

CAROLINE NORTON - FAMILY LAW'S FORGOTTEN HEROINE

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1836 Caroline Norton by William Etty

Introduction:

At the cemetery at Lecropt Kirk¹, Bridge Allan, Stirling, Scotland, Caroline Elizabeth Sarah Sheridan Norton (22.03.1808 to 15.06.1877) lies in rest in the Stirling Maxwell vault nearby the grave of one of her three children William Charles Chapple Norton (26.08.1833 to 12.09.1842)². The proximity in this graveyard of her son is a poignant reminder of the tragic life of a woman, who in her time did more than any other individual in modern legal history to lay the foundations of our current civil divorce system and to advance the claims of women in the face of domestic violence upon marital breakdown and to secure their rights to custody of their children thereafter.

Yet there is no statue of this woman in Westminster, nor, other than last year's unveiling of an English Heritage blue plaque³ at her former home at 3 Chesterfield Street, Mayfair, London commemorating the life of this extraordinary woman, is there any recognition in our secondary education system of the truly remarkable impact of Caroline Norton as, arguably, this country's first women's rights protagonist.

Early Years:

Caroline, born in 1808, was the second of three daughters (known because of their beauty as 'the three Graces') of Thomas and Caroline Henrietta Callender Sheridan. Her grandfather, Richard Brinsley Sheridan⁴, was then the well-known playwright and part owner of the Drury

¹ <https://www.lecroptkirk.org.uk/302456080913.htm>

² https://www.findagrave.com/memorial/83265874/william-charles_chapple-norton

³ <https://www.english-heritage.org.uk/visit/blue-plaques/caroline-norton>

⁴ https://en.wikipedia.org/wiki/Richard_Brinsley_Sheridan

Lane Theatre. Unfortunately, Thomas, who with his wife and eldest daughter had worked as a colonial official for a time in South Africa due to his health, died as his own mother had done, prematurely from tuberculosis in 1717 when Caroline was just 8 years of age, resulting in his family widow and four sons and three daughters being placed in a serious financial situation only partly alleviated by the provision of a 'grace and favour' apartment at Hampton Court Palace through the then Duke of York.

For a time, Caroline lived with her paternal uncle Charles Sheridan when it is believed she developed her love of poetry⁵. However, in 1823, as a girl now aged 15, who was both high spirited and difficult to control, with a quick tongue and a habit of looking at others with her forehead lowered, her mother had sent her off to boarding school at Shalford nearby the then manor at Wonersh Park⁶, Surrey, the home of Lord Grantley the brother of Caroline's husband-to-be George Norton.

Marriage:

George Chappell Norton⁷ (1800-1875) was attracted to Caroline's beauty on first sight, albeit this reaction was not reciprocated. Caroline's own attention had been towards another but that had been cruelly thwarted by his sudden death. In reaction to George's attention, despite the family's financial predicament and no doubt out of maternal concern, her own mother insisted on a 3 year courtship for Caroline by George. Thereafter, they married on 30th July 1827, when Caroline was just 19.

However, George, now a Tory MP for Guildford and described as 'slow, rather dull, jealous and obstinate'⁸ was the opposite of his young wife, an opinionated liberal, who was herself described as 'quick-witted, vivacious, flirtatious and egotistical'. Predictably, their union was a disaster and the relationship, with constant arguments, particularly over politics and a woman's place in society, within months resulted in ever increasing violent outbursts by George upon Caroline.

Despite this constant marital disharmony, the couple had three children, Fletcher (1829-59), Brinsley (1831-77) and William in (1833-42). These same years realised Caroline's literary ambitions⁹ when first her poem 'Sorrows of Rosalie' (1829), completed when she had been just 17, was published followed by 'The Undying One' (1830), leading to her subsequent appointment as editor of a society magazine¹⁰. These were followed by 'The Wife and the Woman's Reward' (1835) and 'The Coquette and Other Tales and Sketches, In Prose and Verse' (1835). In this same period, she maintained and entertained an influential circle of

⁵ Poems of Hon Mrs Norton – author Rufus W Griswald (1856). Caroline and her sister had already had published a satire, 'The Dandies Rout' in 1820.

⁶ https://www.exploringsurreypast.org.uk/themes/places/surrey/waverley/wonersh/wonersh_park/

⁷ https://en.wikipedia.org/wiki/George_Chapple_Norton#:~:text=George%20Chapple%20Norton%20%2831%20August%201800%20-%2024,He%20died%20on%2024%20February%201875%20at%20Wonersh.

⁸ Perkins, Jane Grey. The Life of Mrs Norton: John Murray 1909.

⁹ Later styled as 'the female Byron' and her poetry described 'as fashioned by misfortune' and a 'mirror of her feelings' – see forward to Poems of Hon Mrs Norton – author Rufus W Griswald (1856) and Samuel Taylor Coleridge The Quarterly Review 1840.

¹⁰ 'La Belle Assemblee' and 'Court Magazine'.

friends and associates, including the likes of William Thackeray, Benjamin Disraeli, Mary Shelley and Fanny Kemble.

Lord Melbourne:



c 1836: Lord Melbourne

In contrast, her husband fared less well, losing his Parliamentary seat in 1830 in the general election triggered after George IV's death, despite the Tories' greater returns in the national vote that year. A loss which his brother, the second Lord Grantley, suggested was the result of Norton's neglect of his constituency duties. Embarrassingly for him, thereafter, Norton was forced to ask his wife to use her influence within the new Whig government under Earl Grey to secure him an alternative income, which she did through her friendship with the then Home Secretary, Lord Melbourne - resulting in her husband's appointment as a magistrate for 3 days a week at Lambeth Police Court on 1,000 pa - notwithstanding, Norton's begrudging complaint that he was worth more.

The marriage continued its downward and often violent spiral against a background of a gathering recognition of Caroline's literary and intellectual abilities and her increasingly close relationship with Melbourne, some 28 years her senior and recently a widower following his late wife's demise. The physical violence Norton inflicted on Caroline included kicking, punching, slapping, attempted strangulation, inflicted burns from a heated kettle and on one occasion dragging her downstairs whilst 7 months pregnant and on another beating her resulting in a miscarriage and yet on another the complete destruction of a door and surround locked against him by her in an attempt to assault her¹¹.

Aware of the rumours concerning his wife's friendship with Melbourne, in 1835 Norton, without notice and whilst Caroline was visiting her sister, removed their three children placing them in the charge of a female cousin of his, who on his instruction then refused Caroline access. As the law then stood in pre-Victorian England, a mother had no rights concerning the custody of children without the consent of the husband. Indeed, as Caroline had already experienced and was to be subject to even after their separation until George's death in 1875, all her income from her writings were in law her husband's entitlement.

¹¹ 'English Laws for Women in the Nineteenth Century' C Norton (1854)
<http://digital.library.upenn.edu/women/norton/elfw/elfw.html>

Melbourne had just become prime minister and Norton, conspiring with a political enemy of Melbourne, the Tory Lord Wynford, informed Caroline, despite having his own mistress, that he intended to take Melbourne to court alleging his adultery with Caroline. When his subsequent approach to Melbourne for a pay-off of £1,400 in the form of a 'loan' was rebuffed, Norton then leaked stories to the press of Caroline's alleged numerous associations with Melbourne and other men of society. Melbourne believed this meant his political career was over and offered his resignation to the new king, William IV, who declined the same - but, in response, Melbourne was required to distance himself from Caroline.

Criminal Conversation Trial:

By June 1836, Norton had started an action against Melbourne for 'criminal conversation', claiming £10,000 in damages (over £1m today) for his alleged adultery. The trial was the scandal of the day,¹² with Norton's witnesses alleging, to Caroline's great distress, her illicit conduct with a number of men and three letters between Caroline and Melbourne were exhibited of which the absence of the words 'My dear Mrs Norton' were claimed to indicate the improper intimacy of the correspondents. The evidence of servants even suggested Caroline had been seen exposed after a visit from Melbourne and with marks upon her undergarments indicating intercourse had taken place.

Despite this, the jury, as Norton's own counsel, Sir William Follett, had himself privately predicted, was wholly unimpressed by the detail of the evidence presented by the witnesses and their demeanour, where one was obviously inebriated and where payments had been made for their testimony, to such a degree that after hearing a three and a half hour final submission by the Attorney General for Lord Melbourne, they summarily rejected Norton's claim without hearing any witnesses for the defence.¹³ However, for Caroline the trial details had destroyed her reputation in society and Melbourne, in self-preservation, refused to have any dealings with her thereafter, embarking as he did shortly thereafter on his .

Custody of Infants Act 1839:

Norton, in the wake of his court defeat, was in no mood to alleviate Caroline's sufferings or relinquish his control over her and with conflicting messaged manipulation made disingenuous overtures to her both of private arbitration of their differences and even reconciliation whilst rejecting her pleas to have the children (aged 6, 4 and 2 ½ years on separation) or to even see the children alone, suggesting instead she could only 'interview' them in the presence of his lawyer.

In response, Caroline decided to set out the plight of women as mothers in marriages in the form of a pamphlet entitled 'The Natural Claim of a Mother to the Custody of her Children as affected by the Common Law Rights of the Father '(1837) and the following year 'Separation of Mother and Child by the Laws of Custody Considered'. Caroline subjectively argued, in the first ever challenge to a man's absolute rights to his children's custody, that it could not

¹² also inspiring the caricature of a breach of promise action in Pickwick Papers published in the same year - Charles Dickens having been a reporter at the trial of Lord Melbourne

¹³ 'Extraordinary Trial' 22 June 1836: <http://s3.amazonaws.com/cul-hydra/trial/sat2009/pdfs/sat2009.pdf>

be right that a husband under the law could desert his wife and yet hand over their children to his mistress without their mother having recourse.

In addition, Caroline found a natural ally in Thomas Talfourd (1795-1854)¹⁴ MP for Reading, a friend of both Lord Melbourne and Charles Dickens and himself a playwright and already a known supporter of women's rights and other causes, who agreed upon Caroline's request to introduce a Parliamentary bill allowing married women, who had not themselves committed adultery, to have custody of their children under 7 years of age and rights of access to older children.

The bill passed by a poorly attended House of Commons was nevertheless rejected by just 2 votes in an equally low attended House of Lords, despite judicial support in the second Chamber. Undaunted, Caroline produced a second pamphlet, entitled 'A Plain Letter to the Lord Chancellor on the Law of Custody on Infants', which she also ensured all MPs received a copy of. Talfourd again reintroduced his bill before Parliament in 1839, despite its critics suggesting Caroline and Talfourd were themselves in a sexual relationship and Caroline herself demonic. Whilst once again offended by these attacks on her character, Caroline was advised as a married woman she had no legal persona before the Courts to take action.

In what has been described as a monumental development, Talfourd's bill became law as the Custody of Infants Act 1839, which was the first direct incursion by Parliamentary legislation into what Blackstone previously had termed the 'empire of the father'¹⁵ in describing the near absolute position of authority enjoyed hitherto by husbands in marriage and in relation to their children under the law¹⁶.

Death of Youngest Child:

For Caroline, the new legislation appeared a lifeline, however, Norton had removed the children into the care of his sister, Lady Menzies, in Scotland outside the immediate jurisdiction of the English court. Caroline had learnt that this woman had 'flogged' her eldest child for having simply read a letter from his mother and on another occasion for correction had stripped her youngest naked, tied him to a bed post and riding crop whipped him.

Now Caroline proposed an application under the new law and Norton appeared ready to compromise, at least, by permitting very limited access only to the extent the new law required in 'a most formal and comfortless' manner¹⁷. However, in 1842, with the children in Scotland, tragedy befell Caroline again when the youngest child, William, now only 9 years

¹⁴ Sir Thomas Noon Talfourd, (Mr Justice Talfourd 1833-1854))

<https://www.djo.org.uk/indexes/authors/thomas-noon-talfourd.html>

¹⁵ 1 William Blackstone, Commentaries 458: By contrast the unintended consequence of the Tenures Abolition Act 1660 which had given fathers a right to appoint a guardian of a child by will, had indirectly permitted thereby the court's supervision of testamentary guardians in this role. In addition, the development of the *parens patriae* principle by the Kings Bench during the seventeenth century had also developed the Courts ability to oversee a father's child care.

¹⁶https://en.wikipedia.org/wiki/Custody_of_Infants_Act_1839#:~:text=The%20Custody%20of%20Infants%20Act%20of%201839%20was,of%20their%20children%20won%20much%20sympathy%20among%20parliamentarians.

¹⁷ See note 11 above

old, left without supervision, rode out with his older brother and suffered an arm injury when thrown to the ground by his horse. The injury resulted in blood poisoning and only when the circumstances became grave was Caroline informed by Norton. - it had been 7 years since she had been allowed to see the children. She described the scene she was met by on her arrival at the Scottish train station:

'Lady Kelly (who was an utter stranger to me) met me at the railway station. I said "I am here, is my boy better?" "No," she said, "he is not better, he is dead." And I found, instead of my child, a corpse already coffined.'¹⁸

Husband's Control

Unable as a woman, as the law then stood, to obtain a divorce and with Norton unwilling to divorce her, Caroline following the death of young William was granted by Norton more time with the two older children, only on conditions that she remained free of any other man's relationship and subject to his absolute right to remove them from her at will. All of this against the background of her continued endeavour in pursuing for the profit of them both her writings - being in 1840 'The Dream and Other Poems', in 1845 'The Child of the Islands' and 'Aunt Carry's Ballads for Children' in 1847.

This apparent truce was to be short lived. In 1848, Norton, facing some financial difficulty himself, agreed by deed to paying Caroline £500 pa but only in return for access by him to capital held in a family trust he had years before established for her and their children benefit upon his prior death. However, in the same year Lord Melbourne upon his death left Caroline a small bequest and in 1851 her mother upon her death left Caroline a further modest annual sum. Norton's response was to stop his own deed payment to her.

Enraged, Caroline in relation to a debt she owed of £47 referred the creditors to Norton as her husband under the 'law of coverture' and he was sued for payment. The resulting court proceedings engaged Norton claiming he had been entitled to stop his deed payment in view of Caroline's subsequent bequest receipts, alleging falsely this had been a stipulation of the deed arrangement. Whilst the Court did not accept this suggestion, it accepted the deed was of no consequence, in any event, since a married woman could not enter into a contract - and thus Norton avoided the 1848 arrangement with Caroline again denied by the law, albeit not before she had yet again, with the Court's indulgence, to be subjected to cross examination by Norton's barrister over her alleged liaisons with the late Lord Melbourne¹⁹.

As before, trapped by the law, Caroline, whilst continuing her literary efforts (including 'Stuart of Dunleath' (1851)) from which Norton would continue to benefit, she also turned her attention to change the law, if not for herself, then for others of her gender.

Divorce Reform:

¹⁸ See note 11 above

¹⁹ see Note 11 above

In 1853 a Royal Commission²⁰ had recommended a review of divorce law. Baron Cranworth, appointed as Lord Chancellor in 1852, started the process, which was later to be completed by his successor Lord Campbell. In 1854, Caroline's extensive pamphlet 'English Laws for Women in the Nineteenth Century'²¹ was published setting out the plight of married women under English Law and her eloquent arguments for change.

Caroline wrote to the Lord Chancellor suggesting any reform required women to be able to own their own property in marriage. She also boldly wrote direct to Queen Victoria (A Letter to the Queen on Lord Chancellor Cranworth's Marriage and Divorce Bill, 1857²²) in terms which sought to educate a female sovereign of the plight under the law of the married women of her realm and which bluntly pointed out would if applied to the throne itself have prevented Victoria's very own accession to it.

Caroline graphically set out before the monarch:-

'A married woman in England has no legal existence: her being is absorbed in that of her husband. Years of separation or desertion cannot alter this position. Unless divorced by special enactment in the House of Lords, the legal fiction holds her to be "one" with her husband, even though she may never see or hear of him.

She has no possessions, unless by special settlement; her property is his property. ... It is now provided that a will shall be revoked by marriage: but the claim of the husband to all that is his wife's exists in full force. An English wife has no legal right even to her clothes or ornaments; her husband may take them and sell them if he pleases, even though they be the gifts of relatives or friends, or bought before marriage.

An English wife cannot make a will. She may have children or kindred whom she may earnestly desire to benefit; she may be separated from her husband, who may be living with a mistress; no matter: the law gives what she has to him, and no will she could make would be valid.

An English wife cannot legally claim her own earnings. ..., her salary is the husband's; and he could compel a second payment, and treat the first as void, if paid to the wife without his sanction.

An English wife may not leave her husband's house. Not only can he sue her for "restitution of conjugal rights," but he has a right to enter the house of any friend or relation with whom she may take refuge, and who may "harbour her," as it is termed, and carry her away by force, with or without the aid of the police.

If the wife sues for separation for cruelty, it must be "cruelty that endangers life or limb," and if she has once forgiven, or, in legal phrase, "condoned" his offences, she

²⁰ The Campbell Commission report - <https://www.british-history.ac.uk/office-holders/vol9/pp41-62#h2-0004>

²¹ see Note 11 above

²² <https://www.cambridge.org/core/books/abs/letter-to-the-queen-on-lord-chancellor-cranworths-marriage-and-divorce-bill/letter-to-the-queen/DA42D9B94C4CE54EC7653180A5C66140>

cannot plead them; though her past forgiveness only proves that she endured as long as endurance was possible.

If her husband take proceedings for a divorce, she is not, in the first instance, allowed to defend herself. She has no means of proving the falsehood of his allegations. She is not represented by attorney, nor permitted to be considered a party to the suit between him and her supposed lover, for "damages."

If an English wife be guilty of infidelity, her husband can divorce her so as to marry again; but she cannot divorce the husband a vinculo, however profligate he may be. No law court can divorce in England. A special Act of Parliament annulling the marriage, is passed for each case. The House of Lords grants this almost as a matter of course to the husband, but not to the wife. In only four instances (two of which were cases of incest), has the wife obtained a divorce to marry again.

She cannot prosecute for a libel. Her husband must prosecute; and in cases of enmity and separation, of course she is without a remedy.

She cannot sign a lease, or transact responsible business.

She cannot claim support, as a matter of personal right, from her husband. He is not bound to her. He is bound ... to see that she does not cumber the parish in which she resides. If it be proved that means sufficient are at her disposal, from relatives or friends, her husband is quit of his obligation, and need not contribute a farthing: even if he have deserted her; or be in receipt of money which is hers by inheritance.

She cannot bind her husband by any agreement, except through a third party. A contract formally drawn out by a lawyer, witnessed, and signed by her husband, is void in law; and he can evade payment of an income so assured, by the legal quibble that "a man cannot contract with his own wife."

Separation from her husband by consent, or for his ill usage, does not alter their mutual relation. He retains the right to divorce her after separation, as before, though he himself be unfaithful.

Her being, on the other hand, of spotless character, and without reproach, gives her no advantage in law. the law takes no cognisance of which is to blame. As her husband, he has a right to all that is hers: as his wife, she has no right to anything that is his. As her husband, he may divorce her (if truth or false swearing can do it): as his wife, the utmost "divorce" she could obtain, is permission to reside alone, married to his name. The marriage ceremony is a civil bond for him, and an indissoluble sacrament for her; and the rights of mutual property which that ceremony is ignorantly supposed to confer, are made absolute for him, and null for her'.

Matrimonial Causes Act 1857

By 1857, there had been gathering support and also a pamphlet by the younger Barbara Leigh-Smith entitled 'A Brief Summary in Plain Language of the Most Important Laws Concerning

Women: together with a few observations thereon' (1854)²³. There had also been sympathetic articles published by the Morning Chronicle (1851) and John Stuart Mill's Westminster Review (1849). The result was that the bill presented to Parliament in the same year, albeit receiving vociferous opposition from William Gladstone, who considered it an attempt to undermine both the sanctity of marriage and the Church's authority in matters relating to marriage and divorce, was passed into law as the first Matrimonial Causes Act²⁴.

The Act, albeit headlined at the time as of a procedural nature, introduced a significant change in the attitude to divorce culturally as well as legally ('from dictatorship to partnership'), and for the first time (excluding Ireland) removed (cl II) jurisdiction for matrimonial affairs from the previous tripartite system involving the Assizes, the Ecclesiastical Court and the House of Lords and set up a new secular civil court (cl VI) jurisdiction headed by the Lord Chancellor (cl VIII) as is still in place today.

Under its provisions, women were allowed access to divorce, but to obtain a divorce, men only needed to prove their wife's adultery, whereas (by 'the Gladstone double standard' concession made by the Palmerston government) the wife had to prove her husband's adultery coupled with aggravating conduct (ie incest, rape, sodomy, bestiality, cruelty or desertion for 2 years or more without reasonable excuse). Actions for criminal conversations were abolished. Legal separation was available to either spouse on the basis of adultery, cruelty or desertion. Barristers as well as civil law advocates gained rights of audience thus undermining the previous monopoly of the latter in the Ecclesiastical Courts..

Directly influenced by Caroline's campaign was the provision in the Act of the protection for women deserted by their husbands from any claim against their earnings, the provision of maintenance to a wife or her trustee, a married woman's right to inherit or leave property by will and a separated wife also gained the right to be a party to a contract or to sue or be sued in civil proceedings.

Caroline's Later Years

From the springboard of this reform developed a string of other advances for women in both matrimonial and other aspects of women's rights in education, employment and society generally over the next half of the nineteenth century, notably and not least the separation of property within marriage in the Married Women's Property Act 1883.

However, although Caroline continued to entertain political and literary figures of society, she did not seek to promulgate feminism - believing that men and women had different and not necessarily equal capabilities. More published works by her followed in 'Lost and Saved' (1863) and 'Old Sir Douglas' (1867), but she, despite the reforms, remained locked by the law in the marriage by the operation of her implied condonement of Norton's behaviour by her brief return in 1835 to live with him and her life was further marred by the additional tragedy

²³<http://webapp1.dlib.indiana.edu/vwwp/view?docId=VAB7030&chunk.id=d1e455&toc.id=&toc.depth=1&brand=vwwp&doc.view=print&anchor.id=#bodichon-note01>

²⁴ <https://hansard.parliament.uk/Commons/1857-07-31#undefined>

of the premature death of her eldest son Fletcher from tuberculosis in 1859 followed by her eldest sister Helen's death in 1867 - all at a time when her own health was deteriorating.

Ironically, her own release from an abusive marriage (the consequences of Caroline's resistance to which had changed the entitlement and standing of married and separated women fundamentally under English law and directly undermined the dominance of the patriarchal system for the very first time), was only secured when her embittered husband himself died in 1875.

For Lady Caroline Norton this meant, albeit fleetingly, she was able by remarriage on 1st March 1877 to her good friend of many years, Sir William Stirling-Maxwell, himself a writer and politician, to finally enjoy under the law a marital relationship which provided her with the love, security and comfort which she had yearned for, yet been denied, all of her adult life.

Sadly for her, this was to be but for a few months only, as she fell ill in the summer of 1877 and died on 15th June 1877. Her remaining son, Brinsley, who being disabled had depended upon his mother's financial support, died himself only a few weeks later, aged 45.



c 1863: Caroline Norton

In Conclusion:

It is remarkable that this woman born in a genteel but not aristocratic family, herself the subject of a physically and emotionally abusive marriage, struck by early child loss and embroiled in a sex scandal that threatened the very existence of the government of the day was yet able to harness by her courage and morale conviction and also by the power of her pen and intellectual debate - a seismic change at the very heart of Victorian attitudes and society generally and by reason of the Empire influence in places much further afield .

Undoubtedly, her determined struggles and campaigns to set right the many injustices married and separated women continued to face, despite an enthroned female sovereign, laid the foundation for and encouraged the rise of other younger women, after her, who witnessing her stance became themselves emboldened to continue on what she had begun and to go on to secure women's rights in education and employment and, eventually, of course, enfranchisement.

All women today in this country in positions of influence and power owe a debt of gratitude to Caroline Norton and carry a responsibility to ensure that over 150 years later any woman should receive the same opportunities and rewards as any man whatever their background -

and that every young girl on completing their state education should know the name of -
Caroline Norton.

'I have tasted each varied pleasure,
And drunk of the cup of delight;
I have danced to the gayest measure
In the halls of dazzling light.
I have dwelt in a blaze of splendour,
And stood in the courts of kings;
I have snatched at each toy that could render
More rapid the flight of Time's wings.
But vainly I've sought for joy or peace,
In that life of light and shade;
And I turn with a sigh to my own dear home-
The home where my childhood played!'
- *My Childhood's Home*, by Caroline Norton

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