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Milton's Natural Law: Divorce and Individual Property

Michael Komorowski

In imagining Adam and Eve's marriage in *Paradise Lost*, Milton, as has long been realized, drew heavily on the ideal of companionate marriage that he had developed in his divorce tracts. With a disastrous marriage of his own and a political and religious atmosphere charged by contentious calls for resistance to authority, Milton sent his divorce tracts of 1643–45 into an ideological fray much larger than their immediate subject would suggest. Eventually, Milton found his way to a justification for divorce in the natural law by promoting a natural freedom of individual conscience that would become the trademark of his polemics. In *Tetrachordon* (1645), he argued that marriage joined two parties so that each would be a "help meet" to the other. Marriage was best understood as an "outward good," a means to companionship and communal holiness, that should be entered into and disengaged from according to the dictates of conscience (YP 2:665).¹ Milton accordingly formulated marriage in *Tetrachordon* as a contractual bond, much like ownership of property. In *Paradise Lost*, marriage is the only such contract that Adam and Eve can freely enter and freely leave, and the narrator fittingly describes it as "sole propriety /

...of all things common else" (4.751–52).² Marriage removes both spouses "from the community of nature" so that each becomes the exclusive possession of the other (YP 2:665). Only the creation of a better society composed of two "meet helps" could justify this radical appropriation of communal property (YP 2:621). Any marriage that fell short of that high standard ought to be dissolved, Milton claimed. With characteristic boldness, this argument effectively implied that the burden of proof rested with those who defended marriage as indissoluble rather than with those like himself who pointed to the natural logic of divorce.

Milton constructed a theoretical edifice in *Tetrachordon* to support these brave assertions, which depended heavily on an account of the origins of divorce in natural law. Although an appeal to the natural law in the 1640s offered a common strategy for political and religious controversialists to bolster their positions, Milton's version takes an unusual form when pressed into the service of his argument. In defending the right to divorce, Milton read in the law of nature a strong protection of individual agency that allowed for—and even demanded—the constant evaluation of social relationships. Because marriage instituted a form of property ownership, and not an unbreakable bond, it could be dissolved. This idiosyncratic turn allowed Milton to make an impassioned appeal that located divorce in natural law while marriage, by contrast, pertained to the positive law, or those statutes created secondarily to the natural law. While reason revealed the contents of the natural law, only divine or human fiat could promulgate the positive law. Only the acquisition of a "help meet" could be natural, Milton stressed. The marriage contract had allowed spouses to "appropriate" each other, but that form of ownership only held as long as their exclusive proprietary claim to each other facilitated their mutual help and sociability. Once a spouse no longer fulfilled that godly role, the only natural—and therefore just—action was divorce.

When Milton turned to the subject of his epic some years later, his representation of marriage and of the corresponding necessity for divorce under certain conditions offered him a powerful means

to explain the fall of Adam and Eve. The natural law and the first couple's misunderstanding of the limits of that law lie at the heart of their separate decisions to fall. *Paradise Lost* imagines marriage as an outward good, or a form of exclusive property by which one spouse owns the other, and it is because of this capacity for ownership that Adam and Eve are individuals. But while in Eden, they have extreme difficulty viewing themselves and their marriage in these terms. Milton represents Adam and Eve's choice to sin as one arising from the competing claims of the law of nature and what appears to be an arbitrary positive law. This distinction, though, is one that only becomes readily apparent to the unhappy couple after—and as a result of—their fall. Although they seem to distinguish the natural law from God's positive law, they do not understand that the arbitrariness of the positive law prevents them from comprehending it rationally. Both are tempted to assimilate that law within the natural logic of creation with which they are intimately familiar. Their interactions with each other and with the garden around them convince them to transgress the command: Eve reasons that all things are permitted to her in nature while Adam decides to fall because his love for Eve encourages him to believe that their marriage is naturally unbreakable. Both only vaguely understand their actions as decisions that they undertake as individuals.

After discussing Milton's increasing reliance on natural law arguments during the 1640s culminating in *Tetrachordon*, my argument will visit the separation colloquy at the beginning of book 9 of *Paradise Lost* as Adam and Eve attempt to resolve their distinct views of marriage. It is at this point that the competing desires of collective action in marriage and individual choice begin to be felt most strongly. Their decision to work separately for a few hours leads narratologically to the Fall, but does not cause it. Adam and Eve each decide to disobey God's command for different reasons and, I argue, it is their misunderstanding of their individual agency that causes them to sin. One of the consequences of this misunderstanding of themselves is a misunderstanding of marriage. It is because marriage appears to them to be part of the natural law that

they are led into sin. But their marriage represents a unique species of love in Eden that cannot be reduced to natural or rational attraction or to reflexive self-love. Rather, Edenic marriage constitutes a personal possession, a special kind of property, the legitimacy of which is only guaranteed by the possibility of divorce.

Propriety in Marriage: The Divorce Tracts and Natural Law

Although Milton's career-long intellectual commitments to individual liberty, civic virtue, and biblical hermeneutics all suggest that his interest in the question of the civil and religious permissibility of divorce was more than personal, it has been equally clear to several generations of Milton scholars that this topic was one that "the spurre of self-concernment" drove him to address, as Stephen Fallon aptly notes.³ At least since the discovery that Milton was married in 1642 and not 1643 and the recovery of the suggestive and sordid details of the royalist Powell family's financial debts to the elder John Milton, there can be little doubt that Milton wrote in favor of divorce with the farsighted hope that he himself would be first in line to secure one.⁴ These two inspirations for Milton's clamorous publications on divorce are not at such cross-purposes as it may seem. By the time he completed his fourth divorce tract in early 1645, Milton's personal wish to obtain a divorce harmonized with his ostensibly more altruistic commitment to liberate his compatriots from the bondage of maddeningly interminable marriages. This union was greatly aided by Milton's discovery and heavy use of arguments that located an individual's free agency and consequent right to terminate a marriage in the natural law.

Both parliamentarian and royalist arguments for political legitimacy in the mid-1640s increasingly found recourse to the law of nature to buttress their positions. Appeals to a natural, and therefore divine, order of the universe as a justification for either royal or parliamentary supremacy leveled a powerful critique at opposing arguments.⁵ But with just about everyone making appeals to the law of nature, the concept had fast become slippery. Although

it appeared to many that the natural law comprised more or less the secular commandments that God had given Moses (that is, the second table), a new minimalist conception of this law as simply the right to self-preservation was gaining traction. By the time Milton wrote his impassioned antimonarchical treatises at the end of the decade, he had thoroughly imbibed these appeals to the natural law, but it is his divorce tracts of several years earlier that first present sustained natural law arguments. *Tetrachordon* argues that the natural law guarantees everyone the right to determine how best to live according to God's commands. Divorce must therefore occupy a privileged place within the natural law lest an evil spouse lead the otherwise blameless party only farther from God. An indissoluble marriage, no matter how burdensome or sinful, could never have been in the divine plan for aiding humans to live godly lives. Marriage, therefore, must be "not a naturall, but a civill and ordain'd relation," that is, a positive law (YP 2:601). But Milton was initially slow to appeal to these concepts, and his first publications on divorce take a decidedly different tack.⁶

These first attempts at arguing for divorce depended to a large degree on sustained close readings of a very select number of scriptural passages. Milton argued that Jesus' apparent disapproval of divorce could best be understood as a rebuke of the Pharisees (Matt. 19:3–9). To their selective obedience of the law, Jesus responded, "Moses because of the hardness of your hearts suffered you to put away your wives: but from the beginning it was not so." He concludes by appearing to prohibit divorce in all cases "except it be for fornication."⁷ Dismissing these words as a very specific response to the Pharisees, Milton then proceeds to emphasize the Mosaic law governing divorce, Deuteronomy 24:1–2, which allowed the dissolution of marriage for reasons Milton argued had to do with the incompatibility of the spouses.⁸ The extreme precision with which Milton had construed the Gospel passage suggested, however, a glaring logical weakness. If Jesus' words were uttered merely "either to convince the extravagance of the Pharises on that point, or to give a sharp and vehement answer to a tempting question," it becomes difficult to understand the context of Matthew 5:31–32,

which repeats the prohibition and the single exception of fornication to a much broader audience during the Sermon on the Mount (YP 2:282). Milton had been attacked on precisely this point in the anonymous reply to his tract published in November 1644.⁹

Milton, though, appears already to have been refining the evidence for his thesis. The process of near constant revision of his case for divorce in 1644 forced Milton not only to sharpen his arguments but more importantly to reappraise the relationship between the old and new laws, Edenic and contemporary marriage, and the scope of natural law. Much later, Milton would articulate in *De doctrina Christiana* the more radical position, "that the whole Mosaic law is abolished by the gospel" (YP 6:531). In *Tetrachordon*, as he had to a lesser degree in *The Doctrine and Discipline of Divorce*, Milton takes pains to demonstrate that natural law validates the Mosaic law on divorce. "The Statutes of the Lord are all pure and just," Milton writes, "and if all, then this of Divorce" (YP 2:620).¹⁰ With this assertion in mind, he embarks on a 12-point defense of the Deuteronomic divorce law that begins by distinguishing natural from positive (here "ordain'd" and "civill") law:

if Mariage be but an ordain'd relation, as it seems not more, it cannot take place above the prime dictats of nature; and if it bee of natural right, yet it must yeeld to that which is more natural, and before it by eldership and precedence in nature. Now it is not natural that *Hugh* marries *Beatrice*, or *Thomas Rebecca*, beeing only a civill contract, and full of many chances, but that these men seek them meet helps, that only is natural; and that they espouse them such, that only is mariage. But if they find them neither fit helps, nor tolerable society, what thing more natural, more original and first in nature then to depart from that which is irksom, greivous, actively hateful, and injurious eevn to hostility. (YP 2:621–22)

Since marriage is authorized by a positive law, it is impossible that it should infringe upon natural right. Those rights have been guaranteed by the Gospel, allowing Milton to read much of the Mosaic law as a confirmation of natural law. Christ has released believers from slavish adherence to the arbitrary parts of the law, "having cancell'd the hand writing of ordinances which was against us,"

distilling its essence to "the fulfilling of all through charity" (YP 2:587) or, as Milton was to express later, "love of God and of our neighbor" (YP 6:531).¹¹ The homespun names of Milton's hypothetical couples reinforce his central point that true marriage must promote loving companionship and piety, the ends for which it was intended.

In light of this fuller explanation of the natural law, the new trajectory for Milton's argument for divorce becomes clear. *Tetrachordon* deemphasizes the reading that since Christ addresses only the Pharisees in the Gospel prohibition on divorce, the statute in Deuteronomy therefore remains intact. He contextualizes this narrow argument as merely one part of a larger biblical justification for divorce that finds its rationale in the law of nature, given by God in the Mosaic law and then delivered in a distilled form in the Gospel. Clearly, Milton gauged the logical weakness of a position that so narrowly restricted the addressees of Christ's words and perceived that his argument would demand a fuller and more analytical treatment of the relationship between Old and New Testaments.¹²

Tetrachordon is both more wide ranging in its use of sources and broader in the implications of its argument. The four-stringed lyre named in the Greek title joins the four places in Scripture that address divorce to create what Milton supposes will be the harmonious sound of the natural law. But not all of the notes are played equally in his exegesis. James Turner summarizes, "Deuteronomy may be an important support of the edifice of divorce law, but Genesis is its main pillar," although this contrast is far truer of *Tetrachordon* than it is of any previous iteration of Milton's argument.¹³ *Doctrine and Discipline*, especially in its second incarnation of February 1644, had pushed heavily on the more expansive Deuteronomic prescription, even at times appearing to denigrate the relationship between Genesis and the Gospel. Milton, for instance, dismisses Christ's apparent proscription by assaulting the ambiguity of his scriptural citation: "What God hath joyn'd let no man put asunder, is as obscure as any clause fetcht out of Genesis" (YP 2:301). In this formulation, the precision of Deuteronomy supplements the vagueness of Genesis, but in *Tetrachordon*, Genesis

provides a key justification for the conditional legitimacy of marriage: “*therefore* shall a man leav father and mother...and they shall bee one flesh” (YP 2:613; my emphasis). Milton read this crucial verse as evidence that marriage formed a new social relationship between two persons, bound by “love fitly dispos’d to mutual help and comfort of life” (YP 2:613). Genesis describes the consequences of a true marriage, which “cannot either in Religion, Law, or Reason bee bound, and posted upon mankind to his sorrow and misery, but receiv what force they have from the meetnes of help and solace” (YP 2:613). The ideal of “one flesh” cannot be invoked to prevent the dissolution of a failing marriage. Milton insists that “Mariage is not true mariage by beeing individual, but therfore individual, if it be true Mariage” (YP 2:610). Indissolubility is a consequence of true marriage, but not certain evidence of true marriage since it may be imposed artificially. Those who cite Genesis in support of the absolute integrity of marriage have confused cause and effect. It is only natural, then, that distancing oneself from an obstacle to closer union with God must assume priority over any outward attainment of good, even the good provided by a marriage.

The logic of *Tetrachordon* rests on the theological point that God’s covenants last forever and that the secondary law of nature that governed human behavior from the moment of the Fall is unchanging. Despite base desires to sin, human reason can apprehend this secondary law and, by following it, live harmoniously and righteously in civil society. Since marriage exists so that a man’s wife may be “his image and helpe in religious society,” the natural law must allow divorce to redress those situations in which this spousal aid is not forthcoming (YP 2:592). It is because the marriage makes two into one and unites both parties with the entire body of believers that divorce ought to be permitted, for if it were not, those who remain in unfulfilling marriages would sin against the ideal oneness at which the marriage had aimed. In *Doctrine and Discipline*, Milton found a ghoulish image to convey the point as he urged his readers to consider the miserable spouses “instead of beeing one flesh, they will be rather two carkasses chain’d

unnaturally together" (YP 2:326). In *Tetrachordon*, he resurrects the spouses, but reduces them to mere animals who "live as they were deadly enemies in a cage together" (YP 2:599).

Establishing this point, Milton reads Christ's words in the Gospel of Matthew as a justification for divorce. Christ elucidates the Mosaic law in the Gospel so that what appears to be an abrogation of that law is in fact only a refinement. "Moses because of the hardness of your hearts suffered you to put away your wives," he tells the Pharisees, "but from the beginning it was not so" (Matt. 19:8). Arguing that hardness of heart merely refers to the weaknesses inherent in all humans after the Fall rather than to any particular sin, Milton can then contextualize divorce as one law among "the *secondary law of nature and of nations*" (YP 2:661). Because humans had fallen, God permitted this secondary natural law, or law of nations, that allowed warfare, social hierarchies, government, and "propriety to divide all things by severall possession, trade and commerce, not without usury" (661). Had they persevered in their perfect state, this secondary law would have been "most unjust" (661). Since that law included permission for divorce for incompatibility, Milton argued, "we may as well abolish the whole law of nations" were civil authorities to forbid divorce (662).¹⁴ This argumentative thrust required Milton to take a renewed look at the relationship of paradisaical and postlapsarian marital relations and, somewhat surprisingly, to fashion an innovative conception of marriage as a special kind of property.

The nature of that property only becomes clear for Milton as he articulates the character of marriage after the fall of Adam and Eve. A less stringent law governs fallen humans in accordance with their sinful nature: "In the beginning, had men continu'd perfet, it had bin just that all things should have remain'd, as they began to *Adam & Eve*. But after that the sons of men grew violent & injurious, it alter'd the lore of justice, and put the government of things into a new frame" (YP 2:665). The postlapsarian world demanded new relationships between individuals in marriage and, indeed, among all in a community. Milton was able to clarify the means by which marriage created a form of private property only

by considering the legal guarantee for its dissolution. The secondary law of nature “for mans good and quiet, reduc’t things to propriety, which were at first in common,” thereby underwriting the Deuteronomic divorce law (YP 2:625). Milton explains the logical ramifications for marriage when spouses regard each other as property:

While man and woman were both perfet each to other, there needed no divorce; but when they both degenerated to imperfection, & oft times grew to be an intolerable evil each to other, then law more justly did permitt the alienating of that evil which mistake made proper, then it did the appropriating of that good which Nature at first made common. For if the absence of outward good be not so bad as the presence of a close evil, & that propriety, whether by cov’nant or possession, be but the attainment of some outward good, it is more natural & righteous that the law should sever us from an intimat evil, then appropriate any outward good to us from the community of nature. The Gospel indeed tending ever to that which is perfetest, aim’d at the restorement of all things, as they were in the beginning. And therefore all things were in common to those primitive Christians in the Acts, which *Ananias & Sapphira* dearly felt. (YP 2:665)

A spouse, as an “outward good,” is property that has been appropriated by another from the communal property of all. The Gospel calls for a new Eden, “the restorement of all things, as they were in the beginning,” that is, the restoration of the community of nature. But marriage is special since it necessarily requires the appropriation of another; the “outward good” it creates is not one that can be held in common. (What is more, Milton acknowledges frankly, Christians no longer hold much property in common as in the early days, and it makes little sense to apply the letter of the Gospel to a changed world [YP 2:666].) Christians, living after the promulgation of the Gospel, must make certain that any appropriation of another person from the communal property of all is justified by the acquisition of a help meet. Hence, Milton’s focus in this passage on divesting oneself of evil, lest one suffer the fate of Ananias and Sapphira, who retained part of the money they had

received for their land and immediately collapsed dead when Peter confronted them (Acts 5:1–10). Those who remain in a loveless marriage commit the same crime, Milton implies. Marriage is no more than property, “but . . . some outward good.” When spouses are unfit companions for each other, they unjustly withhold their property from the community. As a result, the Deuteronomic law on divorce guarantees the high standard of the Gospel. It ensures that righteous spouses can end their marriages and thereby free themselves of evil as they return the companionship of their partners to the community of all believers.

Marriage is “propriety,” something one owns “by cov’nant or possession,” and it is therefore always incumbent upon both spouses to ensure that this private, exclusive relationship brings real, tangible benefits that could not be otherwise obtained. Milton’s argument implies that marriage, by the very nature of its exclusivity, robs a larger community of companionship; it resembles an appropriation of formerly public lands by enclosure. Nature makes all goods common at first—both property and immaterial benefits such as companionship—and if a compelling reason is required to appropriate any person or thing from nature for exclusive use, so much more obvious would it appear that any private appropriation ought to be relinquished the moment it no longer fulfills its original purpose.¹⁵ Marriage, then, must necessarily pertain to the positive law since it is merely an option for living a holy life, while the natural law guarantees a right to divorce since a loveless marriage always imperils individual piety and communal harmony.¹⁶

The Positive Law of Eden

Tetrachordon leaves no doubt that Milton found the distinction between natural and positive laws his most potent intellectual weapon in asserting his case for divorce. This distinction also proved crucial for his justification of the divine interdiction on the tree of knowledge in both *De doctrina* and *Paradise Lost*. In *De doctrina*, Milton’s yoking together “Of the Special Government of Man before the Fall: Dealing also with the Sabbath and Marriage”

in a single chapter may at first seem odd, but the interdiction, Sabbath worship, and marriage all count as arbitrary, positive laws for Milton.¹⁷ The interdiction and marriage are, additionally, linked by their concern with respect for property (and discussion of these two laws takes up the vast majority of the chapter in question in *De doctrina*). The original sin was, among much else, a sin of theft according to biblical commentaries, and marriage, as we have seen, institutes a form of property ownership. Disobedience to God in the form of eating the fruit violates God's property just as remaining in a loveless marriage misuses a special form of property that allows for companionship and domestic harmony. In *Paradise Lost*, Milton brings this analogy into sharp focus, especially after the Fall, as Adam and Eve suffer the consequences of sin against God and against each other.

In the epic, the first sin contains all sins, not simply or primarily theft; hence, Adam and Eve are "manifold in sin" after their fall (*PL* 10.16).¹⁸ Nevertheless, Milton's explanation in *De doctrina* of God's punishment for the transgression of the divine command figures the Fall as a sin against property. Justifying humanity's inheritance of the original sin, Milton likens Adam and Eve to "a man convicted of high treason, which is only an offence against another man, [who] forfeits not only his estate and citizenship (*fundum aut civitatem*) but also those of all his family."¹⁹ The legacy of their punishment through all generations can be understood by likening the banishment from Eden to the forfeiture of real property. For Milton, the forfeiture of something concrete, the *fundus*, explains the concomitant loss of the abstraction *civitas*.

Milton's thinking in this regard was no doubt indebted to the major republican theorists of the previous century from Machiavelli forward who had held that a republic granted citizenship on the basis of land tenure.²⁰ But he also would have found it necessary to engage with a tradition of scholarship on the natural law both when writing political tracts in the aftermath of the regicide and when composing his epic some years later. In both of these undertakings, Milton strove, like his contemporaries Samuel Rutherford, Anthony Ascham, and most other polemicists, to describe the

original state of human society and its government as reason dictated it must at some very early time have existed. Milton used this strategy to brilliant effect in *Tetrachordon* and *The Tenure of Kings and Magistrates* to argue for the rights of spouses and citizens that had been theirs since time immemorial. In *Paradise Lost*, Milton reflects not only on the legacy of these original rights but also on the first humans' understanding of the freedom that these rights grant to them. Milton takes great care that his Eden should accurately embody a natural law in which respect for property, including the special case of marriage, is at the center of Adam and Eve's relationship with each other and with God.

The preeminent European theorist of natural law of the previous generation was Hugo Grotius, the Dutch humanist who in 1625 published *De jure belli ac pacis* on the rights of nations in an international arena.²¹ Milton had made a point of visiting Grotius in Paris in 1638 during his continental sojourn and quoted his works approvingly at several points in his divorce tracts. Milton would have known (and presumably admired) him as an Arminian and an advocate of religious toleration. For Grotius, the natural law governed human behavior as a necessary consequence of the Creation and not because God explicitly elucidated its precepts. Humans were naturally sociable, and in order to live in society certain indisputable rules of conduct were necessary even if (*etiamsi daremus*), Grotius boldly proclaimed, God did not exist.²² Behind this startling, though conditional, assertion lay his avowed aim to discredit the position that law was nothing more than institutionalized protection of self-interest (*iura sibi homines utilitate sanxisse*) and that therefore no basis existed for universally binding codes of behavior.²³ Where the skeptical tradition had claimed self-interest as the basis of law, Grotius proposed respect for the property of others, and it was from this principle that he could elucidate universal tenets of conduct for individuals and states alike.

Grotius began with the proposition that the innate sociability of humans necessarily required the mutual respect of everyone living in a society. Although property did not exist at the Creation

when humans had little need for the exclusive use of very much of anything, shortly thereafter they began to apply themselves to the artificial improvement of their environment. It was these “various Arts, whereof the Symbol was *the Tree of Knowledge of Good and Evil*, that is, of the Knowledge of Things which one may use either well or ill” that led to the specialization of labor, or “Diversity of Inclination,” as Grotius calls it, and that bred covetousness, avarice, and violence. It was only when nature was improved through human labor that there arose any desire or need to restrict its use. And it was at this point, entirely without intervention by any human or divine legislator, that Grotius located the “Original of Property,” and with it, the law of nature.²⁴ By utter necessity, the natural law instituted a respect for differences among individuals and among states that became more marked with the passage of time as the original primitive equality of all faded into myth. These differences included hierarchical social relations as between master and slave, husband and wife, or parents and children, and Grotius suggested that liberty was best considered as a kind of property since the liberty of an inferior was governed by his or her superior.²⁵ The natural law established a rational guide for social living that, by respecting private property, in turn preserved the liberty of individuals and nations alike.

Grotius’s conception of the natural law was minimalist to the extreme. His works demonstrated a pronounced skepticism about the existence of universal moral truths and instead substituted for these a right of self-preservation that was grounded in self-ownership. It was on this basis that Grotius argued for a limited right to resist temporal magistrates. But Grotius’s links between property ownership—particularly the ownership of liberty—and self-preservation remained hazy for many thinkers during the decade of the English civil wars.²⁶ Anthony Ascham, who may have fought for the parliamentary army during the wars and who afterward was sent abroad by the new government as a diplomat, sought to clarify the issue by recasting the question of legitimate resistance to authority as a simple matter of respecting the natural rights of possession. Ascham warned the Levellers and other

assorted radicals that, although revolutions might "take down the greatest Colossuse's, and whatever else might be ombragious in the excrescencies of Civill Pomp," to abolish or even tamper with the right of private property would violate the natural law.²⁷

Ascham proposes to the Levellers as well as to moderate Independents and formerly sympathetic Presbyterians the organizing and civilizing virtues of property ownership. He sets out to prove two points: first, that only property ownership can guarantee a right of self-preservation, and second, that property ownership has been a crucial part of human existence from the very beginning. On the first point, he posits a state of nature in which the most powerful arrogate property to themselves since no one can impose obligations on others without physical force or the threat of it. The most powerful individuals, from Nimrod to William the Conqueror, owned the most property and prospered accordingly, he notes dryly.²⁸ Secondly, in order to substantiate his account of the beginnings of property, Ascham invents a clever, and as far as I know, original exegesis of the positive law of Eden:

When *Adam* was alone in the Garden of *Eden*, he was in a state of property, for of one tree thereof he might not eat: so that his first sin was a sin against property, and therefore theft, or at least a sin of Ambition by theft; as Ambition ever since is maintein'd by usurping some other thing also which belongs to another. For that reason he hid himself as fearing to be punish't for that theft; as if Gods command Thou shalt not eat, had been Thou shalt not steale. If *Adam* had not had enough without the allowance of that tree, he might have pleaded as *David* did, when he eate of the sacrifice or shew-bread.²⁹

For Ascham, God's installation of Adam as a *dominus* of the entire earth—but for a unique, crucial exception—was to be taken quite literally. God had instituted property rights from the very beginning. If living in Eden necessitated communal ownership of property, as Levellers and assorted radicals had claimed, there could be no dominion and therefore no sovereignty. Adam's recognition of God's sovereignty and of the limits of his own depends on the existence of property. Dominion and sovereignty are distinct but

interdependent concepts. God will not allow his property to be violated, because to do so would be to abdicate his kingship, in effect to admit that something other than a natural right of self-preservation would justify Adam's resistance to his authority. This is absurd, and consequently Adam loses possession of his own land when he steals. By arguing that property was part of the divine intention from the beginning, Ascham demonstrates that the right to rule derived from the possession of land. Since the Parliamentarians now possessed the nation, they possessed a lawful right to rule as well.

Although Ascham's resourceful use of Genesis lends a measure of godly authority to his argument that critics had charged was lacking, his reading of the key event is a hasty one. His myopic focus on Adam misrepresents the element of temptation so crucial to the Fall as it suggests that Adam's ownership of Eden extends to Eve as well since she fails to merit even a casual reference in Ascham's exegesis. According to Ascham, Adam sins while "alone in the Garden of *Eden*," a baffling factual inaccuracy that suggests Ascham was eager to cast more responsibility for the Fall on Adam than most scriptural commentators would allow. Without Eve or the serpent, Adam's self-possession is never in doubt. He is the archetypal contracting subject who freely enters a contract with God and then equally freely breaks it.

In *Paradise Lost*, Adam and Eve's forfeiture of their dominion follows as a necessary consequence of both their failure to respect the divinely ordained limits on their behavior and their misunderstanding of marriage as instituting mutual ownership of each other. As Eve will say, she has sinned against both God and Adam in disobeying the prohibition, but Adam, too, fails to hold Eve and himself to the high Miltonic standards of marriage (10.930–31). Milton, though, differs sharply from the contentions of Ascham and Grotius on the origins of property. If the tree of knowledge can represent God's private property in *Paradise Lost*, it is only because God has explicitly ordained it as something that the law of nature does not govern. For Milton, the tree functions less as a marker of the importance of property itself than it signals God's

sovereignty and his power to differentiate himself from the laws of the natural world that he has created. Milton is adamant, both in *De doctrina* and in *Paradise Lost*, that the command not to eat the fruit can have no basis in natural law. Neither is this command a symbol or a sacrament of God's law as, notably, William Ames and his followers claimed.³⁰ Milton exposes the logical inconsistency of this line of reasoning by pointing out that since Adam and Eve were naturally good it would have been meaningless for God to have evaluated their loyalty to the natural law. God could only have required their adherence to one or more positive laws that imposed an entirely arbitrary restriction in order to test their obedience. Milton, therefore, insists that the fruit is a thing indifferent and God's command not to eat it must be explicit and arbitrary, in other words, a positive law.³¹ Abdiel will tell Satan just before he delivers the first ceremonial blow in battle that "God and nature bid the same," but the relationship between natural law and the prohibition in Eden is clearly more complex (*PL* 6.176).

Milton followed the famed Hebraist and legal scholar John Selden in his argument that the fruit was a thing indifferent, and his understanding of the relationship of reason to the natural law owes much to Selden as well. Selden's extensive work on the rabbinic understanding of natural law asserts that this law is apparent to humans not only by means of their rational faculties, but also via the direct command of God. Selden argues that God must have uttered the commands of the natural law first to Adam and then again to Noah. Subsequent generations could understand this law by means of the *intellectus agens*, or active intellect, by which Selden means the capacity of human reason when aided by divine inspiration to apprehend truth.³² Selden's formulation of natural law contrasts with the Grotian and Hobbesian models, which posit natural law as simply those constraints on behavior that necessarily arise from the desire for self-preservation and, for Grotius, the concomitant need for society. Their reconceptualization of natural law as reason derived from self-interest diverges sharply from older classical and Thomist formulations of the natural law as a series

of objective rational principles that could be drawn up as a list, the most famous of which was, of course, the second table of the law that Moses received on Sinai.³³

Paradise Lost harmonizes these differing approaches to the natural law. God never outlines the precise tenets of the natural law for Adam and Eve since to do so would be redundant according to Milton's theology, but he does explicitly warn them about the fruit. It is this positive law that guarantees that Adam and Eve are free to obey or disobey God. The prohibition governing the fruit, then, can be read as a kind of seed of the Mosaic law: it is an explicit intervention by God that supplements the natural law and, by supplementing it, renders it distinct. While the second table clarified the natural law for the Israelites, the prohibition likewise renders the natural law meaningful in Eden. The tree of knowledge must have been chosen arbitrarily since, had it possessed innate qualities harmful to Adam and Eve, their obedience would simply have resulted from following the natural law. As Genesis makes abundantly clear, God made his creatures naturally good, and mere obedience to the natural law would require no active choice to accept God's sovereignty. Only an object indifferent, which is "something which was in itself neither good nor evil," and which "had nothing to do with the law of nature," could truly test their obedience. Commands governing things indifferent are contained in the positive law (*ius...positivum*), as Milton notes (YP 6:353; CM 15:116).

When Adam recalls for Raphael his first memories, he relates God's solemn interdiction as one piece of knowledge about paradise among many. "I come thy Guide / To the Garden of bliss, thy seat prepar'd," Adam remembers God telling him, and that divine guidance includes both the prohibition as well as an assurance that Adam remains master over the animals and plants (8.298–99). Accordingly, Adam named the animals "and understood / Thir Nature, with such knowledge God endu'd" (8.352–53). The promulgation of the natural law occurs simultaneously with the positive law, as it must if Adam is to have a real choice to sin. Milton hints, then, that the prohibition signals the Seldenic original moment

at which the deity transmits the natural law to humans. Milton's unique perspective on that moment, though, has God utter a secondary, positive law in order for human reason to orient itself properly vis-à-vis the natural law. But Milton's fierce defenses of personal liberty led him toward the Grotian and Hobbesian camp as well, as he represents Adam's conflict before eating the fruit as one between his self-preservation and his natural sociability with Eve.³⁴

The human understanding of the distinction between natural and positive law, though, is not ordinarily of much consequence to Adam and Eve's daily routine while in Eden. In *Paradise Lost*, the first couple takes their cues from the natural world, understanding that God's law is the ultimate origin of all of their actions. At the end of their first day in paradise, Adam tells Eve,

th' hour
Of night, and all things now retir'd to rest
Mind us of like repose, since God hath set
Labor and rest, as day and night to men
Successive. (4.610–14)

He concludes that the prodigious growth of the garden will beckon them to work in the morning but, for the moment, "as Nature wills, Night bids us rest" (4.633). Eve's response here is notorious as a site of Milton's misogyny in the poem, but she simply ratifies Adam's wholesale representation of their daily routine as a logical effect of the dictates of nature, and through nature, God: "what thou bidd'st / Unargu'd I obey; so God ordains, / God is thy Law, thou mine" (4.635–37). Adam expresses the natural law, which is itself a reflection of God's volition. Eve understands that Adam's words, and presumably the natural world that she observes around her, can have no meaning other than what "God ordains," even if her grammar leaves it unclear whether God has ordained that she obey Adam or merely that she has no objection to Adam's logic on this particular point. By conflating God's words with Adam's, Eve leaves little room for distinguishing the signs of nature (and therefore of God) from their own (or God's) arbitrary will.

When we meet the happy couple about to begin their daily labors in book 9, Eve has found a voice with which to assert her own desires even though she never manages to differentiate fully the natural law from the arbitrary promptings of her will. Eve's argument for the division of their labor appeals to the apparent backlog of gardening that awaits them everywhere they turn. She suggests that she understands obedience to nature as entailing more, and harder, work than they might undertake ordinarily:

the work under our labor grows,
Luxurious by restraint; what we by day
Lop overgrown, or prune, or prop, or bind,
One night or two with wanton growth derides
Tending to wild.

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Let us divide our labors. (9.208–12, 14)

Obedience for Eve consists in following the dictates of the natural world around them even though it would be strange for God to have mandated so much work. Adam's rejoinder gently chides Eve for taking their work too seriously and points out that amorous looks are just as natural and reasonable as the labor that they need to perform in the garden:

Yet not so strictly hath our Lord impos'd
Labor, as to debar us when we need
Refreshment, whether food, or talk between,
Food of the mind, or this sweet intercourse
Of looks and smiles, for smiles from Reason flow,
To brute deni'd, and are of Love the food,
Love not the lowest end of human life. (9.235–41)

Although Adam thinks it absurd that they might literally be choked by the garden's growth however torrid—"These paths and Bowers doubt not but our joint hands / Will keep from Wilderness with ease," he argues (9.244–45)—brief separation might actually help to enliven their relationship. This relationship, too, demands a kind of work that Adam reminds Eve is at least as important as their gardening. He suggests that perhaps Eve tires of always

hearing his apparently more sage advice and therefore that "solitude sometimes is best society, / And short retirement urges sweet return" (9.249–50). Adam may find Eve's compulsion to keep busy unsettling and discovers at this point his own introversion as a validation of Eve's argument if not of her reasoning. Perhaps as a result of these mild neuroses, perhaps because the concept of willful, arbitrary action is itself difficult to fathom in Eden, all action appears to Adam and Eve as if governed by the natural law. Eve sees that law at work in the garden's apparent inducement to separate labor, while Adam finds it expressed in the necessary periodic renewal of their marriage. Overgrown pathways offer the natural evidence for Eve, as conversation and smiles furnish the same for Adam. Both suggest, in their own ways, that they understand their work and their separation not as things indifferent but as reactions to the intimate promptings of nature.

Just as the separation scene shows Adam and Eve's difficulty in putting literal distance between them, so too does it represent their difficulty at conceiving of the choice as entirely the result of individual action, free though it may be. Adam seems to win the first part of the argument easily enough as he dismisses Eve's notion of uncontrollable and dangerous growth, but her counterresponse, which asserts convincingly that true freedom requires the possibility of temptation, proves less easily refuted (9.322–41). Reasoning from mutual benefit, Adam argues that Eve ought to leave if she believes that remaining together would merely insulate her from an impending threat: "if thou think trial unsought may find / Us both securer [i.e., more careless] than thus warn'd thou seem'st / Go" (9.370–72). Although Eve's argument that "Faith, Love, Virtue unassay'd" is of little meaning neatly echoes the most resounding passages encouraging individual trial in *Areopagitica*, her separation is hardly one of principled individualism (9.335).³⁵ At the end of their conversation Eve remains "yet submissive" and still seeks Adam's "permission" to leave his side (9.377, 78). For Adam, the issue that seems to trouble him most is the possibility that they might not be in harmony, and he takes pains to ensure their final agreement, however strained that accord may be. Adam and Eve

both seem to grasp imperfectly their own autonomy at this point. For both, free will remains a theoretical abstraction that the concrete benefits of more productive work or of closer companionship in marriage overshadow.

Eve's declaration that she must test herself in order to remain virtuous signals the impending threat. When Satan finds Eve shortly afterward, her incomplete sense of herself as an autonomous entity separate from Adam and her uncertainty about the limits of natural and personal volition become the entry points for his temptation. She does not fully understand that the natural law governs nature while both natural and positive laws govern human behavior. Her initial response to the tempting serpent is one of shock that the linguistic boundary between human and beast should have been broken: "Language of Man pronounc't / By Tongue of Brute, and human sense exprest?" she wonders (9.553–54). Eve's passive grammatical construction in describing the serpent "with human voice endu'd" suggests both her confusion about the ontological similarities between herself and the serpent and uncertainty over the agency behind this change (9.561). Since almost everything in Eden has been governed by natural law in accordance with the creative power of God, and since the only two positive laws of Eden also originate with God, it is reasonable for her to assume that the serpent's speech ultimately derives from God as well.

Nevertheless, Eve does differentiate God's interdiction from her reason as guides for conduct. Telling Satan that she can neither "taste nor touch" the tree since "God so commanded, and left that Command / Sole Daughter of his voice," she adds that "the rest, we live / Law to ourselves, our Reason is our Law" (9.651–54). Similarly, Adam implies that he understands the special nature of the command when he recounts for Raphael the moment that he heard God pronounce it. Telling the archangel that "the rigid interdiction [still] resounds / Yet dreadful in [his] ear," he contrasts that admonition with the placid natural world around him and with the "clear aspect" of the divine countenance that soon reappears (8.334–36). Eve, however, hears this interdiction secondarily via Adam and in a more measured tone (4.419–35). She has already

acknowledged that Adam acts as a conduit of God's law for her: "what thou bidd'st / Unargu'd I obey; so God ordains, / God is thy Law, thou mine" (4.635–37). In the crucial separation scene, though, Eve does argue with Adam about the nature of their work, and her rational arguments, in part, gain for her a victory. It is not so clear that what Eve understands as law and what she understands as opinion or suggestion remain entirely distinct. If Adam's word is her law and she has just negotiated that law with him, it becomes plausible for her to imagine that a divine command might be similarly negotiable under the right circumstances.

It is precisely this opportunity for debate that Satan exploits by framing his temptation as an appeal to reason when Eve's understanding of the difference between divine ordinance and human choice informed by reason is cursory at best. When Eve reminds Satan of God's prohibition, he asks her, "hath God then said that of the Fruit / Of all these Garden Trees ye shall not eat, / Yet Lords declar'd of all in Earth or Air?" (9.656–58). Eve did not say that *all* of the trees were forbidden, but Satan implies that perhaps he might understand a divine natural logic if God had extended a blanket prohibition. Masking his insinuation as a question asking for clarification, Satan attempts to muddle Eve's distinction between God's positive and natural law. Since positive law governs nothing in Eden except the tree of knowledge and their marriage, and since Adam and Eve, by definition, act in accordance with natural law, there is no possible way in which she can rationally evaluate the justness of the positive law. Satan had grasped this point instantly upon learning that the fruit of the tree had been proscribed: "Knowledge forbidd'n? / Suspicious, reasonless" (4.515–16).³⁶ Accordingly, he tempts Eve with ringing oratory "impregn'd / With Reason" (9.737–38). Reason, though, is a tool insufficient for this particular test of obedience, as Milton shows plangently in Eve's final speech before she tastes the fruit as she argues that God could never have intended to debar her from knowledge; "such prohibitions bind not," she concludes (9.760).

This is the crux of the poem's theodicy: how can Adam and Eve understand the basis of God's completely arbitrary prohibition

when neither their reason nor their complete sense of union with the natural world provides them with tools adequate for that task? Adam and Eve must intuit the basis for this positive law, but unlike the angels, as Raphael explains, they are not yet accustomed to this mode of apprehending knowledge. Reason is mostly intuitive for angels, but mostly discursive for humans (5.486–90). Since Adam and Eve have not encountered any other explicit positive law with which to compare God's prohibition, the discursive use of reason to evaluate that law's intent and scope is inadequate. Positive law operates paradoxically in the poem: it validates the natural law that provides freedom for human action by guaranteeing that Adam and Eve have a real chance of failure. The Blakean and, later, Empsonian traditions of reading the poem, though, would argue that God has weighted the die for failure, and the assertion is difficult to deny given Milton's polemics that defend resistance to positive laws that contravened the natural law. Satan's temptation of Eve follows the same logic: he argues that Eve ought to eat the apple because the prohibition is an arbitrary statute with no basis in nature and that eating the apple is an act that would accord better with God's gift to her of dominion over nature.

Eve's fall occurs when she reasons that natural law supersedes the law governing the tree of knowledge, thereby absolving her of obedience to it, and in a similar way Adam explicitly locates in nature his justification for joining Eve in sin. When she returns bearing a branch with the fruit, Adam cries out, "I feel / The Link of Nature draw me" (9.913–14); "I feel / The Bond of Nature draw me to my own" (9.955–56). Although in pointing to the natural bond between them he merely points back to himself and to his own free will, Adam finds it difficult to distinguish between a choice that he makes entirely of his own accord and one that Eve has already made for him. The "Link" or the "Bond" of nature that Adam feels implies that only some heroic force could liberate him from this captivity, just as Paul will emphasize that only Christ could liberate the Jews from the bondage of the law (Gal. 4:1–31). The terms also recall the legal formula for a divorce *a vinculo matrimonii*; marriage is a durable bond but not an unbreakable one under the

right conditions, although Adam does not seem to admit any circumstances that could possibly end his marriage.³⁷ Indeed, Adam implies that he understands his sin as having already occurred as he wonders skeptically about the possibility that he might "another Rib afford" should he decide to abandon Eve (9.912).

This odd anxiety about a future operation reveals a deeper uncertainty about Adam's own medial position as created being and creator. At first, he appears for a moment to cut God out of the creative act and to take responsibility for Eve's creation himself, but then attempts to quiet his nerves by suggesting that "God, Creator wise / ... [would never] so destroy / Us his prime Creatures" (9.938–40).³⁸ In the end, Adam casts his lot with Eve by finding more similarities with her as created being than with God as Creator. But this interpretation demands that he believe himself already to have sinned and that he mistake the symbolic "one flesh" for literal truth. Adam gravely compromises his sense of himself the moment that he decides that his self resides within Eve and not within his own autonomous being. His hyperbolic rhetoric in which all creation is "dependent made" on Eve and him and, therefore, that "God shall uncreate, / Be frustrate, do, undo, and labor lose" were they to fall completes the process (9.943–44). Adam's hermeneutical approach is backwards: he reasons that the symbol of marriage has caused him to sin when, in fact, his misrepresentation of that symbol as natural fact actually leads him into sin.

Jason P. Rosenblatt shows that Adam's understanding of his marriage is backward in another sense as well. Telling Eve that "to lose thee were to lose myself" (9.959), Adam echoes Milton's conclusion in *Tetrachordon* that the desire to remain in an uncompanionate marriage is the "servil temptation of loosing our selves" (YP 2:681).³⁹ Adam's words immediately before this moment, though, suggest his extreme uneasiness with the concept of the self: "My own in thee, for what thou art is mine; / Our State cannot be sever'd, we are one, / One Flesh; to lose thee were to lose myself" (9.957–59).⁴⁰ Milton takes extreme care with Adam's language here: he will fall with Eve because she is, he says, "my own in thee," that is, something of him possessed in her substance.

And, likewise, something of her that he possesses: “for what thou art is mine.” He does not say, “for what thou art I am”; they are not a single essence. Milton is careful to grant Adam the autonomous choice to fall (and implies that had he thought it through a bit more, he might not have), but Adam’s words have the effect of obscuring the nature of his connection with Eve rather than clarifying it. Indeed, had he followed the logic of “what thou art is mine,” he would have been led back to marriage as property and to the possibility of alienating that property, even if he might still have found it extraordinarily difficult to cast off the one he loves. Milton’s poetic solution to Adam’s dilemma requires a much more complex process of reasoning than the theological solution to an uncompanionate marriage that he had outlined in the divorce tracts. Eve is not an abstraction like the unnamed sinful marriage partner in *Tetrachordon*, but a living spouse bound to Adam not simply by marriage, but by love.

When Adam does decide to fall, the narrator excises the ties of love from the account, supplying a stark description of the act:

She gave him of that fair enticing Fruit
With liberal hand: he scrupl’d not to eat
Against his better knowledge, not deceiv’d,
But fondly overcome with Female charm. (9.996–99)

Adam fully retains his capacity to reason, but it is by an abstract “Female charm” that he is finally subdued. How does the poem suggest that we reconcile the narrator’s adamant assertion here that Adam was “not deceiv’d” with the Father’s equally resolute declaration, “Man falls deceiv’d” (3.130)? A literalist reading would point out that Eve falls for corporate man and is deceived by Satan, while Adam, individually, is undeceived in his resolution to fall with Eve. But the account here is so much colder than Adam’s anxious deliberations immediately before he eats the fruit. In echoing Paul’s words that “Adam was not deceived,” Milton shifts the register of the poem back to one of justification for God’s punishment of sin (1 Tim. 2:14).⁴¹ Both Adam and Eve must fall for humanity to fall, and the narrator’s pronouncement of a clear-sighted Adam

suggests that he does not see himself as fully autonomous from Eve: her deception is his deception, he tells himself, though he understands this line of reasoning to be fallacious. In choosing her, he literally chooses death, enacting Milton's lurid image of the marriage partners not as godly spouses but as two carcasses.

Adam enthralled by "Female charm" recalls the uxoriousness, as Milton often puts it, of many of the heroes whom he had once considered as subjects for his biblical epic, notably Samson and Solomon.⁴² The crucial difference between Adam at the moment of his fall and these later figures lies in his conflicted sense of his physical and spiritual unity with Eve. Adam feels at once extreme self-love and self-loathing—and surely this intensity of emotion must have been one of the reasons why Milton recognized the superiority of Adam and Eve to any other biblical subject—which spurs his decision to confirm the oneness he feels he ought to share with Eve. Adam seems to understand that he has not yet participated in Eve's sin, but "against his better knowledge" and driven by his own form of *philautia*, he can find no means of alienating a part of himself.⁴³ By construing the idea of "one flesh" too narrowly, Adam relinquishes his own individuality for a deluded sense of what constitutes himself.

Adam's extremely literal interpretation of "one flesh" is understandable, especially given Milton's investment in presenting Eden in proleptic terms. Though the morally correct decision for Adam must be the assertion of his own individuality, his relationship with Eve and with the garden around him implores our sympathy for the extraordinary difficulty of this choice.⁴⁴ Adam and Eve's colloquy immediately before the Fall reiterates the durability of representing marriage as indissoluble because of the acute distress Adam feels at the prospect of losing Eve. And yet, Adam enacts what his narrow-minded descendants will do when interpreting Christ's words on divorce in a similarly restrictive fashion. The colloquy provides an explanation for Milton's need to reformulate his argument for divorce between the publication of the second edition of *Doctrine and Discipline* and *Tetrachordon*. In the earlier tract he dismisses the scriptural evidence that "what God has joined, let no

man put asunder" as too obscure. But the enduring legacy of that apparent command, emblemized for Adam in the creation of Eve, suggests the potency of that line of reasoning. Clearly, Eve cannot serve as a help meet when she offers the branch of forbidden fruit to Adam, but she may still be one flesh with his. It is not hard to see how Adam's intense emotions cause him to override God's prohibition against the fruit by appealing to a prohibition against divorce that seems to be present in nature.

The more theologically mature and more difficult decision available to Adam is the one at which Milton arrives in *Tetrachordon*, though Adam has not the luxury of having bushwhacked through three divorce tracts first in order to set his argument straight. Marriage is a kind of property, an "outward good," as *Tetrachordon* insists, that can draw Adam closer to God and to nature, although the benefits of this "outward good" never outweigh the potential of marriage to cause imminent harm. By figuring marriage as "propriety," both what is fitting and what one owns, Milton crystallizes the importance of each marriage partner's individual nature before and during a marriage. In order to understand the paradisaical meaning of marriage as "sole propriety / ... of all things common else," Adam must recognize that his marriage is fundamentally different from every other attraction that he feels in Eden (4.751–52). The narrator's gloss on marriage as "sole propriety" refers not to their monogamy (Adam is, after all, a patriarch), but to the special addition of law outside the natural law that applies only to them (it is *proprius*).⁴⁵ Although Adam is drawn to every other living thing by the natural law, Raphael cautions him explicitly to regard Eve as a separate, individual being and to make his own decisions based on "self-esteem, grounded on just and right / Well manag'd" (8.572–73). Adam's natural reason may not have been entirely sufficient to distinguish himself from Eve, but with an explicit, divine intervention Adam becomes fully capable of understanding his proper place in marriage. Eve's fall sets God's arbitrary demarcation of the limits of lawful action alongside the marriage bond, and when these two positive laws conflict, Adam is understandably distressed. He chooses to take solace not by trusting the word of God, inscrutable

as it seems, but in the familiar comfort of imagining himself as permanently connected to everything in nature.

It is fitting that when the Son arrives in the garden to confront Adam and Eve and to discharge the Father's (or nature's) will in disciplining them, he does so individually. There is scriptural authorization for this, but Milton surely means to emphasize that specific punishments for Eve and for Adam indicate that their marriage no longer remains the "one flesh" that had pertained as a consequence of their companionship in paradise. As their sin alienates them from God, so too does it alienate them from each other. Their mutual recriminations at the end of book 9 lead nowhere, and the Son must explicitly specify their labor and their generative functions. They must rely on each other, and their marriage will require that each act as a help meet to the other. The choice to reconcile will remain with them as they descend from the mountain of paradise to make their way in history.⁴⁶

There remains the further, strange punishment of the serpent in whose "offense" the Son seems peculiarly interested only after the fact (10.171). The curse bestowed on the serpent is, of course, biblical in origin and Milton was bound to include it in his epic, though he appears uneasy as his narrator clarifies that the animal was "unable to transfer / The Guilt on him who made him instrument" (10.165–66). The narrator explains the curse in a very brief line and a half: "justly then accurst, / As vitiated in Nature" (10.168–69), a curious phrase that seems to occlude more than it explains. There is something profoundly unnatural about its physical shape, the Son implies, and it is therefore fitting that it be permanently vitiated or arbitrarily disadvantaged.⁴⁷ The words of the curse, sentencing as they do the serpent to eating dust and to a pathetic means of movement, set it apart from nature for eternity. The serpent remains as a sign of a perpetual positive law in contrast to the world around it governed by the natural law. The lines that immediately follow, "more to know / Concern'd not Man (since he no further knew) / Nor alter'd his offense" (10.169–71), may seem like an ungraceful exit from the explanation on the narrator's part but remind the reader that the serpent's relevance is as a sign of God's positive

law. Adam and Eve need only remember that God can intervene arbitrarily in nature as he wishes. This deliberate intervention will then serve as a sign of their eventual salvation.

Like the prohibition governing the tree of knowledge, the vitiation of the serpent can be understood as a classic instance of what Milton elsewhere calls with reference to the tree "a declaration of power" (YP 6:352). The punishment of the serpent teaches Adam and Eve that God can do it. It creates an indelible differentiation between natural and positive laws and finally makes obvious to Adam and Eve a distinction that would have been helpful to them before the Fall. The knowledge they gain by eating the fruit includes this crucial distinction, and the vitiated serpent becomes living evidence of the freedom they have lost. The serpent represents the necessity of a positive law to guarantee human freedom and a way for Michael to teach the meaning of the *protevangelium*. As a metaphor of the arbitrary and constraining positive law of the Old Testament, the serpent reminds the faithful of a future intervention in human history when Christ will abolish the old law by writing a new one in the human heart (Ezek. 11:19, 36:26; Rom. 2:14–15; 2 Cor. 3:3; and *PL* 12.485–90). The woman's descendants will bruise the head of the serpent, while it shall strike at their heels. The serpent becomes at once a sign of the promise of a new law and a punishment for disobedience to the old law while it is in force.⁴⁸

Paradoxically, Adam's decision to fall with Eve evacuates the warmth from the poem's representation of marriage, and it becomes necessary to understand that bond in the harsher terms of an abstract positive law. Adam is overcome not so much by Eve, the narrator intones, but by a faceless "Female charm" (9.999). His incomplete understanding of marriage prevents him from articulating the meaning of individuality. Had he fully appreciated marriage as a positive law he would have understood its divine purpose as the joining of two helpmates who draw each other closer to God. Raphael had offered hope that paradisaal marriage could one day exhibit the same signs of the angelic commingling of bodily substance even if, for the moment, Adam cannot truly understand

what angelic intimacy really looks and feels like. Since human reason is by nature discursive and may become in time, according to Raphael, more intuitive, only with a partner can this change be effected. Marriage is the only other positive law in Eden to which the positive law governing the tree of knowledge could have been compared. Although not an explicit positive law, Adam and Eve could have used their discursive reasoning and Raphael's words to probe the meaning of their love for each other. It is not the same as love of nature, as Eve seems to think, nor is it the same as self-love, as Adam convinces himself. Marital love is the free and arbitrary love of another, of a person beyond the self, and Milton's theodicy accordingly requires that Adam and Eve's marriage bond be the primary bulwark against their fall. Far from causing the Fall, their love for each other could have led them to greater love of God.

As it is, that path toward God becomes much more circuitous as a result of the Fall. The reality of the vast and newly dangerous world indeed deepens the mutual love of Adam and Eve, but it does so out of necessity. Adam and Eve need each other as the at once terrifying and quiet final lines of the epic insist. Their marriage not only ought to bring them closer to a godly life but, crucially, aid in their survival. The positive law of marriage after the Fall suggests a new and equally valid basis for the law of nature. In accordance with Selden's account of its origins, Milton has Michael narrate the strange ways of a fallen world to equip Adam with revealed knowledge about the law and his descendants' transgressions of it. But as it is for Grotius and Hobbes, Milton's fallen world is one in which the first law is that of self-preservation. Adam speaks more than he realizes at the time when he declares to Eve, "to lose thee were to lose myself" (9.959). By disobeying the positive law of God in eating the fruit, Adam rationalizes obedience to what he supposes is the natural law. But in misunderstanding the natural law of Eden, he utters the words of the stern new law that will govern the fallen world.

Notes to Komorowski, “Milton’s Natural Law”

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1. All citations from Milton's prose are taken from *Complete Prose Works of John Milton*, 8 vols., ed. Don M. Wolfe et al. (New Haven, 1953–82), hereafter cited as YP.

2. Citations from *Paradise Lost* are taken from John Milton, *Complete Poems and Major Prose*, ed. Merritt Y. Hughes (New York, 1957), hereafter cited in the text.

3. Stephen M. Fallon, *Milton's Peculiar Grace: Self-Representation and Authority* (Ithaca, N.Y., 2007), 110–45. The quotation is taken from the second edition of *The Doctrine and Discipline of Divorce* (YP 2:226).

4. For the biographical context of Milton's writing of the divorce tracts, see Barbara Kiefer Lewalski, *The Life of John Milton: A Critical Biography*, rev. ed. (Oxford, 2003), 154–97; and Gordon Campbell and Thomas N. Corns, *John Milton: Life, Work, and Thought* (Oxford, 2008), 152–85.

5. On the development of natural law arguments in the constitutional debates of the 1640s, see Ernest Sirluck, vol. ed., YP 2:21–51, 130–35; Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge, 1979), 101–18; Victoria Kahn, *Wayward Contracts: The Crisis of Political Obligation in England, 1640–1674* (Princeton, N.J., 2004), 95–111; and Perez Zagorin, *Hobbes and the Law of Nature* (Princeton, N.J., 2009).

6. In the second edition of *Doctrine and Discipline* (YP 2:350–51), Milton's final chapter asserts that the civil prohibition of divorce violated the law of nature and of nations. He cites John Selden's *De iure naturali et gentium, iuxta disciplinam Ebræorum* (London, 1640) in support of his position, but does not strongly integrate the claim in this work.

7. All scriptural citations are taken from the Authorized Version (1611). In *Tetrachordon* and, later, in *De doctrina*, Milton specifies that “fornication” is to be understood extremely liberally, including “a constant alienation and disaffection of mind” (YP 2:673) or, in fact, “anything which is found to be persistently at variance with love, fidelity, help and society” (YP 6:378).

8. On the idealism of Milton's claim that ending a sinful marriage represents true Christian charity and his at times contradictory impulses to lash out at intellectual and personal foes in *Doctrine and Discipline*, see James Grantham Turner, *One Flesh: Paradisal Marriage and Sexual Relations in the Age of Milton* (Oxford, 1987), 188–229.

9. Anonymous, *An Answer to a Book, Intituled, The Doctrine and Discipline of Divorce* (London, 1644), 29.

10. This refrain echoes throughout *Tetrachordon*. For similar sentiments, see YP 2:618 and 2:653. See also *Doctrine and Discipline* (YP 2:272, 309–10).

11. Milton articulates the germ of these sentiments in the second edition of *Doctrine and Discipline* (YP 2:228–29).

12. For a body of scholarship so attentive to the intricacies of the development of Milton's thought, the critical literature has been curiously less willing to discuss *Tetrachordon* as substantively as *Doctrine and Discipline*. *Tetrachordon* is most often engaged as Milton's restatement of *Doctrine and Discipline* with greater attention to Scripture, which has the effect of flattening differences between the two texts and of shifting the critical discussion to *Doctrine and Discipline* as if *Tetrachordon* were a bastardized version of the early, uncorrupt form of the argument. I suspect that the vibrant rhetoric and imagery of *Doctrine and Discipline* with its unforgettable carcasses chained together and its invocation of Eros and Anteros are largely responsible for this critical preference, but *Tetrachordon* presents Milton's argument refined to an exceptional degree, thoroughly incorporating his thinking on natural law and on the harmony of Mosaic law and Gospel. Substantive treatments of *Tetrachordon* can be found in Reuben Sánchez Jr., *Persona and Decorum in Milton's Prose* (Madison, N.J., 1997), 77–96; and Fallon, *Milton's Peculiar Grace*, 122–32.

13. Turner, *One Flesh*, 191.

14. What Milton calls "the *secondary law of nature and of nations*" was most often understood in the period as the *ius gentium*, or the law of nations, a set of positive laws common to many nations. God permits these laws because humans have fallen and regulations governing social hierarchies and property ownership have become necessary. The lawyer Sir John Davies (1569–1626), arguing for royal prerogative, describes the origins of the law of nations: "By the Law of Nature all things were cōmon, and all persons equal, there was neither *Meum* nor *Tuum*, there was neither King nor Subject; then came in the Law of Nations, which did limit the Law of Nature, and brought in property, which tooke away communitie of thinges, which brought in Kings and Rulers, which took away equality of persons, for property caused Contracts, Trade, and Traffique, which could not be ministred without a King or Magistrate; so as the first and principal cause of making Kings, was to maintain property and Contracts, and Traffique, and Commerce amongst men." See John Davies, *The Question concerning Impositions, Tonnage, Poundage, Prizage, Customs, &c.* (London, 1656), 29. This work circulated in manuscript from the mid-1620s. I have emended a clause in the printed work, "which brought in community of things," with the manuscript reading "w^{ch} tooke away Cōmunitie of thinges." See *Whether the Kinge of England by His Prerogative May Sett Impositions, Loanes or Privy Seales without Assent of Parliament*, Osborn MS b166, Beinecke Library, Yale

University, f. 18v. On the early modern understanding of the relationship of the *ius gentium* to positive and natural law more generally, see Donald Kelley, "Civil Science in the Renaissance: The Problem of Interpretation," in *The Languages of Political Theory in Early-Modern Europe*, ed. Anthony Pagden (Cambridge, 1987), esp. 72–76.

15. Jason P. Rosenblatt, *Torah and Law in "Paradise Lost"* (Princeton, N.J., 1994), 51–52, draws a sharper distinction than I do between the "privilege and exclusivity of private property" in Edenic marriage and the possibility of alienating that property which the Deuteronomic law permits. But the fact that marriage is property for Milton necessarily extends the relevance of the Deuteronomic law to Eden.

16. Milton hints at this distinction in the second edition of *Doctrine and Discipline*, calling marriage "a civil, an indifferent, a sometime diswaded Law" (YP 2:228–29), while "divorce is not a matter of Law but of Charity" (345), and "to forbid divorce compulsively, is not only against nature, but against law" (346).

17. John Rogers, "Transported Touch: The Fruit of Marriage in *Paradise Lost*," in *Milton and Gender*, ed. Catherine Gimelli Martin (Cambridge, 2004), 115–32, makes this observation, although he finds this chapter less theologically coherent than I argue here. He argues that Milton's difficulty in explaining the theological necessity of the prohibition governing the tree of knowledge in *De doctrina* affects his representation of Eve in *Paradise Lost* as Milton must account for her fall by means of an inherently fragile gender hierarchy.

18. See also *Christian Doctrine* (YP 6:383–84).

19. YP 6:388; *De doctrina Christiana*, in *The Works of John Milton*, 20 vols., gen. ed. Frank Allen Patterson (New York, 1931–40), 15:190, hereafter cited as CM. I have emended the somewhat misleading translation of "civil rights" for *civitatem* in YP to "citizenship." Milton follows Ames on this point, although it is Milton's innovation to link the Fall with the loss of land and citizenship. Compare with Ames's position that Adam fell not only as an individual, "but also as a publique person," in *The Marrow of Sacred Divinity, Drawne out of the Holy Scriptures, and the Interpreters Thereof, and Brought into Method* (London, 1642), 54–55.

20. See Steve Pincus, "Neither Machiavellian Moment nor Possessive Individualism: Commercial Society and the Defenders of the English Commonwealth," *American Historical Review* 103 (1998): 705–36.

21. For helpful background on Grotius's intellectual development, see Richard Tuck, "Grotius and Selden," in *The Cambridge History of Political Thought, 1450–1700*, ed. J. H. Burns and Mark Goldie (Cambridge, 1991), 499–529; and Richard Tuck, *Philosophy and Government, 1572–1651* (Cambridge, 1993), 154–201.

22. Hugo Grotius, *The Rights of War and Peace* [*De jure belli ac pacis*], 3 vols., ed. Jean Barbeyrac and Richard Tuck (Indianapolis, 2005 [1625]), 1:xx (Pro., 11).

23. *Ibid.*, 1:xiv. Grotius assigns this position to the ancient skeptic Carneades. Carneades' position has survived only secondhand in Lactantius, *Divine Institutes*, 5.17. See the translation by William Fletcher in *The Ante-Nicene Fathers: Translations of the Writings of the Fathers down to A. D. 325*, 10 vols., ed. Alexander Roberts and James Donaldson (Grand Rapids, Mich., 1979–82), 7:151–52.

24. Grotius, *The Rights of War and Peace*, 2:145–46 (2.2.2.2–5).

25. *Ibid.*, 2:185–215 (2.5). In his manuscript work *De iure praedae*, written nearly 20 years earlier, he had been even more explicit: “liberty in regard to actions is equivalent to ownership in regard to property” (*quod libertas in actionibus idem est dominium in rebus*). See Hugo Grotius, *Commentary on the Law of Prize and Booty*, ed. Martine Julia van Ittersum, trans. Gwladys L. Williams (Indianapolis, 2006), 34; Grotius, *De jure praedae commentarius*, ed. H. G. Hamaker (The Hague, 1868), 18. See also Tuck's discussion of this idea and Grotius's development of international maritime law in *Natural Rights Theories*, 59–62.

26. This was especially true of Henry Parker, an important figure in the development of natural law arguments for Parliamentarians, who rejected Grotius's theory of voluntary servitude. See Michael Mendle, *Henry Parker and the English Civil War: The Political Thought of the Public's “Privado”* (Cambridge, 1995), 131–32.

27. Anthony Ascham, *Of the Confusions and Revolutions of Government*, 2nd ed. (London, 1649), 18.

28. *Ibid.*, 21.

29. *Ibid.*, 22. The scriptural reference is 1 Samuel 21:1–6. Jesus cites this episode as an instance of obedience to the spirit if not the letter of the law in Matthew 12:3–4.

30. See William Ames, *Marrow of Sacred Divinity*, 55, and, for example, Henry Vane, *The Retired Mans Meditations, or the Myserie and Power of Godliness* (London, 1655), 60, who goes further than Ames and assimilates the command to abstain from the fruit with the natural law.

31. *Christian Doctrine* (YP 6:353). On the arbitrariness of the command and the indifference of the fruit, see Michael Lieb, *Poetics of the Holy: A Reading of “Paradise Lost”* (Chapel Hill, N.C., 1981), 89–118. On Milton's thoughts on things indifferent more generally, see Victoria Kahn, *Machiavellian Rhetoric: From the Counter-Reformation to Milton* (Princeton, N.J., 1994), 171–84.

32. John Selden, *De iure naturali & gentium*, 1.9, esp. 109–13. For this account of Selden's thought, I have relied on J. P. Sommerville,

"John Selden, the Law of Nature, and the Origins of Government," *Historical Journal* 27 (1984): 437–47, which builds on Tuck's discussion of Selden in *Natural Rights Theories*, but takes issue with him on this point. Tuck has subsequently incorporated Sommerville's critique into a more expansive view of Selden's contributions to natural law theory in his *Philosophy and Government*, 214–18. See also the learned work of G. J. Toomer, who finds Selden's thoughts on the transmission of natural law more equivocal in *John Selden: A Life in Scholarship*, 2 vols. (Oxford, 2009), 2:502–04. For Milton's relationship with Selden's thoughts on natural law, see Rosenblatt, *Torah and Law*, 126–29, whose account I modify slightly.

33. Whether this formulation of natural law was revolutionary or merely revamped has been debated widely. For the argument of novelty, see Tuck, *Natural Rights Theories*; Ian Shapiro, *The Evolution of Rights in Liberal Theory: An Essay in Critical Anthropology* (Cambridge, 1986); Michael P. Zuckert, *Natural Rights and the New Republicanism* (Princeton, N.J., 1994), 119–49; Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (Cambridge, 1996); and most of the essays in *Rhetoric and Law in Early Modern Europe*, ed. Victoria Kahn and Lorna Hutson (New Haven, 2001). For an opposing position, see Johann Sommerville's essay in *Rhetoric and Law*, which argues that the natural law formulations of Grotius and Selden represent no substantial rhetorical or conceptual change over earlier Thomist models: "Selden, Grotius, and the Seventeenth-Century Intellectual Revolution in Moral and Political Theory," 318–44.

34. On Milton's intellectual debts to Grotius and Selden on this issue, see especially Jason P. Rosenblatt, *Renaissance England's Chief Rabbi: John Selden* (Oxford, 2006), 135–57. For a contrasting picture of Hobbes's and Milton's conceptions of natural law, see Catherine Gimelli Martin, "The Phoenix and the Crocodile: Milton's Natural Law Debate with Hobbes Retried in the Tragic Forum of *Samson Agonistes*," in *The English Civil Wars in the Literary Imagination*, ed. Claude J. Summers and Ted-Larry Pebworth (Columbia, Mo., 1999), 242–70. On Milton's engagement with Hobbes's conception of liberty, especially toleration, see Christopher N. Warren, "When Self-Preservation Bids: Approaching Milton, Hobbes, and Dissent," *English Literary Renaissance* 37 (2007): 118–50.

35. See, for instance, *Areopagitica* (YP 2:515–16, 527).

36. Lieb stresses the importance of the literal meaning of "reasonless" as without reason, that is, inapprehensible by means of the faculty of reason (*Poetics of the Holy*, 96).

37. Contemporary legal definitions of divorce always list its two types: *a mensa et thoro* (separation) and *a vinculo matrimonii*

(dissolution). See, for instance, Thomas Blount, *NOMO-AEZEIKON: A Law-Dictionary* (London, 1670), s.v. “divorce.”

38. On Adam’s joint role with God in Eve’s creation and the subsequent complication of prelapsarian communication and poetic accommodation, see Jeffrey S. Shoulson, *Milton and the Rabbis: Hebraism, Hellenism, and Christianity* (New York, 2001), 185–88. See also Shoulson’s account of the rabbinical understanding of Moses’ efforts to save his people from divine destruction (113–17).

39. Rosenblatt, *Torah and Law*, 200.

40. Adam has been insecure in his sense of self since meeting Eve. On this and his abandonment of discursive reason in Eve’s company, see David Quint, *Epic and Empire: Politics and Generic Form from Virgil to Milton* (Princeton, N.J., 1993), 288–92.

41. On this manner of framing theological problems in the poem more generally, see Dennis H. Burden, *The Logical Epic: A Study of the Argument of “Paradise Lost”* (Cambridge, Mass., 1967), esp. 157–62, on the logic of Adam remaining undeceived.

42. Milton proposes the titles *Samson marriing* and *Salomon Gynæcocratumenus*, that is, “women-governed,” in the Trinity manuscript among his numerous ideas for biblical tragedy (YP 8:556). For descriptions of these figures as “uxorious,” see *Samson Agonistes*, 945, and *Paradise Lost*, 1.444.

43. This acute attention to himself just before the Fall evokes Eve’s love of her own reflection in the pool in book 4. See John Guillory, “Milton, Narcissism, Gender: On the Genealogy of Male Self-Esteem,” in *Critical Essays on John Milton*, ed. Christopher Kendrick (New York, 1995), 194–233. On the implications for gender, see Mary Nyquist’s classic essay, “The Genesis of Gendered Subjectivity in the Divorce Tracts and in *Paradise Lost*,” in *Re-membering Milton: New Essays on the Texts and the Traditions*, ed. Mary Nyquist and Margaret W. Ferguson (New York, 1987), 99–127.

44. For reasons that I explain below, I cannot endorse Burden’s claim that Adam ought to have sued for divorce (*Logical Epic*, 163–77). Dennis Danielson’s much subtler argument contends that by the logic of typology, Adam could have fulfilled Christ’s redemptive function by offering to sacrifice himself for Eve’s sin. See his “Through the Telescope of Typology: What Adam Should Have Done,” *Milton Quarterly* 23 (1989): 121–27. This argument is much closer to the poetics of marriage in *Paradise Lost* by which Adam’s love for Eve necessarily informs, but does not erase, his view of himself. The ideal version of that marriage would have Adam distinguish himself from Eve in some meaningful way.

45. In *De doctrina*, Milton specifies that the description of marriage in Genesis 2:23–24 (“one flesh”) has nothing to do with monogamy since the example of patriarchs such as Abraham reveals marriage as both polygamous and godly (YP 6:355–56).

46. John Rogers, *The Matter of Revolution: Science, Poetry, and Politics in the Age of Milton* (Ithaca, N.Y., 1996), 144–76, draws attention to the conflicting and contradictory accounts that the Father provides for the expulsion of Adam and Eve from the garden. One is naturalistic (11.48–57), the other interventive (11.93–111), and the contrast between these explanations highlights the change in Adam and Eve’s subjectivity as they move from “shadowy Types to truth” in their interaction with the divine. Their rational obedience will be based not on fear or custom but free choice. Rogers locates this momentous shift only in the final lines of the poem, but I argue that such a change begins much earlier.

47. Stanley Fish, *Surprised by Sin: The Reader in “Paradise Lost,”* 2nd ed. (Cambridge, Mass., 1997), 154–55, argues that the curse is simply a ratification of what has already taken place in nature. God formalizes the serpent’s corruption because the serpent has become “polluted” (PL 10.167). The question of fairness is beside the point in this reading.

48. Milton had begun to work out this symbolism in *De doctrina* as he read the episode of the brazen serpent of Numbers 21:4–9 as evidence of Christ’s spiritual presence among the Israelites (YP 6:282). For the importance of this imagery in *Paradise Lost* and *Paradise Regained*, see Neil Forsyth, “At the Sign of the Dove and Serpent,” *Milton Quarterly* 34 (2000): 57–65.