The Marriage Contract in Fine Art

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I. INTRODUCTION

From the Middle Ages to the Enlightenment, several European and English artists produced paintings depicting the formation of a marriage contract.¹ The artwork usually portrays a couple—sometimes in love, some-

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¹ In this article, I examine five paintings in detail and nine others as illustrative of different legal principles. There are many more artists who dealt with the subject matter of marriage contracts before, during, and after the time period studied here. Other marriage contract themed art not discussed in this article includes the following eighteen works: Abraham Bosse, La Mariage à la ville (1633); Antoine Watteau, The Marriage Contract (1713); Nicolas Lancret, The Marriage Contract (1768); Jan Jozef Horemans II, The Marriage Contract (1738); Guillaume Bodinier, Marriage Contract in Italy (1831); Martinus Rorbye, A Turkish Notary Drawing up a Marriage Contract, Constantinople (1837); orig. Eugene Lami; engr. R. Staines, Contract of Marriage (1841); Mariano Fortuny, The Vicarage (1870); Jean Leon Gerome Ferris, The Marriage Contract (1911); Piedmontese School, Reading the Contract (16th cent.); Francois Brunery, The Marriage Contract (ca. 1849-1926); Quentin Metsys, The Marriage Contract (ca.1500-1530); Giovanni da San Giovanni, Contratto di Matrimonio (ca. 1625); Carle van Loo, The Marriage Contract (ca. 18th cent.); Gaspare Traversi, The Wedding Contract (ca. 18th cent.); Adolphe Alexandre Lesrel, Signing a Marriage Contract at Court of Louis XIV (ca. 19th cent.); Joos van Craesbeeck, The Marriage Contract (ca. 17th cent.); Jan Jozef Horemans the Elder, The Marriage Contract (18th cent.).
times not—who wait while their parents negotiate the dowry and other terms of the marriage contract. In nearly every painting, a notary sits or stands at a table, quill in hand, memorializing the details of the betrothal agreement. 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 were commenting on, critiquing, and, in some cases, attempting to influence marriage custom and law.

Art, like literature, not only reflects our culture but also has the ability to affect how we perceive important events and social customs. Art histor-

2. Notaries, rather than attorneys, typically drafted the marriage contracts. In some jurisdictions and time periods, 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: MEDIEVAL MARRIAGE AND THE ENIGMA OF VAN EYCK’S DOUBLE PORTRAIT 56 (1994).

3. Some paintings, such as Jean-Batiste Greuze’s L’Accordée de village and William Hogarth’s series Mariage à 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 attention than the occasional footnote, though both artists are acknowledged regionally as fine examples of art from the period.

4. This article argues that the large number of marriage contract paintings reflects a desire by artists to comment on the evolving marriage laws. It is quite possible to explain, however, the great number of marriage contract paintings as being driven merely by demand from the consumers of art. The genre artists studied in this article borrowed ideas and images freely from one another. Thus, marriage contract art could have evolved merely because it sold well.

5. Although the focus here is on visual art, many plays and novels were written during this period that used the marriage contract as a plot device. KATHRYN JACOBS, MARRIAGE CONTRACTS FROM CHAUCER TO THE RENAISSANCE STAGE 6 (2001). 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 literature. 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. Id. 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. Id. at 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, at 69 (1990) [hereinafter STONE, ROAD TO DIVORCE]. Lesser known dramatists also regularly used the marriage contract as a plot device. LAWRENCE STONE, THE FAMILY, SEX AND MARRIAGE IN ENGLAND: 1500-1800, at 136 (1979) [hereinafter STONE, FAMILY, SEX AND MARRIAGE]. The clandestine marriage appears in a play by Fletcher and Beaumont. STONE, ROAD TO DIVORCE, supra at 73. 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.” JACOBS, supra at 116. In more than one instance, playwrights got their inspiration from the painters. Hogarth’s Mariage à la Mode was the inspiration for David Garrick’s play The Clandestine Marriage. DAVID GARRICK,
ans 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 lends 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.

Notably, the debate over same-sex marriage has generated renewed interest in how the historic foundation of marriage laws reflects current cultural values. Some supporters of the heterosexual-only approach to marriage rely on the argument that society has conceived marriage as a holy sacrament between a man and a woman. Same-sex advocates argue that conceptions of marriage have been historically dynamic and that the law should favor a contractual view of marriage. Interestingly, the issue of whether marriage is a sacrament or a contract was ably explored by many of the artists in this survey. This is not to suggest that the artwork deals with the issue of same-sex marriage; 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.

The Clandestine Marriage 23 (1995). The overwhelming success of Jean-Baptiste Greuze’s L’Accordée 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’Accordée de Village, 20:2 OXFORD ART J. 42, 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."
This article discusses the role in which fine art reflected, shaped, or amplified the political discourse over the nature of the marriage contract and the laws surrounding marriage from the fifteenth through the eighteenth centuries. Given the wretched state of marriage laws 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, rights held by married women were hardly better, and arguably slightly worse, than during the Middle Ages. There were few options, if any, for a woman who did not want to marry the man chosen by her parents. 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.

As the oppression of women grew during the Renaissance, a countervailing trend in political philosophy and art foreshadowed change. When John Locke laid the framework for natural law theory in Two Treatises, he also discussed many of the injustices to women in the marriage laws of the time. 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. 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. Additionally, artists began to paint images that elevated marriage beyond the economic concerns surrounding dowry—suggesting that love and affection should form the basis of marriage rather than status, prestige, and money.

Did art influence the marriage laws? From a feminist perspective, only mild change occurred. Divorce became somewhat 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 radical changes to the marriage laws 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 four hundred-year period. Even in geographically close regions, such as England and Nor-

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17. Stone, Family, Sex and Marriage, supra note 5, at 136.
This article limits the artistic inquiry to genre painting—a style originating with Dutch and Flemish artists during the Middle Ages, but also influenced French and English 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) within the paintings to evoke emotions within the viewer and teach a moral lesson. Much has been written about iconography, but this semiotic approach to art history is not without controversy; 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.

Given the timeframe, geography, and the number of prolific artists throughout Europe and England, this article necessarily leaves out important artwork, trends, and artifacts. One prominent missing piece is the ketubbah—the Jewish marriage contract—where the written contract is often illuminated and is considered a piece of art in and of itself. In addition, the article does not discuss the preserved historical records of marriage contracts—both in parchment and in stone—all of which are valuable artifacts, but which are beyond the scope of this article. The article also excludes Islamic art, in part because Islamic tradition discouraged the depiction of living images, and the development of figurative art was sporadic and isolated to certain cultures and times. There is at least one painting

20. STONE, ROAD TO DIVORCE, supra note 5, at 80.
21. The theory of “disguised symbolism” is attributed to legendary, art historian Erwin Panofsky. WAYNE FRANITS, LOOKING AT SEVENTEENTH-CENTURY DUTCH ART 1-7 (1997). Some art history scholars refer to “disguised symbolism” as iconology while others term it iconography. Iconography “deals with the content of pictures;” whereas iconology studies the meaning of the pictures. Id. at 9. Yet, the scholarship mixes the terms liberally, sometimes using the term iconography to discuss the meaning behind a symbol. Because legal literature on art symbolism seems to focus on the term iconography, I will use that term throughout this article.
22. Id.
23. Id.
24. SHALOM SABAR, KETUBBAH 6, 12 (2000). In seventeenth and eighteenth century Italy, the illuminated ketubbah became a popular way of documenting a marriage—a tradition that survives today. Id. at 14.
that depicts the formation of a Muslim marriage contract, but including it would require a discussion of comparative religious law and that is outside the scope of this article. The article also does not discuss any art depicting wedding ceremonies since the focus here is on the betrothal. 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. This article also does not discuss the many paintings depicting marriage contracts of royalty. While interesting from a historical and geo-political perspective, those marriage contracts seldom brought up issues surrounding the development of the law affecting the general populace. All of the excluded art is interesting and valuable for historical legal research. To include it all, however, would require a book-length project if not multiple volumes.

In order to give a theoretical framework for interpreting artwork focused on legal topics, Part I of this article first considers trends in the legal academy towards the study of art and law. This article 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 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. With that said, this article 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 period. In Parts II through VI, this article focuses on a single masterpiece that illustrates a

visited Mar. 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 J. Bourgois, *Arabic Geometrical Pattern & Design* (1973); N. Simakoff, *Islamic Design in Color* (1993); Tim Stanley et al., *Palace and Mosque: Islamic Art from the Victoria and Albert Museum* (2004).


27. There is one painting of a royal wedding—James Northcote's *The Marriage of Richard of Shrewsbury, Duke of York, to Lady Anne Mowbray* (ca. 1746-1831)—which illustrates the tension in canon law surrounding the age at which children could consent to marriage. Although children under seven could not 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 (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, fourth 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 engaged—so to speak—in the ceremony.
trend in the law. Within a particular section, other minor artists may be discussed to the extent their paintings reflect or amplify the issues. This article ends with an analysis of two contemporary paintings that focus on the subject of the legal aspects of marriage.

II. 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 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

28. See generally Douzinas & Nead, supra note 7. For a comprehensive list of scholarship on the broader issue of law and aesthetics, see Heather Hughes, Aesthetics of Commercial Law—Domestic and International Implications, 67 LA. L. REV. 689, 691 n.7 (2007).

29. The law and literature movement also has a short history, yet it predates 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).

30. It is 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 its distance 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." DOUZINAS & NEAD, supra note 7, at 1 (citing Bleistein v. Donaldson, 188 U.S. 239, 251 (1903)). In writing of Holmes’s decision and the tension between art and law, Douzinas 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. Id. Holmes’s purpose behind his statement that law should not concern itself with aesthetic matters was to create a prophylactic measure to prevent courts from stifling creativity. Id. While courts still cite Holmes’s 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, 817 (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. DOUZINAS & NEAD, supra note 7, at 203-04. Moreover, it would also be incorrect to say that law lacks an aesthetic. Much has been made of the possible aesthetic qualities of jurisprudence—that is, 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 L.J. 2051, 2052 (1987). As visual imagery has grown more important in our society at large, aesthetic matters have infiltrated the routines of our legal institutions. See generally Richard K. Sherwin, Neal Feigenson & Christina Spiesel, Law in the Digital Age: How Visual Communications Technologies are Transforming the Practice, Theory and Teaching of Law, 12 B.U. J. SCI. & TECH. L. 227, 227 (2006).
ways in which political and legal systems have shaped, used, and regulated images and art.\textsuperscript{31} Courthouses are replete with angels, gods, demigods, and tablets as part of their 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.\textsuperscript{32} In contrast, the second category of “art’s law” looks at “the representation of law, justice[,] and other legal themes in art.”\textsuperscript{33} This article focuses on the latter study of “art’s law.”

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 the 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.\textsuperscript{34} 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.\textsuperscript{35}

As popular as genre painting was with the public, the tradition of genre painting was considered to be “coarse, undignified and even subversive.”\textsuperscript{36}

\textsuperscript{31} DOUZINAS \& NEAD, supra note 7, at 11.

\textsuperscript{32} Id. 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 complexities of a rule than an image. Sometimes even the rich rhetorical history of the law fails, however, and judges must resort to an image to explain a legal concept. The most famous example of visual jurisprudence was Justice Potter Stewart’s scandalous quote about pornography in \textit{Jacobellis v. Ohio}: “I know it when I see it.” 378 U.S. 184, 197 (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 \textit{Jacobellis}) 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. We point to a picture and say: “That’s what I’m talking about.”

\textsuperscript{33} DOUZINAS \& NEAD, supra note 7, at 11.

\textsuperscript{34} Id. 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, \textit{Painting the Law}, 14 CARDOZO ARTS \& ENT. L.J. 397, 403 (1996).

\textsuperscript{35} 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 \textit{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.

\textsuperscript{36} Id.
The tradition was a radical departure from the predominately religious/historical themed artwork, produced for a millennium beforehand. During the Byzantine period (from approximately 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.\textsuperscript{37}

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 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.\textsuperscript{38}

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 be merely 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 meant to convey an underlying moral message to viewers.\textsuperscript{39} 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.\textsuperscript{40} This theory of "disguised symbolism" was popularized in art history by Erwin Panofsky in interpreting \textit{The Arnolfini Marriage},\textsuperscript{41} 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 con-

\textsuperscript{38} \textit{Id.}
\textsuperscript{39} Franuts, supra note 21, at 1-7.
\textsuperscript{40} \textit{Id.} at 6.
\textsuperscript{41} See Erwin Panofsky, \textit{Jan van Eyck’s 'Arnolfini' Portrait}, 64 BURLINGTON MAG. 117-24 (1934).
veyed a moralistic message. For example, in marriage-contract art, one of
the most common images was that of the dog—a representation of faithfulness and 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.” While art “is always an expression of the historical period . . . that produced it,” the artist also invests a painting with “pictorial intelligence” that transcends the mere depiction of a historical scene.

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.” 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.”

Thus, the debate among art historians continues—often on a painting-by-painting basis. 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 artists meant for a painting of wilting flowers to be an allegory for the transience of life. It is well accepted, however, that the genre paintings of daily life, which are studied here, hold symbolic meaning and an underlying moral message. Building upon Panofsky’s work, historian Eddy de Jongh showed that “Dutch paintings were intended to instruct and delight viewers.” The rich realism of the genre painting may have integrated the symbolic icons into a

42. FRANITS, supra note 21, at 1-7.
43. KLEINER & MAMIYA, supra note 37, at 440 (noting that the dog placed in the Arnolfini Portrait represents fidelity).
44. JAMES A. W. HEFFERNAN, CULTIVATING PICTURY: VISUAL ART AND VERBAL INTERVENTIONS 2 (2006).
45. VAN ALPHEN, supra note 6, at 2.
46. Id.
47. HEFFERNAN, supra note 44, at 3.
48. Id. at 27.
49. FRANITS, supra note 21, at 1-7.
50. Id.
51. Id.
52. Id. at 2.
scene from life, but the artist's intent was to send a moralistic message or encourage a certain virtue.\[53\] 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.\[54\]

Whether marriage-contract art is merely reflective or symbolic is a fairly important distinction for the purposes of this article. 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,\[55\] may merely reflect our culture, traditions, and mores rather than carry a deeper meaning. Yet, art is not necessarily meant to be a historically precise reflection of fact.\[56\] We do not expect our artists to be objective reporters of the scene that 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 aesthetics or polemics. Art can have a more meaningful role than just merely recording the social trends of a time and place. In the case of genre painting, we know from the records of the critics of the era that painters used images for their symbolic significance. At the very least, visual culture studies can help us understand the study of iconography and the meaning and ideology behind imagery.\[57\]

The most forward thinking of art historians suggest that artists are revolutionaries who wrestle with social issues well before philosophers and politicians do. University of California, Berkeley scholar, Ernst van Alphen, argues that art is pre-formative;\[58\] that is, it signals and shapes what is to come in a unique and imaginative way.\[59\] Van Alphen writes that "[a]rt is a laboratory where experiments are conducted that shape thought into visual

\[53\] Id. at 21.

\[54\] MATILDE BATTISTINI, SYMBOLS AND ALLEGORIES IN ART 7 (2005). The symbols, which were used in the fifteenth and sixteenth centuries 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. Id.

\[55\] See JACOBS, supra note 5, at 1.

\[56\] Id. In discussing the impact of history on literature, Professor Jacobs observes that "[e]chroniclers are highly selective" and, "[a]s a practical matter, those laws that have little effect on the social experience of everyday men and women . . . fall into deserved oblivion." Id. (emphasis added).

\[57\] W. J. T. MITCHELL, ICONOLOGY: IMAGE, TEXT, IDEOLOGY 1-3 (1986).

\[58\] VAN ALPHEN, supra note 6, at xiv.

\[59\] Id.
and imaginative ways of framing the pain points of a culture."\textsuperscript{60} Art historians have made the "case for the power of art to transform ways in which cultural issues are being conceived."\textsuperscript{61} In other words, art is not just a "historical product" that reflects the mores, laws, and practices of an era.\textsuperscript{62} Rather, art can be a "historical agent" that frames cultural issues in unique and imaginative ways.\textsuperscript{63} Artists achieve this by imbuing a painting with a "pictorial intelligence" — an "intellectual thrust" or point of view — through the use of perspective, iconography, and the choice of subject matter.\textsuperscript{64} Indeed, art is widely accepted as having affected historical, cultural, and political trends by either "reinforcing or challenging cultural values and practices."\textsuperscript{65} 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 just as the culture, laws, and institutions influence the artist.

Some paintings use allegory to communicate a political subtext while other artwork is more overt in its political message. Allegorical examples include Jacques-Louis David's \textit{The Death of Socrates} (1787)\textsuperscript{66} and Peter Paul Rubens's \textit{The Judgment of Solomon} (1615-1617)\textsuperscript{67} where the artists used a historical event that had occurred hundreds of years prior to convey a moral lesson for the political climate of the day. The story of Socrates' choice to become a martyr, rather than escape a politically motivated death sentence, has been the inspiration for many plays, poems, and works of art. Jacques-Louis David, who was involved in the French Revolution, likely painted his dramatic account of Socrates' defiance as a political statement meant to inspire the masses against oppression.\textsuperscript{68} Rubens's account of the biblical story of Solomon's wisdom was also likely meant to be instructive for the ruling classes of his day.\textsuperscript{69} In a more direct manner, the realistic depictions of Norman Rockwell served to humanize abstract legal concepts.

\begin{itemize}
\item \textsuperscript{60} \textit{Id.}
\item \textsuperscript{61} \textit{Id.; see also} Tiefenbrun, \textit{supra} note 29, at 98-100 (arguing that art can serve as restorative justice for victims of crimes).
\item \textsuperscript{62} \textit{Van Alphen}, \textit{supra} note 6, at xiv.
\item \textsuperscript{63} \textit{Id.}
\item \textsuperscript{64} \textit{Id.} at 2-12.
\item \textsuperscript{65} \textit{Kleiner & Mamiya}, \textit{supra} note 37, at xiv.
\item \textsuperscript{66} \textit{Cohen}, \textit{supra} note 35, at 20.
\item \textsuperscript{67} \textit{Id.} at 18.
\item \textsuperscript{68} \textit{Id.} at 20.
\item \textsuperscript{69} \textit{Id.} at 18. 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 the 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. \textit{Id.}
\end{itemize}
for the populace. In *The Problem We All Live With* (1963), the twenty-first-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 walked 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 dealt with subjects of a less monumental nature than political revolutions and the 1960s desegregation of schools in the United States. Yet, this article contends that these modest scenes from the daily life of common people often reflected the Van Alphen concept of art as a preformative indicator of dissonance in societal norms. While many genre painters produced marriage-contract art from the fifteenth to the eighteenth centuries, marriage law and custom underwent significant change due to cultural shifts and the influence of the church. In the fifteenth century, the law of espousals ruled most of Europe and England, and couples need only have spoken vows of marriage 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

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70. COHEN, supra note 35, at 108.

71. Id. In extreme instances, 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 acknowledged experts as Peter Hogg or Lawrence Tribe." Id. at 476. In interpreting the Constitution, Howes suggests that scholars and judges draw upon artistic works and develop "'visual thinking' as opposed to strictly 'verbal thinking.'" Id. at 475.

72. See generally STONE, FAMILY, SEX AND MARRIAGE, supra note 5, at 3.

73. STONE, ROAD TO DIVORCE, supra note 5, at 53. 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. Id.

74. Id. at 55-56.
than unmarried women.\textsuperscript{75} 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.\textsuperscript{76} 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.\textsuperscript{77} Along the way, artists of the day documented, reflected, and commented on the legal customs through their paintings.\textsuperscript{78}

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.\textsuperscript{79} To do so requires both an understanding of the historical context and the meaning of symbolic icons. 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 article begins with the most famous and most controversial painting surrounding the marriage contract—Jan van Eyck's \textit{The Arnolfini Marriage}.\textsuperscript{80} Unlike the other paintings in this survey, \textit{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 grounding is important in order to then proceed to examine other artwork executed during eras when the laws surrounding marriage changed in significant ways.

\section*{III. \textbf{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 \textit{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

\begin{itemize}
  \item \textsuperscript{75} Shanley, \textit{supra} note 18, at 79-91.
  \item \textsuperscript{76} \textit{Id}.
  \item \textsuperscript{77} \textit{See} Suzanne Desan, \textit{The Family on Trial in Revolutionary France} 62-63 (2004).
  \item \textsuperscript{78} Van Alphen, \textit{supra} note 6, at 2.
  \item \textsuperscript{79} \textit{Id}.
  \item \textsuperscript{80} Aside from the controversy over whether the \textit{Arnolfini} double portrait represents a marriage ceremony, the painting represents, on purely technical and aesthetic standards, a masterpiece and "is probably the most widely recognized northern panel painting of the fifteenth century." Hall, \textit{supra} note 2, at 1.
\end{itemize}
certificate.81 Through the use of iconography, a sixteenth-century art-
history text, and an understanding of the historical and legal context, Panof-
sky postulated that the painting represents the speaking of espousals, the
fifteenth-century canon law, which governed marriage.82 Some scholars
rejected Panofsky’s interpretation and contended that the portrait merely
represents a husband and wife greeting friends who have come to visit;83
while others suggest that the ceremonial aspects of the painting represent
the formation of a betrothal agreement—a marriage contract—rather than
an actual marriage.84 Regardless of whether Van Eyck’s masterpiece de-
picts a marriage ceremony or the betrothal agreement, the painting still op-
erates as an “allegory of the social ideal of matrimony, which brings wealth,
abundance, and prosperity.”85 Such an interpretation would be consistent
with the goals of the Catholic Church when it established the rules sur-
rounding espousals.

81. ERWIN PANOFSKY, EARLY NETHERLANDISH PAINTING: ITS ORIGINS AND
CHARACTER 202-03 (Icon ed., Harper & Row 1971) (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 prac-
tice of medieval marriage.” HALL, supra note 2, at xix. It is not the purpose of this article to
rehash the controversy or to document the many different theories of the painting. Instead, I
will use the Arnolfini painting and various critiques as a foundation for discussing the mar-
rriage laws of the period and how artists used iconography to add meaning to marriage con-
tact art.

82. PANOFSKY, supra note 81, at 202.
83. BERNHARD RIDDERBOS, EARLY NETHERLANDISH PAINTINGS: REDISCOVERY,
84. HALL, supra note 2, at xix.
85. BATISTINI, supra note 54, at 339.
The marriage laws of fifteenth-century Europe were dominated by canon law as set forth by the Catholic Church. The church first began to assert influence in marriage laws during the rule of Constantine, the first Christian Roman Emperor. Prior to that time, marriage laws in ancient Rome 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, certainly not uncommon. In response to the chaos created by private contracting, the church began to influence legal institutions; and by the Middle Ages, Church canon law regulated marriage in Europe.

Under canon law, the freedom to contract became more restrained—virtually prohibiting divorce or annulment though narrow exceptions existed. Canon law consisted of vows known as espousals, which were divided into two categories: (1) spousals de futuro and (2) spousals de præsenti. Spousals de futuro were a promise of marriage in the future, as in “I will take thee to my Wife.” In contrast, spousals de præsenti were a promise in the present to be married, such as “I do take thee to my Wife.”

One could skip the spousals de futuro altogether and just speak spousals de præsenti to perform the act of becoming married. Whereas speaking spousals de futuro created a promise to marry that could be revoked unless the parties had sexual intercourse—an act that “was taken to imply present consent” and therefore constituted marriage.

Panofsky contended that the Arnolfini double portrait represented a marriage ceremony (i.e., the speaking of spousals de præsenti). According

86. HALL, supra note 2, at 26-34.
87. JAMES A. BRUNDAGE, LAW, SEX AND CHRISTIAN SOCIETY IN MEDIEVAL Europe (1987).
88. Id. at 3, 88. In England, canon law in respect to marriage was known as “spousals" and survived well into the seventeenth century. In the self-proclaimed definitive book of its time, A Treatise of Spousal or Matrimonial Contracts: Wherein All the Questions Relating to That Subject are ingeniously Debated and Resolved, Henry Swinburne defined spousals de futuro as “a mutual promise of future marriage, being duly made between those persons, to whom it is lawful.” SWINBURNE, supra note 27, at 5. 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. Id. at 5-8.
89. HALL, supra note 2, at 50.
90. SWINBURNE, supra note 27, at 8.
91. Id. at 8. The rhetoric of betrothal 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 (2001).
92. SWINBURNE, supra note 27, at 9.
93. STONE, ROAD TO DIVORCE, supra note 5, at 53.
94. PANOFSKY, supra note 81, at 202.
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. 95 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. 96 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.” 97 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. 98

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 visit; 99 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 100—a symbol that painters regularly used in marriage-contract art, sometimes with ironic effect. 101 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. 102 In fact, the espousals system was formed in part as a response to widespread promiscuity. 103 Given that artists were highly influenced by the Christian church through the Byzantine era, it is not surprising that Van Eyck would use symbols consistent with the church’s point of view.

The fruit resting on the windowsill, 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

95. Id. Although other marriage art shows couples 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 sponsalia de futuro rather than sponsalia de praesenti. HALL, supra note 2, at 50.
96. PANOFSKY, supra note 81, at 202.
97. Id.
98. Id. at 202-03.
100. BATTISTINI, supra note 54, at 339.
101. See infra Part V.
102. HALL, supra note 2, at 14.
103. STONE, FAMILY, SEX AND MARRIAGE, supra note 5, at 30.
that the fruit represents fertility.\textsuperscript{104} In highly stylized calligraphy, Van Eyck also signed the panel, “Jan van Eyck was here.”\textsuperscript{105} 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.”\textsuperscript{106}

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.\textsuperscript{107} Some critics suggest that Van Eyck “forged a universal vision of man and woman, their unification, and their place within Christian philosophy.”\textsuperscript{108} Through its marriage laws, the Catholic Church prohibited illegitimate children from inheriting property and sought to reduce the promiscuity that characterized the early Middle Ages.\textsuperscript{109} Catholic theologians sought to emphasize the personal relationship of the married couple that had an emotional and spiritual basis rather than a carnal one.\textsuperscript{110} 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\textsuperscript{111} 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. If marriage was to be ordained by God, then divorce would be unholy and amount to condemnation to hell.\textsuperscript{112} The Catholic Church prescribed that marriage was monogamous and, perhaps most importantly, ruled that marriage could not be dissolved.\textsuperscript{113}

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.\textsuperscript{114} Hall contends that Panofsky’s reading of the painting does not comport with the legal requirements and rituals of the time; and moreover, Hall argues, it is unlikely that the Arnolfinis would have entered into a marriage in this way,

\begin{itemize}
\item \textsuperscript{104} Battistini, supra note 54, at 339. Fruit is also used symbolically in Jan Steen’s 1673 version of The Marriage of Tobias and Sarah (The Marriage Contract).
\item \textsuperscript{105} Hall, supra note 2, at xix.
\item \textsuperscript{106} Id.
\item \textsuperscript{107} Stone, Family, Sex and Marriage, supra note 5, at 30.
\item \textsuperscript{108} Hall, supra note 2, at xix (citing Alistair Smith, The Arnolfini Marriage by Jan van Eyck, Paintings in Focus No. 8 (1977)).
\item \textsuperscript{109} Stone, Family, Sex and Marriage, supra note 5, at 30.
\item \textsuperscript{110} Brundage, supra note 87, at 263-75.
\item \textsuperscript{111} In Christianity, a sacrament is an outward action, such as marriage or baptism, which creates a spiritual union between a human and God leading to salvation. Alister E. McGrath, Christian Theology: An Introduction 421-24 (2001).
\item \textsuperscript{112} Brundage, supra note 87, at 273.
\item \textsuperscript{113} Id. at 263-75.
\item \textsuperscript{114} Hall, supra note 2, at 49.
\end{itemize}
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 afforded to officially sanctioned legitimate marriages performed before a priest or notary and valid but illegitimate clandestine marriages—those where vows were 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 it 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 presenti in front of

115. Id. at 49.
116. Id. at 24-26.
117. Id.
118. 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. STONE, ROAD TO DIVORCE, supra note 5, at 56-58.
119. BRUNDAGE, supra note 87, at 362.
120. "Clandestine marriage" was the legal term of art for marriage that conformed with espousals, but which were not conducted publicly or with a reading of the banns. BRUNDAGE, supra note 87, at 361.
121. Id. at 362.
122. Id. at 499.
123. HALL, supra note 2, at 31.
124. BRUNDAGE, supra note 87, at 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 263-75.
125. HALL, supra note 2, at 24-33.
two witnesses before the formal ceremony anticipated by the betrothal agreement. Thus, a clandestine marriage was still valid and, therefore, one that could not be dissolved, though still considered illegitimate and socially unacceptable, especially for the moneyed classes.

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. 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. 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 joining of hands was meant to show consent between the parties, whereas Van Eyck portrayed the woman's hand merely resting in that of the man.

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 de futuro. 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.

Hall's thesis that the Arnolfini double portrait does not represent a marriage ceremony is supported by the absence of two other traditional

126. BRUNDAGE, supra note 87, at 498.
127. HALL, supra note 2, at 24-25.
128. Id. at 31.
129. Id. at 33-47.
130. HALL, supra note 2, at 34-47.
131. 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 as a resting place for the woman's hand. Id.
132. Id. at 67-83.
133. Id. at 69.
134. Id. at 83.
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 on 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 long as the proper words had been spoken in the present tense when two witnesses were present—Hall contends that the couple’s clothes and the richness of their surroundings suggest that the couple 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. 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

135. Hall, supra note 2, at 52-55.
136. Id. at 59-60.
137. Brundage, supra note 87, at 263-75. Rituals, ceremonies, and formal dowry agreements were not required to form a union; however, Catholic theologians found all those things desirable because, at the very least, they helped establish that consent was present. Id.
138. Hall, supra note 2, at 105-06.
139. Id. at 94. Hall takes exception to the theory that Van Eyck’s work forged a universal vision of man and woman, their unification, and their place within Christian philosophy. See id.
140. Stone, Road to Divorce, supra note 5, at 55-56.
141. Id. at 55.
142. Stone, Family, Sex and Marriage, supra note 5, at 32.
143. Id. at 35. In England, parsons imprisoned for bad debt in the Fleet Prison ran a brisk business in forged marriage documents, 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
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 ceremonious 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, scholarship has shown that it was common for the 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 spoken before the birth of the child.

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144. Delapoor Downing's painting, *Marriage in Fleet Street* (1898), memorializes the mixing of upper and lower classes in the Fleet Street marriage market. Here, an aristocrat, better dressed than his bride, approaches the desk of the Fleet Street parson as if it were an altar. The lower class bride clings to her catch, perhaps out of affection or perhaps to close the deal before he sobered up and changes his mind. An even lower class woman with a low cut bodice leans forward enticingly and looks in envy at the other woman's fortune. Good cheer abounds, but the occupants of the room, as well as the room itself, indicate a lower class than the clientele. A curtain hangs askew and an overturned tankard on the floor behind the clerk indicates that the groom and his best man are not the only ones who have been drinking. Downing's mixing of social classes in his artwork reflects reality.


146. Stone, *Family, Sex and Marriage*, supra note 5, at 32.

147. James Charles’s *Signing the Marriage Register* (1896) and Edmund Blair Leighton’s *Signing the Register* (ca. 1853-1922) are both part of the Bridgeman Art Library, London. Though both paintings were completed in the late nineteenth century, I include them here as representative of a legal requirement that became a significant and sentimental moment captured by artists.

148. Hall, supra note 2, at 105-06.

149. See generally Hall, supra note 2, at 105-06 (discussing the depiction of pregnant virgins and the heavy, excessive style of dress during that period).

150. Yalom, supra note 91, at 113.
pens, of course, sex often precedes even the betrothal agreement, which leads us to the next painting in this survey.

IV. PRE-CONTRACTUAL SEX AND THE LAWYER AS PROBLEM SOLVER

While the Arnolfini double portrait celebrates the sanctity of marriage, Jan Steen's *Signing of a Marriage Contract* represents a different reality for many Renaissance women—an unwanted pregnancy and the reluctant suitor.¹⁵¹ According to court records, the delicate dilemma was common enough.¹⁵² Pregnant women routinely brought suit against a lover alleging that he had spoken the words of spousals *de futuro* before sex, thereby forming a legal relation. As to the enforceability of spousals *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."¹⁵³ Theoretically, if spousals *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 couple had agreed in the present tense to marry.¹⁵⁴ Given the patriarchic control of the institutions, it is 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.¹⁵⁵

¹⁵². See BRUNDAGE, supra note 87, at 543-44.
¹⁵³. *Id.* at 355.
¹⁵⁴. STONE, ROAD TO DIVORCE, supra note 5, at 53.
¹⁵⁵. *Id.* at 77.
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 on the center of the painting. The gestures and focus of the supporting players draw the eye towards the two main actors in this comic drama. The weeping comes not from joy of 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 angrily shakes his fist at the young man 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. 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 property 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 the 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 unattended, 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 a notary/lawyer as a problem solver.

In stark contrast to 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 acting 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 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 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

160. HALL, supra note 2, at 59.
161. Id. at 59-60.
162. In 1279 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.” ROBERT I. BURNS, S. J., JEWS IN THE NOTARIAL CULTURE: LATINATE WILLS IN MEDITERRANEAN SPAIN 1250-1350 (1996), available at http://www.escholarship.org/editions/view?docId=ft429005nj&chunk.id=s1.2.7 &toc.depth =1&toc.id=ch2&brand=ucpress. 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. Id.
163. The “Statute for the Prevention of Frauds and Perjuries” was drafted by Sir Leoline Jenkins and passed by the English Parliament in 1677. Statute of Frauds, 29 Car. 2, c. 3, § 4 (1677). The statute stated: “[N]o action shall be brought . . . unless the 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. 1977).
164. 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.” BURNS, supra note 162. The notary was more than a mere scribe, though the job of notary seems to have developed from that of scribe. Id. 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.” Id.
165. Id. “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.
contracts.\textsuperscript{166} 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.\textsuperscript{167}

\textit{Signing of a Marriage Contract} may represent 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.\textsuperscript{168} The Calvinist reformation of marriage laws spawned a new set of civil law rules but “retained the traditional Catholic canon law definition of the formal betrothal or engagement . . . as the first step to marriage.”\textsuperscript{169} Dutch civil law, however, required “far more stringent formal requirements for the betrothal” than the simple spousals \textit{de futuro} of canon law.\textsuperscript{170} 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.”\textsuperscript{171} Interestingly, the Dutch allowed either the state or the church to “certify and solemnize the marriage, leaving the choice of forum to the parties.”\textsuperscript{172} \textit{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 had to be met before marriage actually occurred under Dutch civil law, including the reading of banns—an announcement in church for three consecutive Sundays\textsuperscript{173} that the couple was to be wed—in order to give notice to any other interested party.\textsuperscript{174} Given the time constraints of the readings of the banns, as well as the “stiff fines” that would result from a violation of the rule, the agreement here was likely a betrothal rather than an actual wedding ceremony.\textsuperscript{175}

The partygoers entering the room in \textit{Signing of a Marriage Contract} suggest an amicable end to the chaos—that the 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

\textsuperscript{166} Id.
\textsuperscript{167} MARTHA HOWELL, \textit{THE MARRIAGE EXCHANGE: PROPERTY, SOCIAL PLACE, AND GENDER IN CITIES OF THE LOW COUNTRIES,} 1300-1550, at 79-80 (Catherine R. Stimpson ed., 1998). The form might differ depending on the social class of the betrothed. Id. at 80.
\textsuperscript{168} JOHN WITTE, JR., FROM SACRAMENT TO CONTRACT 128 (Don S. Browning & Ian S. Evison eds., 1997).
\textsuperscript{169} Id.
\textsuperscript{170} Id.
\textsuperscript{171} 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.
\textsuperscript{172} Id. at 129.
\textsuperscript{173} WITTE, \textit{supra} note 168, at 128.
\textsuperscript{174} Id.
\textsuperscript{175} Id.
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 of, 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.176

Steen, like Van Eyck, used symbolism to convey “a deeper message within the superficial image.”177 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 in 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.178 Here, the placement of the yoke on the floor, out of reach 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.”179 In this context, genre painters used the broken yolk to represent 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.180 The French painter, Greuze, was likely influenced by Dutch painter Frans van Mieris’ *Broken Eggs* (second half of the seventeenth century).181 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.

177. BATTISTINI, supra note 54, at 6.
179. BATTISTINI, supra note 54, at 133. The egg could represent much more than just simply human birth, such as the creation of a philosophy or inner enlightenment. Id.
181. Id. at 14. Frans van Mieris’s *Broken Eggs* hangs in the Hermitage Museum in St. Petersburg, which is also where Jan Steen’s *Signing the Marriage Contract* is located.
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.'”

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. If the woman became pregnant, however, then a wedding in the church must have occurred 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 matrimony with thee, if thy father consent.”

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182. In Nicolas Maes’s *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.” FRANITS, supra note 21, at 52.
183. Id.
184. STONE, FAMILY, SEX AND MARRIAGE, supra note 5, at 30.
185. See YALOM, supra note 91, at 113.
186. See id.
187. Id.
188. Id.
189. Id.
191. STONE, ROAD TO DIVORCE, supra note 5, at 53.
with modern conditional contracts, if the condition is not met there is no duty for a party to perform. If the condition is fulfilled, however, 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 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 property or proof that one of the parties had enough wealth to go forward with the marriage.

Sex outside of marriage was not an uncommon subject in seventeenth-and eighteenth-century art, but it did not 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. The first engraving, Le Verrou (The Bolt), was of a painting done by famed Rococo artist Jean-Honoré Fragonard. Le Verrou 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 forming a pendant. The painting that Blot used to make his engraving, Le contrat—La promesse de mariage, is not attributed directly to Fragonard, but it is consistent with the themes that Fragonard embraced and used in works he painted with Marguerite Gérard, his student and collaborator. 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.

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

193. Id. § 84 cmt. d.
195. Houlsbrooke, supra note 190, at 57-58.
198. Id.
199. Id.
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—the legal promise to marry—rather than the actual marriage that the artist uses to 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.

V. DOWRIES: FOR LOVE OR MONEY?

One pervasive theme within many marriage contract paintings is the importance given to 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 paintings by depicting the negotiations of the marriage settlement and contrasting it with the love—or lack thereof—between the soon to be wedded couple. Given the few rights accorded women during this period, having parents who negotiated favorable terms for their daughter in the marriage contract was more of a virtue than a vice.

The tension between a marriage for the purpose of wealth transfer and 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; 1671-1673) celebrate marriage as a sacrament, and, through that holy celebration, reject 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. Whereas Jean-Baptiste Greuze’s L’Accordee 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 focuses principally on these three artists, though other painters from the period will be commented on within the context of the individual analyses.

200. YALOM, supra note 91, at xiv.
201. HALL, supra note 2, at 16.
202. See generally HOWELL, supra note 167.
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).*\(^{203}\) 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.”\(^{204}\) 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.\(^{205}\) Steen likely painted the second version to give the subject matter more of a biblical framework.\(^{206}\)

More important than the paintings’ classification as a historical religious painting is the marital 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.\(^{207}\)

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203. *Chapman et al.*, supra note 176, at 247. One of the paintings was done in 1667-1668, and is now located at Herzog Anton Ulrich Museum in Brunswick, Germany. *Id.* The latter painting was painted in 1671-1673 and hangs in the Fine Arts Museums of San Francisco, California. *Id.*

204. *Id.* at 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 calls her mother and tells 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. *See Tobit* 7:11-16 (The New Jerusalem Bible).


206. *Id.*

207. *Id.* at 205.
In the 1671-1673 version of the painting, symbols of fidelity 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 cannot 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 the 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 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 and that she is provided for in the case of abandonment or death of Tobias.

208. Id. at 345.
209. BATISTINI, supra note 54, at 339.
210. Id. An orange could arguably be a substitute for an apple; a scriptural reference to the fruit of the Tree of Knowledge that led to the downfall of man, and when the orange is in the hands of an infant representing Jesus, that depiction suggests the child’s future role as a redeemer of mankind’s fall. JAMES HALL, DICTIONARY OF SUBJECTS AND SYMBOLS IN ART 30, 229 (Icon ed., Harper & Row 1974).
211. BATISTINI, supra note 54, at 339.
212. CHAPMAN ET AL., supra note 176, at 246-47.
213. Id.
Understanding the feminist critique of these images requires an understanding of the historical legal context. As with most contracts, the centerpiece of the marriage contract was economic in nature.\textsuperscript{214} 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 inheritance rights of any children, and protect the marital estate.\textsuperscript{215} 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,\textsuperscript{216} brideprice, bridewealth, or indirect dowry.\textsuperscript{217} The direct dowry was the contribution by the bride’s parents to the newlyweds.\textsuperscript{218} Given the laws of coverture, the daughter had little to no control over the actual property.\textsuperscript{219} The dower was a common law legal right of the wife to a life estate in the property of her husband upon his death.\textsuperscript{220} 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.\textsuperscript{221}

Dowries were commonplace and the subject of much negotiation.\textsuperscript{222} The dowry served multiple purposes, including giving the newlyweds an

\textsuperscript{214} BRUNDAGE, supra note 87, at 37.
\textsuperscript{215} HOWELL, supra note 167, at 37.
\textsuperscript{216} “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. JACK GOODY, THE DEVELOPMENT OF THE FAMILY AND MARRIAGE IN EUROPE 242-43 (1983).
\textsuperscript{217} 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 because “brideprice” carries a connotation of purchase. In the twentieth 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. Id. at 240-42. 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 agree that large gifts from the groom were significantly reduced by the sixteenth century. With that said, the morning gift was still customary in the lowlands during this period. HOWELL, supra note 167, at 197-98. For purposes of this article, I will use Professor Goody’s terms—direct and indirect dowry.
\textsuperscript{218} GOODY, supra note 216, at 242.
\textsuperscript{219} HOWELL, supra note 167, at 116.
\textsuperscript{221} See generally HOWELL, supra note 167.
\textsuperscript{222} 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. In order to form the marriage, the dowry was not a legal requirement under Roman law—which European and English law is rooted—since the centerpiece of a valid marriage was consent. BRUNDAGE, supra note 87, at 37. The marriage contract, however, specifying the dowry, as well as other rituals, “constituted vitally important evidence in order to prove consent to marriage.” Id. at 34. In fact,
economic foundation to build a family, providing a wealth transfer to daughters outside of bequests through a will, and providing 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 of 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 of years, though the first installment would occur "before the bride moved into her husband's house." The husband controlled how the dowry was spent or invested, yet the husband was also expected to contribute the economic basis of the marriage through a "groom's gift."

There is much debate about 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. While wives were described as partners within the marriage contracts, they had little effective say in how wealth might be spent. 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 would die 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 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." Id. at 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. Id.

224. Yalom, supra note 91, at 85.
225. Id.
226. Id.
227. Id.
228. Id.
229. Yalom, supra note 91, at 85.
231. Id.
232. Id. at 30, 222.
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. 233

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. 234 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. 235 After marriage, however, the wife's dower rights could not be reduced by her husband. 236 Moreover, the courts sought to protect widows from coercion by refusing to recognize a wife’s “power to waive her dower interest once she married.” 237 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, if not 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, rights—dower rights during the time period discussed versus common law rights today—are being waived, which might later be regretted.

Like Steen, other genre artists also portrayed mothers as active participants in the drafting and negotiation of their offspring’s marriage contract. The mother takes an active drafting role in Aert de Gelder’s poignant piece, The Marriage Contract (ca. 1670). 238 The mother in the lower right of the painting is as absorbed in the details of the written agreement as the groom is in the bride just left of center in the background. The 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 and away from the business transaction at the table. The mother and notary, however, are painted sharply and distinctly, rooted in the realities of marriage.

233. Id. at 140-43.
234. Lund, supra note 220, at 659. 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 [to] 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.” Yalom, supra note 91, at 8.
235. Lund, supra note 220, at 659 n.2.
236. Id. at 660.
237. Id. at 662.
238. De Gelder's technical precision and choice of subject matter in his marriage contract pieces reveal 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. See Brighton & Hove Museums, http://www.virtualmuseum.info/collections/object.asp?searchText=Gelder&row=0&ckid=45585 (last visited Dec. 8, 2009).
riage—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.

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—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 at the table 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 of 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.

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239. FRANITS, supra note 21, at 51.
240. Id.
241. Children occur in many of the marriage contract paintings, though for different purposes. In Jean-Baptiste Greuze’s *L’Accordée 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.
242. The Le Bas’ engraving was a notable precedent for Jean-Baptiste Greuze’s *L’Accordée de village*. EMMA BARKER, GREUZE AND THE PAINTING OF SENTIMENT 51 (2005).
Not all genre artists presented women at the negotiation table, and the reality is that women's rights in this era actually decreased.243 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.244 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 casts her eyes downward avoiding her daughter’s gaze as if to acknowledge the unsuitability of the match.

Although the oppression of women increased, a more reasoned approach was slowly developing within political philosophy through the writing of John Locke.245 If art is truly pre-formative, as Professor Van Alphen contends, and gives clues as to the “pain points of a culture,”246 then two possible themes emerge from this period. First, that society was becoming less enamored with arranged marriages based purely on wealth transfer and status.247 Second, mothers were sometimes portrayed as actively protecting their daughters’ legal rights lest 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 economics, when viewed in the context of the few rights held by women, it is plausible that the artists meant to portray the 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 do not 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.

243. STONE, FAMILY, SEX, AND MARRIAGE, supra note 5, at 195-98. Through the “legal device of the use to feoffees” some women were deprived of their right to dower. *Id.* at 195.
244. 2 JOHN DENISON CHAMPLIN, JR. & CHARLES C. PERKINS, CYCLOPEDIA OF PAINTERS AND PAINTINGS 292 (Charles Scribner’s Sons 1913) (1885). The painting is in the collection of Rockox House, Antwerp, Belgium. *Id.*
245. STONE, FAMILY, SEX, AND MARRIAGE, supra note 5, at 136, 344-45.
246. VAN ALPHEN, supra note 6, at xiv.
247. STONE, supra note 16, at 8.
VI. 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 that were later reproduced as engravings.\(^{248}\) 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.\(^{249}\) Hogarth was more of a moral essayist and satirist than were the other painters in this survey. He had a social agenda that he wished to push and he did it through his artwork.\(^{250}\) Unlike Jan Steen, Hogarth’s paintings do not suggest an overt religious alternative, but the satire makes the indictment effective.

\(^{248}\) 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 86-87 (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 popularly known as Hogarth’s Act. PAUL TORREMANS, COPYRIGHT LAW 138 (2007).


\(^{250}\) 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 that tortures small animals, who is later caught by authorities and executed for murdering his mistress. 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 L. & LITERATURE 267, 276 (2003).
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 (notice the Earl pointing to himself on the family tree), has run out of cash in the building of a new mansion. An architect looks out the window gazing at the unfinished mansion and making plans for the next phase of building once cash begins to flow again. A well-to-do alderman who wants to join his family with aristocracy enters into a marriage contract wherein his daughter will marry the Earl’s son. The daughter could not 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 children must marry another against their will. The alderman looks over the terms of the contract. The prospective couple is not excited at the prospect.

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. 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. Hogarth uses the mirror, however, to create an allegory to the classical tale of Narcissus in which “the sins of lust, vanity, and pride” convey a “negative . . . character.”

Unlike Steen’s projection of the lawyer as a problem-solver, Hogarth portrays the attorney as a scoundrel. The son’s back is to his future bride, so he misses the lawyer, Silvertongue, flirting with the girl. In a subsequent

253. The Act did require that children under the age of twenty-one 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, parentally-arranged match, by entering into a clandestine marriage. Id. 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.
256. Id. at 138.
257. 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 an exhausted horse to fall and, in turn, the coachman to beat the horse. Jaffe, * supra* note 250, at 267, 275-76.
picture in the tale, we learn that Silvertongue has an affair with the woman after the couple marries.\textsuperscript{258} 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.

Hogarth’s moralistic tale was part of an intellectual and religious movement that rebelled against aristocratic power.\textsuperscript{259} Hogarth was a progressive thinker for his time and embraced the epistemology of Enlightenment philosopher John Locke.\textsuperscript{260} Interestingly, the subject of marriage contracts and the issues surrounding the rights of women were themes within Locke’s \textit{Two Treatises}.\textsuperscript{261} 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.”\textsuperscript{262}

Feminist scholar Mary Shanley notes that the royalists used the patriarchic marriage contract to justify the monarchy’s right to rule unconditionally and irrevocably.\textsuperscript{263} Given the unfortunate state of women’s rights during the era, the marriage contract was a useful analogy for the royalists.\textsuperscript{264} 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.”\textsuperscript{265} 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.\textsuperscript{266} Like the marriage contract, the royalists argued, once the people voluntarily agreed to sovereign rule, the king became

\begin{itemize}
  \item \textsuperscript{258} Hogarth, \textit{supra} note 249, at 54.
  \item \textsuperscript{259} See \textit{Amelia F. Rauser, The Dumb Show: Image and Society in the Works of William Hogarth (review)}, \textit{33 EIGHTEENTH CENTURY STUD.}, Fall 1999, at 141, 141-43.
  \item \textsuperscript{260} Id.
  \item \textsuperscript{261} See \textit{generally} Shanley, \textit{supra} note 18.
  \item \textsuperscript{262} \textit{STONE, ROAD TO DIVORCE}, \textit{supra} note 5, at 52. Marriage and the family have been used as an analogy in political philosophy since Aristotle. \textit{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. \textit{ARISTOTLE, THE POLITICS 8-12} (Ernest Barker trans., Oxford Univ. Press 1995) (ca. 335-322 B.C.E.).
  \item \textsuperscript{263} Shanley, \textit{supra} note 18, at 79-81.
  \item \textsuperscript{264} Id.
  \item \textsuperscript{265} Id. at 81.
  \item \textsuperscript{266} Id.
"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. Once the consent to control the 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." Even well into the nineteenth century, however, 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—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 the marriage contract and respond to the monarchists' contentions that marriage, like the government, was irrevocable. The parliamentarians’ response to the patriarchic hierarchy analogy evolved

267. Id.
268. Shanley, supra note 18, at 80.
269. Id.
270. 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 180-81.
271. STONE, ROAD TO DIVORCE, supra note 5, at 241-42. The conjugal debt finds its genesis in the New Testament of the Bible, though it should be noted that in St. Paul's letter, he states that both husband and wife owe each other the right. 1 Cor. 7:3-4; Dylan Elliott, Sex in Holy Places: An Exploration of Medieval Anxiety, 6 J. WOMEN'S HIST., Fall 1994, at 6, 14. Gratian later wrote that this was one area where "men and women enjoyed equal rights before the law." STONE, ROAD TO DIVORCE, supra note 5, at 241-42. 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. JOHN LOCKE, TWO TREATISES OF GOVERNMENT 230-33 (Peter Laslett ed., Cambridge Univ. Press 1988) (1690). Yet, he also insisted that 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. Id. 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 women are far different than those for men. STONE, ROAD TO DIVORCE, supra note 5, at 242.
272. Shanley, supra note 18, at 79-82.
slowly over time, but culminated with John Locke’s *Two Treatises*.\(^{273}\) 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.\(^{274}\)

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.’”\(^{275}\) 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.\(^{276}\) 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.”\(^{277}\) There would also be obligations of support for 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.\(^{278}\) 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.\(^{279}\) 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.”\(^{280}\) Thus, Locke ultimately deferred to a patriarchic approach by making physical strength the factor that resolved disputes rather than “rational agreement.”\(^{281}\)

\(^{273}\) *Id.* at 87-91.


\(^{275}\) *Shanley*, *supra* note 18, at 88 (citing *John Locke, Two Treatises of Government* (Peter Laslett ed., Cambridge Univ. Press 1988) (1690)).

\(^{276}\) *Id.* at 87-91.

\(^{277}\) *Id.* at 89 (citing *John Locke, Two Treatises of Government* (Peter Laslett ed., Cambridge Univ. Press 1988) (1690)). This obligation aligns with the conjugal debt, though it is safe to say that Locke thought the obligation would be naturally rescinded in the face of violence or force. *Id.*

\(^{278}\) *Shanley*, *supra* note 18, at 88.

\(^{279}\) *Id.* at 89.

\(^{280}\) *Id.*

\(^{281}\) *Mary Lyndon Shanley, Feminism, Marriage and the Law in Victorian England, 1850-1895*, at 11 (1989). In attacking the Royalist’s analogy of the marriage contract to state power, Locke completely rejected the application of the analogy, noting that
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”—were a radical departure from the practices and theory of the day.\(^{282}\) 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, as wealth and prestige in determining a mate.\(^{283}\)

Hogarth’s artwork echoed the anti-authoritarian themes found in Locke’s *Two Treatises*.\(^{284}\) 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 portends 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 transforms the traditional positive symbol of conjugal fidelity into one of forced loyalty by chaining the two well-bred hounds together. Indeed, fidelity becomes a central issue in the series, when Silvertongue is successful in seducing the young wife. What starts out as a farce ends in tragedy for everyone: the old Earl dies of gout; the new Earl discovers the affair between his wife and Silvertongue and challenges the attorney to a duel; the young Earl is shot and killed in the duel and the lawyer is later hanged; the girl returns to her father, who is now 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.\(^{285}\) Some of the painters in Europe tried to copy his  

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success. After *Marriage à la Mode*, many painters who were deemed to be making a statement—especially through the use of a marriage contract—were often compared to Hogarth. The increasing availability of the populace to view art through the vehicles of the Paris Exhibition and the wider availability of engravings may have played a role in setting the stage to create support for legislation that changed the marriage laws.

VII. GREUZE: THE CIVIL MARRIAGE CONTRACT

Jean-Batiste Greuze’s *L’Accordee de village* reflects the high point of marriage contract art. In 1761, Greuze created a buzz at the Paris Salon when he unveiled the work to critical acclaim. A young couple, clearly in love, stands before the patriarch of a wealthy peasant family as the bride’s father 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. Greuze 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’Accordee de village* stands for a positive view—where a couple clearly in love receive the blessing and economic support of the bride’s father. Additionally, and perhaps most importantly, *L’Accordee 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 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[ed] social order,” which “reconcil[ed] virtue with prosperity.”

286. See id.
287. BARKER, supra note 242, at 46-64.
288. Id.
290. Id. at 50.
292. Id. at 43.
Jean-Baptiste Greuze, *L’Accordée de village* (1761). Photo credit: © Réunion des Musées Nationaux / Art Resource, NY.\(^{293}\)

\(^{293}\) This piece is located at the Louvre Museum in Paris, France.
In her definitive history of Jean-Baptiste Greuze, art historian Emma Barker uncovers the meaning, symbolism, and historical context of Jean-Baptiste Greuze’s L’Accordée 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 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 indicating 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 fiancé’s—creating a new bond both literally and figuratively. A single red rose rises from her bosom, 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 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’Accorde de village, was connected with the literary salons through his friendship with Mme. Geoffrin. The ambitious project that Marigny funded gave Greuze the opportunity he needed to do many sketches and preliminary drawings for his masterpiece. Marigny was Directeur-Général Bâtiments du Roi, so

294. Barker, supra note 242, at 46-64.
295. Id. at 50.
296. Id.
297. Id. at 55.
298. Id. at 55-56.
300. Jean Chevalier & Alain Gheerbrant, A Dictionary of Symbols 815 (1994). The placement of a rose at the heart takes on an almost religious significance since the rose in Christian iconography can represent, among other things, the Sacred Heart of Christ. Id. at 813.
301. Barker, supra note 5, at 43 (arguing that Greuze’s moral painting—of which L’Accordée 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”).
303. Barker, supra note 5, at 43.
304. See Edgar Munhall, Greuze the Draftsman 70 (2002).
his unusual involvement in underwriting the young Greuze signaled that this painting had some political and social importance. Although Marigny commissioned the painting for his private collection, Marigny was also a public figure, thus suggesting that Greuze’s painting may not only be considered to be in the Douzinas and Nead category of “art’s law,” but also could be considered to cross 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 this is not to suggest that the government had the same degree of control over Greuze’s painting as it would in the design of art adorning a public building. Given other paintings by Greuze with similar messages, the vision is clearly the artist’s; however, the influence and support of a public figure like Marigny suggests that *L’Accordée 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 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 “[m]an was/is born free, and everywhere he is in chains. One who believes himself the master of others is nonetheless a greater slave than they.” Rousseau argued that the social contract ideally “substitutes a moral and lawful equality . . . so that however unequal in strength and intelligence, men become equal by covenant and by right.” Rousseau’s solution was a new social contract in which individuals joined together in a

305. A superintendent of the buildings of the king and therefore in charge of, among other things, the artwork in the king’s palaces.
307. Id.
308. DOUZINAS & NEAD, supra note 7, at 11.
309. BARKER, supra note 242, at 46.
310. Id. at 46-47.
312. Id.
313. Id. at 46.
314. Id. at 68.
collective democracy to sublimate their will in favor of the common, democratic good.315

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.316 Sensibilité might be thought of as the emotional expression of the ideas expressed by Locke and Rousseau. In literature and drama that convey sensibilité, deep emotion is expressed in order to uplift virtue before materialism.317 The movement was secular in nature and expressed sentiment for simpler times.318 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 of the flourishing sensibilité novels.319 A few months before the Paris Salon debut of L’Accordée de village, Rousseau published Julie ou la Nouvelle Héloïse, which was a best-seller, and signaled a high point for the “literary phenomenon of sensibilité.”320

The phenomena of sensibilité set the stage for the debut of L’Accordée de village. In 1761, the Paris public was ready for Greuze’s simple tale of sentimentality and virtue.321 Greuze’s powerful backers managed the rollout and critique in order to insure success.322 It has been speculated that the backers delayed the debut at the Paris Salon in order to build up anticipation.323 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.324 Assuming for the moment that Greuze’s powerful backers did have a social and political agenda, was a painting and the Paris Salon really the right tactic in pushing the agenda? 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.325

315. See id.
316. BROOKNER, supra note 289, at 1.
317. Id. at 36.
318. Id. at 1-3.
319. Id. at 16-17.
320. BARKER, supra note 242, at 46.
321. Id.
322. Id.
323. Id. at 46-48.
324. THOMAS E. CROW, PAINTERS AND PUBLIC LIFE IN EIGHTEENTH-CENTURY PARIS 147 (1985); Thompson & Fahy, supra note 180, at 21.
325. CROW, supra note 324, at 2-4. In Paris, the theater was more accessible to the larger population than was 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
In fact, the rollout 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.\footnote{KLEINER & MAMIYA, supra note 37, at 808.}

It was not just the appeal of naturalism and sentimentality, however, that drove the crowds to see \textit{L’Accordée de village}. The piece stands out as an excellent example of eighteenth-century genre painting. Professor Barker recounts that \textit{L’Accordée de village} has a “great physical presence”\footnote{BARKER, supra note 242, at 49.} 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.”\footnote{Id. at 52.}

The painting is divided in half. On the left side is a predominantly female side that is drawn with “pale tones and curving contours.”\footnote{Id. at 52.} \textit{[M]other and sister who cling tearfully to the bride to remind us that the happy event will create a gap in the family circle.}\footnote{Id. at 52.} A child feeds the chickens in the foreground. From an iconological point of view, the birds represent a traditional symbol of fertility.\footnote{KLEINER & MAMIYA, supra note 37, at 468.} In contrast, the predominantly male side uses tones and colors that are mostly dark, and the lines are sharp and angular.\footnote{Id. at 52.}

Within the male group, the mood is more serious and business-like though not without emotion.\footnote{See BARKER, supra note 242, at 53-56.} The father and new son-in-law bond with one another as well. The young man listens seriously as the older man pontificates and both men are clearly moved by the moment.\footnote{Id. at 52.} 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.\footnote{Id. at 52.}

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 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.\footnote{Id. at 52.}
father from his daughter. Although the daughter is a party to the contract, she essentially has no power and her husband will control her dowry. She has no legal personality since she is just passing from the control of her father to the control of her new husband. While the very subject of this painting perpetuates the patriarchal family structure, the emphasis on virtue suggests that the patriarchal model will work 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.

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 him 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. Thus, one reading of Greuze’s painting would suggest that it is a 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 does not 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. 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. Although there are emotional bonds between the young couple, the point is

336. *Id.* at 49.
337. *Id.* at 55-56.
339. *Id.*
342. *Id.* at 55-56.
343. *Id.* at 54.
344. *Id.* at 55-56.
345. *Id.*
347. *Id.*
348. *Id.* at 55-56.
made that the family is also an economic unit.\textsuperscript{349} Professor Barker contends that the good father is fulfilling his duty by providing capital to help his daughter and son-in-law to establish their new life together.\textsuperscript{350} Although ultimately the scene depicted in \textit{L'Accordée de village} is patriarchic, the general tenor comports with Rousseauean and Lockean notions of a social contract.\textsuperscript{351} 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{352}

To the extent that the family is an allegory in \textit{L'Accordée 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 do not 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{353} According to Lakoff, the family metaphor is still very strong in political discourse.\textsuperscript{354} Conservatives follow a "strict father model" where a dominant and strict father is the metaphor for the government, and citizens are the children.\textsuperscript{355} The government's role is that of the father; to teach its children to be fiscally responsible and moral. To the extent that the children behave and grow up to be responsible adults—good citizens as defined by the dominant government—then the father stays out of their lives since they are not behaving like children.\textsuperscript{356} 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.\textsuperscript{357} While the modern day family metaphor is far different from the debate during the Enlightenment, the fact that the family as metaphor is still with us suggests a surprising resilience.

\begin{itemize}
\item \textsuperscript{349} \textit{Id.}
\item \textsuperscript{350} \textit{Id.}
\item \textsuperscript{351} Barker, supra note 242, at 55-56.
\item \textsuperscript{352} \textit{Id.} at 56.
\item \textsuperscript{353} George Lakoff, \textit{Moral Politics} 3-5 (1996).
\item \textsuperscript{354} \textit{Id.}
\item \textsuperscript{355} \textit{Id.} at 12.
\item \textsuperscript{356} \textit{Id.} at 33.
\item \textsuperscript{357} \textit{Id.} at 108-09.
\end{itemize}
The notary/lawyer does not come off well in L’Accordée de village. He scowls and looks with mistrust at the young groom holding the purse. Barker suggests that the figure represents “authority that seeks power for its own sake.” Although Diderot described the notary as a “crafty haggler,” he added that the notary was “a beautiful figure” who was also listening to the advice being given to the new son-in-law. The notary is the only male who has not taken off his hat—a tricorn that he wears to denote that he holds an official office. Interestingly, Greuze placed the most politically powerful man in the room at an inferior position within the painting. Placed at the lower right, the notary is physically lower than the others—a suggestion by the painter that the legal authority is of less importance than the action at the center. 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. 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.”

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 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 the 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

358. Barker, supra note 242, at 55.
359. Id.
360. Munhall, supra note 304, at 82.
361. Id.
362. Id.
363. Rousseau, supra note 311, at 128.
364. Id. at 131.
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. 368 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. 369 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 and privacy in the ordering of personal relationships,” clarify the expectations of the parties, create a “[n]ormative [b]lueprint for [b]ehavior,” and legitimize nontraditional relationships, such as those between same-sex couples. 370

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.” 371 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 Hogarth’s pieces. 372 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; 373 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. Greuze sets up a more Rousseauean, 374 idealized, and virtuous setting, however, 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

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368. Id. at 54.
369. See Martha Albertson Fineman, The Neutered Mother, the Sexual Family and Other Twentieth Century Tragedies 2, 12, 199, 227 (1995).
373. Munnall, supra note 304, at 84.
374. Thompson & Fahy, supra note 180, at 40.
of corruption in society." In particular, Rousseau wrote that "the dissolution of morals, the necessary consequence of luxury, brings with it in its turn the corruption of taste." Consequently, in his own art, Rousseau sought to "inculcate virtue by presenting models of right conduct which, rather than discouraging, were accessible and uplifting." Professor Barker concludes that not only did L'Accordée 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.

While Greuze's painting may not have had the direct commentary that Hogarth had, the use of a more egalitarian marriage contract, naturalism, and homespun virtues foreshadowed a movement and laid a foundation for an emerging French artistic tradition of politically-motivated art. In Representations of Revolution, Professor Ronald Paulson recounts how Jacques-Louis David, an artist with ties to the leadership of the French Revolution, had created pre-Revolutionary classical paintings that "anticipate[] the Revolution as it in fact developed" or, in the words of Professor Van Alphen, were "pre-formative" of political and social change. In Jacques-Louis David's Lictors Returning to Brutus the Bodies of His Sons (1789), the acknowledged artist/revolutionary painted a classical allegory to the French Revolution in which the successful revolutionary becomes the governor who must now make difficult decisions in order to rule. In order to keep the peace, Brutus, as Rome's consul, commanded that his own sons be executed. As an allegory, David expressed the conflicting emotions of divided loyalties as France was on the eve of the revolution.

Jacques-Louis David's pre-formative paintings also include The Oath of Horatii (1785) and The Death of Socrates (1787). In his later, post-Revolutionary paintings, David painted the still famous Oath of the Tennis Court, The Coronation of Napoleon, and The Distribution of the Eagle Standards. Greuze was likewise pre-formative. Like David, he had ties to the revolutionary intelligentsia. Greuze's connection to Rousseau is fairly significant

377. BARKER, supra note 242, at 53.
378. Id. at 63-64.
379. PAULSON, supra note 365, at 31.
380. Id. at 30-31.
381. Id. at 33. Paulson stops short of suggesting that David had a hidden "subversive, antigovernmental message" in his painting. Id. at 29. He does acknowledge, however, that David was "an artist politician" if not a "political activist." Id. at 31.
382. COHEN, supra note 35, at 20.
383. PAULSON, supra note 365, at 34.
since the philosopher’s writings are credited with fomenting the revolution.\(^{384}\)

Did *L’Accordée de village* help spark the French Revolution? Clearly not. No other painting in this survey, however, 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.\(^{385}\) 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’Accordée de village* helped set the stage for the development of discontent.

VIII. NINETEENTH AND TWENTIETH CENTURY COMPARISONS

While *L’Accordée de village* marked the high point of marriage-contract art, it was far from the last painting on the subject. 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.\(^{386}\) The thematic trend, however, dissipated over time, and twentieth-century artists did not approach the subject of the marriage contract in the visual arts anywhere near the interest of Renaissance and Enlightenment painters. One twentieth-century piece that evokes 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.\(^{387}\) The picture appeals to the sentimentality of the time in which it was painted: a couple seeks to join together 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 dowry. 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.

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384. *Id.* at 3.
386. A stunning example of marriage contract art from the Romantic Movement is Guillaume Bodinier’s *Marriage Contract in Italy* (1831).
The painting is appealing for the same reasons that Greuze’s *L’Accordée de village* was successful—the sentimentality expressed in marriage as an expression of love resonates with nearly everyone. 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’Accordée de village*. As Rockwell was likely 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 conveys a sense of home and comfort. The casual appearance of the office and the kindly justice of the peace give a sentimental feel that very likely appealed to the 1950s post-war mentality that was in the middle of producing the baby boom generation.

One aspect 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. Rockwell’s piece does not illustrate how far marriage law has advanced since the eighteenth century; rather it shows how far we 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, or at least is ambiguous. 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 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 appear almost horse-like with hoof-like feet. 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 of the cubist tradition, at the top of the painting are two black dots. These dots could be seen 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. The stockings are colorful, almost paisley. 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.

IX. 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 in which an underlying tension exists between a libertarian notion of freedom of contract and a paternalistic influence of the state to regulate and protect. The policies surrounding marriage involve a 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, the 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 was probably negligible, the increasing ability of the populace to view art through the vehicles of the Paris Exhibition and the wider availability of engravings may have played a role in setting the stage for the revolutions to come.