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## **Emotions, the Law and the Press in Britain: Seduction and Breach of Promise Suits, 1780-1830<sup>1</sup>**

SEDUCTION and DESERTION. July 1 – *Burton v. Boland, esq.* This case deeply affected the feelings of all who heard it (*Bury and Norwich Post*, 8 July 1801).

The role the press played in shaping public ‘emotions’ is a topic of increasing interest. Moral panics and sexual scandals have long been recognised as key discursive sites in the shaping of modern Britain. For some historians, they offered a space to promote and evidence the secularisation, privatisation and growth of the state in British society, as marriage and sexual behaviour moved from being a concern of the ecclesiastical courts to the civil courts and the parliament.<sup>2</sup> For others, they played a key role in the creation of bourgeois values and, in the latter part of the eighteenth century, in creating an aristocratic ‘other’ against whom the new middle classes could define themselves.<sup>3</sup> Perhaps the largest body of secondary literature has been devoted to their role in shaping a new form of family relationship, with an emphasis on the nuclear family over extended kin networks, a greater sense of individualisation amongst family members, the privatisation of private life, and the idealisation of domesticity.<sup>4</sup> This work has particularly focused on the models of femininity that were placed under scrutiny in sexual scandals, with women increasingly imagined as sexually passive and ‘innocent’ (until corrupted by men), requiring their protection and a restricted public role.<sup>5</sup> Ultimately, such sexual scandals are viewed as implicated in the formation of a new system of gender relationships, as well as the development of modern constructions of hetero- and homosexuality.

Emotions are increasingly placed at the heart of this social change; no longer located as a universal and amorphous phenomenon that was manipulated to motivate action in the

traditional readings of moral panics, but themselves a driver of social processes.<sup>6</sup> Nicole Eustace and William Reddy have both identified changes in ‘emotional regimes’ as causes of the American and French Revolutions, placing changing political attitudes within broader shifts in emotional culture.<sup>7</sup> In a British context, Randell McGowen and Luke Gibbons have explored how different understandings of the ‘emotional potential’ of the lower classes shaped how the elite governed.<sup>8</sup> This development has required a shift in focus on to the emotions that were in operation during times of social change and how they were created, contested and felt by the public. This article contributes to that debate with an exploration of how the late eighteenth and early nineteenth-century press shaped an ‘emotional public opinion’ through the reporting of breach of promise and seduction suits.

It argues that in creating an ‘emotional public opinion’ the press formed a national community, in Benedict Anderson’s sense of an imagined British collective identity, connected by shared norms in emotional expression and which placed similar value on particular types of emotion.<sup>9</sup> In this, it conforms to Barbara Rosenwein’s model of an ‘emotional community’, but it also recognises that eighteenth-century Britain was diverse, incorporating a range of emotions, opinions and political stances.<sup>10</sup> It might be better then to think of an emotional public opinion as a form of emotional regime, the dominant emotional norm that other emotions and emotional values are defined against, but also a norm that is constantly debated and evolving as it incorporates new voices and new experiences.<sup>11</sup> Yet, the concept of community should not be thrown out altogether, because, as this article argues, seduction and breach of promise cases were implicated in the creation of national identity – the formation of a national community. Newspaper reports were a discursive space in which particular forms of masculinity, which located men as ‘defenders’ of female virtue, were taught to men and women. In asking the public to identify with such a militarised-styling of

an idealised masculinity, the reading public became invested in the larger British project of defending and expanding the nation.

That seduction and breach of promise suits were expected to act on the emotions of the court and the wider public has been widely recognised. Seduction stories have been located as a key genre of the culture of sensibility, teaching and allowing the public to explore complex questions around female morality and sexual agency in emotional terms.<sup>12</sup> Susan Staves has demonstrated how such seduced maidens were cast as ‘pathetic victims’, ‘fascinat[ing] writers and draw[ing] deep sympathy from reader’.<sup>13</sup> Breach of promise cases have been understood similarly. Susie Steinbach argues that whilst in the later nineteenth century, breach of promise suits were understood as farcical, in a late eighteenth and early nineteenth-century context, they were ‘tragic’.<sup>14</sup> Seska Lettmaier agrees, arguing that the humorous breach fiction of the later Victorian period relied on depicting women as ‘unfeminine’, whereas women were cast as innocent victims of nefarious villains in the melodramatic fashioning of cases that appeared in court in the first half of the century.<sup>15</sup>

While these authors recognise the central emotional register in which such suits should be read and the implications for contemporary understandings of femininity, there has been less work on how these suits created these emotions in the courtroom participants and in the wider public who accessed them through the press. Through focusing on the emotional work that the press was doing for and with the reading public, the role of emotion in processes of social change come to the fore. This article proceeds to explore this through an analysis of what emotions such suits were expected to create in the reader, with a focus on pity, shame and paternal care, before looking at how laughter was used to mediate such emotions. It then demonstrates how these emotions were in turn utilised in the making of national identity, with a case study of the suit of *Foote v Hayne* (1824). It begins by

providing some historical background to seduction and breach of promise suits and their life in the public sphere.

### **Seduction and Breach of Promise Suits in the Press**

Seduction and breach of promise of marriage cases had a long history. In England and Wales, seduction suits provided compensation to the parents or employers of seduced women for a loss of their services; breach of promise cases were usually pursued by women or, if underage, their guardians for the emotional hurt and financial loss when an engagement to marry was not fulfilled. In the seventeenth and early eighteenth century, men also sued for breach of promise, but this became less common across the period.<sup>16</sup> Seduction and breach of promise were similarly available in Scottish law, and, unlike England, Scottish law allowed women, including married women, to sue for their own seduction.<sup>17</sup> Like annulments and legal separations, breach of promise of marriage and seduction suits were tried in the ecclesiastical courts for centuries.<sup>18</sup> There was, however, an alternative option of suing in the civil courts, and after Hardwicke's Marriage Act in 1753, breach of promises could no longer be dealt with in the church courts in England and Wales.<sup>19</sup>

This changing legal context shaped the opportunities for the press to publicise such cases and created an environment which allowed the public to become arbitrators of public morality. Much of the business of the ecclesiastical courts was done on paper and behind closed doors. In contrast, the business of the civil courts was often performed in open court, particularly those suits, such as seduction and breach of promise, that required a jury to determine damages. This provided an opportunity for the public and journalists to attend proceedings and hear evidence first hand, allowing them to participate in the theatre of the court and to spread news of what went on there.<sup>20</sup> In civil courts, it was often juries –

members of the public – who evaluated and judged immoral behaviour and the appropriate (financial) punishment. As result, determining morality formally became the ‘business’ of the public, as well as the church. Happening within the wider context of the growth of the press and the incorporation of its readership into a national community, such a shift was an invitation for the general public to participate in the governance of the nation’s morals.<sup>21</sup> That sexual morality was an issue of both ‘public’ concern and implicated in the governance of the nation was reinforced by the trying of divorce (*decree absolute*) in the parliament, where (despite the fact they were private bills) it was discussed alongside the national budget, foreign policy and imperial expansion, and reported under parliamentary business in the news sections of the press.

This context also had a practical impact on which sexual scandals were widely reported. Cases at the English Ecclesiastical courts and at the Scottish Commissary Court were relatively under-reported; only a small number received any press at all and those that did tended to be reduced to short accounts in the newspapers. In contrast, jury trials were much more likely to be written up as trial reports and circulated widely. They supplied a market that had already been engaged by attendance at the trials themselves, or through hearing about the trials from those who had been present. The theatre of the court was central to exciting an interest in these cases, much like the live theatre productions that inspired the quick printing of plays for a wider audience during the period.<sup>22</sup> Detailed numbers of seduction and breach of promise suits in the civil courts across the seventeenth and eighteenth centuries have not been compiled, but they were generally rare before 1753. After this date, numbers increased, with seduction growing in popularity earlier than breach of promise cases. Both types of suit, however, reached their apogee in the nineteenth century, with breach of promises numerically peaking between 1870 and 1900, before going out of fashion from the 1930s.<sup>23</sup>

Tales of seduction fascinated the eighteenth-century public, inspiring a genre of novels where the seduction of an innocent woman and her subsequent social fall was the central story arch.<sup>24</sup> Such stories, as well as considerable moral commentary, filled the eighteenth-century press, with columns in newspapers, letters to the editor and numerous pamphlets and books. The narrative of seduction relied on a young, innocent female soiled by a calculating lover, who deprived her of her physical, and/or, in breach of promise cases, emotional chastity by having her fall in love with him, but ultimately not marrying her.<sup>25</sup> In both instances, as her chastity was ‘corrupted’, her marketability as a wife was compromised, but as importantly in a sentimental era, her innocence was lost.

In contrast, reports of seduction and breach of promise trials in the press were relatively uncommon during the eighteenth century. It may be that such suits were rare, but, in addition, ‘real-life’ seduction suits could not easily be situated within the narrative of innocence lost that relied on an upper-middle class, or occasionally lower class but usually rural and pure, victim, with minimal agency in courtship, and a suave seducer. Most seduction suits were the result of frustrated courtships between couples of similar social background and expectations. The women involved were most often of the lower middling sorts, groups which allowed women greater choice of partner and ‘alone-time’ with future spouses. Some may have viewed sex before marriage as a normative courtship custom, although this could not be admitted in court without disrupting the logic of the seduction suit (although it was sometimes mentioned in breach of promise suits).<sup>26</sup> Whilst such women portrayed themselves as passive within courtships, that most of them ultimately consented to sexual intercourse made them at least partly culpable in their ‘downfall’. In contrast, the victims of seduction in novels increasingly had their opportunity to consent removed, either through being drugged, fainting, or violence.<sup>27</sup>

Most seduced women in frustrated courtships had long-term sexual relationships with their partners, leading to pregnancy and abandonment. While it was not impossible for the eighteenth-century public to view this sympathetically, often by locating the woman as someone seeking marriage through maintaining her relationship, it made her story appear less tragic than the woman who succumbed on one fateful occasion, only to immediately repent. Finally, a central category of seduced women were servants who had relationships with their employers or their employer's relatives, and whilst Pamela's virtues may have made her a suitable choice for an upwardly mobile marriage, eighteenth-century juries, and so presumably much of the general public, appear to have felt that servants who deluded themselves into thinking marriage with their employers was possible did not deserve much sympathy.<sup>28</sup>

The seduction and breach of promise suits that were reported in the mid-eighteenth-century British press tended to be confined to brief columns with a focus on the suffering of the woman. In contrast, considerable space was given to 'true stories' of seductions, which never went to court (and so are frequently unverifiable). Conveniently, these tended to conform much more easily to the narrative of innocence seduced, and there was a whole genre of 'true story' articles that feature innocent country girls that came to the city to work, to either be seduced by a false lover or a brothel keeper and ultimately fall into prostitution, or who throw themselves on the mercy of an appropriately moral, middle-class or elite man.<sup>29</sup> It is also worth noting that victims of seduction in eighteenth-century novels do not turn to civil suits as an appropriate response to their position. Where they do appear before a judge, it is usually when being prosecuted for a crime after their downfall. They may, or may not, then get to tell their tale of woe, but do not get compensation for the wrong done to them.

Reporting of seduction and breach of promise cases (particularly the latter) starts to expand in the early decades of the nineteenth century and the narrative structure of such cases



was clearly informed by the past discursive context around seduction. As Susie Steinbach demonstrates, most wronged women successfully manage to tell their tales in a melodramatic register that was ultimately successful in appealing to the sympathies of the jury.<sup>30</sup> Their ability to do this revealed a change in the portrayal of middle-class identity. The social background of the women engaged in such suits across the eighteenth and nineteenth centuries appears to be very similar, but in the early nineteenth century, many of these women have become more clearly ‘middle class’ or ‘polite’, rather than ‘middling sorts’, and so tend to be represented as richer, or less likely to labour themselves, better educated (often in boarding-schools, where they are locked away from knowledge of the world) and ‘more innocent’. At the same time, juries were less sympathetic towards men who abandoned their sweethearts, displaying a strong expectation that men should not withdraw from marriage after entering into courtship without very good reason. This context made early-nineteenth-century seduction suits and breach of promise cases more compelling than for previous generations, but it also appears that a demand for reportage on these cases grew because the narrative structure provided the opportunity for the public to explore key questions around female innocence, martial masculinity and Britishness during a period of European war and expansion of Empire.

Despite the fact that it was broadly agreed that such suits were of particular interest to the ‘female sex’, the reader of such reports was invariably imagined as male.<sup>31</sup> Following the rhetorical models for news-reporting that had existed for centuries, most trial reports were relatively free of editorial moral commentary, allowing the ‘facts’ of the case and the spin provided by lawyers and judges in their speeches to create the emotional tone of the article.<sup>32</sup> Perhaps inevitably, the reader became located in a similar role to the male jury, asked to peruse the facts and use his emotional intelligence to come to a just verdict. The juries ‘maleness’ was explicitly engaged with by lawyers and judges of the period, who called on

them to act as father and brothers and to come to an honourable decision. As a result, the reader of press reports on this topic, regardless of their gender, was asked to emote like the men of the jury and come to a similar judgement. In this, as will become apparent, men and women were asked to similarly invest in the process of nation-building.

### **Feeling Pity**

Sensibility, as an ideal espoused by much of mainstream eighteenth-century society, encouraged the public to emote openly and appropriately when encountering the life narratives of others. The ability to sympathise with another's experience was a marker of emotional sophistication and polite identity, actively demonstrated through the display of emotion on the body.<sup>33</sup> If eighteenth-century fiction was a reflection of social reality, the appropriate emotional response to a tale of seduction was pity. When Henry Mackenzie's *The Man of Feeling* encountered a seduced woman on his adventures, he wept at her tale. The nature of his tears is clarified on the next page, when the woman's father appeared, initially angry, but on seeing his daughter 'his eyes lost the lightning of their fury! There was a reproach in them, but with a mingling of pity! He turned them up to heaven – then on his daughter. ... he burst into tears'.<sup>34</sup> When the 'melancholy narrative' of Arabella Bolton's seduction is described to the family who shelter her by their father, 'his wife and all his children in tears of pity and generosity fled to the afflicted Arabella, and offered every assistance and comfort in their power'.<sup>35</sup> Similarly, the author of the *Newgate Calendar* believed that 'it is impossible to repress the tears of pity', on observing London prostitutes, whom he imagined were the 'joy and comfort of their parents' and 'born and educated to expect a better fate', but had been seduced from 'a state of innocence'.<sup>36</sup>

The pity imagined by eighteenth-century commentators underwent some change towards the end of the century. In 1755, Samuel Johnson thought pity coterminous with

compassion, defining it as ‘compassion; sympathy with misery’, and that ‘to pity’ was ‘to regard with tenderness on account of unhappiness’.<sup>37</sup> By 1816, George Crabb’s *English Synonymes*, however, distinguished between pity and compassion. Whilst both are ‘pain which one feels at the distresses of another’, pity was ‘excited principally by the weakness or degraded condition of the subject’. Crabb thought pity similar to contempt and so believed it hurt the pride of the pitied man as ‘he can excite no interest but by provoking a comparison to his own disadvantage’.<sup>38</sup> For Johnson, pity did not hold such negative connotations; in his definition of ‘wretch’, ‘it is used by way of slight, ironical pity, or contempt’, he even attempted to distance pure pity from disdain through describing an ‘ironical pity’.<sup>39</sup>

In breach of promise and seduction cases that came to court, lawyers were expected to stir pity in the breasts of the male jury. This was often stated explicitly in the Irish courts, where lawyers tended to draw on sentimental rhetoric for longer than in the English context.<sup>40</sup> In *Coila v. Macnamara* (1820), a well-known case reported across the British Isles and involving an Englishwoman in London promised marriage by an Irishman and so tried in the Irish courts, Counsellor Wallace opened for the plaintiff by arguing, ‘this is an action at which the heart sickens—there is no passion of your nature that will not be called forth; pity, sympathy, sorrow, for an injured woman; indignation, hatred, contempt for her betrayer’.<sup>41</sup> In the Lancaster case of *Waite v. Aspinall* (1824), Mr Scarlett opened with an apology that ‘he was a plain man, and was not in the habit of using that high-flown rhetoric of which some of his Learned Friends were so fond’, but, despite not using emotional language himself, he located it into the mouths of his witnesses.<sup>42</sup> In his opening, he introduced the sympathetic character of Mrs Aspinall, who on finding out ‘that her husband had acted a treacherous part [by promising marriage to Waite], ... admitted that the poor young girl was greatly to be pitied. And greatly to be pitied indeed she was...’. He also spent considerable time detailing Waite’s illness after she discovered that Aspinall was a married man, and quoted the medical

doctor who attended her: 'the symptoms which she had appeared to proceed from some deep-seated grief that was preying on her mind'. Scarlett directed the jury and wider public to feel pity, both through his portrayal of the wretchedness of Waite and through locating pity in other sympathetic witnesses.

Detailing the affliction of the plaintiff was an integral part of breach of promise or seduction suits, where juries were compensating for emotional, as well as other forms, of suffering. In *Thompson v. Blamire* (1821), Scarlett argued that: 'There had been no attempt to describe the distress of Miss Thompson on this occasion, or indeed to show that she had lost a shilling, and therefore the Jury would treat the case as it deserved'.<sup>43</sup> In this sense, and according with Crabb's definition of pity that placed 'degradation' at its heart, the structure of the trial, which emphasised the ways the victim had deteriorated in health, status or wealth, was itself designed to evoke pity in the juries, and the success or failure in creating a compelling narrative of suffering was expected to determine verdicts.

When divested of contempt, pity was an emotion that was meant to inspire people to help. Arabella Bolton's story stimulated her adopted family to aid her in her affliction; increasingly, seduced women were thought to be a problem that needed respectable people to respond through providing money or charitable enterprises, like the Magdalene Asylums.<sup>44</sup> In seduction and breach of promise cases, lawyers called on the male judiciary and juries to 'protect', and so financially provide for, the women who sought affirmative decisions from them. This was often done by locating them, and discursively the reading public, as 'fathers' and 'brothers'. In *Palmer v. Barnard* (1792), Thomas Erskine addressed 'myself to some who are fathers, probably to others who are brothers. But I am sure I am addressing myself to twelve, whom I know to be gentlemen of honour, and who cannot be ignorant of what Mr Palmer [plaintiff's father] must have felt, and this unfortunate lady must have suffered'.<sup>45</sup> Mr Brougham observed in *Thompson v. Blamire* 'that as fathers, brothers, or men, they would

not suffer a woman's feelings to be thus violated'.<sup>46</sup> Lord Chief Justice Mansfield when summarising the evidence in *Marchant v. Hoadley* (1805) used similar language to remind the jury of their obligation to be fair: 'You, as jurymen, will consider that you are fathers and have families, and will feel what is due to a father injured as Mr Marchant has been; but at the same time, if you are fathers, you will feel also what is due to your care and affection for your sons'.<sup>47</sup> Through locating men in this familial role, lawyers and judges called on them to both engage the emotions they were expected to feel towards their family members, and to use those emotions to fulfil the expected fatherly and brotherly duties of provision and protection towards women.<sup>48</sup>

This emotional context was heightened by the expectation that fathers, in particular, were wronged through the seduction (physical or emotional) of their daughters. This was partly due to the structure of the suits, where fathers (not their daughters) were the plaintiffs, or 'victims', in seduction suits, and where in breach of promise cases, if the women were underage, they sued on their daughter's behalf; and it was due to the significant emotional devastation that fathers were portrayed as feeling on their daughter's seduction in the typical novel of the period.<sup>49</sup> Male juries were asked to not only pity the women in court, but to take the wrong done to them personally. However, the fathers that appeared in fiction and trial reports were helpless. In fiction, some went insane, others were overcome with grief; in trials, such men required the judicial system to bring them justice. Juries were expected to provide that justice, and so needed to have emotions that would lead to action.

This was effected by encouraging juries to counterbalance their feelings of pity towards a deserving plaintiff with that of disapprobation towards the male defendant, and by encouraging them to restrain their emotions to allow an emotionally-informed, but controlled, justice. Counsellor Wallace in *Coila v Macnamara* not only asked the jury to pity the plaintiff, 'but, Gentlemen, whatever sacrifice it may cost you, you will restrain those feelings,

and I look for an exemplary verdict from your sense of justice alone'.<sup>50</sup> In the semi-fictional memoirs of Arabella Bolton, whilst Mr Walter's family felt pity and offered assistance, Mr Walter's himself 'was struck with astonishment and honest indignation at his [the seducer's] villainy and perfidy. Mr Walters used every tender means to sooth the unhappy object before him, and assured her, that she should find in him both a friend and protector'.<sup>51</sup>

The defence lawyer in *Waite v. Aspinall*, Mr Brougham, recognised this instinct in the jury and tried to divert it by pointing out that Miss Waite had not immediately severed her contact with Aspinell on learning he was married:

It might be well to feel indignation against Mr Aspinell for the mischief he had done, it might be well to feel abhorrence for the mischief he had intended to do; it might be well to make him suffer for the infatuation under which he had laboured, provided that he were the only sufferer; but would it be well, he would ask them, that conduct like that of Miss Waite should be encouraged and rewarded?<sup>52</sup>

Here Mr Brougham tried to displace Miss Waite as the woman in need of protection by locating Mrs Aspinall as the true victim of her husband's adulterous activities. Indignation and anger was expected to be directed towards the male defendant and to operate as a policing mechanism between men and a defence of female virtue. In turn, the reading public, discursively placed in the role of jury, were asked to emote similarly, located as active members of polity invested in the defence of the vulnerable female – a role that potentially could be imagined by the female reader as well as the male. Whilst fiction imagined that women's responses to such situations would differ from their male counterparts, the press did not, providing women with the opportunity to read and feel as men if they wished.

### **From tragedy to comedy: shaming laughter**

Whilst lawyers spent considerable time directing the emotions of juries and the reading public towards pity and action, there was a long-running trope that the public did not emote properly when faced with such suits – a device that acted to encourage the reader to take each case as seriously as the last. As early as 1770, the author of Arabella Bolton's *Memoirs* noted that: 'The unhappy female, whose history I am going to publish, may by some unfeeling and unthinking readers, be thought of too little consequence, to draw such serious reflections; and that the frequency of such seduction and prostitution, tho' it may not justify the perpetrator of it, may lessen the infamy, moderate the crime, and render the narration neither novel or interesting'.<sup>53</sup> Yet, nineteenth-century breach of promise cases did not bore the public, but rather began to sit dangerously on the boundary between tragedy and comedy. As the numbers of seduction and breach of promise suits expanded simultaneously with the size of newspapers (so allowing more coverage of more everyday trials), women from lower-class backgrounds were better represented in the press coverage of such suits, and the public became more cynical of many of these 'victims', as demonstrated by the popularity of Charles Dicken's humorous representation of a breach of promise in *The Pickwick Papers* (1836).<sup>54</sup> Despite the fact that these trials had real and important implications for the lives of those engaged in them, numerous accounts of breach of promise trials noted that the gallery laughed during evidence.<sup>55</sup>

Much of this laughter was regulatory in response to 'ridiculous situations', following the early logic of Sir Philip Sydney that laughter was a shaming mechanism designed to encourage both those being laughed at and the audience themselves of appropriate social behaviour.<sup>56</sup> This remained particularly relevant during a period where public humiliation and shaming rituals remained central to public discipline.<sup>57</sup> Breach of promise cases where men were plaintiffs, where the couple were elderly, or where there was a significant age difference or class disparity between the pursuer and defendant were often viewed as funny in

themselves. In the reports of *Davison v. Wilson* (1821), Mr Scarlett's speech for the male plaintiff clearly demonstrated an understanding that the age of his clients would work to trivialise his client's claims for justice. He noted that:

Solitude at any period of life was not good; we were made for society, and for communicating and enjoying pleasure or consolation by reciprocity of attention and kindness. He made these remarks, because he observed a smile upon some faces on account of the age of his client. He admitted he was 68; ... Miss Wilson, he understood, was 64 years of age. (The burst of laughter infected the learned counsel himself, and occasioned a short pause in the love-story). They saw how difficult it was to excite sympathy for love at this age [continued Mr Scarlett].<sup>58</sup>

The case caused merriment throughout, with Mr Scarlett finally agreeing to a small settlement before judgement, acknowledging to the jury 'I could not expect such damages from you as if they were younger, and there were more love and sentiment in their attachment'. The article that appeared in the *Chester Courant* and *Morning Post* concluded that 'The court was extremely crowded, especially with ladies, and we never saw more merriment excited by the afflictions of disappointed love'.<sup>59</sup> Like others of this type, that this couple was elderly appeared to be inherently funny, which then allowed all their actions to be interpreted as entertaining. This presumption allowed lawyers and judges leeway to make jokes and refer to the absurdity of such cases. In such cases, regulatory laughter operated to police the boundaries of what was considered acceptable, but was generally not entirely condemnatory and did not predicate against the plaintiff winning. The extent to which it lowered the value of the award is harder to determine, but many of the people involved in such cases still received reasonable sums.

Such laughter also appeared during suits between couples that conformed more readily to expected social norms around appropriate age at marriage and equity of social



status, especially in response to the reading aloud of love letters. The *Morning Post* in its brief summary of *Budd v. Duggin* (1821) noted that: ‘The letters which passed between the parties were quite *unique*, and those who heard them were highly amused’.<sup>60</sup> Mr Scarlett, in *Thompson v. Blamire*, explicitly connected love letters to the ‘ridiculous’, using them to belittle the plaintiff’s hurt: ‘I know not whether I shall be able to keep up the tone of merriment and ridicule which my learned friend very judiciously introduced into this cause [through reading love letters]. Not only are love letters in their very nature ridiculous, but this cause is of a character which could not be mentioned to you with affected gravity’.<sup>61</sup>

In contrast to romantic poetry or even epistolary literature, love letters between couples often combined loving endearments with everyday requests or conversation. One of the more humorous moments in the trial of *Foote v. Hayne* (1824) was Colonel Berkeley’s ‘sublime thee and thou letters’, where he asked Maria Foote ‘Have thou forgotten how the horses used to be kept waiting at the stage door’? As one commentator noted: ‘This was easily the thought of an English lover. No other lover under the sun would have thought about the horses’.<sup>62</sup> This disjunction between the fantasy of romance and the banality of daily life highlighted the absurdity of the attempt to express feelings in words, creating a form of bathos. Moreover, this was a period where people were increasingly suspicious of overly flowery language in matters of romance, viewing it as ‘inauthentic’. This meant that lovers were more restrained in expressing their feelings and gave value to ‘awkwardness’ in expression as a measure of authenticity.<sup>63</sup> While the lover may have found such ‘awkwardness’ endearing, when read aloud in court it also moved into the realm of the absurd.

The increasing importance of love letters to these trials had the effect of turning every breach of promise, or even seduction suit, into a potential farce. These suits became, in effect, tragicomedies, ultimately demanding pity for the wronged woman but with moments of

comic relief throughout. Clearly, defence lawyers often hoped that if they successfully moved the suit into the comic mode that sympathy for the plaintiff would be diminished. Yet, they also ran the risk of heightening the tragedy. One of the major anxieties around love letters was that they were a form of persuading women to overcome their emotional chastity and fall in love with the writer. In cases where the relationship ended, it then suggested that such language was deceptive, which heightened the seriousness of the guilty party's actions. A number of reports demonstrate the significance given to such evidence, despite the best efforts of defence attorneys. The *Dublin Evening Mail* provided a transcription of a particularly effusive letter in *Dick v. Fletcher* (1824), and followed it with nothing but the comment 'After this letter, the Reverend Gentleman broke off the intended match, in consequence of the disapproval of his sisters'.<sup>64</sup> The clear implication for the reader was such an effusive outpouring of affection rendered Fletcher's later actions particularly damning.

In *Berkinshaw v. Loder* (1830), Mr Adolphus addressed this issue directly in his speech for the defence. He began by trying to make light of the content of the letters, enjoining the court to laugh with him, but his concluding plea to the jury to 'not give such damages as would have the effect of ruining a man because he had written such foolish letters' is indicative of his expectation that ultimately such evidence was taken quite seriously by juries.<sup>65</sup> The comic relief offered the jury, gallery and readers a usually short-term emotional release from their feelings of pity, but, in doing so, it also gave depth to the tragedy, sharpening the sense of wrongdoing through its focus on the incongruity of life or the deceptive actions of the author. As Samuel Johnson noted, 'no plays have oftner filled the eye with tears, and the breast with palpitation, than those which are variegated with interludes of mirth'.<sup>66</sup>

Due to its potential to reinforce the emotional tenor of the plaintiff's suit, laughter was a complex tool to control. Some lawyers attempted to explicitly direct the juries and gallery's

emotions to another potential outcome of shaming laughter – disgust. The case of *Pizzey v. Boulter and Wife* (1821) arose when a servant maid, who had been in courtship with a stable boy, won the lottery. She initially continued to court him, but eventually broke the relationship off and subsequently married a wealthier tradesman with an ‘extensive business’. The stable boy, Pizzey, then sued for compensation. The defendant’s lawyer, Mr Cresswell, instead of laughing at Pizzey treated the case with contempt, telling the jury that:

He should have found it difficult to address them on the present occasion, were it not for the indignation which he could not but feel as finding them dragged there to waste their valuable time in listening to such a case as this – that they should have been drawn away from other avocations to be insulted and disgusted by the mockery of such an action.<sup>67</sup>

Cresswell based his contempt on a combination of Pizzey’s gender and social class, arguing that a stable boy could not have provided for a wife and family and so could not marry without disaster (hence suffered no loss from the breach), and that he could not have benefited from her wealth, as ‘ignorant of business, must soon have dissipated any little property which she might possess’. The jury in this instance disagreed, awarding him £200 of her £833 win.

Laughter (or at least how it was reported) was also used to signal condemnation in cases that involved female servants or lower-class women seeking marriage to employers. In the various press reports of *Walker v. Lyon* (1829), where the plaintiff claimed damages for breach of promise of marriage from her father’s employer’s son (now an extremely wealthy man), laughter was recorded as following much of the witnesses testimony, suggesting the levity with which the case was taken.<sup>68</sup> The *Morning Post* in its abbreviated version of the trial went further, however, by locating the laughter in response to the account of the plaintiff’s suffering.<sup>69</sup> The plaintiff’s mother testimony was recorded in the third person: ‘The

circumstance had a great effect on her daughter. She was very unhappy in mind; and she (witness) feared the river, which was very near. It had injured her character, hurt her health, and she never had a well day since. – (Great merriment and laughter.)’ This account is absent in other reports, but when accompanied with the jury verdict of ‘one farthing’, it clearly located laughter as a shaming mechanism used to condemn the behaviour of poor women seeking to marry men of higher station.

While Susie Steinbach has associated ‘farce’ as a later nineteenth-century response to breach of promise that reflected its increasing anachronism to Victorian society, laughter was also a feature of earlier suits.<sup>70</sup> However, rather than acting to diminish the moral importance of the trial, laughter was used to heighten the emotional impact of the case, either through drawing attention to the tragic in juxtaposition to banal, or as a regulating force that directed the jury and the reading public towards the deserving and undeserving plaintiff. In this, laughter complemented the ‘pity’ that was demanded of the public by these suits, by allowing emotional relief and pushing the jury and the public towards action and justice. It may also have allowed the public, both in and out of court, to distance themselves from appearing overly-sentimental and so ‘feminine’ – something that was moving out of fashion during this period – whilst still allowing them to feel the necessary pity required for justice.<sup>71</sup>

### **Defending the nation: *Foote v. Hayne* (1824)**

To encourage juries to respond appropriately to these suits, male behaviour towards female sweethearts became located within a much wider code of honourable manliness, the failure of which was potentially devastating to not only individuals but society, civilisation and even Empire.<sup>72</sup> The author of Arabella Bolton’s *Memoirs* made this explicit:

The man who can with deliberation and cool pursuit of an innocent, virtuous, tho' obscure girl, by long perswasion, and false promises, seduce and rob her of her chastity and reputation, and afterwards abandon her to the world, covered with shame, infamy, and dreadful disease; would not hesitate one moment to blast the reputation, or destroy the peace, honour, or happiness of the first or most respectable character of the nation.<sup>73</sup>

The man who could rob a woman of her virtue was not only unmanly, but unpatriotic, tying together male behaviour towards women with the fate of the British nation.

Female virtue became the mark of British superiority and British men the moral protectors of female virtue, and through their protection of women, guardians of the nation. This was an idea that was also extended into Empire, where Britain's imperial project was justified in terms of British men's, and later British women's, ability to protect 'native' women from the seeming 'uncivilised' practices of their own cultures.<sup>74</sup> This positioning of men, and particularly elite or middle-class men, as 'defenders' of female virtue was explored in the suit of *Foote v. Hayne*.<sup>75</sup> Maria Foote was an attractive, popular actress, and long-time mistress of Colonel Berkeley, son of the Earl of Berkeley, by whom she had two children. Berkeley had seduced Foote under promise of marriage when she was seventeen and Foote had remained his mistress for a number of years whilst waiting for him to fulfil his word. Eventually, she gave him an ultimatum and ended their relationship when he did not marry her by an agreed date. Shortly afterwards, Joseph Haynes, a young wealthy 'man about town', with an estate in the West Indies, approached Foote's father with a view to marrying her. Before proceeding in the courtship, Maria Foote explained to him that she had two children to Col. Berkeley and could only advance if he was prepared to accept this. Haynes declared yes, but jilted Foote on her wedding day. Worse, he subsequently sought forgiveness and rearranged the marriage, before abandoning her a second time.

The case was a *cause célèbre* of the period; its popularity heightened by the high-profile participants, Foote's ability to locate herself as 'seduced innocent', and the multiple sorrows Foote experienced at the hands of different men. As is depicted in Fairburn's account of the trial, Foote's lawyer, the Attorney General, John Singleton Copley, located her as a woman in need of male protection. His opening speech only briefly mentions her father and then in his role of finding her first stage role (a problematic choice given the continued association of actresses with prostitution).<sup>76</sup> From this point, Copley always referred to 'her parents' when discussing their role in her courtship, despite some of the later evidence that emerged during testimony indicating her father played a larger role than this suggested. In addition, only Foote's mother appeared to testify in court. Copley also expended considerable time detailing Foote's seduction by Berkeley, before describing Hayne's behaviour. The result was that Maria Foote appeared as a woman in need of a male protector.

Ironically, Hayne's lawyer, Mr Scarlett, also contributed to this portrayal of Maria. He began by criticising her father for allowing her onto the stage and for not appearing in court to testify, noting that 'He should wish to have known from him, whether he had ever made a corrupt bargain with Colonel Berkeley for the sale of his daughter's honour?'<sup>77</sup> Scarlett then suggested that it was Berkeley, Maria's original seducer, not Hayne, that should appear in court, before trying to place Foote as the aggressor in the courtship, seeking a secure settlement, not a romantic attachment. This latter backfired when the Attorney General noted in rebuttal (ignoring the swipes at Foote's father) that, to instruct his lawyer to portray him as 'simpleton', Hayne 'proved that he had a most steady view of his own interests, and proved that to promote them, he was ready to sacrifice his own character and honour'. As Copley pointed out, was the jury to believe that Hayne was 'an extraordinary driveller and idiot', a man who had attended Eton where young men 'acquire more knowledge of the world than men much more grown up', who then lived in Paris and the West End of London, not 'remote

from society’?<sup>78</sup> Through his defence, Mr Scarlett made Maria Foote appear even more in need of male protection than ever. The jury obligingly offered that protection by giving her victory and awarding her £3000. Interestingly, the report of the trial noted that ‘As the verdict was pronounced, there was a momentary expression of approbation in the Court, but it was not general, and was instantly checked by the voice of the court officer’.<sup>79</sup> Despite the jury’s definitive verdict, not everyone in court agreed with the decision, suggestive of the fact that the emotional guidance provided by lawyers to juries and the wider public were not always successful.

<Insert Figure 1>

<Caption>Figure 1 Isaac Cruickshank, *Miss Foot-it, in the Kings Bench Battery!! Peppering a Haineous Nincompoop* (London, John Fairburn, 1824). © Victoria and Albert Museum, London.</caption>

The complex response of the public to *Foote v. Hayne* was also portrayed in the colourful prints produced after the verdict was announced. In Isaac Cruickshank’s *Miss Foot-it* (figure 1), Maria Foote is portrayed firing a canon at Hayne, crouched behind a target with ‘A haineous breach of promise’ written on it. Hayne is distinguished by the green coat for which he was renowned, whilst he wears ass’s ears on his head, symbolising both that he was ‘an ass’, so foolish, but also holding sexual overtones due to the resemblance to a cuckold’s horns. The canon ball blaze contains the words £3000, whilst it fires the marriage license, along with other pieces of trial evidence at him. Col. Berkeley rides towards the scene, shouting ‘I’m the boy for her after all’, whilst his two children sit astride the canon, urging him on. The canon itself is named the ‘King’s Bench Battery’.

Whilst locating her as the victor in this suit, in the context of early-nineteenth-century models of femininity, this is not a sympathetic portrayal of Maria, who is posed assertively behind the canon, declaring ‘Ha, ha, ha! Three thousand pounds damage done and not within a Foot of the Bulls-Eye-either—I shall get three rounds of applause for this’. The ‘Bulls-Eye’ in this context symbolised her vagina, and relied on a wider rumour that was circulating that her previous relationship with Berkeley had a financial component, something that her lawyer explicitly denied at trial. As a ‘kept mistress’, not a ‘seduced woman’, Maria was significantly less sympathetic. At the same time, neither Haynes nor Berkeley were positively portrayed here, so Maria’s victory was not an injustice. This is reinforced by the evidence being fired at Haynes, and one of the readings of this print is that if he was enough of ‘an ass’ to provide such evidence of his promise then he deserved to lose. This reading would have had cultural resonance as there was a growing concern that innocent women could not prove their cases as they only had oral promises. The early-nineteenth-century print ‘Proof of Seduction’ featured a woman being reprimanded by a lawyer for ‘pestering’ him when she did not have evidence of her seduction, although her hands placed strategically over a slightly bulging belly suggest otherwise.<sup>80</sup>

While Maria fired the (undoubtedly phallic) canon, it placed the ‘King’s Bench Battery’, when armed with proper ammunition, as the envoy of justice. The military metaphor is particularly significant in the context of the breach of promise, where male juries, and the male public more generally, were placed in the role of ‘defenders of virtue’. Moreover, during a period, where as Kathleen Wilson, has demonstrated, women were making greater claims to their rights to patriotic and even militaristic political engagement, it may be that through reading as men, women were also able to imagine themselves in this way.<sup>81</sup> Martial metaphors are also found in other prints arising from breach of promise cases. In *The Silver Ball Polished by a Foote & Co*, another print satirising Maria’s victory, Maria kicks Hayne’s



backside, as she is urged on by a crowd of lawyers, and watched by Col. Berkeley.<sup>82</sup> ‘The Silver Ball’ was Hayne’s nickname (a reference to the fact his fortune was smaller than his close friend Hughes Ball ‘the Golden Ball’), and the play on ‘Foote’ and ‘Ball’ provided the opportunity for kicking in this print and ultimately created a new nickname for Haynes (the Foote-Ball).

Similarly, in a print (figure 2) to accompany the high profile breach of promise *Dick v. Fletcher*, Alexander Fletcher, in minister’s garb, is seen running away from an attractive Eliza Dick, trampling over Cupid in his haste, whilst Cupid’s arrows rain down upon him. *Dick v. Fletcher* was never tried by the King’s Bench as, when it got to court, Fletcher made an apology and Dick did not press for damages. The Presbyterian Synod, however, subsequently tried Fletcher for behaviour unbecoming to a minister and he was suspended from the Church. Words within the arrows reflect the origins of justice in this case: ‘Caricatures’, ‘Times’, ‘Moniter’, ‘Chronacle’, ‘Scotch Sin-not [synod]’. Dick received justice, not just from the court’s forced apology, but from Fletcher’s shaming in prominent newspapers, from the Synod, and from the caricature itself. Like in the prints surrounding *Foote v. Haynes*, the representation of justice as a form of violence tied together the localised defence of individual women in the court or the press with the larger military project of defending and expanding the nation, during a period of almost continual European wars and imperial expansion. As a result, feelings of pity towards women and indignation and anger towards unmanly men become a form of patriotism, locating gender roles and relationships at the heart of the Victorian nation.<sup>83</sup>

<Insert Figure 2>

<Caption> Figure 2 J. Lewis Marks, *We Eye Nature’s Walks and Shoot Folly as He Flies* (London, 1824). © Trustees of the British Museum </Caption>

## **Conclusion: Gendering Patriotism**

The reportage of breach of promise and seduction trials placed the reading public in the position of the male jury, asked to read the evidence, ‘listen’ to the lawyers and judges’ speeches and to come to a just verdict. This was an inherently emotional process, with juries and the public, primed by the wider cultural discourses that enveloped seduction and breach of promise suits, asked to feel pity for wronged innocent, contempt for the conniving woman, and indignation towards the dishonourable man. Justice required juries and the public to emote appropriately to the situation and to use their emotional reading of the evidence to inform their verdict. This is not to say it was an uncontested process. Just as the court provided a discursive space to explore the evidence and the appropriate emotions to it, with humorous situations and laughter providing an opportunity for lawyers to try and direct the emotional tenor of the suit, the press allowed the reading public to similarly explore their feelings in response to such situations. In doing so, the press asked the public to emotionally invest in the suits that read they about, to form an ‘emotional public opinion’, and, moreover, in imagining themselves as ‘defenders of virtue’, to become engaged in wider processes of social change as ‘defenders of the nation’.

In this, the discursive construction of the reader as male had important implications. On the one hand, it was expected that men would emote differently to women, which was made clear in the gendered rendering of pleas to the jury as ‘fathers and brothers’. Whilst pity was expected to encourage both men and women to action, this was informed by understandings of the appropriate spheres of action for men and women, where men were called on not just to offer assistance to the wronged woman (as their wives were), but to defend and protect her, enacting justice on dishonourable suitors. On the other hand, no such

differentiation was made of the reading public, where the female reader was able to cast herself into the male role if she so chose. Through reading as men, women were provided with the same opportunity to imagine themselves as defenders of virtue and nation, investing them in the same processes of nation-building as their fathers, brothers and husbands.

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<sup>53</sup> *Memoirs of Arabella Bolton*, p.xiii.

<sup>54</sup> Steinbach, 'From Redress to Farce'.

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<sup>75</sup> *Fairburn's Edition of the Trial between Maria Foote, ... and Joseph Hayne, esq ...* (Ludgate Hill: John Fairburn, [c. 1824]). For a discussion of class and honour see: *Public Men: Masculinity and Politics in Modern Britain*, ed. Matthew McCormack (Basingstoke: Palgrave Macmillan, 2007).

<sup>76</sup> Tracy C. Davis, *Actresses as Working Women: Their Social Identity in Victorian Culture* (London: Routledge, 1991).

<sup>77</sup> *Trial between Maria Foote*, p.37.

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<sup>78</sup> Ibid., p.41-2.

<sup>79</sup> Ibid., p.45.

<sup>80</sup> Piercy Roberts, *Proof of Seduction* (London: Roberts, [c. 1806]), held by the British Museum.

<sup>81</sup> Wilson, 'Nelson's Women'.

<sup>82</sup> Thomas Howell Jones, *The Silver Ball Polished, by A: Foote & Coy* (J. Duncombe, 1824), held by the British Museum.

<sup>83</sup> Wilson, 'Nelson's Women'; Kathleen Wilson, 'Citizenship, Empire, and Modernity in the English Provinces, c. 1720-1790', *Eighteenth-Century Studies* 29 (1996), p.69-96.