attitudes to marriage negotiations in Jacobean England is revealing the topicality of *The Witch of Edmonton* for its original audience. At a time of rapid economic, social, cultural, and legal developments affecting marriage and family fortunes in the broadest sense, the Carters hold firmly to ancient certainties. As marks of his attachment to the past, Old Carter resists being called ‘master’, because his father never answered to that title (1.2.1–5), and prefers traditional English yeoman’s fare, ‘bread, beer and beef’ to newfangled cuisine (1.2.35–40). The Thorneys, by contrast, are enmeshed in recent changes that colour much of their decision making. Instead of mocking or reifying the disappearing world of Old Carter’s youth, the playwrights consider continuity as well as change, comparing convention with innovation and custom with individual choice. In short, the play examines what today we term the price of progress. In doing so, it raises questions about the extent to which Elizabeth Sawyer might be a victim of this changing world characterized by rising inequality and burgeoning materialism.

For the Carters, in common with the majority of English men and women living a generation or more before the action of the play, wealth was about land

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and land equated with stability. In their minds the primary focus of 'Honest Hertfordshire yeomen' (1.2.6) was on stewarding and preserving land for future generations, rather than on attempting to extract maximum profit from it. Old Carter might expand his holdings if the opportunity arose, but would never risk them through speculative endeavours. The Thorneys, by contrast, understand how money and the profits of trade and commercial ventures threaten to topple the status of land as the unquestioned benchmark of wealth, and that even in respect of land, the catchword was now 'improvement' not stewardship.¹ Far from land constituting a stable asset, Old Thorney reminds Frank 'I need not tell you / With what a labyrinth of dangers daily / The best part of my whole estate's encumbered;' (139–41)

After decades of sustained population growth and rising demand, the English economy had become increasingly commercial, particularly in urban centres. Mercantile and commercial profits were central to the steady growth of London, which more than doubled in population between 1550 and 1620 en route to becoming the largest city in Europe.² Accompanying and facilitating the expansion of economic activity was a dramatic growth in reliance on credit.³ Many English women and men found themselves in the position of Sir Arthur when he admits to Frank Thorney, concerning his promise to supply him with £200, 'I cannot make thee / A present payment' (1.1.119–20). In the rush to secure credit in a world before banks, increasing numbers of individuals employed financial instruments such as mortgages by deed to unlock the value of land as a security (akin to modern remortgages or lines of credit rather than to mortgages to acquire property) or employed recognizances in the form of 'statutes staple' to use lands to secure debts.⁴ The popularity of mortgages led to the emergence of increased protections against forfeitures, such as the 'equity of redemption' in Chancery, by which owners who mortgaged their property had a right to recover title by repaying the loan and interest, even if they had technically defaulted (say, by missing a repayment date). They nevertheless risked losing their 'encumbered' estates if they could not meet their financial commitments.⁵ The wealth of the nation was growing, but so too was the volatility of the economy, as families such as the Thorneys were discovering to their cost.

Other dangers also emerged when land could be used as security for financial transactions. Methods of obtaining credit in Jacobean England were personal and therefore not transferable, producing chains of indebtedness where a single default could be the catalyst for multiple failures. This situation helped to produce the highest levels of personal litigation in recorded history, to the point where each year in the 1620s saw more lawsuits than households to account for them.⁶ The

majority of credit extensions were informal, but the most common written instrument was the conditional bond, by which one party agreed to pay a penalty to another on a specified date, in return for the lending of a sum of money. As anyone familiar with *The Merchant of Venice* knows well, subscribed to such an agreement would be the condition, detailing that the bond would become null and void if the lent money was repaid in full on or before the due date.

These apparently straightforward agreements became the subject of intense litigation at common law and equity, not simply because increased economic activity increased the numbers of defaults, but because penalties were commonly double the amount of the loan, even for loan periods as short as three months. The exorbitant value of penalties created incentives for creditors to sue whenever defaults occurred, regardless of why the conditions had not been met. Some bondholders sued when a debt had been almost, but not quite, fully repaid. Others sued when payment was a day, an hour, or even a minute late. Certain unscrupulous creditors actually hid from debtors to engineer defaults. Bondholders could even sue over loans that had been fully repaid, using the technicality that the bonds had not been cancelled (by defacing them or removing the attached wax seals).⁷ In all of these situations common law courts observed principles of strict liability and refused to entertain defendants' excuses. Equity courts would consider mitigating circumstances, and measure actual losses in lieu of penalties, but equity suits could be time consuming and expensive. If Old Thorney defaulted on bonds, he might need to sell an asset to pay any outstanding penalties or risk joining the rapidly growing ranks of England's imprisoned debtors.

As well as greatly exacerbating the misfortunes of debtors who could not make loan payments, let alone afford penalties for forfeitures, the sheer numbers of men and women caught up in lawsuits and witnessing the harsh effects that legal words could cause fostered a culture of legal mindedness. More and more people were thinking in ways we would label contractual — the first recorded appearance in print of contract as a noun referring to a written agreement was in 1611 — and becoming more pragmatic about personal relations.⁸ Against this backdrop Master Thorney registers his amazement at Old Carter's refusal to supply legal instruments to secure Susan's marriage portion, and perhaps greater astonishment when Carter offers immediate payment.

OLD CARTER I tell you Master Thorney, I'll give no security. Bonds and bills are but tariers to catch fools and keep lazy knaves busy. My security shall be present payment. And we here about Edmonton hold present

payment as sure as an alderman's bond in London, Master Thorney.

OLD THORNEY I cry you mercy, sir, I understood you not.(1.2.15–23)

Bonds securing agreements and providing sureties for default had become the norm and Old Carter appears so out of step with financial realities that many in the Jacobean audience would have found his naivety comical.

Old Carter also appears old fashioned in his approach to marriage, surprising onlookers with the 'liberty' (44) he gives his daughters to choose their husbands. His goal is his children's happiness, rather than his (or his family's) enrichment. As he explains to Master Thorney:

I like young Frank well, so does my Susan too. The girl has a fancy to him, which makes me ready in my purse. There be other suitors within, that make much noise to little purpose. If Frank love Sue, Sue shall have none but Frank. (24–8)

This freedom is not without limits, with Carter clarifying that his daughters 'shall choose for themselves *by my consent*' (48–9, emphasis added), but his relaxed attitude still strikes onlookers as unusual. The source of his calm was England's traditional property regime. Under the common law rules of primogeniture, coverture, and dower, sensible oversight of marriage was prudent, to avoid an heiress running off with a farmhand, but the property implications of marriages were handled almost mechanically by custom. Inheritance followed clear and strict rules, with eldest sons inheriting freehold lands and daughters inheriting only in the absence of sons. Other property was subject to the custom of 'thirds' under which one third of a man's moveable estate went to his widow, another third to his children, and the final third he could distribute as he wished through his last testament (traditionally to the church). Under coverture a husband's legal identity covered his wife's, symbolized by her taking his surname, and he gained immediate ownership of all her moveable property (money, goods, and livestock) and control of any real property (lands). He decided where the couple lived and how their children would be educated and without his cooperation she could not enter a contract, bring a lawsuit, or write a will. In return for this surrender of her property and autonomy she gained an entitlement to maintenance (although this privilege could prove difficult to enforce) and a widow's right to dower if she outlived him; a life interest in one third of any freehold lands he possessed, regardless of whether she had brought a portion to the marriage. All Old Carter had to do was to provide generous enough dowries or portions to ensure his daughters found husbands with sufficient means to maintain them. In the same spirit of

stewardship he applied to his management of lands, common law rules and conventions would see to the rest.

By the time Rowley, Dekker, and Ford sharpened their quills to write *The Witch of Edmonton*, statutory changes and innovations in equity had eroded or complicated every aspect of this common law regime. Through the employment of uses and then trusts landowners had slowly gained the ability to direct their property at death, a right extended since 1540 by the Statute of Wills. Where disinheriting an heir had been impossible under primogeniture, in the 1620s Frank Thorney is right to fear that his father might disinherit him for marrying Winnifred without his consent. The other change was that property arrangements between generations were less often determined at death, through primogeniture, dower, or a will, and more commonly established at marriage through the arrangement of a jointure, trust, or entail. This idea of marital property is what Frank envisages when he explains to Winnifred how

Fathers are
 Won by degrees, not bluntly, as our masters
 Or wrongèd friends are; and besides I'll use
 Such dutiful and ready means, that ere
 He can have notice of what's past, th' inheritance
 To which I am born heir shall be assured;
 That done, why, let him know it: if he like it not,
 Yet he shall have no power in him left
 To cross the thriving of it. (1.1.24–32)

Once property was settled on the couple, in the form of a jointure or land grant, or on trustees through a marriage treaty or covenant (later known as a settlement), Master Thorney would be unable to interfere with it or reclaim it.⁹

Wives had recently begun to use similar means to evade some of the worst effects of coverture, by divesting themselves of property that under common law would fall under their husbands' ownership or control, while retaining rights over that property in equity. Anne Middleton, the mother of the playwright Thomas, employed just such an equitable device to protect key property when she married her second husband.¹⁰ Once again, this legal strategy represented a move away from collective custom, signified by dower and coverture, towards greater individual choice and control, with jointures tied directly to the value of portions. The possibility of increased autonomy for wives constituted yet another factor in the marriage making process.

Questions of property had always featured in marriage negotiations, but the shift from universal dower to individual jointures and to arranging property flows at marriage rather than death, facilitated the jockeying in the play over portions and jointures. Logic might suggest that the general trend towards increasing choice in inheritance and other property matters would coincide with a push for greater freedom when choosing a marriage partner. To some extent this was true, particularly in urban settings where parental supervision and influence could be weak. More generally, however, the craving of parents for more control over the destination of property meant that many felt the economic (and social) stakes had become too high to leave marriage choices to prospective grooms and brides.¹¹ The ecclesiastical canons of 1604, for example, demanded that couples who were under twenty one years of age obtain their parents' or guardians' consent before marrying.¹² Marriages without such permission remained legal, but social pressure to conform to family wishes intensified, becoming stronger the younger parties were and the higher their social status, thus making Old Carter's position appear anachronistic.

Like so much else in early modern England, marriage was becoming commodified, prompting Susan's rebuke to her suitor Warbeck that 'Neither / Am I a property for you to use' (1.2.110–11). She accepts that marriages and transfers of property go hand in hand, but draws the line at becoming a commodity herself. Even Old Carter confesses that his promise to Warbeck that he breaks 'Is a kind of debt' (2.2.10), an idea he later echoes, perhaps, in his use of the words 'assurance' and 'sealed' often associated with bonds (43–4).

The same processes of economic change and intensified marriage negotiations worked to blur lines between financial transactions and moral worth. This blurring can be seen in Frank Thorney's admission to Susan towards the end of the play that 'Your marriage was my theft, / For I espoused your dowry, and I have it' (3.3.35–6) and in expressions such as 'dowry of my sin' (3.2.17) as well as 'dower of a virginity' (1.1.162) and 'dower of thy virtues' (1.2.73) (where 'dower' means dowry or portion).¹³ Perhaps nowhere was the commodification of marriage more apparent than in the marital fortunes of Anne Elsdon (or Ellesden), the inspiration for the title character in Dekker, Rowley, Ford, and Webster's lost play *Keep the Widow Waiting* (1624). As a wealthy widow she gained the attention of Tobias Audley, a tobacco seller of modest means. Once she rebuffed Audley's attempts to woo her, he got her so intoxicated after a three day drinking binge that, with the help of unethical accomplices and a corrupt minister, he managed to marry her when she was unable to speak or consent. Shamelessly reaping the dividends

of coverture, he took possession of as much of her fortune as he could (before his eventual arrest and imprisonment).¹⁴

Anne Elsdon's example also demonstrates the extent to which the kinds of assets individuals might bring to marriage in the 1620s varied from those of a few decades before. Her personal fortune amounted to £6000, two thirds of which was in written and sealed instruments and in 'money, plate, jewells and chatels'.¹⁵ This kind of liquid wealth was of more use to the Thorneys than estates in lands, and their motives for wooing Susan Carter appear almost as covetous and self-interested as Tobias Audley's in his later pursuit of Elsdon. Frank is obviously duplicitous, shamelessly committing bigamy and lying to his father out of his lust for Winifred and desire for the wealth that marriage to Susan can secure him. Master Thorney, however, may be committing a transgression almost as profound by seeking to reverse the time-honoured direction of property flows at marriage. Instead of aiming to enhance his children's prospects through marriage, as Old Carter does, he places his own needs above his son's, justifying his acts through the implications for them both of his immediate financial peril. Guided by his own motivations, Frank duly assures his father that he will marry 'to secure / And settle the continuance of *your* credit' (1.2.159–60, emphasis added), an upending of the natural or conventional order that not surprisingly ends in disaster.

In later sixteenth- and early seventeenth-century England, financial credit and personal reputation were inextricably mixed. The heavy reliance on credit put a premium on trust and on the importance of being known for honest dealing. A reputation for fairness had always been valuable in small communities where interactions were face to face and depended on spoken promises marked by accustomed rituals, such as handshakes, the exchanging of tokens, and the drinking of alcohol, but became essential in a more anonymous world of parchment bonds and chains of debt. With moral credit and financial credit indivisible in the popular imagination (seen obliquely in Sir Arthur's offer to provide a portion for Winnifred if Frank will marry her, in part to purchase respectability), the growing importance of personal standing created a 'currency of reputation', particularly in urban settings, leading to fierce verbal battles about reputation on doorsteps and a tidal wave of defamation suits in church courts and slander suits at common law.¹⁶ Many scholars have noted the contrast between the covetous economic motivations depicted in Jacobean (and some late Elizabethan) city comedies and the simpler and more honest economic values they overlapped with and replaced.¹⁷ In that sense the greed exhibited by the Thorneys is unremarkable. What is new in their pursuit of financial advantage through immoral means is both men's willingness to separate financial credit from moral credit, presaging

the distinct meanings of the word 'credit' that we use today. The temptation for them to think in this way seems in part to be a product of the contractual, impersonal, volatile, and increasingly anonymous times in which they lived.

The legal regime affecting marriage was also evolving. A century before the play's composition the church enjoyed an unquestioned monopoly over the regulation of marriage. Under canon law the only technical requirement for a legal union was for a couple to exchange vows in the present tense, although convention increasingly demanded a ceremony in church before a priest and members of the community. Had a couple married each other by way of a *de praesenti* (present tense) spousal, as Winnifred and Frank appear to have done, everyone agreed that their union was legal, but in the longer term they would have to confirm their union in a church ceremony to gain community acceptance.¹⁸ So-called 'irregular' marriages were feasible, but they remained just that: irregular, and on stage usually ended in tragedy.¹⁹ In the wake of the Reformation, Protestant reformers called for the abolition of church courts and although these courts survived, their standing in the community suffered a blow. In 1601 a woman named Katherine Willoughby sued two former husbands, claiming ignorance that under canon law this situation should have been impossible.²⁰ That same year a lawsuit in Star Chamber accused Hercules Foljambe of having three living wives, a fact he readily admitted, arguing that eminent church leaders had told him that the church permitted remarriage after a church-sanctioned separation on the ground of adultery even though this 'fact' had never been the law. All this confusion came to a head in the years either side of 1600, culminating in the passing of the 1604 act 'to restrain all persons from marriage until their former wives and former husbands be dead' that turned the sin of bigamy into a felony and moved its jurisdiction from church to state.²¹ Excommunication, the church's traditional deterrent and punishment, had lost much of its effectiveness, in an age where swearing false oaths was on the rise, necessitating a change to introduce the state punishment of hanging.²² The elevation of this sin into a felony attracting the death penalty raised the stakes for Frank Thorney when he married both Winnifred and Susan. It also provides perspective for Sir Arthur's weighty fine of a thousand marks, presumably for abetting him: common law courts dealt in fines and money damages whereas the ecclesiastical courts restricted themselves to excommunication or public shaming through penance.

A further indicator of the relative fragility of the church's authority was the emergence of private marital separations. Of the minority of couples who sought to escape unhappy marriages, most approached the church to request an official separation from bed and board, letting them live apart but not marry anyone else.

A small but growing number decided to bypass ecclesiastical officials, however, and have lawyers or scribes draw up private deeds of separation outlining the division of property and the payment of maintenance. Such agreements could be difficult to enforce — given that under coverture a married woman could not make contracts or sue without her husband's cooperation — but their existence provides yet more evidence of a contractual approach to marriage that extended here from its making to its breaking.²³

In the opening scene of the play Frank refers in passing to 'The misery of beggary and want, / Two devils that are occasions to enforce / A shameful end' (1.1.18–20). The misery of want, his own and his father's, arguably leads to his shameful end, and the misery of beggary sets Mother Sawyer down the path to hers. As she asks in her opening speech:

And why on me? Why should the envious world
 Throw all their scandalous malice upon me?
 'Cause I am poor, deformed, and ignorant,
 And like a bow buckled and bent together
 By some more strong in mischiefs than myself. (2.1.1–5)

The growth of self interest and the reorientation of many people's outlooks from the community towards the individual shapes the conditions Mother Sawyer confronts just as much as it does for the Thorneys.²⁴ In 1520 she might have been the object of sympathy and Christian charity. In 1620 she is an object of suspicion, simply for being 'poor, deformed, and ignorant'. The first generation of community members paying the compulsory poor rate felt licensed to judge the worth of relief recipients, and those caught up in the 'labyrinth of dangers daily' had little time to pay heed to the less fortunate. In her frustration and anger at the mistreatment she receives, Mother Sawyer dreams of working

Revenge upon this miser, this black cur,
 That barks and bites, and sucks the very blood
 Of me and of my credit. 'Tis all one
 To be a witch as to be counted one. (131–4)

Like others in the play Sawyer is concerned about her credit. The devil might be at large in the world, although characters such as the judge express scepticism at this possibility. But a number of individuals display devilish attitudes as a result of their own foibles and circumstances, the latter heavily influenced by social and economic change.

England's economy in the 1620s was vibrant but volatile; its benefits unevenly distributed in a society where ostentatious displays of wealth coexisted with newly institutionalized poor laws and the poverty of women such as Elizabeth Sawyer. More than in previous generations, citizens and subjects emphasized their material worth as a marker of their moral worth and worried about losing fortunes as much as they dreamed of making them.²⁵ Writers tapped into this social and economic anxiety and the circulating currents of nostalgia for older certainties it inspired. Every age harkens back to supposedly simpler and happier times. In this instance, however, while playwrights obviously exaggerated the contrast between old and new, and had characters romanticize the virtues or ridicule the naivety of the former, they did not fabricate the changes they described. The evolving forms and quickening pace of economic activity, and a greater tolerance for 'hazarding' and risk, upset older rhythms rooted in the stability of land, under which a country squire could be assumed to be comfortably wealthy rather than mired in debt. In this newer world a £300 a year jointure could be 'by sea or by land' (1.2.105) and if by sea then it was considerably less secure. Similarly, where marriage negotiations had traditionally centred on longer term dynastic ambitions, where the expansion or consolidation of a couple's wealth would ensure that their offspring were better placed than themselves, now these talks might focus on parties' shorter term requirements for liquidity. Contractual thinking, mercenary intentions in marriage and in business, and legalistic outlooks could all be argued to be on the rise, especially in urban settings, not because people were becoming inherently more greedy but because uncertain times and circumstances could call for unusual or even desperate measures.

In multiple areas of life traditional community norms, epitomized by customary law, were under strain from newer realities that might be characterized as more self-interested and at times more secular. For example, Old Carter had reason to declare that 'My word and my deed shall be proved one at all times' (1.2.1–20) given that litigation over bonds and other secured debts in the nation's two largest common law courts had increased by over 500 per cent between 1560 and 1606 (and would grow by a further 280 per cent by 1640).²⁶ A new commercial order threatened to displace an older economic one based exclusively around landed wealth. Contractual arrangements involving marriage and property seemed at odds with older traditions governed by custom.²⁷ A developing pragmatism undermined many individuals' faith in honest dealing. A torrent of accusations of false oaths and broken promises alongside rising criminal prosecutions for perjury arguably made a mockery of older habits of trusting in vows. And finally, a world in which multiple churches made competing claims about

spiritual truth had eclipsed an older world where one church seemed capable of keeping the devil at bay. Some onlookers assumed that in this new world the devil was running riot. And if it was not the devil without, then it was more than likely the devil within.

Notes

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- 3 Muldrew, *Economy of Obligation*, 95–119.
- 4 A ‘Statute staple’ was a bond that originally could only be employed by merchants using staple ports. After the passing of the statute 23 Henry 8 cap. 6, recognizances using the same form became popular as a way of publicly acknowledging debts, and of giving sheriffs authority to deliver debtors’ lands as well as goods to creditors to cover payment in case of default.
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- 12 H.A. Wilson (ed.), *Constitutions and Canons Ecclesiastical, 1604* (Oxford, 1923), Canons 64, 100, 102, 103.
- 13 See *OED*, 'Dower' n.2, 2a.
- 14 Jennifer M. Panek, *Widows and Suitors in Early Modern English Comedy* (Cambridge, 2004) 107–23, <https://doi.org/10.1017/CBO9780511483868>; C.J. Sisson, *Lost Plays of Shakespeare's Age* (Cambridge, 1936), 80–110.
- 15 Panek, *Widows and Suitors in Early Modern English Comedy*, 107–23; Subha Mukherji, *Law and Representation in Early Modern Drama* (Cambridge, 2006), 186–92, <https://doi.org/10.1017/CBO9780511483813>.
- 16 Muldrew, *Economy of Obligation*, 2–3; Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern England* (Oxford, 1996), 30–58, <https://doi.org/10.1093/acprof:oso/9780198207634.001.0001>; Christopher W. Brooks, *Law, Politics and Society in Early Modern England* (Cambridge, 2008), 391–7, <https://doi.org/10.1017/CBO9780511757372>.
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- 18 Mukherji, *Law and Representation in Early Modern Drama*, 26; Martin Ingram, *Carnal Knowledge: Regulating Sex in England, 1470–1600* (Cambridge, 2017), 51–4, 419–20, <https://doi.org/10.1017/9781316841150>.
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