The Marriage Contract in Fine Art

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From the Middle Ages to the Enlightenment, several European and English artists produced paintings depicting the formation of a marriage contract. The artwork invariably portrays a couple – sometimes in love, sometimes not – who wait while their parents negotiate the dowry and other terms of the betrothal agreement. In nearly every painting, a notary sits or stands at a table, quill in hand, memorializing the details of the marriage. Some artists celebrated the accord while others condemned parents who arranged marriages for the purpose of status or money. Not all of the paintings in this survey are masterpieces. Yet, the artwork collectively demonstrates a thematic trend in which artists commented on, analyzed and, in some cases, attempted to influence marriage custom and law.

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1 In this article, I examine six paintings in detail and eight others as illustrative of different legal principals. There are many more artists who dealt with the subject matter of marriage contracts before, during and after the time period studied here.

2 Notaries, rather than attorneys, typically drafted the marriage contracts. In some jurisdictions and times, notaries were also empowered to officiate at a marriage ceremony in lieu of a priest – a Renaissance precursor to the modern justice of the peace. Edwin Hall, The Arnolfini Betrothal, 59 (Univ. of Calif. Press, 1994).

3 Some paintings, such as Jean-Batiste Greuze’s l’Accordeé de village and William Hogarth’s series Marriage a la Mode, are acknowledged masterpieces that have spawned many books and critiques. Others, such as Aert de Gelder’s The Marriage Contract and Abraham Bosse’s Le Mariage à la ville, receive little more than the occasional footnote, though both artists are acknowledged regionally as fine examples of art from the period.

4 Although this paper asserts that marriage contract art reflects a desire by artists to comment on the evolving marriage laws, another explanation for the large number of paintings is merely market demand. The genre artists studied in this
Art, like literature, not only reflects our culture but also has the ability to affect how we perceive important events and social customs. Art historians and legal scholars have increasingly noted the role that art plays in the development of social custom and legal norms. While law shapes art, so too can art shape law. Gauging the depth to which art influences law is, of course, difficult to estimate. At first glance, the paintings in this survey seem little more than visual accounts of a private legal matter. However, the interdisciplinary area of cultural and art studies provides tools to help explain the “intellectual thrust” of a painting – i.e. the underlying ideas that the artist wishes to introduce into the societal discourse on cultural values.

paper worked from a limited subject matter; therefore there was much duplication in the themes that were painted. Wayne Frantis, Dutch 17th Century Genre Painting 1 (2004). Marriage contract art could have evolved merely because it sold well in the market at the time that the art was made.

Although the focus here is on visual art, many plays and novels from this period used the marriage contract as a plot device. Almost invariably when the subject came up in Renaissance drama, “someone – be it husband, wife, or an influential third party—makes an issue of the legality of the contract.” Kathryn Jacobs, Marriage Contracts from Chaucer to the Renaissance Stage, 116. The number of authors who incorporated the marriage contract into their novels, poems and plays includes some of the greatest literary figures from the Middle Ages and Renaissance. Chaucer and Shakespeare stand prominent among the list. In Chaucer’s Canterbury Tales, the characters “speak and think in financial and business legalisms” as part of the plot device. Since the law allowed that oral promises may give rise to dramatic consequences (i.e. a binding marriage) the romantic dialogue spoken between lovers could swiftly change lives.

Kathryn Jacobs, Marriage Contracts from Chaucer to the Renaissance Stage, 6, 116. Shakespeare also used marriage contracts as a dramatic device in “Twelfth Night, Measure for Measure and The Winter’s Tale.” Lawrence Stone, Road to Divorce: England 1530-1987, 69. Lesser known dramatists also regularly used the marriage contract as a plot device. The clandestine marriage appears in a play by Fletcher and Beaumont. Lawrence Stone, Road to Divorce: England 1530-1987, 73, 136. In more than one instance, playwrights got their inspiration from the painters. Hogarth’s Marriage a la Mode was the inspiration for David Garrick’s play “The Clandestine Marriage.” David Garrick, The Clandestine Marriage, 23 Broadview Press (October 5, 1995). The overwhelming success of Jean-Baptiste Greuze’s L’Accordeé de village in the Paris Salon led playwrights to imitate the painting in the theater so authentically that “at one point, the curtain rose to reveal the actors in the same costumes and poses as the figures in the painting.” Emma Barker, “Painting and Reform in Eighteenth-Century France: Greuze’s L’Accordeé de village” Oxford Art J. Vol. 20, # 2, p 43 (1997). In the operatic world, the marriage contract also took a bow in Gioachino Rossini’s 1810 opera, La Cambiale di Matrimonio "The Marriage Contract."

6 Ernst Van Alphen, Art in Mind, xiv (2005).


8 Ernst Van Alphen, Art in Mind, xiv-xvi (2005).
Notably, there has recently been renewed interest in the historical foundation of marriage law as a result of the debate over same-sex marriage.9 Some supporters of the heterosexual-only approach to marriage rely on the argument that society has conceived of marriage as a holy sacrament between a man and a woman.10 Same-sex advocates argue that conceptions of marriage have been dynamic historically11 and the issue of same-sex marriage has brought the origins of marriage into the debate.12 Interestingly, many of the artists in this survey ably explored the issue of whether marriage is a sacrament or a contract. This is not to suggest that the artwork deals with the issue of same-sex marriage;13 rather, the analysis of visual representation of the marriage contract yields another data point for marriage scholars researching the history and origin of society’s conception of marriage.

This article discusses the role in which fine art reflected, shaped and amplified the political discourse over the nature of the marriage contract and the laws surrounding marriage from the

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9 James L. Musselman, What’s Love Got to Do with it? A proposal for elevating the status of marriage by narrowing its definition, while universally extending the rights and benefits enjoyed by married couples, 16 Duke J. Gender L. & Pol’y 37, 39 (2009). Professor Musselman discusses the history and origin of marriage noting that during different eras marriage has been alternatively viewed as a sacrament or as a civil contract. Id.


13 As might be expected, none of the art studied in this paper deals with same sex relationships. That said, there were many artists (Michelangelo, Guercino, Giovanni Antonio Bazzi, and Caravaggio to name a few) who are now generally acknowledged as homosexual and who produced art that is considered, through the lens of twentieth century art criticism as homoerotic. Yet, such interpretation conflates the gay identity of the artist with homosexual content in the painting. George Haggerty, Gay Histories and Cultures, Vol. 2, 72-73 (2000). For an authoritative look at the historic development of gay themes in the arts, see James M. Salow, Pictures and Passions: A History of Homosexuality in the Visual Arts, (1999).
fifteenth through the eighteenth centuries. Given the plight of women’s rights during this period, artists had many issues that they could raise. Through the common law doctrine of coverture, the wife had no separate legal personality from her husband. In theory, the marriage united the two as one person under the law, but “that person was the husband.” Married women had no right to hold or dispose of property except for that provided in the marriage contract. In fact, as patriarchal power grew in the sixteenth century, married women were hardly better, and arguably slightly worse, than during the Middle Ages. If marriage was a contract then it was certainly an unconscionable one for women since they lacked any meaningful choice in selecting a mate and the resulting terms were unfair and overly harsh. There were few options, if any, for a woman who did not want to marry the man chosen by her parents. Unfortunately, the problems of the Renaissance are still

14 For purposes of this paper, I use the terms betrothal agreement and marriage contract interchangeably. In general use, the term “marriage contract” means either the betrothal agreement or the state of being married. Modernly, courts still use the term “marriage contract” to describe the legal status of wedlock even though the word “contract” is a bit of a misnomer. Modern courts conceive of marriage as a “civil contract” in which the state has an interest, and over which the state exercises control. Patel v. Navitlal, 265 N.J. Super. 402 (1992). As with commercial contracts, consent of the parties is required to form a marriage. However, formation of a marriage results in a legal status or legal condition rather than a business-like contractual relationship. Eric Rasmusen and Jeffrey Evans Stake, Lifting the Veil of Ignorance: Personalizing the Marriage Contract, 73 Ind. L. J. 453 (1998). Unlike the common commercial contract, a marriage cannot be rescinded nor may a novation be made without the state consenting to the annulment or divorce. The state’s control over marriage is so entrenched that government has been said, tongue in cheek, to be “a third party to the marriage contract.” West v. West, 294 Ill. App. 3d 356. If we consider that marriage is truly a contractual relationship, then that agreement might best be understood as “a contract of adhesion” in which the state sets the terms. Eric Rasmusen & Jeffrey Evans Stake, Lifting the Veil of Ignorance: Personalizing the Marriage Contract, 73 Ind. L.J. 453, 455 (1998). Rasmusen and Stake argue that in response to a weakening in the importance of life-long marriage commitment, legislatures should offer, without the need to government oversight, some personal choice to individuals in how to structure, maintain and dissolve a marriage. Id. at 501-502.

15 Lawrence Stone, The Family, Sex and Marriage in England: 1500-1800, 136 (1979). The common law embraced this principle well into the nineteenth and in America as well as in England. “[H]usband and wife were one flesh; but the man was the owner of that flesh.” Lawrence M. Friedman, A History of American Law (3d ed. 2005).

16 Lawrence Stone, The Family, Sex and Marriage in England: 1500-1800, 136-7 (1979). Through the “legal device of the use to feoffees” some women were deprived of their right to dower. Married women had fewer rights than a person who had been excommunicated. Id.

17 Lawrence Stone, Uncertain Unions: Marriage in England 1660-1753.
contemporary problems. A 2008 study estimated that there were 3000 cases of forced marriage every year in the United Kingdom.\textsuperscript{18}

As the oppression of women grew during the Renaissance, a countervailing trend in political philosophy and art foreshadowed change.\textsuperscript{19} When John Locke laid the framework for natural law theory in \textit{Two Treatises}, he also discussed many of the injustices to women in the marriage laws of the time.\textsuperscript{20} Although not a feminist by modern standards, Locke defined a new form of marriage contract, in which women could not only choose their own husbands but could also choose to dissolve the marriage.\textsuperscript{21} As the political discourse over marriage contracts heated up, a noticeable change occurred in how some artists portrayed women in marriage contract art. Artists started to place women in their artwork literally at the negotiating table – arguing over dowry and dower rights and asserting their rights within the patriarchic structure. Some historians have interpreted these images of women as being greedy; yet when considered from a feminist perspective within the context of women’s rights during the era, the alleged vice of greed actually becomes a virtue as mothers sought to protect and provide for their daughters in the negotiation of the economic terms of a marriage. Additionally, artists began to paint images that elevated marriage beyond the economic concerns surrounding the dowry thus suggesting that love and affection should form the basis of marriage rather than status, prestige and money. Marriage contract art reached a high point when both concepts – love as a basis for marriage and providing an economic basis for the newlyweds – are expressed in Jean-Batiste Greuze’s \textit{l’Accordeé de village}.

Families and friends exerted pressure on the couple and used financial leverage by threatening disinheritance if consent was not forthcoming. The only practical alternative was to enter religious life. \textit{Id.}

\textsuperscript{18} By the Numbers, Newsweek, 5 (December 8, 2008). Of the 300 cases handled yearly by the Britain’s Forced Marriage Unit, most forced marriages occurred within minority families – 65% were Pakistani and 25% were Bangladeshi. The United Kingdom passed laws in 2008 aimed at protecting women from unwanted arranged marriages. \textit{Id.}


\textsuperscript{21} Lawrence Stone, \textit{The Family, Sex and Marriage in England: 1500-1800}, 136 (1979). In the eighteenth century, political philosopher Jean-Jacque Rousseau also wrote about marriage contracts within the context of natural law theory. Rousseau’s influence was felt in Jean-Batiste Greuze’s masterpiece, \textit{l’Accordeé de village}. 

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Did art influence marriage law? From a feminist perspective, only mild change occurred. Divorce became easier, but coverture continued well into the nineteenth century. What is intriguing from a law and art perspective is the concurrent development of egalitarian ideas within both political philosophy and art. While Locke and Rousseau were busy developing natural law theory, artists were expressing those theories visually through marriage contract paintings. As the eighteenth century unfolded, the message carried within the artwork reached a larger audience as museums became more accessible to the populace and as artists made engravings of their paintings available for sale. The concurrent historic development in marriage and political thought during this period suggests that the artist was making a commentary on the evolving institution of marriage in an effort to influence change. As the paintings became more available to a wider audience, the artwork may have also shaped public opinion in ways that helped set the stage for changes to marriage law in the late eighteenth century.

It is dangerous, if not impossible, to generalize about legal, political and artistic trends throughout Europe and England over a 400 year period. Even in geographically close regions, such as England and Normandy, the “differences are more striking than the similarities.”

This paper limits the artistic inquiry to genre painting – a style originating with Dutch and Flemish artists but which later spread to French painters. Genre paintings, which depict common events from the lives of ordinary people, were considered a radical departure from the religious and historical art of the time. While genre paintings are useful historical reflections of clothing, furniture and style, many contemporary art historians contend that genre artists used “disguised symbolism” – i.e. iconography or iconology – within the painting to evoke

22 Lawrence Stone, Road to Divorce: England 1530-1987, 80. Given the temporal, geographical, legal and artistic differences of the pieces analyzed, this paper can, in some respects, be no more than a descriptive compilation of disparate and tangentially related pieces of art tied together merely by subject matter.


24 The theory of “disguised symbolism” is attributed to legendary art historian Erwin Panofsky. Wayne Franits, Looking at Seventeenth-Century Dutch Art, 1-7 (Cambridge Press, 1997).

25 Some art history scholars make a distinction between iconography and iconology. Iconography “deals with the content of pictures;” whereas iconology studies the meaning of the pictures. Wayne Franits, Looking at Seventeenth-Century Dutch Art, 9 (Cambridge Press, 1997). Yet the scholarship mixes the terms liberally, sometimes using the term iconography to discuss the meaning
emotions and teach a moral lesson. Much has been written about iconography, but this semiotic approach to art history is not without controversy.\(^{26}\) However, enough evidence exists that painters imbued their art with meaningful symbols that the real question is not whether artists of this period used symbols, but rather, how to interpret those icons within the social and historical context of the painting.\(^{27}\) Given the timeframe, geography and the number of prolific artists throughout Europe and England, this paper necessarily leaves out important artwork, trends and artifacts, such as the Jewish Ketubbah,\(^{28}\) Islamic marriage contracts,\(^{29}\) visual records depicting marriage contracts among

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29 A small number of paintings depict the formation of an Islamic marriage contract, but including Islamic art would require a discussion of comparative religious law and that is outside the scope of the paper In his 1736 painting, “A Marriage Contract”. Carle Van Loo painted a group of people in Turkish dress and turbans preparing a betrothal agreement. Van Loo may or may not have intended the genre painting to depict the formation of an Islamic marriage contract. Van Loo often used Turkish dress to make his paintings appear more exotic. Colin, B. Bailey, *The Age of Watteau, Chardin, and Fragonard: Masterpieces of French Genre Painting*, 1 (2003). Nineteenth century artist Martinus Rorbye painted what is more clearly depicted as an Islamic marriage contract in “A Turkish Notary Drawing up a Marriage Contract,” (1837). The small number of Islamic marriage contract paintings may be explained in part because Islamic tradition discouraged the depiction of living images. The Qur'an does not explicitly prohibit artists from painting living images; rather, like other religions, Islam prohibits idolatry and the worship of images. Persian art from the late medieval period is perhaps the richest source of Islamic figurative art. ReligionFacts, *Islamic Figurative Art and Depictions of Muhammad*, [http://www.religionfacts.com/islam/things/depictions-of-muhammad-in-islamic-art.htm](http://www.religionfacts.com/islam/things/depictions-of-muhammad-in-islamic-art.htm) (last updated March 16, 2009). Although Islamic artists did not develop figurative painting to the same degree as Western art, they have a rich and colorful heritage of complex interweaving patterns and designs that rivals anything found in Western art or nature. See Tim Stanley et al., *Palace and Mosque: Islamic Art from the Victoria and Albert Museum*, passim (V&A Publications 2004); N. Simakoff, *Islamic Design in Color*, passim (Dover Publications, Inc. 1993); and J. Bourgoin, *Arabic Geometrical Pattern & Design*, passim (Dover Publications, Inc. 1973).
royalty, paintings depicting weddings, and preserved historical records of marriage contract both in parchment and in stone. All of the excluded art is interesting and valuable for historical legal research but to include it all would require a book-length project if not multiple volumes.

Part 1 of the paper first considers trends in the legal academy towards the study of art and law in order to give a theoretical framework for interpretation of the paintings. The paper attempts to analyze the paintings from two perspectives – that of the art historian to understand the artist’s interpretation of the law and that of the legal historian to give the paintings a historic legal and political context. While it would be ideal to assess the quantitative impact of the paintings on legal norms, ultimately, there is not enough data to gauge how important these paintings were in shaping laws. That said, this paper attempts to elicit legal themes within the artwork and then tie those themes to the political discourse on marriage as well as the changes in marriage law during the time.

Parts 2 through 6 track the development of marriage contract art. Each part focuses primarily on a single masterpiece that illustrates a trend in the law. Within some sections, other minor artists are discussed to the extent their paintings reflect or amplify the issues. Part 2 discusses Jan van Eyck’s *The Arnolfini Marriage*, which illustrates fifteenth century church canon law as well as the importance of iconography as an expression medium in

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30 While interesting from a historical and geo-political perspective, the depiction of the formation of marriage contracts among royalty seldom brought up issues surrounding the development of the law affecting the general populace. There is one notable exception – James Northcote’s *The Marriage of Richard of Shrewsbury, Duke of York, to Lady Anne Mowbray*. One aspect of the painting is that it illustrates the tension in canon law surrounding the age at which children could consent to marry. Although children under seven couldn’t consent to a betrothal agreement, there was ambiguity in the law as to whether children under seven could bypass the betrothal stage altogether and jump straight into marriage. Henry Swinburne, *A Treatise of Spousal or Matrimonial Contracts, 5* (London 1686). The ambiguity in the law was likely used by King Edward IV in 1478 to marry his four-year old son to the five-year old daughter and only heir of John Mowbray, 4th Duke of Norfolk thereby securing the Duke’s considerable fortune for the crown. Northcote handily illustrates the issues surrounding consent by portraying the children as dutifully following instructions of the priests but not fully comprehending the import of the ceremony.

31 The article does not discuss any art depicting wedding ceremonies since the focus here is on the betrothal ceremony. One exception is the controversial Jan Van Eyck *The Arnolfini Wedding*, which serves as a starting point for a discussion of Catholic canon law and which arguably portrays a betrothal rather than a wedding ceremony.
paintings. Part 3 introduces famed genre artist Jan Steen and his *Signing of a Marriage Contract*. This painting, rich in iconography, sent a moral message to sixteenth century viewers about the dangers of sex outside of marriage, and also introduce the notion of the lawyer/notary as a problem solver. In Part 4, the tension between conceptions of marriage as a holy sacrament versus marriage for economic gains is explored in Jan Steen’s two versions of *The Marriage of Tobias and Sarah*. In Part 5, William Hogarth’s satiric indictment of arranged marriages in his series *Marriage à la Mode* is compared with John Locke’s theories on how natural law applies to the marriage contract. Part 6 introduces the high point of marriage contract art -- Jean-Batiste Greuze’s *l’Accordeé de village*. Greuze’s masterpiece was influenced by Rousseau’s theories, and, in turn, the painting helped shape social attitudes about wealth, power and the role of marriage. In Part 7, the paper concludes with an analysis of two contemporary paintings that focus on the legal aspects of marriage.

**PART 1: The Artist’s Interpretation of Law**

In the last decade, art historians and legal scholars have increasingly written about the interdisciplinary study of art and law. The nascent movement has been helped along by the burgeoning number of scholars studying law and literature, yet the interdisciplinary study of law and art has developed more slowly. In their seminal book *Law and the Image*, Douzinas and

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33 The law and literature movement also has a short history, yet it pre-dates the first serious studies of law and art. For a history of law and literature, see Susan Tiefenbrun, *The Failure of the International Laws of War and the Role of Art and Story-Telling as a Self-Help Remedy for Restorative Justice*, 12 Tex. Wesleyan L. Rev. 91, 98-100 (2005).

34 It’s not surprising that it has taken so long for the legal academy to embrace the study of law and art. The law has traditionally kept distant from aesthetic matters. In a famous decision that set the tone for nearly a century, Justice Holmes wrote “It would be a dangerous undertaking for persons trained only to the law to constitute themselves as final judges of the worth of pictorial illustrations....” *Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239, 251 (1903). In writing of Holmes’ decision and the tension between law and law, Costas and Nead recognize that lawyers rely on tradition, precedent and history whereas “great art...is the antithesis of law” since it breaks conventional rules through creative expression of form and subject. Holmes’ purpose behind his
Nead break legal art into two categories – “law’s art” and “art’s law.” In considering “law’s art,” Douzinas and Nead look at “the ways in which political and legal systems have shaped, used, and regulated images and art.”35 Courthouses are replete with angels, gods, demigods and tablets as part of the art and architecture. Douzinas and Nead contend that these images and symbols give meaning to our legal institutions, galvanize and inspire populations toward legislative aims and otherwise act to keep order.36 In contrast, the second category of “art’s law” looks at “the representation of law, justice and other legal themes in art.”37 This paper focuses on the latter study of art’s law.

statement that law should not concern itself with aesthetic matters was to create a prophylactic measure to prevent courts from stifling creativity. Costas Douzinas and Lynda Nead, Law and the Image: The Authority of Art and the Aesthetics of Law (1999). While courts still cite Holmes’ cautionary wisdom with approval, some scholars contend that judges need to learn the tools of art criticism in order to render decisions on matters related to art. See Christine Haight Farley, Judging Art, 79 Tul. L. Rev. 805. (2005). Lawyers, judges and scholars deal in mundane aspects of art as a subject of disputes – determining provenance, authenticity, moral rights and otherwise mixing law with the art world. Art also triggers legal issues other than property rights, as when a court deems an image obscene. Lynda Nead, “Bodies of Judgment: Art, Obscenity, and the Connoisseur” in Law and the Image: The Authority of Art and the Aesthetics of Law, 203 (1999). Moreover, it would also be incorrect to say that law lacks an aesthetic. Much has been made of the possible aesthetic qualities of jurisprudence – i.e. that the rich creative theoretical traditions in art may hold lessons for developing a “philosophy of law as art.” Laura Fitzgerald, Towards a Modern Art of Law, 96 Yale Law J. 2051 (1987). As visual imagery has grown more important in our society at large, aesthetic matters have infiltrated the routines of our legal institutions. Richard K. Sherwin, Neal Feigenson, and Christina Spiesel, Law in the Digital Age: How Visual Communications Technologies are Transforming the Practice, Theory and Teaching of Law, 20 Boston U. J. Sci. & Tech. L. 227 (2006).


36 Law and the Image: The Authority of Art and the Aesthetics of Law, 11 (1999). While the law uses art to convey a sense about the institution, legal scholars seldom make use of art in describing the law. Precision in language is one excuse. Words can more easily convey the parameters, nuances and complexity of a rule than an image. However, sometimes, even the rich rhetorical history of the law fails and judges must resort to an image to explain a legal concept. The most famous example of visual jurisprudence was Justice Potter Stewart scandalous quote about pornography in Jacobellis v. Ohio, “I know it when I see it.” 378 U.S. 184 (1964). Yet as much as those words have been ridiculed, the visual thinking expressed by Justice Stewart serves as a practical sorting device. The image of pornography (or “not pornography” as in the case of Jacobellis v. Ohio) does more to lend a definition to the legal line that has or has not been crossed than a treatise on the subject. When words fail, images often succeed.

The paintings under consideration here are loosely categorized as genre paintings – an artistic tradition developed by Dutch painters in the fifteenth century but practiced by other European and English artists. Genre paintings depict ordinary life in which neither the events nor people are famous. Artists worked with images that were easily identifiable to common people and created a sense of intimacy and sentimentality in the viewer. The topics are not necessarily legal in nature but legal actions that touched ordinary people were within the purview of genre artists. Historians find genre paintings to be useful records since the artwork sought to display an accurate account of the scene’s details from the clothing and furniture to the actual relationships, gestures and activities of common people.

As popular as genre painting was with the public, the tradition of genre painting was considered to be “coarse, undignified and even subversive.” The tradition was a radical departure from the predominately religious/historical themed artwork produced for a millennium beforehand. During most of the Byzantine period (approximately from the fourth century through the mid-fifteenth century with the fall of Constantinople), artists were greatly influenced by the Holy Roman Empire and most paintings, that were not commissioned portraits, were about religious topics.

Genre paintings, however, were a significant departure from traditional subjects, such as historic Biblical scenes, classical paintings or portraits of wealthy merchants or nobility. Painters were able to produce these scenes in part because they were no longer entirely beholden to the church or wealthy

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38 Through the depiction of the formation of a marriage contract and reading of a will, artists provided “instructive glimpses into human nature, revealing the dramatic and emotional elements associated with these somewhat mundane legal documents.” Nancy Illman Meyers, *Painting the Law*, 14 Cardozo Arts & Ent. L.J. 397 (1996).

39 Morris L. Cohen, *Law: The Art of Justice*, 64 (1992). The seventeenth century attorney’s office was a scene that inspired more than one genre painter. Pieter de Bloot’s *The Lawyer’s Office* (1628) “provides valuable detail for both the social historian and the legal historian” as to the “size of the office, the diversity of classes among its clientele, and the varied costumes.” *Id.* Likewise, Pieter Breugel’s *Village Lawyer* (1621) illustrates the deference shown to lawyers who could read, unlike the mostly illiterate peasants. The piles of paper strewn everywhere – on desks, walls, and over the floor – foreshadow a profession inundated with paper and driven by the written word.


patrons for their livelihood. With the rise of the merchant class came the ability for more common people to own art. Painters became freer to express themselves and respond with subject matter that would appeal to the newly wealthy.\(^42\)

Genre paintings became a focus of debate for art historians starting in the mid-twentieth century and continuing today. Some scholars consider genre paintings to merely be historically precise reflections of a scene from a day in the life of common people; while other scholars contend that artists used carefully placed iconic images, which were meant to convey an underlying moral message to viewers.\(^43\) The realist camp viewed Dutch genre painters as something akin to photographers. Artists might choose a subject and perspective, which skews the meaning of a painting, but otherwise genre artists dutifully portrayed a scene as it had occurred. At first glance, the Dutch genre painters did depict daily life in amazing detail and with seeming accuracy as to the clothes, setting and the actions of the subjects.

Starting in the mid-twentieth century art historians began to question whether genre art might hold hidden symbolism.\(^44\) This theory of “disguised symbolism” was popularized in art history by Erwin Panofsky in interpreting The Arnolfini Marriage,\(^45\) which is discussed below as a formative painting in the thematic tradition of marriage contract art. The interpretive historians looked for symbolic meaning beneath the apparently realistic depictions of common everyday life. The artists used iconography dating from the medieval period, and the hidden meaning of such iconography was well known to the audience of the day. Through the choice of subject matter and the careful placement of these iconographic images, the artists conveyed a moralistic message.\(^46\) For example, in marriage contract art one of the most common images was that of the dog—a representation of faithfulness and fidelity.\(^47\)

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\(^{42}\) Id. at 596-597.


\(^{44}\) Id.


\(^{47}\) Fred S. Kleiner and Christin J. Mamiya, *Gardner’s Art through the Ages*, 560 (12th ed. 2004). (Noting that the dog placed in the Arnolfini Portrait represents fidelity.)
Panofsky’s insights into symbolism were made at a time of increasing academic interest in semiotics. Semiotics gives art historians tools to instill a painting with a richer historical, social, legal and political meaning. Through semiotics, the interpretation of a painting goes beyond a mere narrative of the events depicted. By looking at a painting through the lens of semiotics, each piece of the painting becomes a “historically determinate sign of the culture that generated it.”48 While art “is always an expression of the historical period…that produced it,”49 the artist also invests a painting with “pictorial intelligence” that transcends the mere depiction of a historical scene.50 The difficulty of interpreting such art, however, is that the icons can be absorbed into the realistic images so as to create ambiguity as to the artist’s true intent. Semioticians view this as an illusionist effect in which the painting “manipulates the sign in such a way as to conceal its status as a sign.”51 Art historians in the realist tradition criticized the symbolic-iconic-semiotic approach as being too “formulaic and reductive, translating images into words with the aid of an iconographic dictionary that makes no allowance for ambiguity or indeterminacy.”52

Thus, the debate among art historians continues – often on a painting-by-painting basis.53 At its most extreme, the interpretive scholars maintain that even still-life paintings, portraits and landscapes carry symbolic meaning. For example, scholars continue to debate whether the artists meant for a painting of wilting flowers to be an allegory for the transience of life.54 It is well accepted, however, that genre paintings of daily life hold symbolic meaning and an underlying moral message.55 Building upon Panofsky’s work, historian Eddy de Jongh showed that “Dutch paintings were intended to instruct and delight viewers…..”56 The rich realism of the genre painting may have

49 Ernst Van Alphen, Art in Mind, 2 (2005).
50 Id.
52 Id. at 27.
54 Id.
55 Id.
56 Id.
integrated the symbolic icons into a scene from life, but the artist’s intent was to send a moralistic message or encourage a certain virtue. During the early Renaissance, such symbols were common but were usually understood only by the educated elite. By the eighteenth century, the symbols had gained enough plurality to be used by artists “in an almost mechanical fashion” to convey an instructional meaning to a wider audience.

Whether marriage contract art is merely reflective or symbolic is a fairly important distinction for this paper’s thesis. If reflective, then the paintings under consideration could be viewed as little more than the Renaissance equivalent of a wedding photo. If symbolic, then our understanding of the popular conception of marriage during a period of great change in the laws may be helped by the analysis of this category of art. It is certainly true that some art, like literature, may merely reflect our culture, traditions, and mores rather than carrying deeper meaning. Yet, art is not necessarily meant to be a historically precise reflection of fact. We don’t expect our artists to be objective reporters of the scene they have painted; rather we accept that artists are motivated to comment or advocate a particular point of view. The phrase “artistic license” has become embedded in the English language to convey the idea that artists sacrifice factual accuracy for reasons of aesthetics or polemics. At very least, visual culture studies can help us understand the study of iconography and the meaning and ideology behind imagery.

The most progressive art theorists contend that the role of the artist is to reflect and “frame” in a unique visual manner “the pain points of a culture.”

57 Id. at 21.
58 Matilde Battistini, Symbols and Allegories in Art, 7 (2005). The symbols which were used in the 15th and sixteenth century to convey meaning to the intelligentsia were later “collected in a series of treatises and dictionaries” and therefore made available to a more populist audience. Matilde Battistini, Symbols and Allegories in Art, 7 (2005).
59 See Kathryn Jacobs, Marriage Contracts from Chaucer to the Renaissance Stage.
60 Kathryn Jacobs, Marriage Contracts from Chaucer to the Renaissance Stage, 1. In discussing the impact of history on literature, Professor Jacobs observes that “Chroniclers are highly selective… As a practical matter, those laws that had little effect on the social experience of everyday men and women… fall into deserved oblivion.” Kathryn Jacobs, Marriage Contracts from Chaucer to the Renaissance Stage, 1.
scholar Ernst Van Alphen argues that art is pre-formative\textsuperscript{63} -- i.e. that it signals and shapes what is to come in a unique and imaginative way. \textsuperscript{64} Van Alphen writes that “[a]rt is a laboratory where experiments are conducted that shape thought into visual and imaginative ways of framing the pain points of a culture.”\textsuperscript{65} Art historians have “made the case for the power of art to transform ways in which cultural issues are being conceived.”\textsuperscript{66} In other words, art is not just a “historical product” -- reflecting the mores, laws and practices of an era.\textsuperscript{67} Rather, art can be a “historical agent” that frames cultural issues in unique and imaginative ways.\textsuperscript{68} Artists achieve this by imbuing a painting with a “pictorial intelligence” -- an “intellectual thrust” or point of view -- through the use of perspective, iconography as well as the choice of subject matter.\textsuperscript{69} Indeed, art is widely accepted as having affected historical cultural and political trends by either “reinforcing or challenging cultural values and practices.”\textsuperscript{70} In other words, art does not exist in a vacuum; nor does the development of the law. The artist influences the culture, laws and institutions around her, and the culture, laws and institutions influence the artist.

Some artists use a historical allegory to make political statements to their contemporaries. In \textit{The Death of Socrates} (1787), Jacques-Louis David painted his dramatic account of Socrates defiance to inspire the masses against oppression during the French Revolution.\textsuperscript{71} and where the artists used historical event that had occurred hundreds of years prior to convey a moral lesson for the political climate of the day. Jacques-Louis David, who was

\textsuperscript{63} Id.
\textsuperscript{64} Id.
\textsuperscript{65} Id.
\textsuperscript{66} Id. See also Susan Tiefenbrun, \textit{The Failure of the International Laws of War and the Role of Art and Story-Telling as a Self-Help Remedy for Restorative Justice}, 12 Tex. Wesleyan L. Rev. 91, 98-100 (2005). (Arguing that art can serve as restorative justice for victims of crimes.)
\textsuperscript{67} Ernst Van Alphen, \textit{Art in Mind}, xiiiv (2005).
\textsuperscript{68} Id.
\textsuperscript{69} Id. at 2-12.
\textsuperscript{70} Fred S. Kleiner and Christin J. Mamiya, \textit{Gardner’s Art through the Ages}, xiv (12\textsuperscript{th} ed. 2004).
\textsuperscript{71} The story of Socrates’ choice to become a martyr rather than escape a politically motivated death penalty sentence has been the inspiration for many plays, poems and artwork. Morris L. Cohen, \textit{Law: The Art of Justice}, 20 (1992).
involved in the French Revolution, likely Peter Paul Rubens’ *The Judgment of Solomon* (1615-1617) painted an account of the biblical story of Solomon’s wisdom in order to instruct the ruling classes of his day. In a more direct manner, Norman Rockwell’s *The Problem We All Live With* (1963) served to humanize abstract legal concepts for the populace. The twentieth century American artist, whose work is best known for its portrayals of sentimental scenes that advance traditional values, produced an astonishingly impactful image of a young African American girl guarded by U.S. marshals as she walks to school among the riots surrounding desegregation in the 1960s. The painting, which was published in the January 14, 1964 issue of *Look* magazine is credited with raising awareness and “sympathy for the courageous black children who had borne the brunt of the attacks on desegregation.”

Genre art from the Renaissance through the Enlightenment dealt with subjects of a less monumental nature than political revolutions and the 1960s desegregation of schools in the United States. Yet, these modest scenes from the daily life of common people often reflected the Van Alphen concept of art as pre-formative of societal norms. While many genre painters produced marriage contract art from the fifteenth to eighteenth centuries, marriage law and custom underwent significant change due to cultural shifts and customs and the influence of the church. In the fifteenth century, the Catholic Church canon law ruled most of


73 Morris L. Cohen, *Law: The Art of Justice*, 18 (1992). In his Baroque masterpiece, the great Flemish artist Rubens recounts the Biblical story of King Solomon who ordered that a child be cut in half when two women both claimed to be the mother. One woman pleaded with Solomon to give the child to the other woman; thus, Solomon cleverly determined the real mother to be one who wished to preserve the child’s life. The “suspense, color and emotional charge” of the story lends itself to a dramatic visual depiction which draws the viewer into a scene of impending death and redemption. *Id.*

74 Morris L. Cohen, *Law: The Art of Justice*, 108 (1992). At its most extreme commentators have suggested that artwork does more to explain the U.S. and Canadian constitutions than the scholarship of respected treatise writers. David Howes, *In the Balance: The Art of Norman Rockwell and Alex Colville as Discourses on the Constitutions of the United States and Canada*, 29 Alberta L. Rev. 475 (1991). In a comparison of how Canadian and American artists reflect societal values and laws, Howes writes that the two artists – Rockwell and Colville – “have more to tell us about our respective constitutions than such acknowledge experts as Peter Hogg or Lawrence Tribe.” *Id.* In interpreting the constitution, David Howes suggests that scholars and judges draw upon artistic works and develop “visual thinking” as opposed to strictly ‘verbal thinking’.” David Howes, *In the Balance: The Art of Norman Rockwell and Alex Colville as Discourses on the Constitutions of the United States and Canada*, 29 Alberta L. Rev. 475, 496-7 (1991).
Europe and England. Under the canon law concept of espousals, couples need only have spoken marriage vows in the present tense in front of two witnesses in order to be wed. Such a simple process, however, led many lovers to either actually or accidentally marry against the wishes of their parents.

By the sixteenth century in Europe and the eighteenth century in England, church weddings were required. Dissent against arranged marriages for the purpose of social advancement and wealth also began to rise, and writers began to discuss the plight of married women who had fewer rights than unmarried women. Political philosophers of the day, notably John Locke and Jean-Jacques Rousseau, laid the framework for natural law theory that defined a new marriage contract based on real, rather than manufactured, consent. During the French revolution, the strict orthodoxy of the church and the ban on divorce gave way to civil ceremonies that could be formed and dissolved by the state. Along the way, artists of the day documented, reflected and commented on the legal customs through their paintings.

While art will inevitably reflect the historical period in which it was produced, a true understanding of the art requires the art/legal historian to consider the “intellectual thrust” or “pictorial intelligence” of a painting. To do so requires both an understanding of the historical context and iconography. As to the historical context, understanding the development of the legal and social context of the marriage contract is essential in order to understand both the meaning and impact of the artwork under discussion. This paper begins with the most famous and most controversial painting surrounding the marriage contract – Jan van Eyck’s The Arnolfini Marriage. Unlike nearly every other

75 If a couple in the presence of two witnesses promised, in the present tense, to marry one another, then the act was done and no divorce could change their status. Promises in the future tense merely created a betrothal agreement. Lovers who were trying to avoid an arranged marriage to other people might sometimes claim to have spoken the espousals before the betrothal; thus creating an unbreakable bond. James A. Brundage, Law, Sex and Christian Society in Medieval Europe, 87.


77 Id.

78 Ernst Van Alphen, Art in Mind, 2 (2005)

79 Aside from the controversy over whether the Arnolfini double portrait represents a marriage ceremony, the painting represents on purely technical and aesthetic standards as a masterpiece and “is probably the most widely
paintings in this survey, *The Arnolfini Marriage* does not contain the image of a notary or attorney drafting a marriage contract, yet the historical importance of the painting and the controversy surrounding it lends the opportunity to discuss the marriage laws of the era and the problems in implanting those rules. Such a grounding is important in order to then proceed to examine other artwork executed during eras when the laws surrounding marriage changed in significant ways.

**PART 2: The Arnolfini Marriage: Clandestine Marriage Ceremony or Betrothal Contract?**


Famed art critic Erwin Panofsky ignited a heated academic debate among art scholars when he argued that Jan van Eyck’s *The Arnolfini Marriage* (1434) represented a clandestine marriage ceremony, and that the artwork itself served not only as a wedding portrait but also as a “marriage certificate.” Through the use of iconography, a sixteenth century art history text and an understanding of the historical and legal context, Panofsky postulated that the painting represents the speaking of espousals, the fifteenth century canon law which governed marriage. Some scholars rejected Panofsky’s interpretation and contended that the portrait merely represents a husband and wife greeting friends who have come to visit, while others suggest that the ceremonial aspects of the painting represents the formation of a betrothal recognized northern panel painting of the fifteenth century.” Edwin Hall, *The Arnolfini Betrothal*, 1 (Univ. of Calif. Press, 1994).


81 Erwin Panofsky, Early Netherlandish Painting: Its Origins and Character, Volume One, 202 (Icon Edition, 1971, Originally published by Harvard Univ. Press, 1953). Much has been written about van Eyck’s masterpiece and Panofsky’s interpretation. The meaning of the painting has, in fact, become muddled “by accumulated misunderstandings about both the theory and practice of medieval marriage.” Edwin Hall, *The Arnolfini Betrothal*, xix (Univ. of Calif. Press, 1994). It’s not the purpose of this paper to rehash the controversy or to document the many different theories of the painting. Instead, I will use the Arnolfini painting and various critique as a foundation for discussing the marriage laws of the period and how artists used iconography to add meaning to marriage contract art.

agreement rather than an actual marriage.\textsuperscript{83} Regardless of whether van Eyck’s masterpiece depicts a marriage ceremony or the betrothal agreement, the painting still operates as an “allegory of the social ideal of matrimony, which brings wealth, abundance, and prosperity.”\textsuperscript{84} Such an interpretation would be consistent with the goals of the Catholic Church when it established the rules surrounding espousals.

Understanding the marriage laws of the time and place where the painting was created is crucial to understanding the artwork. Most of fifteenth century Europe followed the Catholic Church’s canon law in regard to marriage. The church first began to assert influence in marriage laws during the rule of Constantine, the first Christian Roman Emperor.\textsuperscript{85} Prior to that time, ancient Rome, marriage laws favored private contracting where terms, including divorce, could be set by the parties without interference by the state. Coupling, decoupling, adultery, polygamy and incestuous marriages were, if not rampant, then certainly not uncommon. In response to the chaos created by private contracting, the church began to influence legal institution and by the Middle Ages, a system called espousals was the dominant law in Europe and England.\textsuperscript{86}

With espousals, the freedom to contract became more restrained – virtually prohibiting divorce or annulment though narrow exceptions existed. Espousals were divided into two categories: (1) spousals \textit{de futuro} and (2) spousals \textit{de praesenti}. Spousals \textit{de futuro} were a promise of marriage in the future, as in “I will take thee to my Wife.”\textsuperscript{87} In contrast, spousals \textit{de praesenti} are a promise in the present to be married, such as “I do take thee

\textsuperscript{83} Edwin Hall, \textit{The Arnolfini Betrothal}, xix (Univ. of Calif. Press, 1994).

\textsuperscript{84} Matilde Battistini, \textit{Symbols and Allegories in Art}, 339 (2005).

\textsuperscript{85} James A. Brundage, \textit{Law, Sex and Christian Society in Medieval Europe}, 87.

\textsuperscript{86} Id. at 338. In England, espousals came to be known as “spousals” and survived well into seventeenth century. In the self-proclaimed definitive book of its time, \textit{A Treatise of Spousal or Matrimonial Contracts: wherein All the Questions relating to that Subject are ingeniously Debated and Resolved}, Henry Swinburne defined spousals \textit{de futuro} as “a mutual promise of future marriage, being duly made between those persons, to whom it is lawful.” Henry Swinburne, \textit{A Treatise of Spousal or Matrimonial Contracts}, 5 (London 1686). Swinburne focused his analysis of this definition on three elements (1) the mutuality of the promises; (2) the formalities of the act or contract and (3) whether it was lawful for two particular persons to become married. \textit{Id.} at 5-8.

\textsuperscript{87} Henry Swinburne, \textit{A Treatise of Spousal or Matrimonial Contracts}, 8 (London 1686).
to my Wife.”88 Of course, once could skip the spousals de futuro altogether and just speak spousals de præsenti to perform the act of marriage.89 The speaking of spousals de futuro created a promise that could be revoked unless the parties had sexual intercourse – an act that “was taken to imply present consent” and therefore constituted marriage.90

Panofsky contended that the Arnolfini double portrait represented a marriage ceremony (i.e. the speaking of spousals de præsenti). According to Panofsky, the combination of the man’s raised right hand and the joining of the man’s left hand with the woman’s right hand represents the speaking of an oath which is similar to the gestures of oaths taken in fourteenth and fifteenth century art depicting marriage ceremonies.91 To build his case, Panofsky notes that the single burning candle in the chandelier does not serve to light the room since daylight streams through the window. Instead, the burning candle was part of the traditional wedding ceremony and acts as a “symbol of the all-seeing Christ,” thus lending support to Panofsky’s thesis that the painting “glorifies the sacrament of marriage.”92 The two people reflected in the mirror, one of which is the artist van Eyck, are the witnesses required by canon law to make the ceremony valid.93

In a celebrated debate in the art world, Lorne Campbell of the National Gallery in London refuted Panofsky’s claims and wrote that the man is simply greeting friends who have come to

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88 Henry Swinburne, A Treatise of Spousal or Matrimonial Contracts, 8 (London 1686). The rhetoric of betrothall vows varied among different communities and over time. A legally binding contract existed if the couple each promised in the present tense “to take the other person as one’s ‘handfast’ or ‘wedded’ wife or husband.” Marilyn Yalom, A History of the Wife, 113.

89 Henry Swinburne, A Treatise of Spousal or Matrimonial Contracts, 9 (London 1686).

90 Lawrence Stone, Road to Divorce: England 1530-1987, 53

91 Erwin Panofsky, Early Netherlandish Painting: Its Origins and Character, Volume One, 202 (Icon Edition, 1971, Originally published by Harvard Univ. Press, 1953). Although other marriage art shows couple grasping right hands, Panofsky dismisses this inconsistency as just a preference by the artist in composition. Id. Other commentators, however, use this inconsistency to argue that the portrait represents spousals de futuro rather than spousals de præsenti. Edwin Hall, The Arnolfini Betrothal, (Univ. of Calif. Press, 1994).


93 Id. at 202-3.
However, Panofsky supported his claim that *The Arnolfini Marriage* is a pictorial marriage certificate by using medieval iconography to identify marriage symbols within the painting that would be consistent with Catholic theology and goals. Panofsky contended that the dog represents conjugal fidelity, a symbol that painters regularly used in marriage contract art, sometimes with ironic effect. Here, the dog, when understood as a symbol of fidelity, can be seen as a serious attempt to convey the moralistic message that sex and procreation should occur within marriage. Fidelity was a virtue that the church wanted to encourage. In fact the espousals system was formed in part as a response to widespread promiscuity. Given that artists were highly influence by the Christian church through the Byzantine era, it’s not surprising that Van Eyck would use symbols consistent with the church point of view.

The fruit resting on the window sill, Panofsky wrote, also had religious significance as a symbol of “the state of innocence before the Fall of Man” – referring to the Biblical story in the book of Genesis of Adam and Eve’s banishment from the Garden of Eden. Alternative critiques suggest that the fruit represents fertility. In highly stylized calligraphy, Van Eyck also signed the panel “Jan van Eyck was here.” The addition of the signature – along with the postures of the couple, Van Eyck’s reflection in the mirror and the iconic representation of matrimony – suggests that Van Eyck wanted to make the point that he was witnessing “a specific ceremony the painting was meant to record or memorialize.”

All of these symbols are consistent with the purpose of the Catholic Church in promulgating espousals, which was to exert some moral influence over the terms of the marriage contract. Some critics suggest that Van Eyck “forged a universal vision of

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96 See infra Part 5 for a discussion of William Hogarth’s satiric indictment of arranged marriage among the aristocracy in his famous series *Marriage à la Mode*.
99 Id. at xix.
man and woman, their unification, and their place within Christian
philosophy." Through its marriage laws, the Church prohibited
illegitimate children from inheriting property and sought to reduce
the promiscuity that characterized the early Middle Ages. Catholic theologians sought to emphasize the personal relationship
of the married couple that had an emotional and spiritual basis
rather than a carnal one. With an increase in the influence of the
church during the Middle Ages, marriage was deemed to be
ordained by god and was therefore a sacrament rather than a
contract. The distinction between sacrament and contract is far
from trivial. The resolution of the matter had important implication
for legal rules. The Church prescribed that marriage was
monogamous and, perhaps most importantly, ruled that marriage
could not be dissolved. If marriage was to be ordained by god, then
divorce would be unholy and amount to condemnation to hell. The
days of the quick divorce ended in the Middle Ages and would
not reappear again until the late 20th century.

While Panofsky’s conclusions are intriguing, Professor
Edwin Hall contends that Van Eyck’s painting more likely
represents the couple’s entry into a betrothal agreement than a
clandestine marriage ceremony. Hall contends that Panofsky’s
reading of the painting does not comport with the legal
requirements and rituals of the time. Moreover, Hall argues, it is
unlikely that the Arnolfinis would have entered into a marriage in
this way, or that Van Eyck would have painted such a scene, given
the “harsh opprobrium and legal disabilities then associated with
[clandestine marriage.]”

To fully appreciate Hall’s argument requires an
understanding of the legal status accorded officially sanctioned
legitimate marriages performed before a priest or notary and valid
but illegitimate clandestine marriages – i.e. those where vows were

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\begin{itemize}
  \item[103] In Christianity, a sacrament is an outward action, such as marriage or baptism, creates a spiritual union between a human and god leading to salvation.
  \item[105] Edwin Hall, The Arnolfini Betrothal, 49 (Univ. of Calif. Press, 1994).
\end{itemize}
spoken only in front of two witnesses who were not clergy or a notary. Dissonance existed within canon law, which led to a legal distinction in the early thirteenth century between marriages which were legitimate in the eyes of the church and marriages which were valid but illegitimate. A legitimate marriage was one where there had been public notice (referred to as a reading of the banns) and a public ceremony. Yet, couples could still just speak present tense espousals in front of two witnesses and have a valid marriage. Such clandestine marriages might be subject to fines and the children from such a marriage could be declared illegitimate and therefore incapable of inheritance; yet the practical solution to an illegitimate union was often to just formalize with a church wedding. At worst, the church threatened excommunication for parties who had entered into clandestine marriage – a penalty the church considered akin to being damned to hell for eternity.

Interestingly, the church tolerated clandestine marriage because of a “commitment to freedom of contract and their wish to enable persons to marry despite opposition from their families.” Clandestine marriage provided an out for children who wanted to avoid an arranged marriage, which proved problematic for families who had entered into betrothal agreements. Although a binding betrothal agreement may have been entered into between two families, one of the future spouses could break the betrothal agreement merely by speaking the spousals de præsenti in front of two witnesses with another before the formal ceremony anticipated by the betroth agreement. Thus, a clandestine marriage was

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106 The banns were an announcement of the impending nuptials, thereby giving notice to a third party who might have also entered a betrothal agreement with either the bride or groom. Lawrence Stone, *Road to Divorce: England 1530-1987*, 56-8.


108 “Clandestine marriage” was the legal term of art for marriage that conformed with espousals but which were not conducted publicly and with a reading of the banns. Id. at 361.

109 Id. at 362.

110 Id. at 499.


112 James A. Brundage, *Law, Sex and Christian Society in Medieval Europe*, p. 364. While rituals, ceremonies and formal dowry agreements were not required to form a union, Catholic theologians found all those things desirable, if for no other reason than it helped establish that consent was present. Id. at 263-275.

113 Id. at 498.
still valid and therefore one that could not be dissolved, though still considered illegitimate and socially unacceptable especially for the moneyed classes.\textsuperscript{114}

Hall makes much of the fact that “the wealthy and aristocratic” merchant depicted in Van Eyck’s work would not likely have risked a clandestine marriage given the social stigma and “legal complications” of inheritance for children born from such a union.\textsuperscript{115} In building his argument, Hall deconstructs Panofsky’s argument by looking at the customs surrounding marriage. Hall focuses on the joining of the woman’s right hand with the man’s left hand, a gesture that is inconsistent with the traditional joining of couple’s right hands during a marriage ceremony.\textsuperscript{116} Hall rejects Panofsky’s argument that Van Eyck’s joining of left and right hands was driven by composition and artistic license. Hall does a survey to show that other artists of the period had no compositional problems in depicting a marriage ceremony with both parties joining right hands. Hall also makes the point that the matrimonial ritual of an actual joining of hands was meant to show consent between the parties; whereas Van Eyck portrayed woman’s hand merely resting in that of the man.\textsuperscript{117}

Given the light touch and the composition of the picture, Hall contends that the hand touching is more consistent with the entering into of a betrothal agreement than a marriage ceremony. Touching or striking hands along with oath swearing was traditionally part of the ceremony surrounding the speaking of spousals \textit{de futuro}.\textsuperscript{118} Hall notes that a betrothal agreement required merely a light physical touch or striking of the hands, such as that shown in the Arnolfini double portrait, as opposed to the clasping and joining of hands that occurs in the marriage ceremony. As to the man’s raised hand, Hall contends that the gesture is more consistent with speaking of a promissory oath to do something in the future and was not a gesture which was used by artists in portraying marriage vows.\textsuperscript{119}

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\textsuperscript{114} Edwin Hall, \textit{The Arnolfini Betrothal}, 24-25 (Univ. of Calif. Press, 1994).

\textsuperscript{115} Id. at 31.

\textsuperscript{116} Id. at 33-47.

\textsuperscript{117} Id. at 47. Using infrared technology, Hall shows that Van Eyck actually reworked the picture. The infrared analysis shows that underneath the paint is a drawing that shows the man more firmly clasping the woman’s hand but the final portrait renders the man’s palm providing a resting place for the woman’s hand. \textit{Id}.

\textsuperscript{118} Id. at 67-83.

\textsuperscript{119} Id. at 83.
Hall’s thesis that the Arnolfini double portrait does not represent a marriage ceremony is supported by the absence of two other traditional rites – the exchanging of rings and the presence of either a priest or notary as witness. Since the Arnolfini couple were both of Italian descent, it would be customary for there to be a ring exchange ceremony, yet no rings appear of the fingers of either party. Also customary for Italians would be the presence of a notary or priest to witness the event. Notaries, who were commissioned by the pope or the emperor, had a public persona, which allowed them to act as the equivalent of a priest for the purposes of witnessing marriage. While canon law would be satisfied that the marriage was valid without a notary as witness – so along as the proper words had been spoken in the present tense when two witnesses were present – Hall contends a wealthy couple such the Arnolfinis would not be married without the formalities. When seen through Hall’s lens, the Arnolfini double portrait does not “celebrate…the sacrament of marriage,” rather it shows the contractual joining of “two rich and important Italian mercantile families with all the financial and social benefits that might be expected to accrue therefrom.”

The legal ambiguities of espousals and the problems caused by clandestine marriage were solved in Europe by the Council of Trent in 1563 and much later in England by the Hardwicke Marriage Act of 1753. In Europe in 1563, the Catholic Church made a decision at the Council of Trent that a valid marriage required a public wedding conducted by a priest with at least two other witnesses. However, the English Anglican church did not recognize the authority of the Roman Catholic Church and therefore ignored the innovation until the start of the eighteenth century when the problem of clandestine marriage became critical.

120 Id. at 52-55
121 James A. Brundage, Law, Sex and Christian Society in Medieval Europe, p. 263-275. Rituals, ceremonies and formal dowry agreements were not required to form a union, though Catholic theologians found all those things desirable, if for no other reason than it helped establish that consent was present. Id.
122 Id. at 94. Hall takes exception with the characterization that Van Eyck’s work “forged a universal vision of man and woman, their unification, and their place within Christian philosophy.” Lawrence Stone, Road to Divorce: England 1530-1987, 55 – 56.
124 Id. at 55.
With marriage so easy and children defiant, concerns arose that aristocratic youth were being led astray by ‘both men and women of the most infamous character.’ At least one artist working in the nineteenth century chose to memorialize the rushed nuptials between an aristocratic youth and a lower class woman after a night of drinking. In England, the Hardwicke Marriage Act of 1753 put an end to espousals and easy marriage. While the church played an increased role in the performance of marriages and maintenance of records, the function of enforcing the law was transferred from the ecclesiastical courts to the secular courts. At least two British romanticists, Edmund Blair Leighton and James Charles, captured the ceremonial aspects of signing the church register as required by the Hardwicke Marriage Act of 1753.

One final point about the Arnolfini double portrait that bears mention is the scholarly debate surrounding whether or not the bride is pregnant. Given the placement of her hand and the roundness of her belly, modern viewers would be justified in presuming that she was at least in her fourth month of pregnancy. However, scholars have shown that it was common for dresses of the period to be designed so as to make a woman look pregnant when in fact she was not. While the academic community is resolute in the view that the woman is not pregnant, it should be noted that there was not necessarily any shame in a woman being pregnant before marriage during this era. It would not have been unusual or frowned upon in social circles for a couple to conceive a child before the actual marriage so long as the sex came after the spousals de futuro were given and the spousals de præsenti were

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126 Id. at 32. In England, a brisk business in forged marriage documents was done by parsons who had been imprisoned for bad debt in the Fleet Prison even as late as 1753. The imprisoned clergymen were allowed to set up a business nearby the Fleet Prison in order to conduct easy and cheap marriages; thus leading to the term “Fleet Street marriage.” For a price, the disgraced ministers would forge prior marriage certificates and other documents as proof of marriage to anyone who wanted a divorce from their present spouse. Id. at 110-112.

127 Delapoer Downing’s painting *Marriage in Fleet Street* (1898) memorializes the mixing of upper and lower classes in the Fleet Street marriage market.


129 James Charles’ *Signing the Marriage Register*, (1896) and Edmund Blair Leighton’s *Signing the Register* (nineteenth century) are both part of the Bridgeman Art Library, London.

130 Edwin Hall, *The Arnolfini Betrothal*, 105-106
spoken before the birth of the child.\textsuperscript{131} As happens, of course, sex often precedes even the betrothal agreement, which leads us to the next painting in this survey.

PART 3: Pre-Contractual Sex and the Lawyer as Problem Solver

While the Arnolfini double portrait celebrates the sanctity of marriage, Jan Steen’s \textit{Signing of a Marriage Contract} represents a different reality for many Renaissance women – an unwanted pregnancy and the reluctant suitor. According to court records of the era, the delicate dilemma was common enough. Pregnant women routinely brought suit against a lover alleging that he had spoken the words of spousals \textit{de futuro} before sex thereby forming a legal relation. As to the enforceability of spousals \textit{de futuro}, the authorities encouraged couples to honor a betrothal agreement, but “the Church did not require specific performance when one party refused to honor a promise of future marriage.”\textsuperscript{132} Theoretically, if spousals \textit{de futuro} had been spoken and sex had followed then a presumption was raised that the couple was married since the act of sexual relations implied that the couples had agreed in the present tense to marry.\textsuperscript{133} Given the patriarchic control of the institutions, it’s not surprising that courts often rejected suits brought by pregnant women while increasingly ruling in favor of men who sought a “jactitation of marriage” – the equivalent of the modern declaratory judgment that no contract existed between the parties.\textsuperscript{134}

For image of Jan Steen. \textit{Signing of a Marriage Contract}. c. 1650s.\textsuperscript{135} see http://hermitagemuseum.org/fcgi-bin/db2www/fullsize.mac/fullSize?selLang=English&dlViewId=GTFKPWF TX85JDFME&size=big&selCateg=picture&dlCategId=YYWOV9%2B23D AR5JD1Z7&comeFrom=quick

Jan Steen painted an emotionally charged scene where the only cool head is the lawyer/notary who offers a simple solution to the problem of pregnancy. Steen, considered one of the great genre painters of his era, focuses the action in the center of the painting.

\begin{flushleft}
\textsuperscript{131} Marilyn Yalom, \textit{A History of the Wife}, 113.
\textsuperscript{132} James A. Brundage, Law, Sex and Christian Society in Medieval Europe, p. 355
\textsuperscript{133} Lawrence Stone, \textit{Road to Divorce: England 1530-1987}, 53
\textsuperscript{134} Id. at 77.
\textsuperscript{135} The Hermitage, St. Petersburg, Russia.
\end{flushleft}
The gestures and focus of the supporting players draws the eye toward the two main actors in this comic drama. The weeping comes not from joy of an impending nuptials but from trauma of an unwanted pregnancy. The youth supplicates to the mother of the pregnant woman, who scolds him for his misdeeds. Behind the mother stands a peasant, possibly another suitor or a relative of the bride, who shakes his fist at the young man angrily condemning the future husband’s misdeeds.

The feathers in the young man’s cap and the ruffles on his shirt suggest a higher social status than that of the girl. From an iconography point of view, feathers were a common symbol to suggest egotism. Here, Steen’s use of feathers in the cap suggests that the young man’s ego has led him to this dire situation. In contrast to most other paintings in this survey, there is no apparent dowry – such as a bag of coins, box of jewelry or deeds – which would represent the economic means by which the couple would set up a household. Given that the dowry imagery is so common in other marriage contract art, its absence here suggests the unplanned and unfortunate consequences of sex before marriage.

*Signing of a Marriage Contract* is an excellent example of a painting where the artist uses the law to bring order to chaos. The foreground and center of painting suggests bedlam and despair. The disgraced woman weeps, the mother scolds, and a relative needs to be restrained lest he strike out at the suitor. A child sits unintended watching the cat steal food from the basket. Tubs and baskets are overturned and eggs are broken on the table.

Yet in the middle of the chaos stands the notary – calm and collected– smiling as if to reassure everyone that all can be resolved if the parties would merely sign the document he is holding. By placing the notary near the center of the action – literally and figuratively backing up the woman in distress – Steen portrays notaries/lawyer as a problem solver. In stark contrast to

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137 I use the term lawyer and notary interchangeably throughout this article. While most of the paintings portray notaries rather than lawyers, notaries were the representation of law and lawyers within these paintings.

common perceptions of the lawyer as a greedy miscreant feeding off the labor of others, Steen presents the notary as having a calming effect. The law brings order to chaos, and the notary here aptly represents the calming effect of the legal process in turbulent times. He stands with pen in hand, radiating calm and good will – sure in his belief that a piece of paper can resolve the immediate difficulties.

Notaries played a critical role not only in drawing up marriage contracts but also as legal witnesses to the actual speaking of present tense espousals. In some jurisdictions, a sanctioned notary was the equal of a priest in terms of authenticating the marriage vows. Naturally, it was also desirable to have a notary draw up and witness a marriage contract in order to lend authenticity if the agreement should ever go to court. Indeed, by 1677, England instituted the Statute of Frauds, which required that certain contracts – including but not limited to contracts in consideration of marriage – be in writing. As a functionary who recorded the transaction, notaries grew in great number during the Middle Ages. In some cities during the


140 In 1279 in Spain, the crown centralized all of the notary services and made a decree that only documents certified by notaries who were licensed by the crown would have legal effect; yet, notably, dowries and wills were exempt since “these were the least commercial of possible contracts and also may well have touched the lives of more persons than did the larger mass of commercial or real estate documents.” Many clerics would routinely notarize marriage documents and the effect of a clergy notarizing a dowry agreement did not make it void in the eyes of the court. Burns, Robert I., S. J. *Jews in the Notarial Culture: Latinate Wills in Mediterranean Spain, 1250-1350*. Berkeley: University of California Press, 1996. http://ark.cdlib.org/ark:/13030/t429005rj/

141 The “Statute for the Prevention of Frauds and Perjuries” was drafted by Sir Leoline Jenkins and passed by the English Parliament in 1677. 29 Charles II, c.3. The statute stated that “No action shall be brought…unless that agreement…or some memorandum or note thereof, shall be in writing, and signed by the party to be charged ….” *Id.* The provision requiring a writing for contracts made upon consideration of marriage was included since such contracts usually included some sort of transfer of an interest in real property. W. Holdsworth, *A History of English Law* 390-93 (2d ed. reprinted 1977).

142 Although notaries did not study at the universities, the documents they used and witnessed “followed set legal and rhetorical formulas and enjoyed full validity as juridical items ‘in court and outside,’ enforceable at law.” The notary was more than a mere scribe, though the job of notary seems to have developed from that of scribe. The notaries’ “combination of rhetorical skills and Roman law erudition” often resulted in their having “extensive influence in politics” and they “were among the readiest speakers in public affairs.” Burns, Robert I., S. J. *Jews in the Notarial Culture: Latinate Wills in Mediterranean Spain, 1250-1350*. Berkeley: University of California Press, 1996. http://ark.cdlib.org/ark:/13030/t429005rj/
thirteenth century the ratio of notaries to the population at large was nearly the same as that of lawyers in modern America. Notaries were used for nearly every type of commercial transaction of any significance including “leases, loans, deeds, payments, sales, transfers, authentic copies, bills of lading aboard ship, or bills of exchange” as well as, of course, marriage contracts. The marriage contract used by notaries was, in some jurisdictions, a form contract that required the notary to merely fill in the blanks and then certify the signatures.

_Signing of a Marriage Contract_ probably represents a Protestant rather than a Catholic wedding. Seventeenth century Holland was primarily Protestant – having been subject to Catholic canon law as a result of Spanish rule until the mid sixteenth century. The Calvinist reformation of marriage laws spawned a new set of civil law rules but “retained the traditional Catholic law definition of the formal betrothal or engagement…as the first step to marriage.” However, Dutch civil law required “far more stringent formal requirements for the betrothal” than the simple spousals de futuro of canon law. One new innovation was that a local magistrate had to certify that each party was “single, in good standing, and free from communicable disease and criminal delinquency.” Interestingly, the Dutch allowed either the state or the church to “certify and solemnize the marriage, leaving the choice of forum to the parties.”

143 Burns, Robert I., S. J. _Jews in the Notarial Culture: Latinate Wills in Mediterranean Spain, 1250-1350_. Berkeley: University of California Press, c1996 1996. http://ark.cdlib.org/ark:/13030/ft429005rj/ “Genoa had some 200 in the late thirteenth century, a ratio of 1 to 500 residents. This compares to the current national average in the United States of one lawyer for every 319 citizens, as reported by the Census Bureau and the American Bar Association.” _Id._


147 _Id._

148 _Id._ While the Dutch civil laws of the era required betrothals to be announced before two witnesses, like canon law, the rules had a number of other new requirements including registering the betrothal with the church, and mandatory spiritual instruction. _Id._

149 _Id._ at 129.
Signing of a Marriage Contract likely illustrates a betrothal rather than an actual marriage. Although the notary could be the local magistrate authorized to certify marriages, there were other requirements that must be met before marriage actually occurred under Dutch civil law including and the reading of banns – an announcement in church for three consecutive Sundays that the couple was to be wed in order to give notice to any other interested party.\textsuperscript{150} Given the time constraints of the readings of the banns, as well as the “stiff fines” that would result from violation of the rule, the agreement here was likely a betrothal rather than an actual wedding ceremony.\textsuperscript{151}

The partygoers entering the room in Signing of a Marriage Contract suggest an amicable end to the chaos – i.e. that bachelor will take the notary’s proffered pen, sign the commitment in front of the required two witnesses, and then a celebration will ensue. The visage of the portly fellow carrying the birdcage is actually a self-portrait of the artist, Jan Steen. Steen was well known as a jolly drunkard, and he routinely put himself into scenes as the fellow ever ready to start a party. In fact, the painting is a reflection of, if not the actual story, Steen’s marriage. Steen, the son of a wealthy father, apprenticed himself to an artist of middling reputation. Steen romanced his master’s daughter and was soon in the same predicament as the young fellow at the center of the Signing of a Marriage Contract. Steen was able to convince both his master and his father that the best course was to give him permission to marry the girl.\textsuperscript{152}

Steen, like Van Eyck, used symbolism to convey “a deeper message within the superficial image.”\textsuperscript{153} The symbolism was typically used to evoke emotions within the viewer and relate a moral message – often consistent with the teachings of the church. In this painting, Steen cleverly uses both a cast-away yoke – casually thrown on the floor the right foreground – to suggest that the impending marriage is doomed. When used in marriage-themed paintings, the yoke serves as a symbol of the responsibilities and burdens assumed in marriage. It is usually placed above the heads of the married couple or in a place of honor.\textsuperscript{154} Here, the placement of the yoke on the floor out of reach

\textsuperscript{150} Id. at 128.  
\textsuperscript{151} Id. at 128.  
\textsuperscript{152} Jan Steen, Painter and Storyteller, 93-4.  
\textsuperscript{153} Matilde Battistini, Symbols and Allegories in Art, 6 (2005).  
\textsuperscript{154} David Alan Brown, Lorenzo Lotto: Rediscovered Master of the Renaissance, 134 (1997)
of either the young man or pregnant woman suggests that neither party is ready or willing to assume the responsibilities of marriage.

The broken eggs with splattered yolks lie on a table to the left of the kneeling man. Artists used the egg to represent “[a] symbol of life in formation, fertility, and perfection.” In this context, genre painters used the broken yolk represents fallen virtue. Jean-Baptiste Greuze’s *The Broken Eggs* (1756) and François Boucher’s *The Beautiful Kitchen Maid* (1734) both use eggs to represent a woman’s “fallen” and “falling” virtue respectively. The French painter Greuze was likely influenced by Dutch painter Frans van Mieris’ *Brooken Eggs* (second half of seventeenth century). Given that genre painters routinely borrowed themes from one another, it is possible that Mieris found his inspiration in Steen’s work. Jan Steen’s representation of both whole and broken eggs was likely conveying not only the fall from virtue, but also the hopelessly imperfect match.

Not surprisingly, Steen did not include a dog – the traditional symbol of fidelity in marriage contract art. Instead, Steen quite cleverly included a cat to convey infidelity. Here, the cat is stealing food from a basket while the innocent child laughs at the naughty animal and lets him out of his arms. Both cat and child are likely aware that they are breaking the rules, but are taking advantage of the chaos and lack of supervision to let the forbidden happen. Interestingly, this image of a cat stealing the meat reoccurs in other paintings of the period illustrating infidelity. The action of stealing the food by an animal represented “carnal lust” and served as a warning to parents “to keep a sharp eye on their daughters during ‘their vulnerable youth’.”

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155 Matilde Battistini, *Symbols and Allegories in Art*, 133 (2005). The egg could represent much more than just simply human birth. It also represented the creation of a philosophy or inner Enlightenment. *Id.*


158 In Nicolas Maes’ *The Eavesdropper* (1657), a servant and her suitor “are so engrossed in each other’s company that they do not notice the cat snatching a piece of meat from a dish in the kitchen.” Wayne Franits, *Looking at Seventeenth-Century Dutch Art*, 52 (Cambridge Press, 1997)

Steen’s moralistic tone echoes the doctrine of the church—sex before marriage was taboo. *Signing the Marriage Contract* could be Steen’s warning to not to follow in his footsteps or it could be read as an admonition to men in a similar situation to take on the responsibility of marriage. Interestingly, community and legal standards provided for sexual relations after the formation of the betrothal agreement. After the betrothal, sex between the couples was legitimate depending on the community, social status and the couple’s ethos. However, if the woman became pregnant, then a wedding in the church must occur before the baby was born if the child was to be a legitimate heir. Consequently, the custom evolved that couples were “expected to solemnize their nuptials not more than six months after the betrothal” since sex began shortly after the contract was formed. Up to a third of the brides were thought to be pregnant at the point of the wedding. Under the espousal system, a future promise of marriage might lead a couple to bed but the non-binding nature of the future promise led, of course, to problems of revocation. Yet, the ecclesiastical courts found an interesting work-around. Both present and future espousals could be made conditional; thereby leading to yet more nuances in how the law might treat a set of facts. In the conditional contract, a party might say, “I do contract with thee, if thy father consent.” As with modern conditional contracts, if the condition is not met there is no duty for a party to perform. Yet if the condition is fulfilled, then the parties are bound by their promises. In modern contract doctrine, a condition might also be waived by a party through acts or words. If a party relies to their detriment based on actions or words by one party on modifying the condition, then the condition is waived regardless of whether there is consideration for the modification. This idea seems to express itself in a decision by Pope Innocent III who ruled that sexual relations and a conditional contract to marry constituted marriage since in his view intercourse would waive whatever condition to marriage had been made. Typical conditions precedent to a promise to marry ranged from getting the blessing and approval of friends and parents to a transfer of

160 Marilyn Yalom, *A History of the Wife*, 113. Couples of higher social rank would have to get married in a church before sex.

161 Id. at 113.

162 Id.

163 Ralph Houlbrooke, *Church Courts and the People during the English Reformation: 1520-1570*, 57

164 Lawrence Stone, *Road to Divorce: England 1530-1987*, 53

property or proof that one of the parties had enough wealth to go forward with the marriage.166

Sex outside marriage was not an uncommon subject in seventeenth and eighteenth century art, but it didn’t always end in sorrow. Maurice Blot – an engraver – paired two paintings and published the engraved artwork in order to suggest that signing a marriage contract could be a happy solution to an illicit affair.167 The first engraving, Le Verrou (“The Bolt”) (1777)168, was of a painting done by famed rococo artist Jean-Honore Fragonard. Le Verrou (The Bolt) depicts two passionate lovers embarking on their first tryst. The erotically charged painting shows the lovers embracing as the man reaches up to bolt the door for privacy. Blot paired Le Verrou with Le contrat - La promesse de mariage (The Contract – A Promise of Marriage) forming a pendant – a term used to describe one of two pictures that are intended to be displayed together regardless of whether the same artist produced both images. The painting that Blot used to make his engraving Le contrat - La promesse de mariage (1786-1792) is not always attributed directly to Fragonard but it is consistent with the themes that Fragonard embraced and used in works he painted with Marguerite Gerard, his student and collaborator.169 In some respects, it is not important here whether the artist(s) intended to match the pair together to tell a story since the engraver did so and made the images popular.

Two Etchings paired by Maurice Blot. (Above, Le Verrou ; Below, Le contrat - La promesse de mariage (1786-1792), see http://artheque.net/blot.html

By pairing the two engravings, Blot sought to show the happy resolution to the tryst. The young man takes the left hand of the young woman, suggesting the ceremonial ritual of taking of the hand in marriage, as he proposes that she sign a promise to marry. There is no regret or sorrow expressed as in Steen’s work; rather the man looks adoringly up at his lover while her posture suggests that she is a breath away from taking the pen in hand and signing the contract. Interestingly, it is the contract – i.e. the legal promise to marry – rather than the actual marriage that the artist uses to

166 Ralph Houlbrooke, Church Courts and the People during the English Reformation: 1520-1570, 57-8.
168 Louvre, Paris, France.
illustrate the resolution of the dilemma. When seen in the context of the two paired engravings, the written contract is imbued with a degree of solemnity and commitment equal to an actual ceremony and happily resolves the potential stigma of an illicit affair.

PART 4: Dowries: For Love or Money?

One pervasive theme within many marriage contract paintings is the negotiation over the dowry. More than one artist depicted a scene where the couple swoons while the parents negotiate the dowry agreement. During this era, most marriages were arranged for reasons of status or money. While the law spoke of consent as a requirement of the marriage contract, most women (and men) had little power to refuse a match made by parents. The negotiation of the dowry was a complex and serious matter, which was typically documented by a notary. Artists created a visual tension in the painting by depicting the negotiation of the marriage settlement and contrasting it with the love – or lack thereof – expressed between the soon to wedded couple. Yet, given the few rights accorded women during this period, having parents who negotiated favorable terms for their daughter in the marriage contract may have been more of a virtue than a vice.

The tension between a marriage for the purpose of wealth transfer or coupling because of love and romance was a central theme of several artists during this era, though each evokes a different tone and message to the viewer. Jan Steen’s two versions of *The Marriage of Tobias and Sarah* (1667-1668; 1671-3) celebrate marriage as a sacrament, and, through that holy celebration, rejects the economic aspects of marriage contracts. William Hogarth, however, is not so subtle in his series *Marriage à la Mode*. Hogarth uses biting satire as an indictment of the English upper classes in their pursuit of status and wealth through arranged marriages. Jean-Baptiste Greuze’s *l’Accordeé de village* adopts a middle ground, romanticized approach where a young couple – tentatively yet clearly connected and in love – are seeded with the means to start a new family and household. The rest of this survey of seventeenth and eighteenth century genre art focuses principally on these three artists, though other painters from the period will be commented on within the context of the individual analyses.

Jan Steen made a bold statement about marriage’s importance as a holy sacrament rather than an economic contract in two versions of a painting titled *The Marriage of Tobias and Sarah (The Marriage Contract)*. These paintings give an account of the apocryphal wedding story from the Book of Tobit, which “was a popular source for mastering biblical illustration among Dutch artists.”

Technically, both paintings are considered to be historical rather than genre art since the inspiration for the image is from a religious tradition. Yet, Steen made it easier for the Dutch audience to relate the themes back to their own lives in part because the figures are dressed in contemporary clothing. Despite Jan Steen’s intent that the painting be historical, audiences widely considered the 1667-1668 version to be a genre painting depicting a scene from everyday life. Steen likely painted the second version to give the subject matter more of a biblical framework.

More important than the paintings classification is the theme. Both paintings elevate marriage as a holy union born out of love rather than a transfer of property between families. In the 1667-1668 version, Steen portrays the couple as overcome with emotion. Tobias looks towards heaven as Sarah weeps. A wingless angel Raphael blesses the couple in the background. In the foreground at a table, the parents of Sarah look on as a sly notary is engrossed in drafting the marriage contract. There is a seat at the table for Tobias, but he does not take it and in doing so rejects the property negotiation for the love and sacredness of the marriage itself.

To view the image of Jan Steen, *The Marriage of Tobias and Sarah*, (1671-3), see


In the 1671-3 version of the painting, symbols of fidelity

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171 Jan Steen: *Painter and Storyteller*, 203. In the Book of Tobit the angel Raphael urges Tobias to marry Sarah, whose seven previous attempts at getting married were thwarted when a devil killed her husband prior to consummation. Raphael, however, had given Tobias the secret to kill the devil. When Tobias seeks agreement from Sarah’s father for the wedding, the Book of Tobit actually makes reference to the father and mother drafting a written marriage contract. “He then called her mother and told her to bring a scroll, so that he might draw up a marriage contract stating that he gave Sarah to Tobias as his wife according to the decree of the Mosaic law. Her mother brought the scroll, and he drew up the contract, to which they affixed their seals.” Tobit:7:11-16.


173 Jan Steen: *Painter and Storyteller*, 203
and fertility abound – the wreath of sunflowers, the dog and the oranges all indicate that the couple is blessed with a happy future together. In the same way that Jan van Eyck used fruit in *The Arnolfini Marriage* to represent fertility, Jan Steen places a bowl in the foreground where it can’t be missed and drives the point home by positioning a child looking straight out at the viewer as the infant snags an orange from the tipping bowl.

Every person in the painting is in action – each serving a specific function in the telling of the moral tale. The angel Raphael is again present blessing the union. Here, the contrast between the business side of marriage and the holy matrimony is even more pronounced. The notary is positioned between the parents and the loving couple, keeping them apart so the parents can complete the drafting of the marriage contract. The emotions expressed by Tobias and Sarah stand in stark contrast to those of the parents and notary. Steen was making a commentary on the fact that marriage should be blessed by God rather than by contract. Steen thought that the “[treatment of marriage] as a contractual agreement [is] “an inappropriate privileging of the law over the word.”

In the second version of *The Marriage of Tobias and Sarah* the artist portrays the mother as having a much more active role in drafting the contract. She scrupulously checks each term, running her finger down the page. In the first version, Steen paints the mother as just looking at the contract upside down as the notary scribbles away. In the second, the mother is more empowered as she – and not the husband – checks the details.

Commentators suggest that the mother is depicted as being greedy and worldly in contrast to the divine love being expressed by Sarah and Tobias. However, when the laws surrounding dowry and dower are considered, the mother’s attention can be viewed as a virtue and not a vice. When considered from the feminist perspective with an understanding of the laws surrounding

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174 Id. at 245.

175 Matilde Battistini, *Symbols and Allegories in Art*, 339 (2005). Oranges could arguably be a substitute for an apple, a scriptural reference to the fruit of the Tree of Knowledge which led to the downfall of man, and when the orange is in the hands of an infant representing Jesus suggest the child’s future role as a redeemer of mankind’s fall. James Hall, *Dictionary of Subjects and Symbols in Art*, 30, 229 (1974).


178 Id.
coverture, dowry and dower, an alternate interpretation emerges. The mother could very well be checking to make sure that her daughter’s rights are protected in the of abandonment or death of Tobias.

To understand the feminist critique of these images requires an understanding the historical legal context. As with most contracts, the centerpiece of the marriage contract was economic in nature. The actual form of the contract varied from place to place and over time, but the central goals were to provide support for widows, determine the child’s inheritance, and protect the marital estate. The contract would spell out terms relating to three economic concepts surrounding marriage – the direct dowry, the dower and, a gift from the groom to either the bride’s father or the bride herself, a practice that carries a variety of labels depending on culture, including groom’s gift, morning gift, brideprice, bridewealth or indirect dowry. The direct dowry was the contribution by the bride’s parents to the newlyweds. Given the laws of coverture, the daughter had little to no control over the actual property. The dower was a common law legal right of the wife to a life estate in the property of her husband upon his

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180 “Morning gift” was property given by the husband to his wife on the morning after consummation of the marriage. It could be in the form of real or personal property. Goody, Jack, *The development of the family and marriage in Europe*, 242-242 (Cambridge University Press, 24 1983)

181 Although the term “brideprice” is used in many cultural and anthropological studies, scholars quite rightly began to use the term “bridewealth” to describe gifts made to the bride since “brideprice” carries a connotation of purchase. In the 20th century scholars began to describe this practice as just part of the dowry. Professor Goody relies on the term “indirect dowry” to describe the money that the bride conceptually brings into the marriage by way of gift from the groom. Goody, Jack, *The development of the family and marriage in Europe*, 240-242 (Cambridge University Press, 24 1983) Brideprice and bridewealth are terms that are still used to describe contemporary practices in some tribal cultures. I should note that there are distinct anthropological distinctions between brideprice and bridewealth systems which I will not explore here, but most scholars are agreed that large gifts from the groom were significantly reduced by the sixteenth century. That said, the morning gift was still customary in the lowlands during this period. Martha Howell, *The Marriage Exchange*, 197-198. For purposes of this article, I will use Professor Goody’s terms – direct and indirect dowry.


Indirect dowry was a transfer of property from the groom to the bride. A written marriage contract might speak to all three of these property ideas.

Dowries were commonplace and the subject of much negotiation. The dowry served multiple purposes including giving the newlyweds an economic foundation to build a family, provide a wealth transfer to daughters outside of bequests through a will, and to provide women with support in the event of the death or desertion of a husband. In Italy during the Middle Ages public law required fathers to provide a dowry in lieu of inheritance rights so that the daughter had “a share of the family patrimony.” A record of the amount of the dowry was notarized and became a matter of public record; thereby establishing the status of the bride, family, and the newlyweds. The practical Medieval Florentine authorities created a municipal savings fund, much like “our contemporary college funds,” where fathers could deposit money from the birth their daughters in order to build up a dowry that would transfer to the husband at the time of the wedding. The dowry was set at the betrothal, but the consideration might be “paid in installments, each of which was duly notarized.” The installments might cross a span a years though the first installment would occur “before the bride moved

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185 The historical roots of the dowry system show its importance as a method of wealth transfer to women and as proof of a marriage contract. While, the dowry was not a legal requirement under Roman law, which European and English law is rooted in, to form the marriage since the centerpiece of a valid marriage was consent. James A. Brundage, *Law, Sex and Christian Society in Medieval Europe*, p. 37. However, the marriage contract specifying the dowry, as well as certain rituals, “constituted vitally important evidence in order to prove consent to marriage.” James A. Brundage, *Law, Sex and Christian Society in Medieval Europe*, p. 34. In fact, dowry was such strong proof of the existence of marriage that “[a]ny showing that a dowry had been given created a presumption that a marriage had been agreed upon.” James A. Brundage, *Law, Sex and Christian Society in Medieval Europe*, p. 37. Notably, a written contract detailing the dowry arrangements became a default formality of proof of marriage for the upper classes during the first century. James A. Brundage, *Law, Sex and Christian Society in Medieval Europe*, p. 37.

186 Martha Howell, *The Marriage Exchange*.


188 *Id.*

189 *Id.*

190 *Id.*
into her husband’s house.”191 The husband controlled how the dowry was spent or invested.192 Yet, the husband was also expected to contribute the economic basis of the marriage through a “groom’s gift.”193

There is much debate on whether the dowry was effective in achieving the function of protecting women’s rights since control of the wealth passed from a bride’s father to the new husband. The husband had total control over the conjugal property and could effectively destroy even the property that the wife contributed through the direct dowry.194 While wives were described as partners within the marriage contracts, there was little effective say in how wealth might be spent.195 As a practical matter, however, the marriage contract was the best legal vehicle by which families could provide for the financial security of daughters when a husband dies or if he should desert or divorce her. In perhaps the best account of marriage contracts in low lands up to the sixteenth century Professor Martha Howell describes an evolved system of form contracts and customs that would provide women with morning gifts, rights to receive the direct dowry back upon death or desertion of a husband and the Dutch equivalent of dower rights.196

The legal right to dower, found both in the common law of Europe and England gave a widow a life estate in one third of her husband’s property.197 While dower could never legally exceed one third of the husband’s property, the percentage could be reduced before marriage occurred with the consent of the bride.198 After marriage however, the wife’s dower rights could not be reduced by her husband. Moreover, the courts sought to protect widows from coercion by refusing to recognize a wife’s “power to

191 Marilyn Id.
192 Id. Martha Howell, The Marriage Exchange,
193 Marilyn Yalom, A History of the Wife, 85
194 Martha Howell, The Marriage Exchange, 116
195 Id.
196 Id.
197 Thomas Lund, Some Interesting Medieval Dower Cases, 37 U. of Toledo L. Rev. 659 (2006). Lund cites to the Magna Carta that “[t]here shall be assigned to [the widow] for her dower a third of all her husband’s land which was his in his lifetime, unless a smaller share was given her at the church door.” Id. Like England, the pervasive rule across Europe was that a widow would receive “one third of the total estate.” Marilyn Yalom, A History of the Wife, 8
waive her dower interest once she married." Given that dower rights could only be reduced through agreement prior to marriage, the negotiation and terms of the marriage contract became extraordinarily important to the parents of the bride, as well as the bride herself. The marriage contract, in essence, was the medieval predecessor to the modern pre-nuptial agreement and raised similar issues – whether during the point when love and affection might be at its height, are rights (dower rights during the time period discussed vs. common law rights today) being waived which might later be regretted.

To view Aert de Gelder, *The Marriage Contract* (c 1670), see http://www.virtualmuseum.info/collections/object.asp?searchText=Aert+deGelder&row=0&ckid=45585

Like Steen, other genre artists also portrayed mothers as engaged in the drafting and negotiation of their offspring’s marriage contract. The mother takes an active drafting role in Aert de Gelder’s poignant and underrated *The Marriage Contract* (c 1670). The older and wiser woman is as absorbed in the details of the written agreement as the groom is in the bride. The soon-to-be betrothed couple is almost ethereal – poised in the background – literally and figuratively in another space of their own. The groom turns the bride’s face toward him for a kiss steering her away from the business transaction at the table. The mother and notary, however, are painted sharply and distinctly, rooted in the realities of marriage – making sure that the agreement provides for her daughter. The dowry, a box of jewels in the foreground, is notably not on the table but is placed by the side of the mother and on the other side of the table from the groom. The dowry will not pass until the mother is satisfied with the written contract. Here, the message does not seem to be that being in love is better than focusing on the economic aspects. An interpretation that is just as plausible is the view that the artist is reminding young lovers that passions may blind them to practical matters and their elders should look out to protect their interests.

199 *Id.* at 662.

200 The Royal Pavilion Art Gallery and Museum, Brighton, United Kingdom.

201 De Gelder never sold a painting even though he was arguably the most talented pupil of Rembrandt. Given his devotion to his teacher, De Gelder continued to paint in the Rembrandt style long after it was no longer in vogue. Although not appreciated by his contemporaries, de Gelder’s technical precision and choice of subject matter in his marriage contract pieces reveals an artist who not only exquisitely captured the emotions of his subjects but also conveyed a moral message about the importance of marriage having an economic basis as well as one founded in love and affection.
An earlier example of where women were placed at the table is Abraham Bosse, *Le Mariage à la ville* (1633). Steen may have drawn inspiration from Abraham Bosse, *Le Mariage à la ville* (1633) – a French engraver who was known to have influenced Dutch genre painters. In Bosse’s rendition, the women are not only seated at the negotiation table but also seem to be in the role of consultant – one of the wives confers with her husband while the other gives a meaningful look as her husband makes a point to the notary. The etching here suggests tension between the conception of marriage as an economic vehicle or as a matter of love and affection. While the heated negotiation takes place between the parents of the two families, the lovers sit apart expressing love and emotion without concern about the wealth transfer occurring behind them. A notary separates the two groups, recording the transfer as agreement to particular terms takes place. As in Jan Steen’s marriage contract art, children play or go about such business as they have without recognizing the import of the event. Children convey a sense of family, and serve to remind the viewer a principal reason for arranged matches – to extend the family line.

A third example of women involved in drafting is Jacques-Philippe Le Bas’ “*La Fiancée normande*” (1760) – an engraving of a Le Nain painting. Only the men are seated at the table where the contract is being drawn up. However, a mother looks over the shoulder of the notary as the final details of the marriage contract are written down. Although seated at the table with the notary, the groom’s attention is on his bride. Not all genre artists portrayed women as engaged in the negotiation and drafting of the marriage contract. In Jan Jozef Horemans the Younger’s *The Marriage Contract* (1768) the positioning and portrayal of the women is one of disinterest bordering on distress. This scene is clearly more of a business deal than a matter of love. The bride seems uncertain of how she should react – whether to smile at the impending nuptials or frown like the rest of the subjects in the foreground. The bride looks to her mother across the table to the far left, but the mother

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202 *Looking at Seventeenth Century Dutch Art*, 51.
203 *Looking at Seventeenth Century Dutch Art*, 51.
204 Children occur in many of the marriage contract paintings though for different purposes. In Jean-Baptiste Greuze, *l’Accordeé de village* (1761), children are shown doing chores representing that they had a place in the economic unit of the family. Whereas in Jan Steen’s paintings, children appear in carefree and often mischievous roles.
205 The Le Bas’ engraving was a notable precedent for Jean-Baptiste Greuze’s *l’Accordeé de village*. Emma Barker, *Greuze and the Painting of Sentiment*, 51 (2005).
casts her eyes downward avoiding her daughter’s gaze as if to acknowledge the unsuitability of the match.

While some male artists presented women at the negotiation table, the reality is that women’s rights in this era actually decreased. Although the oppression of women increased, a more reasoned approach was slowly developing within political philosophy through the writings of John Locke. If art is truly pre-formative and gives clues as to the “pain points of a culture,” as Professor Van Alphen’s contends, then two possible themes emerge from this period. First, that society was becoming less enamored with arranged marriages based on purely on wealth transfer and status. Second, mothers were argued portrayed as needing to actively protect their daughters less there be an attempt to cut back on dower rights. The first contention is well documented by critics. The second point is not necessarily in opposition with the first. While mothers are portrayed as being concerned with the economics, when viewed in context of the few rights held by women, it is plausible that the artists meant to portray mothers as showing concern for their daughter’s welfare. Of course, since all of the painters in this survey are male the perspective is naturally from a male perspective. I don’t suggest that the painters were ardent feminists by any means. In all likelihood, they were not. One aspect of the pleasure of viewing art is from the perspective of the modern viewer without knowing the full intent of the artist. In other words, one need not view these sets of paintings as affirmations of love and rejections of dowry-based marriage. Rather, with an understanding of the rules surrounding dower rights, the paintings gain deeper meaning and more resonance as a reflection of the legal aspects of the times and the direction in which the law was going.

PART 5: William Hogarth: Satiric Indictment of Arranged Marriages

William Hogarth painted the most famous indictment of arranged marriages –*Marriage à la Mode*, a series of six paintings.

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206 Lawrence Stone, *The Family, Sex and Marriage in England: 1500-1800*, 136-7 (1979). Through the “legal device of the use to feoffees” some women were deprived of their right to dower. *Id.*

207 *Id.* at 136.

that were later reproduced as engravings. In this brilliant satire and moralistic tale, Hogarth told the story of the Earl of Squanderfield who contracted to marry his son to an alderman’s daughter. Hogarth was more of a moral essayist and satirist than the other painters in this survey. He had a social agenda that he wished to push and he did it through his artwork. Unlike Jan Steen, Hogarth’s paintings don’t suggest an overt religious alternative; but the satire makes the indictment effective.

To view William Hogarth, The Marriage Settlement, the first in a series of six paintings titled Marriage à la Mode, 1743 see http://www.nationalgallery.org.uk/paintings/william-hogarth-marriage-a-la-mode-1-the-marriage-settlement

In The Marriage Settlement, the first painting of the Marriage à la Mode series, Hogarth depicts the formation and negotiation of the marriage contract. The story plays out that the Earl of Squanderfield, a direct descendant of William Duke of Normandy (see the Earl pointing to himself on the family tree) has run out of cash in the building of a new mansion. An architect gazes out the window at the unfinished mansion making plans for the next phase of building once cash begins to flow again. A well-to-do Alderman who wishes to join his family with aristocracy enters into a marriage contract wherein his daughter will marry the Earl’s son. The daughter couldn’t legally object at this point in British history. It would take ten years from the date of the painting and the Hardwicke Marriage Act of 1753 to forbid parents from dictating that a child must marry another against their

209 Hogarth was a master at maximizing the value of his artwork by creating popular images and then reproducing the engravings. The six paintings in this series were made into engravings that were then printed in the popular press. Austin Dobson, William Hogarth, 86-7 (1891). Hogarth became so popular and successful that a number of forgeries were made of his works. In defense of his property rights, Hogarth successfully advocated that English copyright laws be extended to prints and engravings. The 1735 Engraver’s Act became known popularly as Hogarth’s Act. Paul Torremans, Copyright Law, 138 (2007).

210 Sean Shesgreen (ed.), Engravings by Hogarth, Plate 51

211 Marriage was not the only legal issue that Hogarth took on through his art. In his visual narrative, The Four Stages of Cruelty, Hogarth tracks the development of a boy who tortures small animals to the man who murders his mistress, is caught by the authorities and executed. While “often interpreted as a warning to those who practice cruelty,” the series also criticizes the government practice of dissecting criminals after executing them. Barbara Jaffe, William Hogarth and Eighteenth Century English Law Relating to Capital Punishment, 15 Law & Literature 267, 276 (2003).


213 Sean Shesgreen (ed.), Engravings by Hogarth, Plate 51
will.\textsuperscript{214} The alderman looks over the terms of the contract while the prospective couple look anywhere except at each other.

The son, who shows no interest in his future bride, is portrayed as effete. Gay art scholars contend that Hogarth used cliché images to target homosexuality as a decadent lifestyle.\textsuperscript{215} The son wears make-up, including a patch on his neck – a standard cover-up of the day for sexually transmitted diseases. The young dandy stares adoringly at his own visage in the mirror. The mirror as an icon has two possible meanings. It is possible that a figure who stares into a mirror can convey a positive message in the sense of “looking inside oneself” for life’s meaning.\textsuperscript{216} However, Hogarth uses the mirror to create an allegory to the classical tale of Narcissus in which “the sins of lust, vanity, and pride” convey a “negative...character.”\textsuperscript{217}

Unlike Steen’s projection of lawyer as problem-solver, Hogarth portrays the attorney as a scoundrel. The son’s back is to his future bride so he misses the lawyer, named Silvertongue, flirting with the girl.\textsuperscript{218} In a subsequent picture in the tale, we learn that Silvertongue has an affair with the woman after the marriage.\textsuperscript{219} At this point, the bride is just petulant and upset. She twists a handkerchief and plays with the wedding ring – keeping it off her finger. The business deal progresses in the foreground as the Earl’s banker takes the money from the dowry off the table and returns a mortgage to the Earl.

\textsuperscript{214} The Act did require that children under the age of 21 would need to seek parental consent before marrying. The main purpose of the Marriage Act was to halt clandestine marriages. Critics of the Marriage Act argued that the time requirements placed on marriage with the reading of the banns made it harder for women who wanted to avoid an ill-suited match arranged by parents by entering into a clandestine marriage. Derek Jarrett, England in the Age of Hogarth, 119 (Yale Univ. Press, 1986). In practice, the Act “seems to have had only marginal effects on the lives and the happiness of individual women.” Id. Arranged marriages that were forced on women continued “for the rest of the century.” Id.

\textsuperscript{215} Homosexuals were a target of Hogarth’s satire. European Art: Eighteenth Century, http://www.glbtq.com/arts/eur_art2_18c3.html

\textsuperscript{216} Matilde Battistini, Symbols and Allegories in Art, 138, 140 (2005).

\textsuperscript{217} Id. at 138.

\textsuperscript{218} Lawyers generally do not come off well in Hogarth’s artwork. In The Four Stages of Cruelty it is the weight of a group of obese lawyers who are too cheap to hire two carriages which causes a horse to fall exhausted and in turn the coach man to beat the horse. Barbara Jaffe, William Hogarth and Eighteenth Century English Law Relating to Capital Punishment, 15 Law & Literature 267, 275-6 (2003).

\textsuperscript{219} Sean Shesgreen, Engravings by Hogarth. Plate 54.
Hogarth’s moralistic tale was part of an intellectual and religious movement that rebelled against aristocratic power. Hogarth was a progressive thinker for his time and embraced the epistemology of Enlightenment philosopher John Locke. Interestingly, the subject of marriage contracts and the issues surrounding the rights of women were themes within Locke’s *Two Treatises*. Marriage contracts, although generally considered a private matter, played a role in the public political debate between the royalists and liberal political theory in the seventeenth century. The monarchists tried to justify the “divine right of kings upon the patriarchal principle embedded in the family structure.”

Feminist scholar Mary Shanley notes that the royalists used the patriarchic marriage contract to justify the monarchy’s right to rule unconditionally and irrevocably. Given the unfortunate state of women’s rights during the era, the marriage contract was a useful analogy for the royalists. The royalists argued that although men and women entered into the marriage through mutual consent, “in marriage God established the husband in a position of rule over his wife.” In the Christian tradition of the time, the husband and wife could not then divorce even if they both agreed to do so. Moreover, any breach of marital vows or customary duties of spouses to one another – even though a “party was…seriously abused” would not sever the bond of marriage. Like the marriage contract, the royalists argued, once the people voluntarily agreed to sovereign rule, the king became “wedded to the kingdom by a ring at his Coronation.” In the royalist view, the king had a divine right to absolute and irrevocable power because of the consent freely given to enter into a relationship of subjugation.

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221 Lawrence Stone, *Road to Divorce: England 1530-1987*, 52. Marriage and the family have been used as an analogy in political philosophy since Aristotle. *Id.* at 15. Aristotle maintained that the family as an association arose from nature to provide for daily needs. As several families bonded together, villages and then city states arose. Aristotle, although an advocate of democracy rule by the middle class, observed that the rule of kings in the city states mirrored the family power structure where the eldest ruled since those early villages and city states were primarily units of related families. Aristotle, *The Polis*.


223 *Id.* at 81.

224 *Id.*

225 *Id.*
Once the consent to control subjects was given to the monarch, the subjects could not withdraw that consent any more than “a wife might be released from the subjection to her husband.”

It was odd that the royalists relied on a contract theory of rule to support the reign of the monarch since “contractarian thought in England is usually associated with the advocates of parliamentary or popular rights.” However, even well into the nineteenth century, feminists considered the marriage contract more like a “slave code” than an agreement between equal partners. Once married, the wife had little to no control over her person. A woman could not divorce her husband even for desertion, adultery or physical abuse. Both spouses owed one another what has been labeled the marital or conjugal debt – i.e. the right to demand sex with only certain exceptions such as during menstruation or pregnancy.

The use of the analogy to marriage contracts forced the liberal theorists to examine the nature of marriage contract and respond to the monarchists contentions that marriage, like the government, was irrevocable. The parliamentarians response to the

226 Id.
227 Id. at 80.
228 Amy Stanley, From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation, 176 (1998). After the emancipation of slaves in America in the second half of the nineteenth century, feminists urged legislators to extend emancipation to women. This in turn led to a body of Post-bellum jurisprudence which explained away inequality by designating marriage as a “status” in which the state had an important interest in procreation. Id. at 180-181.
229 Lawrence Stone, Road to Divorce: England 1530-1987, 241, 508 (1990). The conjugal debt finds its genesis in the new Testament of the Bible (1 Cor. 7:3-4) though it should be noted that in St. Paul’s letter, he states that both husband and wife owe each other the right. Gratian later wrote that this was one area where “men and women enjoyed equal rights before the law.” Lawrence Stone, Road to Divorce: England 1530-1987, 241-242. When John Locke wrote about the marriage contract in his Two Treatises, he dismissed the patriarchal model and noted that men and women were equal in nature. Yet he also insisted that the men and women owe one another access to each other’s bodies in order to procreate, though that access was not unlimited and could be easily cut off by conditions such as violence by the husband. Mary Lyndon Shanley, Marriage Contract and Social Contract in Seventeenth Century English Political Thought, The Western Political Quarterly, Vol. 32, No. 1, 87-91. Although stated as an equal right, feminists argue that the rule favors men since it ignores the fact that men and women have different sexual needs and that the consequences of sex – i.e. pregnancy – for a woman are far different than those for the man. Dylan Elliott, Sex in Holy Places: An Exploration of a Medieval Anxiety, Journal of Women's History, (Vol. 6, 1994).
patriarchic hierarchy analogy evolved slowly over time, but culminated with John Locke’s *Two Treatises*. Locke took on the royalists to provide a philosophic basis for rebellion against the state, and, at the same time, planted the seeds for change in the conception of marriage. Locke rejected scripture altogether and used natural law theory as the basis of his theories. Theological scholars point to this period of time as the genesis of a pivotal shift in history in the transformation of our conception of marriage from one as a sacrament to that of a contract.230

Locke rejected the patriarchal model for consensual marriage and instead proposed that a natural law theory wherein “conjugal society is formed by ‘a voluntary Compact between Man and Woman.’”231 Unlike the conception of a marriage contract where a woman consents to the authority of a man, Locke found no basis in nature for such dominance. There were some rights and responsibilities established by nature to the parties in a marriage contract. If two people enter into a marriage contract, nature would provide a “Right in one anothers Bodies, as is necessary to its chief End, Procreation.”232 There would also be obligations of support of each other and the children. Locke’s important departure from the royalists was that other terms might be set in the marriage contract than had been common or accepted up until then.233

Perhaps, the most important departure was Locke’s insistence that a marriage contract could also be terminated, so long as the children were provided for. He made clear that there was nothing in nature that suggested marriage should be for life.234 As progressive as these ideas might have been at the time, Locke was far from being a feminist. He subscribed to the idea that in the event of a disagreement over community property, the decision should “fall to the Man’s share as the abler and the stronger.”235 Thus, Locke ultimately deferred to a patriarchic approach by making physical strength the factor that resolved disputes rather

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232 See footnote 229.


234 Id. at 89.

235 Id.
than “rational agreement.”

Locke’s political theory and focus on individual rights did not result in any immediate reform in the laws of marriage. In fact, change in terms of women’s rights was extremely slow in coming. Yet the ideas that Locke expressed – “that contract might regulate property rights and maintenance obligations in marriage” – was a radical departure from the practices and theory of the day. That departure, however, had some effect on the practices of the day. While patriarchal domination and the threat of disinheritance coerced some couples to wed up through the sixteenth and seventeenth centuries, the philosophy of “affective individualism” and the influence of the romanticists began to shape eighteenth century behavior, such that an individual’s actual consent and concerns over love and affection began to become as important, if not more so, as wealth and prestige in determining a mate.

Hogarth’s artwork echoed the anti-authoritarian themes found in the Locke’s Two Treatises. Hogarth condemns the fathers who pushed the young couple into an ill-suited match through an innovative use of iconography. Each of the paintings on the wall portend an impending doom. The paintings portray either mythological or religious tragedies including a depiction of Medusa; a rendering of the Pharaoh’s armies in the Red Sea; the Martyrdom of St. Sebastian; Prometheus being tortured by a vulture; the massacre of the innocents; and Cain killing Abel. With the image of the dogs, Hogarth turns the traditional symbol of conjugal fidelity symbol to his own devices by chaining the two well-bred hounds together – symbolizing that the loyalty that

236 Mary Lyndon Shanley, *Feminism, Marriage and the Law in Victorian England, 1850-1895*, 11 (1989). Locke rejected the application of the Royalist’s analogy of the marriage contract to state power noting that the power wielded by a father over a child was far different than that of a “Magistrate over a Subject.” Mary Lyndon Shanley, “Marriage Contract and Social Contract in Seventeenth Century English Political Thought,” The Western Political Quarterly, Vol. 32, No. 1, 90. For Locke, “the family was a private association which preceded civil society and into which the state should not intrude.” Mary Lyndon Shanley, “Marriage Contract and Social Contract in Seventeenth Century English Political Thought,” The Western Political Quarterly, Vol. 32, No. 1, 90


239 David Bindman, *Hogarth and His Times*, 53 (University of California Press 1997). Described Hogarth’s engraving “The Analysis of Beauty” as “Lockean in basing its arguments not on the authority of the past but on the observation and rational enquiry into the workings of the human mind.” *Id.*
follows is forced and not representing true faithfulness. Indeed, fidelity becomes a central issue in the series, when Silvertongue seduces the young wife. What starts out as a farce ends in tragedy for everyone. The old Earl dies of gout; the new Earl discover the affair between his wife and Silvertongue and challenges the attorney to a duel; the Earl is shot, and killed in the duel and the lawyer is later hanged; the girl returns to her father’s house who is penniless as a result of paying a dowry he could not afford; the girl commits suicide unable to go forward.

Hogarth’s sermonizing and moral condemnation of the excesses of the rich was hugely popular. Some of the painters in Europe tried to copy his success. After *Marriage a la Mode*, any painter who was deemed to be making a statement – especially through the use of a marriage contract – was usually compared to Hogarth. The increasing availability of the populace to view art through the wider availability of engravings may have played a role in setting the stage to create support for legislation that changed the marriage laws.

**PART 6: Greuze: The High Point of Marriage Contract Art**

Jean-Batiste Greuze’s *L’Accordeé de village* reflects the high point of marriage contract art. A young couple, clearly in love, stands before the patriarch of a wealth peasant family as the father of the bride bestows his blessing and passes the dowry to his new son-in-law. A notary, documenting the marriage contract, gazes seriously at the young couple – sizing up the young man. Greuze, a French artist, succeeded in creating an artistic masterpiece that had an impact on shaping conceptions of the family unit. The painting was successful aesthetically, thematically and in terms of overall impact in the social and political context of the day. In contrast to Hogarth’s cynical indictment of marriage contracts, Jean-Baptiste Greuze’s *l’Accordeé de village* stands for a positive view – where a couple clearly in love receive the blessing and economic support of bride’s father. Additionally, and perhaps most importantly, *l’Accordeé de village* lacks the prominent religious imagery found in earlier works – signaling that the church’s influence over marriage law had waned considerably, and that marriage was now firmly thought of as “a civil contract rather than a holy sacrament.”

Finally, the painting represents an attempt – perhaps even more than Hogarth’s work – to influence...

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politics and legal institutions through the arts. As an “instrument of the Enlightenment” and a political tool, the painting was an attempt to reflect a “utopian vision of an enlighten social order” which “reconcil[ed] virtue with prosperity.”

To view Jean-Baptiste Greuze, *L’Accordeé de village, 1761* see http://cartelen.louvre.fr/cartelen/visite?srv=obj_view_obj&objet=cartel_11668_14123_p0001339.001.jpg_obj.html&flag=true

In her definitive history of Jean-Baptiste Greuze, art historian Emma Barker uncovers the meaning, symbolism and historical context of *L’Accordeé de village*. The scene is of the betrothal rather than a wedding and is set in the house of prosperous farmers who live in a rural setting. The young groom and the father of the bride have just completed the negotiations for a contract that will govern “the financial matters and other terms of the young couple’s union.” The terms are duly recorded by a notary who wears a black tricorn hat -- a status symbol that he holds a rank or official office. Signaling agreement to the betrothal, the father has handed over the dowry – a small purse placed near the center of the scene – to the prospective groom. The young man’s left hand grasps the purse while his right arm is intertwined with his finance’s – creating a new bond both literally and figuratively. A single red rose rises from her bodice, strategically placed near her heart. The rose symbolizes not only love, but in particular, a pure form of love.

When viewed within the context of pre-Revolutionary France and the influences of Enlightenment thinkers on Greuze, Professor Barker contends that the simple rendering of a legal ceremony in a peasant household blossoms into a political and ideological message advocating a new “utopian vision of an

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242 Id. at 43.
243 Musée du Louvre, Paris
244 Emma Barker, Greuze and the Painting of Sentiment, 46-64 (2005).
245 Id.
246 Id.
enlightened social order.” In building her case, Barker traces the genesis of Greuze’s painting to the literary salons of eighteenth century France. The literary salons “provided a crucial forum in which new ideas could be worked out, prior to addressing the public.” The Marquis de Marigny, who commissioned Greuze to paint *L’Accordeé de village*, was connected with the literary salons through his friendship with Mme. Geoffrin. The ambitious project that de Marigny funded gave Greuze the opportunity he needed to do many sketches and preliminary drawings for his masterpiece. De Marigny was Directeur-Général *Bâtiments du Roi*, so his unusual involvement in underwriting the young Greuze signaled that this painting had some political and social importance.

Since de Marigny was a public figure, the commission suggests that Greuze’s painting may not only be considered to be in the Douzinas and Nead category of “art’s law,” but also crosses over into the category of “law’s art” in the sense that the political and legal system may have shaped the painting. It is not clear how much influence Marigny, Geoffrin or others within the salon exerted over the direction that Greuze took with the painting, and it is unlikely that the government had the same degree of control over the artist in his painting of *L’Accordeé de village* as it would in the look of art adorning a public building. Given other paintings by Greuze with similar messages, the vision is clearly that of the artist. However, the influence and support of a public figure like Marigny suggests that *L’Accordeé de village* had political importance in terms of sending a message to the public.

During this period in French history, there existed among Enlightenment thinkers “a perceived need for reform at a time

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248 Emma Barker, “Painting and Reform in Eighteenth-Century France: Greuze’s *L’Accordeé de village*” *Oxford Art J.* Vol. 20, # 2, p 43 (1997). Professor Barker argues that Greuze’s moral paintings – of which *L’Accordeé de village* is just one of many – “are utopian (as well as ideological) in holding out the possibility that nature and virtue, common humanity and self-interest, personal happiness and the public good, can all be reconciled with each other.”

249 Emma Barker, *Greuze and the Painting of Sentiment*, 16 (2005).

250 Edgar Munhall, *Greuze the Draftsman* (Merrell Publishers Ltd. (2002)).

251 A superintendent of the buildings of the king and therefore in charge of, among other things, the artwork in the king’s palaces.


253 See supra footnote 40.

when France’s hegemony in Europe was under threat.” Critical of the corruption apparent in the established monarchy and the decadence of city life, Enlightenment thinkers – as embodied by the writings of Jean-Jacques Rousseau, the influential eighteenth century political philosopher – advocated a return to virtuous action and utilitarian values. Like John Locke, Rousseau also based his theories on natural law and maintained that while humans were free and equal in nature, the development of society resulted in a hierarchical interdependent social contract that resulted in economic and social inequalities. In the *Social Contract*, Rousseau observed that “Man is born free and everywhere he is in chains. Those who think themselves masters of others are indeed greater slaves than they.”

Rousseau believed “there was a basic goodness in man that was hidden under layers of socialization.” Rousseau’s solution was a new social contract in which individuals joined together in a collective democracy to sublimate their will in favor of the common, democratic good.

Sometimes called the “age of reason,” the Enlightenment was also an “age of emotion” which was expressed in a literary and social phenomenon called *sensibilité*. *Sensibilité* might be thought of as the emotional expression of the ideas expressed by Locke and Rousseau. In literature and drama which conveys *sensibilité*, deep emotion is expressed in order to uplift virtue before materialism. The movement was secular in nature and expressed sentiment for simpler times. Tired of the complexity and corruption of sophisticated city life, the population was embracing the notion of a simpler, more rustic and virtuous life. In addition to his political writings Rousseau authored one of the most successful *sensibilité* novels, *Julie ou la Nouvelle Héloïse*, which signaled a high point for the “literary phenomenon of *sensibilité*....”

The phenomena of *sensibilité* set the stage for the debut of *L’Accordeé de village*. In 1761, the Paris public was ready for Greuze’s simple tale of sentimentality and virtue. Greuze’s powerful backers managed the roll-out and critique in order to

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256 Id.
257 Id.
259 Id. at 36.
It has been speculated that the backers delayed the debut at the Paris Salon in order to build up anticipation. Denis Diderot, the influential editor of the Encyclopédie, ou dictionnaire raisonné des sciences, des arts et des métiers, which served as an important compilation of the leading political and artistic ideas during the Enlightenment, wrote a glowing review of the painting which was an important factor in its success. The use of art to influence political thought is not unreasonable given that the Paris Salon was immensely popular and was accessible to nearly every social class. In fact, the roll-out was extremely successful. Greuze’s masterpiece made a huge impact when it debuted at the Louvre. The crowds jostled one another to see the inspirational painting, and Diderot wrote that it was difficult to get near the painting because of the crowds.

However, it wasn’t just the appeal of naturalism and sentimentality that drove the crowds to see l’Accordeé de village. The piece stands out as an excellent example of eighteenth century genre painting. Professor Barker recounts that l’Accordeé de village has a “great physical presence” and clarity because of the artist’s use of line, perspective, and color. In the use of line, the setting is framed “by strong vertical and horizontal lines formed by the wall, the cupboard door and the shelf above.” The painting is divided in half. On the left is a predominantly female side that is drawn with “curving contours” and painted with pale tones. “Mother and sister cling tearfully to the bride to remind us that the happy event will create a gap in the family circle.” A child feeds the chickens in the foreground. From an iconography point of

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261 Id.
263 Thomas E. Crow, Painters and Public Life in Eighteenth-century Paris, 1-20 (1985). In Paris, the theater was more accessible to the larger population than art until the advent of the Paris Salon starting around the late seventeenth century. By 1737, the Academy of Painting and Sculpture in Paris was holding a bi-annual Salon open to the public at the Louvre. For six weeks in the summer and fall, the Salon was the most important event in the city. Crowds containing all social levels of society mixed together, sometimes uncomfortably, to see a large collection of genre painting. Id.
264 Fred S. Kleiner and Christin J. Mamiya, Gardner’s Art through the Ages, 808 (12th ed. 2004)
266 Id.
267 Id.
view, the birds represent a traditional symbol of fertility.\textsuperscript{268} On the right side is the predominantly male half. The tones and colors are mostly dark and the lines are sharp and angular in stark contrast to the female half. Within the male group, the mood is more business-like since money is changing hands yet there is still an emotional element.\textsuperscript{269} The father and new son-in-law bond with one another. The young man listens seriously as the older man pontificates. Both men are clearly moved by the moment. An older sister, who is not yet married, looks on skeptically and perhaps with a little resentment at the transaction – either jealous of her younger sister or wondering if there is enough of a dowry left for her prospects.

The contrast of the male and female sides creates tension and movement in the painting. The grouping of the figures on each side builds a diagonal line upward from the respective corners at the bottom of the painting to the center. The new son-in-law’s red waistcoat draws the eye to the center of the painting and he becomes the focus since he is now separating the father from his daughter.\textsuperscript{270} Legally, the daughter is a party to the contract, but she essentially has no power. She will not control her own dowry and has no legal personality since she is passing from the control of her father to the control of her new husband. Again, the very subject of this painting at this time is a perpetuation of the patriarchal family structure. During the era, romanticists suggested that so long as marriage was based on love the patriarchal model worked since love would guarantee that a husband would not become tyrannical. Of course, reality, as evidenced by court records, shows that such guarantees were “flimsy” at best.\textsuperscript{271}

Nearly everyone in the room focuses their attention on the father as he welcomes and accepts the young man as his son-in-law. The father raises his head to heaven and appears to have a noble air about him. The young man listens intently as the father of the bride advises the boy on how to spend the dowry money wisely. One interpretation is that the new son-in-law and the entire family for that matter are submitting to the moral authority of the father.\textsuperscript{272} Thus, one reading of Greuze’s painting would that it is a

\textsuperscript{268} Fred S. Kleiner and Christin J. Mamiya, \textit{Gardner’s Art through the Ages}, Vol. 2, 468 (11th ed.).

\textsuperscript{269} Emma Barker, \textit{Greuze and the Painting of Sentiment}, (2005).

\textsuperscript{270} \textit{Id}.


\textsuperscript{272} Emma Barker, \textit{Greuze and the Painting of Sentiment}, 55 (2005).
paean to patriarchy rather than a progressive visual work by a famed Enlightenment artist who was influenced by Rousseau.

However, Professor Barker interprets this scene as containing the model loving father rather than a tyrant. The father is not forcing a daughter into a match she doesn’t want. Here, the marriage is founded on love rather than economics. Moreover, the mother is situated in a “parallel” position to the father suggesting that there are rights and duties shared by both parents.\textsuperscript{273} Although still clearly patriarchic, the father does not represent a tyrant with absolute power. Rather, the father’s “authority…is justified by his natural concern for his children’s happiness.” While there is a property transfer, in the form of the purse, at the literal center of the painting, the sentiment expressed is one of concern for the economic well-being of the couple.\textsuperscript{274} Although there are emotional bonds between the young couple, the point is made that the family is also an economic unit. Professor Barker contends that the good father is fulfilling his duty by providing capital to help his daughter and son-in-law establish their new life together. Although ultimately, the scene depicted in \textit{l’Accordeé de village} is patriarchic, the general tenor comports with Roussean and Lockean notions of a social contract. Since the literal subject matter of the painting is the marriage contract, Professor Barker contends that Greuze is showing that the social order is essentially man-made, and therefore terms that are fair and just can be set and people can follow those terms in line with a moral code of love and fairness.\textsuperscript{275}

To the extent that the family is an allegory in \textit{l’Accordeé de village} for the political debate over state power, Greuze’s use of the metaphor is consistent – interestingly enough – with modern political discourse. Although Locke rejected the analogy of the family to the state, such powerful analogies don’t disappear quickly. As a metaphor in political discourse, the nurturing family would reflect a more progressive viewpoint. Cognitive linguist George Lakoff has used his theories of conceptual metaphor to explain how modern conservatives and liberals articulate their views on government.\textsuperscript{276} According to Lakoff, the family metaphor is still very strong in political discourse. Conservatives follow a “strict father model” where a dominant and strict father is the metaphor for the government and citizen are the children. The

\textsuperscript{273} Id.
\textsuperscript{274} Id.
\textsuperscript{275} Id.
\textsuperscript{276} George Lakoff, \textit{Moral Politics} (1996).
government/father’s role is to teach its children to be fiscally responsible and moral. To the extent that the children behave and grow up to be responsible adults (i.e. good citizens as defined by the dominant government), then the father stays out their lives since they are not behaving like children. Liberals also use the family metaphor, concludes Lakoff, though this family is described as a nurturing parent model where the government parent works to provide an environment for its children/citizens that is free from inequality, poverty, social injustice, and pollution.277

The notary/lawyer does not come off well in l’Accordeé de village. He scowls and looks with mistrust at the young groom holding the purse. Barker suggests that the figure, who represents state power, is “one who seeks power for his own sake.”278 Although Diderot described the notary as a “crafty haggler,” he also described him as “a beautiful figure” who was merely listening to the advice being given to the new son-in-law.279 He is the only male who has not taken off his hat – a tricorn that he wears to denote that he holds an office. Interestingly, Greuze placed the most powerful man in the room at the most inferior position within the painting. Placed at the lower right, the notary is physically lower than the others -- a suggestion by the painter that he is not important despite his higher status.280 The presence of the notary as the civil authority witnessing the betrothal and the absence of a priest (or for that matter any apparent religious iconography) is consistent with Rousseau’s views of the church. Although Rousseau did not discuss the marriage contract in as much detail as Locke, he also rejected the authority of the church in matters of marriage.281 Rousseau maintained that marriage was a civil matter and to allow the church to decide who could marry and thus who could inherit property could possibly yield the power of the state to an “intolerant religion.”282

Later on in the eighteenth century, revolutionaries in France embraced Rousseau’s theories and saw them as justification for rebellion against the crown. It was the political philosophy of

277 George Lakoff, Moral Politics (1996).
278 Emma Barker, Greuze and the Painting of Sentiment, (2005).
280 This placement of the notary/lawyer stands in sharp contrast to the placement in Antoine Watteau’s The Marriage Contract (1713, Museo del Prado, Madrid). Watteau puts the notary/lawyer at the center of a celebration – more prominent than the groom.
282 Id.
Rousseau, Voltaire and similar thinkers that sparked French revolutionaries to act. One of the first steps of the new republic was a flurry of new legislation redefining marriage as a civil contract and allowing divorce based on mutual consent or incompatibility. From a modern feminist perspective, the contractarian view of marriage is controversial. Some modern feminists contend that Locke’s idealized vision of equality is a myth and that the Social Contract and reformed Marriage Contract that Locke wrote of did not change that fact that men conspired, literally or symbolically, well after Locke and into the present day to keep dominion over women. This argument suggests that prostitution, surrogacy and even marriage can be explained as a view of women as subservient and used only for their bodies for either sexual pleasure or procreation. Rather than free consent, such relationships could also be the result of coercion or force. Other feminists embrace the contractarian view of marriage since it allows individuals to decide how to structure their own lives with minimal interference by the state. Broadly defined, that conception of private contract in the context of marriage could result in the legitimization of same sex marriage or even polygamous relationships. In her practical book, *The Marriage Contract*, noted feminist scholar Lenore Weitzman made a case for intimate contracts since it would, among other things, provide a basis for egalitarian relationships, allow for “privacy and freedom in the ordering personal relationships,” clarify the expectations of the parties, create a “normative blueprint for behavior” and legitimize nontraditional relationships, such as those between same sex couples.

Other commentators have suggested that Greuze was following the lead of Hogarth in that both painters are like preachers trying to import a moral lesson through the means of a “painted sermon…” Greuze certainly would have been familiar with Hogarth’s work through engravings and some of Greuze’s other work does exhibit a composition which is similar to

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286 Id.
287 Martha. A. Fineman, *The Neutered Mother, the Sexual Family and Other Twentieth Century Tragedies*, 2, 12, 199, 227 (Routledge 1995).
289 Catholic encyclopedia -see [http://www.newadvent.org/cathen/07029c.htm](http://www.newadvent.org/cathen/07029c.htm).
Hogarth’s pieces. In fact, Greuze did a study for a second painting titled “The Departure of the Married Couple” suggesting that he contemplated a Hogarth-type series. However, that is where the similarities end. Though both Greuze and Hogarth used the marriage contract as subject matter for their art, they did so with far different purposes. Hogarth gave a biting commentary on contemporary practices through the use of a satire that ends in tragedy leaving the viewer contemptuous of the nature of the marriage contracts. However, Greuze sets up a more Roussean idealized and virtuous setting in which two lovers begin life together leaving the viewer with a sentimental and optimistic point of view.

Indeed, Greuze’s work is consistent with Rousseau’s views on the purpose of art. In his *Discourse on the Arts and Sciences*, Rousseau viewed art “not only as a symptom of luxury and of excess, but are also the cause of corruption in society.” Consequently, Rousseau thought that art should serve a didactic purpose and teach higher values. Rousseau sought “a return to high-minded classicism (beautiful, idealized art that elevates people).” Professor Barker concludes that not only did *L’Accordeé de village* conform with Rousseau’s notion of what art should be, the piece did in fact “elevate people” to higher ideals when it was first shown at the Louvre.

No other painting in this survey, with the possible exception of Hogarth’s contribution, achieved the level of success or impact as did Greuze’s masterpiece. The painting when displayed in the populist venue of the Paris Salon created a sensation and atmosphere of excitement. The painting was discussed at length in the media and added to the general discourse of the state of marriage. The painting had a large impact in helping to solidify romanticism and love as a key virtue in marriage while the economic aspects of the dowry were reframed as start-up capital for an extension of the family. If not directly attacking the patriarchic system, *L’Accordeé de village* helped set the stage for

293 Antoine Watteau: Perspectives on the Artist and the Culture of His Time
the development of discontent.

PART 7: Nineteenth and Twentieth Century Comparisons

While l’Accordeé de village marked the high point, it was far from the last painting on the theme of the marriage contract. With the start of the romanticism movement in art during the late eighteenth and extending into the nineteenth century, a number of artists portrayed sentimental pictures detailing the formation of the marriage contract. A stunning example of marriage contract art from romantic movement is Guillaume Bodinier’s *Marriage Contract in Italy* (1831). The thematic trend, however, dissipated over time, and twentieth century artists did not approach the subject of marriage in the visual arts with anywhere near the interest of Renaissance and Enlightenment painters. One recent 20th century piece that harkens back to the sentimentality of the eighteenth century genre painters is the nostalgic artwork of Norman Rockwell. Rockwell’s *The Marriage License* appeared on the cover of the Saturday Evening Post on June 11, 1955 and the themes within the image are strikingly similar to those of the genre artists. The picture appeals to the sentimentality of the time in which was painted. A couple seeks to join, and a legal functionary is present to make sure that the paperwork is filled out and signed correctly. Gone, however, are the symbols of property transfers in the betrothal agreement. No parents are present negotiating or witnessing the promises exchanged. Yet, the application and delivery of the license just replaces the betrothal agreement as the first step of a two-step process. A ceremony would still be necessary in order to be wed in most modern jurisdictions.

The painting is appealing for the same reasons that Greuze’s l’Accordeé de village was successful. The sentimentality expressed resonates with nearly everyone who has been in love. The painting is well conceived and framed. The window draws us to the center and the stovepipe frames the action. A rose is still present – this time sitting on a windowsill instead of being attached to the bride as in l’Accordeé de village. As Rockwell was aware, the symbolic meaning of pure love contained in a single rose would touch modern audiences as much as such symbols did with seventeenth and eighteenth century audiences. A cat replaces the often-painted seventeenth century dog, which symbolized fidelity in Renaissance paintings. Yet here, the feline is not a symbol of animal hunger and lust as in Steen’s *Signing of a Marriage Contract*. Rather the cat convey a sense of home and comfort. The casual appearance of the office and the kindly justice of the peace gives a sentimental feel that was appealing to the 1950s post-war
mentality that was in the middle of producing the Baby Boom generation.

One aspect, however, that remains within Rockwell’s image, however, is the presence of the patriarchal model. The man stands over the woman with one arm around her and the other holding the license as if ready to snatch it out of her clasp as soon as she signs her name. She stands on her toes, like a child, suggesting a paternal role for her new husband. He looks on to make sure that she fills in the license correctly in what was probably meant to convey protective oversight but which clearly also signals control. The state implicitly agrees with the patriarchic model given the smiling paternalistic friendliness of the justice of the peace and the American flag draped on the bookshelf. In many respects, Rockwell’s piece does not illustrate how far marriage law has advanced since the eighteenth century; rather it shows how far we yet have to go.

At least one contemporary artist has focused on a power dynamic in marriage. In Gil Mayers’ *Marriage American Style*, one party leads and the other follows, but the gender identity of the leader suggests a shift from male to female as the leader of the couple. Interestingly, the medieval and Renaissance legal concept of two people joined as one legal entity is conveyed through Mayers’ image. In Mayers’ contemporary mixed media piece, two bodies join as one through the construct of a legal document. The legal document of the marriage license substitutes for the contract used in seventeenth and eighteenth century art, and is used here to merge the two bodies into one. The bodies are separate yet together – the document containing column like distinctions – the back half with writing and the front with an almost pictorial abstraction washing out any print that might have been there. Two pairs of legs are all that remain of the separate entities. The legs and feet appear almost horse like. One pair of legs leads, appearing on the front of the license and going forward, while the other pair follows – attached to the rear of the license body. Using the floating body parts like cubist painters, Mayers places two black dots to serve as eyes – one each from the newly formed body – trying to focus and act in unison in their newly formed union. Alternatively, the dots are also heads – the left encompassed by a bird like head, seemingly in control of the forward moving legs.

Rather than representing a partnership, Mayers echoes the themes that predominate in marriage contract art – one partner leads and the other follows. Whether the leader is male or female remains ambiguous in Mayers’ art. The isolated body parts are not genderless. The front leading legs could easily be characterized as
feminine given the pointed toe and shapely calf as well as the colorful, almost paisley stockings. The rear legs have a dark green masculine tone. A lone cross represents the presence of religion or the church where the marriage took place. The newly formed couple/entity moving away from—instead of towards the cross—as they/it proceeds in marriage. A sun/moon symbol (with yin-yang overtones) appears in the upper left while the horse like hooves step on stars which could be seen either as lost dreams being crushed or movement towards a brilliant future.

Conclusion

The thematic tradition of marriage contract art continues to serve as a rich resource for art, legal and social historians. The paintings reflect the traditions and customs of the day as well as the attitudes of the artists towards those customs. In particular, this sub-genre of marriage contract art demonstrates how some artists attempt to influence social and legal institutions through their art. The marriage contract sub-genre also serves as a relevant touchstone in the modern debate over same sex marriage—illustrating the evolution of marriage as a sacrament to a more contractual view of marriage based on mutual affection. Additionally, marriage contract art continues to be relevant for feminists studying the historic patriarchic model of the family.

Marriage is a complex institution that still struggles to define itself. The tension created between marriage as conceived as a contract and that of a status dictated by the courts continues to be a controversy with policy-makers, academics and the public. The policies surrounding marriage involve a complex mix of societal values and goals involving property, emotions, well-being, economics, child rearing and sex. The role that the doctrine of contract plays in the issues surrounding marriage is almost schizophrenic. At times, contractarian notions of marriage have been derided as being focused on the economics of marriage rather than the spiritual or emotional bond between two people. At other times, contract is exalted as being the metaphor for freedom of choice and an end to the tyranny of patriarchy. The nature of the marriage contract has also played a role as a metaphor for state power during the Renaissance. The political debate in the seventeenth and eighteenth centuries and the underlying social unrest of the time in all likelihood inspired several of Europe and England’s finest artists to document and comment on the role of contract in creating marriages. While the effect of the artwork on the political process of reform cannot be measured, the increasing availability of the populace to view art through the vehicles of the Paris Exhibition and the wider availability of engravings likely
played a role in exposing the populace to the symbolic ideas expressed in the artwork as a pre-formative indicator of changes to come.