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“Willing Victims” and “Innocence Unguarded”? Ambiguous Volition, Perishable Promises, and Disavowed Consent in Fielding’s *Amelia*

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Abstract

This paper examines Henry Fielding’s novel *Amelia* (1751) as a prescient literary contemplation of the temporality of consent. The novel’s preoccupation with impulsive consent and fluctuations of intention is set against a background of shifting legal standards concerning the imperishability of consent. Characters feel bound by norms discouraging the retraction of consent. *Amelia*’s private sexual episodes prepare the reader to deliberate over crises of accountability in non-sexual public settings (the criminal justice system, the gambling den, Vauxhall, and elsewhere). Modern-day legislation and university sexual codes enshrining the stepwise gauging of consent derive from such early reappraisals of the duration of consent.

“Willing Victims” and “Innocence Unguarded”? Ambiguous Volition, Perishable Promises, and Disavowed Consent in Fielding’s *Amelia*

Nicole M. Wright
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KING. *What say you, Madam? We will have a trial.
 When I consent, what power has your denial?*
 —Henry Fielding, *Tom Thumb, A Tragedy* (1730)¹

Consent should be understood as an on-going process rather than a one-time, one-conversation, open door to any or all sexual interactions. Be aware that consent for one act (such as kissing) does not automatically imply consent for subsequent behaviors.

—“Guidelines for Sexual Consent,” President’s Task Force on Sexual Ethics and Education, Oberlin College (2011)²

In 2010, amidst complaints that tolerance of sexual coercion prevailed on many a campus, several prominent American universities and liberal arts colleges distributed guidelines for establishing consent during intimate encounters. According to these codes of sexual conduct, one of consent’s primary features is ephemerality. Codes prepared by Oberlin College and the University of Chicago stipulate that consent is not a binding pledge that must be honored for an unspecified duration regardless of context, but rather a temporary agreement that must be renewed for each successive act. The Yale guidelines state that “Consent to some sexual acts does not imply consent to others, nor does past consent to a given act imply ongoing or future consent. Consent can be revoked at any time.”³ Published centuries before this cascade of codes, Henry Fielding’s final novel *Amelia* (1751) anticipates these declarations of the perishable and bounded nature of consent and expressions of volition. It also reflects new developments in the law’s assessment of consent as evidenced in foundational contemporary legal treatises and Old Bailey case records alike: consent to one activity was not necessarily construed as consent to all ensuing events, and consent could be withdrawn even a while after it was granted.

The novel is ahead of its time in articulating a concept of a person's consent as impermanent. One key character, Miss Mathews, testifies of the exorbitant personal costs incurred due to social norms of consent's perdurability when she is drawn into a seducer's web: she grudgingly agrees to entertain her father's friend, Hebbers, whom she initially views with "Dislike" and "great Indifference," only to realize that she feels powerless to retract her consent: she sleeps with him, becomes his long-term, clandestine lover. Miss Mathews explains that after she was "undone," she felt that she had no viable alternative to continue honoring pledges made in the heat of the moment, so she consented to join Hebbers in London as his mistress and then to bear his child. Laments such as this one recur throughout her recitation of her misfortunes: "I was persuaded to acquiesce, and was indeed pretty easy... O may my Fate be a Warning to every Woman to keep her innocence, to resist every Temptation, since she is certain to repent of the foolish Bargain."⁴ As in her case, most of the novel's sexual relationships and encounters are technically consensual but involve coercion.

The reader of this paper need not brace herself for a sensational exposé of Fielding's hitherto unacknowledged autumnal turn as an anti-rape activist. Early in his career as a playwright, in his comedy *Rape upon Rape* (1730), Fielding mocked allegations of sexual assault as attempts to salvage modesty, as Simon Dickie has documented.⁵ Fielding kept up his snark about rape when he turned novelist in *An Apology for the Life of Miss Shamela Andrews* (1741), *The History of the Adventure of Joseph Andrews* (1742) and *The History of Tom Jones, a Foundling* (1743) (as both Dickie and Sandra Macpherson⁶ have noted). When he found yet another new career as a Westminster magistrate and co-founder, with his brother John Fielding, of the Bow Street Runners (the first prototype of London's modern police force), Fielding judged some rape cases but did not focus on rape in his extended legal and sociological treatises,

including *An Enquiry into the Causes of the Late Increase of Robbers* (1751) and *A Proposal for Making an Effectual Provision for the Poor* (1753). *Amelia* was published years before the notorious Elizabeth Canning kidnapping case, during which Fielding would attend closely to questions of evidence of force against one's will.⁷ One must concur with the historian Roy Porter when he includes Fielding in a list of early modern, eighteenth- and nineteenth-century "male reformers" of whom he declares, "No reformer seems to have thought that rape was the scandal of the day."⁸

In *Amelia*, though, the reader does see a more sympathetic portrayal of allegations of coerced sex. After stating (correctly) that "Modern literary critics have been almost as quick to doubt Mrs. Bennet's story [of rape] as eighteenth-century jurymen would have been," Susan Staves implies that she is taking an interpretive leap in entertaining the possibility that Mrs. Bennet's story may be true.⁹ Yet the evidence supports the story. The "Noble Lord" whom Mrs. Bennet accuses is the novel's deep-dyed villain: he is not vouchsafed any tincture of humanizing charisma (or a given name, for that matter), and there is a paper trail of stipends he grants to his conquests after seductions, *and* he tries his scheme again with Amelia—there is little doubt that he intentionally coerced Mrs. Bennet into mental blackout and unwanted sex after she, flattered by his attentions, consented to his invitation to a masquerade. Moreover, in *Amelia* Fielding departs from the judicial convention of allowing testimony from both sides, for he enters into the record stories of unwanted sexual contact told exclusively from the female victims' point of view, while the male alleged perpetrators' accounts of events are consistently omitted.¹⁰

Despite this new tone, the novel's portrayals of rape and attempts to coerce sexual interaction in *Amelia* do not amount to a jeremiad against rape or a misogynist society; these scenes are instead emblematic of a thematic preoccupation with the overly dire consequences

meted out by eighteenth-century London's unforgiving society and legal system for good-natured if careless initial consent. This paper suggests that these scenes should be read in concert with other non-sexual scenes involving consent, as both types of scenes are emblematic of the novel's more general concern with the supposed inevitability of (mis)reading consent as perdurable

While its areas of concern overlaps with those of insightful previous critiques of *Amelia* (by an eminent cohort of scholars including Robert Alter, John Bender, Barbara Benedict, Terry Castle, Jill Campbell, Ronald Paulson, Tiffany Potter, Claude Rawson, Pat Rogers, and Patricia Meyer Spacks¹¹), this paper has a different focus: it examines Fielding's novel as a prescient literary contemplation of the temporality of consent in matters both sexual and non-sexual, showing how the novel devotes special attention to the sequential nature of events¹² and fluctuating desires as a critical element to be weighed in evaluating relative accountability for regretted outcomes. Although some scholars cordon off the novel's treatment of sex and gender relations as a separate issue,¹³ the novel's sexual episodes—dreary affairs that unfold in dank urban jails and chintzy rooming-houses and provoke lasting resentment, so different from the no-harm no-foul bucolic frolics of *Joseph Andrews* and *Tom Jones*¹⁴—prepare readers to evaluate *Amelia*'s non-sexual episodes of nominally consensual yet coerced behavior in a different light; notions of relative accountability shift, given the foregoing sexual episodes' focus on the idea that initial consent to one action may not reflect willingness to participate in subsequent acts. The type of reasoning voiced by Miss Mathews and Mrs. Bennet is echoed in scenes that examine power dynamics not only in secluded trysting-places, but also in such various domains as the criminal justice system; the Vauxhall public gardens; the marriage market; the gamblers' den, with its sharpers and saps; the so-called “verge,” where debtors escape their creditors, who

in turn resort to unsporting stratagem to lure their quarry from the protective space; and the household, as the idea that consent is imperishable limits autonomy and damages lives in each of these very different contexts.

The reading that follows demonstrates that this complicated novel encourages skepticism regarding the validity of treating even verifiable instances of consent as reliable indicators of the entirety and future direction of an individual's desires and intentions. Fielding repeatedly places characters in predicaments involving crises of accountability. Many of the novel's episodes involve decisions that are nominally and momentarily volitional, yet are described in retrospect as contravening the intentions and most cherished values of the character who made the decision. This is a key difference between *Amelia* and Fielding's earlier novels. In tracing the work's development of a concept of provisional consent, I shall first provide historical context and critical background. Next, I shall establish that *Amelia*'s numerous scenes of coerced and regretted sexual encounters demonstrate the importance of regarding consent as perpetually subject to change; show that consent's ephemerality is also emphasized in the novel's non-sexual situations; and make a case for a more favorable evaluation of the narrative shape of *Amelia*, a novel widely disparaged as formally incoherent.

I. Hale (*et al.*) and Hearty Consent: Historical Context for Provisional Agreements

The challenges of authenticating consent and establishing its limits came to the fore as a controversial topic during Fielding's time. *Amelia* appeared two years before the passage of Lord Hardwicke's 1753 Marriage Act, which changed the terms according to which a marriage ceremony qualified as valid and thus attempted to quell the rising incidence of clandestine marriages said to be based on the impetuous or coerced consent of naïve heiresses and their ilk.

Yet the novel's focus on the provisionality of consent, elucidated through a series of episodes involving coerced or regretted sexual and non-sexual interactions, corresponds to some eminent legal figures' admissions that consent, once granted, is not ironclad. As Chief Westminster Magistrate at London's Bow Street court (during the exact period that he was writing *Amelia*), Fielding clearly demonstrates in his writings that he is familiar with both contemporary and previous legal scholarship.¹⁵

For the most part, major English jurists of preceding generations did not entertain questions of sexual consent. "The issue of consent does not appear to play a significant part in medieval cases (although the victim's lack of consent as fact was sometimes alleged in medieval indictments)," the historian Anthony Musson finds, "partly because the trial did not focus on the accused's state of mind during the encounter."¹⁶ Rape was viewed as a matter of one man encroaching on another man's property, rather than a man violating a woman's rights.¹⁷ Yet contracts and consent to sign over property were more complex transactions and it is here that a burgeoning sense of the provisionality of consent can be found.

The medieval legal authority and *coram rege* judge Henry de Bracton contemplates the perishability of volition in *De legibus et consuetudinibus Angliæ* (c. 1235-1256), a guide to the English law of a scope and breadth not attempted again until William Blackstone labored over his *Commentaries on the Laws of England*, which were published more than a decade after Fielding's death in 1764. Bracton devotes multiple chapters of his massive work, which has been lauded by prominent scholars as "the crown and flower of English jurisprudence"¹⁸ and "without question the most outstanding legal text produced in England during the Middle Ages,"¹⁹ to the importance of ascertaining whether a transfer of property is compelled or coerced. He finds that one can withdraw what has been freely given, if one followed through due to feeling

threatened: “But if I first promise freely and then, coerced by fear and [force], deliver, such fear does excuse [the nullification of the promise], because of the force and compulsion connected with the transfer, for my original intention to transfer the thing to the donee may have been abandoned.”²⁰ Bracton states elsewhere in *De legibus* that “Some possessions are precarious, as where one grants to another at will the right to use his house as a dwelling or a usufruct in his property, which is properly called ‘bare’ since it may be revoked in season and out; if the grantee endeavors to retain seisin against the will of the true lord, let him be ejected at once.”²¹ As for commercial deals, Bracton avers that purchasing agreements be voided if the buyer or seller changes his mind, and that full restitution is not required for voided contracts: he states, “When something by way of earnest has been paid before delivery and the buyer regrets his purchase and wishes to withdraw from the contract, let him forfeit what he gave.”²²

In another foundational common law text, *The Institutes of the Lawes of England* (1628; 1642, 1644), Edward Coke similarly indicates that a person should not be constrained by fear to make good on a freely given promise: such a “gift is simple and pure, not constrained by civil or natural law, with no fear preceding it or intervening, which proceeds from the pure and gratuitous liberality of the giver.”²³ While these statements favored landowners, identical reasoning—that one should not necessarily be held to one’s initial promise, especially if not *compos mentis*, that is, suffering from fear, ill health, incapacitation, or poor memory²⁴—has been used in the United States over the last two decades to change legislation to protect traditionally disempowered people such as alleged victims of sexual assault. In several American states, a defendant can be convicted of rape even if an initially willing sex partner changes her mind in the midst of the act, that is, after penetration.²⁵

The notion that time was an important organizing principle of consent is also found in

other works frequently cited by Fielding in his legal writings. In *The Mirror of Justices* (1642), which was edited, compiled, and perhaps written by the renowned legal scholar Andrew Horn (whom Blackstone praises in his introduction to the *Commentaries* as “one of the most learned scholars of his day”²⁶) the section “On Contracts” begins by categorizing contracts according to duration: “A contract is a speech betwixt Parties... of which there are many kinds; some are perpetuall, as of those of Matrimony; others are temporary, as of Baylements, and Leases; and one kind is mixt, as of Exchanges, which sometimes are for a time, and sometimes for ever.”²⁷

Although sex is an activity and not the physical object to which Coke, Hale, and Hawkins were referring, perceptions of initial sexual consent are based on a contract model. The legal scholar Michele Alexandre observes that “[t]he ease with which withdrawal of consent is disregarded stem[s] from the traditional contract-based view that the defendant relied upon the consent given and would be prejudiced if consent was subsequently withdrawn. This idea protects in part the contractual concept of part-performance.” Under this rubric, withholding sex is akin to reneging on a promise to deliver an item. As Alexandre further explains, “In other words, from circumstantial evidence, we interpret the contract as only capable of having been made at the inception of sexual interaction. Accordingly, once the contract is made, all steps subsequently taken by the defendant are in reliance on the original terms of the contract.”²⁸

Evidently, Miss Mathews and Mrs. Bennet are aware that they will be judged according to such reasoning. Amelia seems to accept a similar view in a set piece near the denouement of the novel, when she is approached by two leering young men who loom over her and demand kisses shortly after she enters the Vauxhall gardens (XII.ix, 392). She is accompanied by her children and three adult men, but her male companions do not make a move to defend her, and she does not blame the young blades for accosting her. She cowers but does not attempt to run

away, and seems, horrified, to resign herself to her fate. As Kramnick has emphasized, Locke maintained that by virtue of inhabiting the lands of a nation, one accepted the laws of that nation.²⁹ David E. Coke and Alan Borg remark in their history of Vauxhall that female visitors were frequently exposed to sexual intimidation for decades before Amelia's fictional outing; in his *Diary* of the 1660s Samuel Pepys mentions that he was "troubled" by the all-too-prevalent scene of obnoxious upstarts harassing "two pretty women."³⁰ Amelia has no intention of consorting with male strangers, and simply means to enjoy an afternoon excursion with her family and friends; but by passing through the entrance into Vauxhall, she has waived her rights to sexual safety and subjected herself to the garden's notoriously lax mores and sexual dangers, and she appears to realize this with chagrin. Yet the assailants are portrayed as villains, and the narrator's sympathy is clearly with Amelia. Loss of virtue seems a cruel price to pay for daring to venture into a park in broad daylight, especially when the precaution was taken of surrounding oneself with male chaperones.

As compared to the nuanced yet lucid idea of consent that emerges in *Amelia*—that is, it is overly harsh and punitive to insist that initial consent should be conflated with consent to all subsequent activities—criteria for determining sexual consent endorsed in legal writings of Fielding's own era seem conflicted and arbitrary, even as the writers acknowledge changing standards. The prominent English jurist Matthew Hale's much-quoted assertion from *Historiae Placitorum Coronae* (1736) conveys the notion that a women's marriage vows amount to guaranteed consent to her husband's sexual overtures in perpetuity: "[A] husband cannot be guilty of rape . . . for by their mutual matrimonial consent and contract, the wife hath given up herself in this kind unto her husband, which she cannot retract."³¹ Fielding was very familiar with Hale's influential criminal law treatise, which was one of the most important of its age³²; he

continually referred to the *Coronae* as a vital resource for his jurisprudential writings, and made plentiful notes in his copy.³³ While Hale's logic of consent's imperishability applies specifically to a marital bond, Fielding's novel illustrates that such stringent reasoning pervaded different categories of interpersonal encounters during the period. The world of *Amelia* is one where all manner of initial commitments are deemed indissoluble, leading to characters' enmeshment in predicaments in which they did not intend to involve themselves; one's word is one's bondage.

Although Hale's pronouncement that marriage guaranteed wives' consent to sex has been rendered infamous by some feminist scholars as a representative misogynist sound bite,³⁴ further perusal of his and other legal guides reveals inconsistency as to whether, for women who were not officially married, initial consent preemptively trumped any subsequent retraction. In an adjacent passage, Hale declares that women should no longer be barred from bringing rape cases against their common-law husbands: "It appears [from ancient legal standards]... that in an appeal of rape, unlawful cohabitation carried a presumption in law, that it was not against her will," Hale finds, continuing to observe, "But this is no exception at this day, it [cohabitation] may be evidence of an assent, but it is not necessary that it should be, for the woman may forsake that unlawful course of life." Similarly contending that change of mind can invalidate prior consent, the barrister William Hawkins maintains in his commentary on forcible marriage in his renowned work,³⁵ *A Treatise of Pleas of the Crown* (1716), that "[I]t is no manner of excuse, that the woman at first was taken away with her own consent, because if she afterwards refuse to continue with the offender, and be forced against her will, she may from that time as properly be said to be taken against her will, as if she had never given any consent at all; for till the force was put upon her, she was in her own power."³⁶ Foremost jurists of the time thus display a shifting view of sexual consent that made fine distinctions depending on the context in

which consent was given. This is in keeping with the more accommodating, merciful view of consent endorsed in *Amelia*.

Of the sources listed by the Old Bailey archives, the word “consent” proliferates in female prosecutrixes’ and male defendants’ testimony, but does not always signify what one would expect—that is, the sex act that is the foundation of the accusation. While the term does sometimes refer to the sexual encounter, the word “consent” is also used to denote the prosecutrix’s response to some other, non-sexual activity suggested by the defendant. In one case that reads like an excerpt from an Eliza Haywood novel, a prosecutrix testifies that a stranger approaches her outdoors, spends time with her in a public house, and asks her “to consent to go down to the Country” and promenade with him there to make the woman who jilted him jealous; he proffers a pricey bauble as security for his good intentions (“says he, if I am rude, —keep this, [pulling a very handsome Diamond Ring off his Finger]”). She agrees to his plan, but says that she will not sleep away from her home, and suggests a morning visit instead. The stranger accompanies her outside and helps her into a chair to take her home; however, contrary to his assurances to her, he directs the men to take her to his lodgings, where he allegedly rapes her.³⁷ It is often the case that a plaintiff reports that the male defendant interpreted her consent to a non-sexual activity or courtship gesture as consent to sex.

In a few cases, the term “consent” is invoked by the male defendant to denote concessions demanded by a scheming woman (the prosecutrix), as when one man testifies that his accuser sought to barter sex for marriage: “She asked me if I would marry her; I said I never came to such a place to make up a match, nor marry a woman that went there with me; upon that we differed... When I would not consent to marry her she got up... she said she would make me repent it, or suffer for it.”³⁸ The Old Bailey cases highlight the prevalence of the argument that

consent to one action (be it stepping into a vehicle, or sex with a comely stranger) did not entail consent to a subsequent activity (sex, marriage), even if that activity could be perceived as naturally condoned by the initial consent.

II. Fielding Apologies: The Critical Background

In dwelling on questions of both sexual and non-sexual consent in *Amelia*, Fielding entered into conversation with novelists of his day and of the preceding generation. Recent years have seen the publication of invigorating scholarship by Frances Ferguson, Jonathan Kramnick, and Sandra Macpherson, among others, on consent in canonical works by such prominent authors as Samuel Richardson and Eliza Haywood.¹ Taking a variety of approaches, all draw special attention to what Elaine Scarry calls “the grounding of consent in the body.”³⁹ Kramnick focuses on *Love in Excess* (1719) and *Fantomina* (1725), arguing that Haywood contradicts the Lockean view that “the self is... an autonomous agent acting upon the world,” and instead suggests that “the will exists in a web of relationships, where consciousness, agency, and finally consent thread through others.”⁴⁰ Characters in *Amelia* must somehow manage to survive in a corrupt eighteenth-century London society that refuses to acknowledge this interconnectedness. While *Fantomina* revels in orchestrating her own objectification, that is, in indulging her very active will by, paradoxically, imagining her male suitors thinking of her as passive sexual fodder to bend to *their* will, those characters in *Amelia* without access to the protective resources of money or power suffer from the opposite situation. They are styled by those who judge them (arrogant magistrates, predatory aristocrats, fair-weather friends obsessed with the social whirl) as über-agents—and so are credited with too much power, with sole responsibility for outcomes that should not be attributed to them alone. According to society’s self-interested account of

things, an impoverished man's or desperate woman's first assent to a single proposed activity sets massive chains of events in inexorable motion. This endowment of agency occurs only when it comes time for law and society to assign responsibility, because structural inequality ensures that such consummate agency remains a legal fiction and that the characters do not in actuality enjoy such supreme powers to exert their will.⁴¹

Issues of agency also receive a considered treatment in Ferguson's important essay, "Rape and the Rise of the Novel." Ferguson notes that "Rape law continually suggests as a paradigmatic interpretive strategy the reversibility of the terms that seem to be associated with the charge of rape itself," adding that "[i]f in statutory rape *yes* is always meant to mean "no," in other kinds of rape *no* is frequently taken to mean 'yes.'"⁴² The problem in *Amelia* is not the venal (or supposedly magnanimous) misreading of an unequivocal "no" as "yes," or vice versa. Instead, the novel illustrates the disastrous consequences that follow when a curious, provisional "yes" is taken as an informed, sustained "Yes" to all further requests rather than as a consent for the moment, for the specific activity mentioned in the initial overture.

In her brilliant account describing the British novel as a vehicle for realism's inherently "tragic logic of strict liability," Macpherson persuasively refutes and reframes cherished tenets of criticism's conventional wisdom. Her decision to abide by lit-crit protocol in using Fielding as a more cheerful and less compelling foil for Richardson thus seems uncharacteristic. Macpherson accepts the received wisdom of other critics in stating, "In a Fielding novel, there is no harm and there are no accidents."⁴³ Fielding, she claims, holds that as long as a person is good-natured, they should not be blamed; damage to a person's reputation through malicious accusation is the real harm with which he is concerned.⁴⁴ This may be true of Fielding's earlier novels, but it does not hold in *Amelia*. Curiously, Macpherson omits any mention of *Amelia* in her work, although

due to its themes it would be a prime candidate for her account of the developing form of the novel. (Dickie likewise dispatches *Amelia* from his article “Rape Jokes in Fielding” in a single, trivializing sentence although the novel’s episodes of rape and sexual threat are pertinent to his analysis, perhaps because *Amelia* does not support his portrait of a jocular, misogynist Fielding.⁴⁵) By leaving out Fielding’s last novel, Macpherson disregards the evolution of his views on accountability. As opposed to his earlier works, in *Amelia* Fielding admits that even if one’s heart has good intentions—if one’s initial “yes” is uttered with all the milk of human kindness or all the lustiness of a healthy sexual appetite—harm ensues.⁴⁶

So why do some of *Amelia*’s careless consenters get a happy ending? Here I reiterate that, while revealing the inadequacy and inconsistency of predominant contemporary views of consent during Fielding’s time, *Amelia* contests the habitual societal presumption that consent to any one overture indicates assent to all subsequent activities. The novel accomplishes this reassessment in a way that unsettles schematic delineations of victim and perpetrator, refusing to valorize immediate and staunch refusal of tempting overtures or proof of unequivocal resistance as criteria for deserving justice. By bringing his characters to the brink of despair, and then delivering on his promise of a happy ending for his “comic epic,” Fielding indicates that while people should suffer for their mistakes, draconian punishments for outcomes stemming from spur-of-the-moment or otherwise unthoughtful consent are inordinate. Nor does he propose specific legal remedies to protect people from themselves, from their own ill-advised promises. He simply—and powerfully—illustrates the social collateral damage and legal cruxes that lie in the wake of regarding initial consent as binding, in a way that signals a new development in his own legal thinking and for the novel in general, and foreshadows shifts in legislation on sexual and other modes of consent, as laws regarding consent continue to evolve today.

III. Contested Clinches: Temporal Segmentation and Retroactive Denial

In contrast with Fielding's other novels, *Amelia* is peopled by characters afflicted by a newly prominent emotion: regret.⁴⁷ "I am heartily sorry I ever consented" (X, viii, 438), the heroine exclaims at one point, and up until the tidy conclusion, this phrase could serve as the motto for several characters. How different from the unrepentant protagonists of Fielding's previous works—consider the brazen Shamela, or the incorrigible scapegrace Jonathan Wild, who, as Claude Rawson notes, purloins a dagger from the hangman's pocket even when ascending the scaffold.⁴⁸ Nor do characters tend to bewail their sexual encounters, let alone recite bitter accounts of forced sex years later, as in *Amelia*: Molly Seagrim never accuses Tom of anything like "gray rape,"⁴⁹ and Nancy's illegitimate impregnation by Nightingale is but a hiccup en route to nuptials and domestic bliss.

Certainly, questions of consent and accountability feature in Fielding's other efforts—for instance, the term "liability" and variants thereof occur exactly the same number of times in *Tom Jones* (1749) as in *Amelia*. In the final novel, however, these concerns are foregrounded. Expressions of regret are noteworthy because these disclosures illuminate the volatility of willingness, highlighting the discrepancy between the cooperative state of mind implied by the fact of consent to an apparently inconsequential activity and contrasting emotions of penitence, grief, or fury stemming from ensuing events that were beyond one's control. By lingering on characters' ruminations, the novel underscores the evanescence of the feelings, thoughts, and desires on which assumptions of a perdurable consent is all too precariously based.

Those who yield to sexual temptation in *Amelia* mistakenly believe that they can dictate outcomes, that they can acquiesce up to a certain point and then decline to continue. Booth does

not expect that his prison assignments with Miss Mathews amount to any promise of future rendezvous. Mrs. Bennet expresses regret for welcoming the attentions of the “Noble Lord” while married, but denies that she had any intention of ultimately succumbing to a sexual proposition. During an extended private conversation she tells Amelia:

I will—I will own the Truth; [...] I was charmed with the Delicacy of his Passion; and in the foolish thoughtless Turn of Mind, in which I then was, I fancied I might give some very distant Encouragement to such a Passion in such a Man, with the utmost Safety; that I might indulge my Vanity and Interest at once, without being guilty of the least Injury. (VII.vii.308)

Mrs. Bennet acknowledges that she thought that she could flirt without repercussions, and implies that she recognized the possibility of “Injury,” but acted in such a circumspect way as to avoid being perceived as a “guilty” party. Attribution of responsibility only becomes murkier when she describes herself elsewhere as a “willing Victim”(VII.ix.313). Throughout her extended narrative of the lord’s grooming of her family—he dotes on her young son and offers gifts during frequent visits—Mrs. Bennet omits the word “consent.” She speaks, instead, of being “thoughtless,” a descriptor that she regularly applies to herself. She resembles Eliza Haywood’s Betsy Thoughtless (the heroine of the novel of that name, published the same year as was *Amelia*), who “was too volatile for reflection, and was hurried thro’ the ocean of life, just as each predominant passion dictated.”⁵⁰ Invoking terms with a legal valence (“guilty” and “Injury”), Mrs. Bennet indicates that she may have recognized the possible ramifications of her flirtation, complicating her claim of thoughtlessness.

The phrase “I believe” recurs throughout Mrs. Bennet’s hearthside testimony, but she uses the phrase so frequently that it registers as a verbal tic rather than an assertion of fact or declaration of adherence to a certain tenet, and her beliefs are remarkably transient and fluid. Her narrative of her past is riddled with lacunae, with instances of cognitive retreat and volitional drift that do not quite amount to genuine naïve credulity so much as willed obliviousness: “Innocence, it is true, possessed my Heart; but it was Innocence Unguarded, intoxicated with foolish Desires, and liable to every Temptation.... [W]e had many trifling Adventures, not worth remembering” (VII, vii, 308). Only when she arrives at the culmination of the account of her flirtation with the lord does Mrs. Bennet utter the term “consent,” only to disavow its application to her case: “I must draw a Curtain over the Residue of that fatal Night,” she tells Amelia. “Let it suffice, that it involved me in the most dreadful Ruin; a Ruin, to which, I can truly say, I never consented, and of which I was scarce conscious”(VII, vii, 307-8).

Mrs. Bennet’s omission from her story of her own specific words and actions—evidence that may be judged as encouraging the lord—is geared towards absolving herself of blame, but it is her off-putting self-absorption that more effectively, if unexpectedly, vindicates her, signaling her inability to discern the lord’s motives and to understand the full extent of the risk she is taking. Her manner of recounting the gradual development of the affair indicates that Mrs. Bennet fails to grasp the import of the sententia intoned by the narrator: “[T]here is no Exercise of the Mind of a sensible Reader more pleasant than the tracing the several small and almost imperceptible Events by which all the great Actions of the World are produced” (XII, ii, 482). *Amelia* guides the reader to practice such tracing of origins, to identify the initial decision to consent as one “small cause” of many.

In the aforementioned, prolix narrative that anticipates that of Mrs. Bennett, Miss Mathews bemoans her initial agreement to tolerate Hebbers's company, thereby ultimately blighting her life. She tells of being lured into the compromising situation by degrees: Hebbers comes to live with her family and urges her to practice the harpsichord. She mentions her reluctance: "I never had any Delight in Music, and it was not without some Difficulty that I was prevailed upon to play," she says, noting that "as this Man, therefore, was frequently the Occasion of my being importuned to play against my Will, I began to entertain some Dislike for him on that Account"(I, ix, 83). At each subsequent point of their interaction, she feels helpless to withdraw her consent to private visits from Hebbers, first yielding to furtive trysts, then agreeing to run away with him to London as his mistress. In sordid city lodgings, she bears a child and is abandoned for a wealthy older woman. After recounting her story to Booth in her jail cell, Miss Mathews wails, with theatrical declamation, "Every Woman... walks on a Precipice, and the bottomless Pit is to receive her if she slips; nay, if she makes but one false Step"(I, viii, 86). The marriage market does not allow for "false Steps" or misguided moments of consent; a woman who makes an exception guarantees her own irrevocable ruin. The market also does not make exceptions or calibrate punishment according to the degree of persuasion or deception practiced by the woman's male partner; the fact of consent suffices to seal a woman's fate. Yet, ultimately, the novel's "liable little wretches"—the children who are neglected by their parents or are conceived during thoughtless sexual encounters—conveniently perish or recede into the background, so that the burden of carelessness is not disproportionately borne according to gender for more than a couple of years: Miss Mathews and Mrs. Bennet are relieved of that magnitude of a burden for their initial consent to intercourse, while Amelia faces no dire consequences for leaving her children overseas or with neighbors to rush to comfort her husband.

II. “Acting Out of Character”?: Initial Consent and the Waning of Willingness

When the novel’s female characters impulsively consent to sexual encounters due to vulnerability or infatuation, their first impulses may be construed as unwise, but are not portrayed as unwomanly, depraved, or otherwise inherently wrong. John Zomchick would disagree; he claims that the novel corrects those characters who “indulge sympathetic impulses,” contending that in the novel “there is a causal relationship between freedom and self-restraint.”⁵¹ In Zomchick’s view, Fielding unfavorably contrasts “the public sphere in *Amelia* . . . the sphere of violence, coercion, and non-reciprocal social relations” to an idealized “alternative space of non-coercive relations in the private sphere.” Yet closer examination reveals that, on the contrary, the novel characterizes the private realm as similarly inflexible and legalistic in failing to protect those who consent based on innocent or generous impulses from disproportionately punitive outcomes. The novel suggests analogies between dramatic incidents of sexual coercion and subtler yet just as harmful social, legal, and economic coercion. It includes an abundance of counterpoised scenes in which initial consent to one apparently innocuous diversion binds the consentor to participate in more compromising and risky activities.

At the very beginning of the novel, acting on impulse and consenting without question is portrayed as commendable. Booth is at his most morally appealing here, where he is depicted as helpless to refute a falsified account of his responsibility for a violent brawl. *Amelia* and the earlier *Tom Jones* both include pivotal episodes in which an impecunious gambler happens upon a group of assailants beating a single man, and rushes forward to defend him from further harm: “As I had not therefore been deprived of my Humanity by my present Life and Conversation, I immediately offered my Assistance to the unhappy Person,”⁵² the “Man of the Hill” recalls in

Tom Jones. After the Man of the Hill brings the “wounded Man” for medical treatment, he is rewarded for his troubles: “I began to recognize the Features of my Father... I presently ran to him, raised him in my Arms, and kissed his cold Lips with the utmost Eagerness.” The impulsive decision to intervene is rewarded by social repair in form of an uncanny moment of recognition between defender and victim and the subsequent reconstitution of a long-estranged family.

By contrast, in *Amelia* Booth similarly “endeavor[s] to assist the Person who was so unequally attacked”(I, ii, 63), but his impulsive entrance into the fray exacerbates the novel’s prevailing sense of anomie and voided social contract: Booth is arrested on a trumped-up charge of “Battery” and is thus separated from his family, while the anonymous “Person” to whom he serves as good Samaritan vanishes. In court, Booth is branded an “Offender” (I, ii, 63) by the merciless and corrupt Judge Thrasher, who imprisons the penniless Booth while releasing the true culprits (who bribe their way out of jail). By prefacing the novel’s extensive chronicle of abhorrent, ostensibly consensual activities (adultery, gambling, bribery, prostitution, forgery, usurious money-lending) with a magistrate’s egregious misreading of a commendable instance of spontaneous consensual participation, the novel guides the reader to question the ways in which consent is taken out of context; characters make outsized assumptions based on the meager knowledge of the fact that a certain action is nominally consensual. The characters placed in a position to judge their fellows conclude that those who granted consent to participate in an immoral or unlawful activity did so based on congenital character traits such as venality or hard-heartedness. They ignore contributing circumstances. For those insufficiently protected by social institutions that favor punishment over correction, Fielding suggests, impetuous inclination is an overwhelming force that cannot be countermanded by the force of will; such

vulnerable figures are subject to harsh overcorrection at the hands of the law.

At times, a character's unerring determination to abide by their consensual participation is cast in a slapstick, bizarrely comical tone. The latter case is exemplified by Colonel Bath's magnanimous yet emasculating declaration to his surgeon, exculpating Booth, who has just "run him through" with his sword in a duel: "I desire you will be a Witness of my Declaration, that this young Gentleman is entirely innocent. I forced him to do what he did"(V, vi, 231).

(Incidentally, in another example of his inconsistency regarding the imperishability of consent, Hale states that if two men engage in a bout "of cudgels or wrestling by consent," and one dies in the fray, the other is guilty of manslaughter, despite the fact that consent was given.⁵³) Honoring one's word is thus reframed as masochism in extreme scenarios of the type of ethical dilemmas that feature in subtler forms elsewhere in the novel.

In the bleak London of Fielding's imagining, it is made bitterly clear that one's consent is open to misinterpretation. The novel's most obvious manifestation of this is found when characters forge wills or reinterpret dying instructions for bequests such that dead relatives appear to have condoned their material desires. These deceased mothers and fathers are the ultimate flat characters: a dead character's intentions are legible only in her will (in *Amelia* the term connotes both the specific sense of "testament" and the more general sense of "volition"), which is open to interpretation—and alteration—by others. Late in the novel, for instance, Amelia learns that her sister forged her mother's will from Robinson, one of the sister's accomplices:

Now, Sir, it seems the other Daughter had, some way or other, disobliged
her Mother, a little before the old Lady died, therefore she had made a Will,
and left all her Fortune, except one thousand Pound, to Mrs. *Booth*; to

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which will *Murphy*, myself, and Another, who is now dead, were the Witnesses. Mrs. *Harris* afterwards died suddenly; upon which it was contrived, by her other Daughter and Mr. *Murphy* to make a new Will, in which Mrs. *Booth* had a legacy of £10 and all the Rest was given to the Other. To this will *Murphy*, myself, and the same third Person, again set our Hands. (XII, vi, 501)

Although this revelation is meant to set in motion the novel's comic resolution, it opens up new, troubling implications that undermine the expected happy ending. The mother made her decisions as her life waned, and in a fit of pique. The resulting document was not a product of thoughtful deliberation. Embedded in this new information, therefore, is an acknowledgment of impulsive behavior that contradicts the sense that things have been set right, that the mother's definitive intentions have been revealed; had the mother lived to re-think her hasty action, the estate would likely have been divided in a more equitable fashion. The mother would likely have prepared a testament identical to the forged one had she passed away during the lengthy period of her estrangement from Amelia, who had angered her by accepting a marriage proposal from the impecunious Booth. She had just recently mended relations with Amelia when she falls ill and dies. The newly revealed, unforged testament captures the mother's intentions only at a brief moment in time, and is thus not necessarily more valid than the forged testament.

For his part, Robinson may have knowingly consented to validate the new will, but his signature does not express meaningful, lasting intention. His collaboration is a response to a temporary situation; he needs money, and will sign anything to obtain it. Disappointingly, Robinson turns out to be vulnerable to the same lures that motivate the crowd from which he is explicitly separated, despite a red-herring intimation earlier in the novel that he is, in some

ineffable way, different: “[S]omething in the Manner of *Robinson*, notwithstanding the meanness of his Dress, seemed to distinguish him from the Crowds of Wretches who swarmed in those Regions” (I, iii, 66). Robinson, like Booth, loses his capacity for independent volition in promiscuous blending with the amoral hordes surrounding him in prison.

Even as Robinson and Booth alike mingle with others of ill repute, Fielding relates how they are divided within themselves even at the moment of consent. In Fielding’s time, making the claim that defendant was “acting out of character” became increasingly recognized as an effective exculpatory technique. As one analyst of the period notes, “By the middle of the eighteenth century, pre-trial examinations and trial testimony alike reveal the efforts of defendants to fashion pleas of diminished responsibility based on popular perceptions of mental distress... borrow[ing] the language of legal insanity to argue for some kind of diminished intent.”⁵⁴ When Booth squanders household funds on gambling, his problem is described as stemming from a physiological impetus and social pressure:

How easy it is for a Man who is at all tainted with the Itch of Gaming, to leave off Play in such a Situation, especially when he is likewise heated with Liquor, I leave to the Gamesters to determine. Certain it is, that Booth had no Inclination to desist; but, on the Contrary, was so eagerly bent on playing on, that he called his Friend out of the Room, and asked him for ten Pieces, which he promised punctually to pay the next Morning. (X, v, 427)

With the first sentence, the narrator implies that Booth’s powers of volition are impaired; he enhances this sense by presenting Booth’s zeal for play as a passively contracted somatic condition rather than as a ruling passion guiding a deliberate mental process, noting Booth’s

desire to continue at table in words used to describe a malady, as an “itch” exacerbated by his “heated” state. This would seem to undermine any assumption that Booth’s lack of “inclination to desist” should be equated to full-fledged consent to continue at play and become indebted to his friend. To be sure, the narrator states that Booth does not want to step away from the table—by all appearances, Booth is more responsible for his plight than, say, an unassertive man who longs to exit the game but fears physical retaliation from his companions. Yet the diction of the passage implies that Booth is primed by animal instinct for automatic, bestial reaction to the stimuli around him.

The sentence that follows, in contrast, emphatically presents Booth as the instigator of his own destruction, stating that it is “certain” that Booth was set on extending his night of play, and, indeed, had the presence of mind to invite a friend to another room and enter into a lending agreement. This equivocal description of Booth’s state of mind reflects eighteenth-century jurists’ often internally inconsistent assessments as to whether a defendant’s drunkenness could constitute a valid reason for mitigating criminal punishment. In “On Drunkenness,” Fielding himself opens by commending Aristotle for recommending harsher punishments for crimes committed under the influence; but later in the essay he recalls observing drastic changes in prisoners’ demeanor once they sobered up (“I have plainly perceived... that the *Gin* alone was the cause of the Transgression”), and admits, “I have been sometimes sorry that I was obliged to commit them to Prison.”⁵⁵

Blackstone acknowledges that drunkenness overrides the reasoning faculties, but describes it as a “voluntarily contracted Madness”(drawing upon the same somatic, socially oriented vocabulary used by Fielding). Blackstone concludes that entering into such a condition ought to compound a defendant’s culpability: “As to artificial, voluntarily contracted Madness,

by Drunkenness or Intoxication, which, depriving Men of their Reason, puts them in a temporary Frenzy,” Blackstone remarks, “our Law looks upon this as an Aggravation of the Offense, rather than as an Excuse for any criminal Behavior.⁵⁶ Blackstone’s notion of a “voluntarily contracted” incapacity acknowledges the imbiber’s willingness, but the term “contracted” itself connotes two opposite conditions: one sense being expressly indicated volition, and the other being passive susceptibility. The *Oxford English Dictionary* provides instances of the latter sense of “contract” used by Hobbes and Pepys, among others: “To enter into, bring upon oneself (involuntarily), incur, catch, acquire, become infected with (something noxious, as disease, mischief; bad habits).” Fielding’s characters tend to place themselves in a situation for which they anticipate a certain level of risk, but neglect to devise strategies for extracting themselves when matters worsen.

The narrator, having made much of Booth’s “eager” assent to continue play and enter into the bargain with Trent, then completely alters position, turning about not only to underscore Booth’s regret, but, further, to shift responsibility for the bargain retroactively to Trent: “[B]esides the Loss of his own Money, he [Booth] was 50*l.* indebted to Trent... A Sum indeed which he would not have borrowed, had not the other, like a very generous Friend, push’d it on him”(X, v, 427). In another parallel to the female characters’ seduction narratives, initial consent sets Booth on an apparently inescapable downward course: “The more *Booth* lost, the deeper he made his Bets.” Booth’s despair grows when he leaves the scene and is no longer under Trent’s influence: “He was ashamed of the Debt which he had already contracted to *Trent*, and very far from desiring to encrease it”(X, v, 428). Far from augmenting the reader’s sense that Booth is chiefly responsible for his plight, the novel shows the escalating pressures that the well-meaning everyman faces over the course of the evening; under such conditions, it seems futile to expect

Booth to muster the wherewithal to escape a cycle of initial consent and ultimate remorse, as he falls still ever more deeply into arrears. In his shame over incurring a financial debt, he becomes even more entangled, just as Mrs. Bennet and Miss Mathews feel that it is too late to retract their consent and thus slip further after their initial acquiescence to male overtures.

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III. Internal Discord as Thematic Harmony: A Reappraisal of *Amelia*'s Formal Discontinuity

As the preceding analysis has shown, *Amelia* emphasizes the inconsistency of people's desires and intentions over time despite the initial granting of consent. Fittingly, then, the overall form of the novel exemplifies inconsistency, while individual story arcs take consistency to absurdist extremes. An example of the latter: delivered in a laconic pair of sentences that furnish a sour epilogue to the novel's saccharine comic resolution (in which the Booths, their marital bond rejuvenated, enjoy a felicitous windfall), the account of Colonel Bath's manner of death intimates, with dark humor, the novel's broad-spectrum scorn for the over-valuation of harmonious agreement: the narrator reports that Bath "was killed in a Duel about six Years ago, by a Gentleman who told the Colonel he differed from him in Opinion"(XII, ix, 514). Bath meets his demise in a way so utterly in keeping with his hotheaded propensities, reaffirming the caricature of him which Amelia so strenuously, and compellingly, refutes earlier in the novel. This registers as an idiotic waste, rather than an honorable conclusion to the life of a decent man.

The ending is too perfectly apropos and fable-esque, especially when contrasted with the novel's pronounced realism (a departure from the epic structure and formal features of Fielding's earlier novels). Moreover, Bath's fatal zeal for eliciting agreement with his views from all comers is reminiscent of the wrongheaded fervor for compliance that bedevils several other

minor characters in the narrative, including Amelia's mother (who objects to Amelia's betrothal and then emotionally retaliates when her daughter defies her); Mrs. Bennet's aunt (who expects complete submission from her niece, whom she has taken into her home); and Booth's sententious acquaintance Tom (a young clergyman "so choaked with Self-Conceit" [IX, x, 403] that he will brook no disagreement with his theological opinions). In contrast, Amelia, whose supposedly immaculate character irks some readers, is shown to be inconsistent; she is not the guileless naïf that she first appears to be, but instead repeatedly lies to her husband (albeit to protect him) and indicates "a momentary Tenderness and Complacency" for another man (XI, vi, 471)⁵⁷; under different circumstances, she may have been as susceptible to impulsive sexual consent as are Mrs. Bennet (whose physical resemblance to her is said to be uncanny) or Miss Mathews.

Critics tend to fault the novel's own inconsistency and lack of uniformity, even as they vouchsafe backhanded compliments to its experimental quality: John Richetti describes the fruits of Fielding's efforts as "[a]n odd mixture of degraded romance and social realism."⁵⁸ Indeed, the novel's enmeshed genres can seem incongruous and the transitions from one genre to another jerry-built. Yet it is fitting that such an "odd mixture" is an appropriate vehicle for a narrative that bitterly exposes the inadequacy of the legal premise and popular understanding that consent indicates a sustained and imperishable willingness. Consent is enunciated by characters who are themselves "odd mixtures," composed of yearnings and misgivings. To present their stories in a form that abruptly morphs and shape-shifts from mock-epic to monologue to proto-detective story to sentimental fiction is only appropriate, as form reiterates content. Whereas Fielding's earlier novels were so notable for their harmonious composition, consistency of form and unity of character is not—and, given the subject matter, *cannot* be—a valued objective in the

formal composition of *Amelia*.

IV. Conclusion

Not Waiving, but Drowning?: Universities' Sexual Strictures, Consent's Casualties, and Fielding's Preservation of Errant Promisors

Although Booth, Amelia, and Mrs. Bennet undergo agony as a result of consensual agreements that they make and do not think through (beginning with Amelia's decision to marry Booth, which perplexed Fielding's contemporary readers⁵⁹), they are not doomed to lasting indigence, illness, or incarceration—that is, to make reparations for their choices in perpetuity. Yet in his last novel Fielding strews the pages with plenty of casualties of ill-considered consent who seem to be good-natured people to offer a sobering reminder of the high stakes of agreements: the count includes several of the Newgate prisoners; Robinson; Colonel Bath; Miss Matthew's infant; and Mrs. Bennet's first husband and son.

Today, good-hearted (yet careless or self-absorbed) young adults, whose nonspectacular avatars are Booth, Mrs. Bennet, and Miss Mathews, are still largely held to initial consent to sexual agreements. Universities have attempted to give students tools, in the form of codes, to better navigate the establishment of consent during sexual encounters. Yet when college administrators seek to give college students the tools to express or verify consent, some students balk at the prospect. Some believe that the guidelines discourage spontaneity and cultivate an environment of "litigious paranoia."⁶⁰ By offering suggestions for verbalizing consent, some fear, the university replaces one institutional sexual script with another. The aggressive script in which the asker will not take "no" for an answer and considers a "yes" as shorthand for waiving of all rights to demur from subsequent sexual activities (misogynist fraternity culture's "No

means Yes, and Yes means anal”⁶¹) is replaced with the overly cautious script of the timid, ineffectual suitor (“Yes? Do you really mean yes? Do you?” or, as one irked alumnus put it, a gingerly “May I look at you with bedroom eyes?”⁶²). “A lot of freshmen counselors were not happy for a number of reasons. A lot of them felt awkward having that conversation directly with the freshmen,” one freshman counselor at Yale said. “The way it was initially presented is that we were going to have to read from a script. A lot of us felt that it was hard to really convey anything, and that we were being used by the administration. They had this clear agenda.”⁶³ Yet the scrambling for such a script indicates a larger societal problem of uncertainty regarding appropriate measures to counteract selfish and malevolent attempts to exploit others and to rationalize this exploitation by drawing on cultural assumptions that consent is a one-time event rather than a stepwise process. Such predation has led to more widespread catastrophes of holding people to initial consent, as when bailed-out bankers remonstrate with underwater homebuyers for refusing to repay the usurious loans to which they initially consented, and international corporations impose binding arbitration agreements, to be signed at the beginning of employment, that effectively bar workers from any subsequent litigation.⁶⁴ The sexual and consensual crises of the current moment are jarringly similar to those described in Fielding’s admonitory narrative of the pernicious consequences of social and legal enforcement of initial consent as a binding promise.

Both the predatory practices illuminated by Fielding in his eighteenth-century novel and the scripts dictated by college administrators for Millennial-era glossy posters contribute to the erosion of personhood, because both attempt to co-opt people’s capacity for making decisions for themselves. Eighteenth-century women subject to coerced sex; gamblers who find sharpers’ loans irresistible; and college students mulling sexual interaction are subject to others’ attempts

to organize others' impressions of their volition. One scholar's suggestion that consistency of volition is integral to widely-held definitions of personhood seems equally valid for fictional characters as for the real people he describes: following Durkheim's notion of "collective representations," the social scientist Martin E. Spencer argues that "the central criterion for personhood is the idea of will... what we seek in the other, quite implicitly, is that he is 'all together,' that his actions flow from a coherent purpose and design, and that there is a unity of will that is the author of his actions... When purpose, intent, and order is absent from the behavior of the other, we sense oddness... we are dealing with a *non-person*."⁶⁵ Fielding's novel invites readers to question the association between "unity of will" and personhood, as *Amelia*'s fictional non-persons reveal misconceptions closely held in real life.

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¹ Henry Fielding, *Tom Thumb, a Tragedy* in *Henry Fielding: Plays 1728-1731*, ed. Thomas Lockwood, *The Wesleyan Edition of the Works of Henry Fielding* (2 vols.) (Oxford: Clarendon Press of Oxford University Press, 2004), I: 390, I.iii. 42-43.

² Preparation of materials was sponsored by the Office of Health and Life Skills Education at Oberlin College; online access at <http://new.oberlin.edu/dotAsset/1634256.pdf>. Adapted and revised for the University of Chicago campus by the Resources for Sexual Violence Prevention (RSVP) division of the Office of Campus and Student Life as “Educational Guidelines for Sexual Consent” (2011); online version of posters distributed on campus is available at http://rsvp.uchicago.edu/resources/consent_guidelines.shtml.

³ “Yale Undergraduate Regulations on Sexual Conduct” [circulated document], prepared by Melanie Boyd, special advisor to the Dean of Yale College on gender issues, available at <http://yalecollege.yale.edu/content/definition-sexual-misconduct-sexual-consent-and-sexual-harassment>. For background on the university’s decision and undergraduates’ negative reaction to the guidelines, see David Burt, “Consent Workshops Revamped,” *Yale Daily News*, 2 September 2011, 1.

⁴ Henry Fielding, *Amelia*, ed. Linda Bree (Peterborough, Ontario: Broadview, 2010), Bk.I, Ch. viii, 87. All subsequent parenthetical citations (format: book, chapter, page number) refer to this edition.

⁵ See Simon Dickie, “Fielding’s Rape Jokes,” *The Review of English Studies*, New Series 61:251 (2010), 575-579.

⁶ Sandra Macpherson, *Harm’s Way: Tragic Responsibility and the Novel Form* (Baltimore: The Johns Hopkins University Press, 2009), 127. Macpherson notes that “It is a staple of feminist criticism on Fielding to object to the way marriage comedy confirms the hero in his sense that he

has “never done, nor even designed an Injury to any Being whatever.” She argues persuasively that

[a]t stake in feminist skepticism about comedy’s salubriousness is a muted formal insight, one it is the purpose of *Harm’s Way* to move to the center of historiography on the novel: *comedy is a masculinist genre*—a genre that render’s (women’s) harm and (men’s) responsibility as incoherent as when Mrs. Waters [in *Joseph Andrews*] calls out “Rape! Which last, some perhaps, may wonder she should mention, who do not consider that these words of Exclamation are used by Ladies in a Fright, as Fa, la, la, ra, da, & c. are in Music, only as the Vehicles of Sound, and without any fixed Ideas” (529-30).

(Macpherson, 127).

⁷ Against significant opposition, Fielding took upon himself to argue vehemently in support of the servant Canning’s story of being kidnapped and held against her will. See Henry Fielding, *A Clear State of the Case of Elizabeth Canning*, in Fielding, *An Enquiry into the Causes of the Late Increase in Robbers and Related Writings* ed. Malvin R. Zirker (1753; Middletown, Connecticut: Wesleyan University Press, 1988). For more on the particulars of this strange case, see Kristina Straub, *Domestic Affairs: Intimacy, Eroticism, and Violence between Servants and Masters in Eighteenth-Century Britain* (Baltimore: The Johns Hopkins University Press, 2008), 47-82.

⁸ Roy Porter, “Does Rape Have an Historical Meaning?” in *Rape* ed. Sylvana Tomaselli and Roy Porter [Oxford and New York: Basil Blackwell, 1986], 222.

⁹ Susan Staves, “Fielding and the Comedy of Attempted Rape,” in *History, Gender & Eighteenth-Century Literature* ed. Beth Fowkes Tobin [Athens, Georgia and London: The University of Georgia Press, 1994], 99.

¹⁰ The novel's episodes of ambivalent or coerced sexual encounters are thus an exception to a pattern observed by Jill Campbell. She notes that in *Amelia*, "the narrator... repeatedly takes [the reader] through a disorienting process of shifting perspectives, offering one account of a character or event only to withdraw it and replace it with an unexpected alternative" (Campbell, *Natural Masques* [Palo Alto: Stanford University Press, 1995, 226]). Campbell argues that "when the narrator provides different impressions, in succession, of a single event, authority adheres to the later version as a belated revelation of the event's *real* contents. Nonetheless, our partial understanding is colored by ... the narrator sustains, side by side or one after another, several conflicting views" (Campbell, 227-228). Fielding does not take up an opportunity to provide a contrasting narrative to the victim's account.

¹¹ See Robert Alter, *Fielding and the Nature of the Novel* (Cambridge: Harvard University Press, 1968), 141-177; Barbara S. Benedict, *Framing Feeling: Sentiment and Prose Style in English Prose Fiction, 1745-1800* (New York: AMS Press, 1994), 30-46; John Bender, *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England* (Chicago and London: The University of Chicago Press, 1987), 180-184; Terry Castle, *Masquerade and Civilization: The Carnavalesque in Eighteenth-Century English Culture and Fiction* (Stanford: Stanford University Press, 1986), 177-252; Campbell (op. cit.); Ronald Paulson, *The Life of Henry Fielding* (Oxford: Blackwell, 2000); Tiffany Potter, *Honest Sins: Georgian Libertinism and the Plays and Novels of Henry Fielding* (Montreal & Kingston; London; and Ithaca: McGill-Queen's University Press, 1999); Claude Rawson, *Henry Fielding and the Augustan Ideal Under Stress* (London and Boston: Routledge & Kegan Paul, 1972), 67-98; Pat Rogers, *Henry Fielding: A Biography* (New York: Charles Scribner's Sons, 1979); Peter Sabor, "Amelia" in *The Cambridge Companion to Henry Fielding* ed. Claude Rawson

(Cambridge: Cambridge University Press, 2007), 94-108; and Patricia Meyer Spacks, *Imagining a Self: Autobiography and Novel in Eighteenth-Century England* (Cambridge, Massachusetts: Belknap Press, 1976), 280-289.

¹² Pat Rogers finds that Fielding differs from Richardson and preceding authors in his portrayal of time, that is, in conveying a sense of time elapsing:

Unlike chivalric romances of the Arthurian type, the novel specialized in a strong feeling of the here and now. Unlike the immense slow-wheeling convoys of narrative launched upon an ocean of words by Madame de Scudéry, the innovative form aimed for a certain directness and uncluttered quality. (*Clarissa* and *Sir Charles Grandison* remain in the archaic vein, from that point of view: but *Tom Jones* and *Amelia* do not, long as they are, for they have a steady impetus and definite sense of time passing.) (Rogers, *Henry Fielding: A Biography*, 123).

¹³ While Staves gives *Amelia* the closer attention that it deserves, she focuses exclusively on rape in a way that distorts the salience of the topic in Fielding's final novel; she does not view the sexual scenes, as I do, as emblematic of the novel's larger focus on consent. Furthermore, Staves makes a key error in attributing Amelia's avoidance of rape to Booth's vigilance instead of to the heroine's own sagacity: "The reader, of course, knows that the noble lord in fact has the designs Booth fears and that Amelia has not suspected them. In the event, Amelia's virtue is saved not by his discernment or even by her own virtue acting as a sufficient guard, but by her reliance on her husband's judgment and her obedience to his prohibition" (Staves, 98-99). Tiffany Potter, at the other end of the empowerment spectrum, strains a bit to read Amelia and Mrs. Bennet as exemplary "libertines," but I agree with her (and Macpherson's) emphasis on Fielding's

stipulation that for a proper hero there is no pleasure to be had in harming others. See Potter, 162-168.

¹⁴This paper's argument locates a middle ground between two predominant strains of previous critical approaches to attributing blame in Fielding's novels. Characters who embroil themselves and their families in difficulties by impulsively consenting are labeled either as golden-hearted but feckless victims of a dysfunctional legal system or as selfish perpetrators of their families' recurrent crises. For instance, the comic fates that Fielding reserves for Booth and Mrs. Bennet are either celebrated or deplored by critics. Writing in 1968 of what he labels as the "embryonic novel of social protest" that in his view marks a new development in the moral worldview of "Fielding the conservative," Robert Alter argues that "[t]he mysterious recovery of Amelia's estate seems like too easy a way out here because the whole novel has been concerned with the absolute failure of the social system to recognize merit, and the apparently irreversible trend of the whole system is to crush all poor innocents like Booth" (Alter, 165). Identifying the limitations of what he deems Fielding's "problem novel," Alter finds that "[p]lots constructed, or at least concluded, in this way are, to borrow Ford Madox Ford's vehement phrase, 'dangers to the body-politic,' for they evade the responsibilities of the moral issues which the novelist himself has raised" (Alter, 165).

Alter invokes the withering critique in *The English Novel*, released nearly four decades earlier, where Ford sneers at "[f]ellows like Fielding... who pretend that if you are a gay drunkard, a lecher, squanderer of your goods and fumbler in placket-holes you will eventually find a benevolent uncle, concealed father or benefactor who will shower on you bags of tens of thousands of guineas, estates[,] and the hands of adorable mistresses—those fellows are dangers to the body-politic and horrible bad constructors of plot"(Ford, *The English Novel* [Constable:

London, 1930], 26). Alter's choice of Ford's quotation as the epigram for his chapter is puzzling because he finds "poor innocents" where Ford sees "lechers, squanderers of goods and fumblers in placket-holes." Ford berates authors for enabling individual characters to escape scot-free from the consequences of their acquiescence to temptation; Alter, in contrast, ascribes fault to a corrupt and abstract agglomeration, "society," for punishing the "innocent" too weak to resist its snares.

Other important critics of the novel oscillate between Alter's exoneration of misguided consenters as victims and Ford's stringency. At one point in her reading, Patricia Meyer Spacks marks a clear delineation between the "natural victim" Booth and "those who wish to harm or exploit," but elsewhere in her commentary, she presents the character as the author of his troubles (Spacks, 289). Recognition of the importance of the concept of the temporality of consent to the novel's ethics facilitates a reading that moves beyond the simplistic labeling of the victim/villain dichotomy to identify relative accountability while acknowledging mitigating factors.

¹⁵Malvin R. Zirker lists some of the legal authorities whose work Fielding regularly consulted in his introduction to *An Enquiry into the Causes of the Late Increase in Robbers* by Henry Fielding, ed. Zirker (Oxford: Oxford University Press, 1988), xxix-xxxiii. Zirker finds that "Fielding's most important authorities are Coke, Sir Matthew Hale, and William Hawkins" (xxix), but he also admires "Fielding's range of learning," noting allusions to "Horne's Mirror of Justice, Coke, Bracton, Britton, Nathaniel Bacon, Petyt, and Machiavelli's *Discourse*, all writers whom Fielding cites either in the *Charge* or the *Enquiry*," and commends "Fielding's easy allusions to historians like Daniel, Echard, Rapin, and learned citation of law reporters like Keble, Croke, Anderson, and Kelying, [and] his familiarity with legal 'books of authority' like

Bracton's *De Legibus et consuetudinibus Angliae*, Coke's Institutes, the Year Books, and the *Custumier de Normandy*" (xix).

¹⁶ Anthony Musson, "Crossing Boundaries: Attitudes to Rape in Late Medieval England," in *Boundaries of the Law: Geography, Gender and Jurisdiction in Medieval and Early Modern Europe* ed. Musson (Aldershot, Hants and Burlington, Vermont: Ashgate, 2005), 97.

¹⁷ See (among many other sources) Cynthia B. Herrup, *A House in Gross Disorder: Sex, Law, and the Second Earl of Castlehaven* (New York: Oxford University Press, 1999), 30.

¹⁸ Frederick Pollock and Frederic William Maitland, *The History of English Law before the Time of Edward I*, second ed. (1898; repr., Clark, New Jersey: The Lawbook Exchange, 2007), 206.

Maitland himself is generally recognized as the modern father of English legal history.

¹⁹ Frederick Bernays Wiener, "Bracton—A Tangled Web of Legal Mysteries that Defied Scholars for More than Seven Centuries," 2 *George Mason University Law Review* 129 (1977-1978), 129.

²⁰ Henry de Bracton [the name has been mangled by previous historians; today's scholars prefer "Henry of Bratton"], *De legibus et consuetudinibus Angliæ* ed. Gordon Woodbine, trans. Samuel Thorne (Cambridge: Cambridge University Press, 1968), Vol. II, 65. This is the definitive edition of *De Legibus*. According to this edition, Bracton was not the sole author. A previous historian commenced the work when Bracton was still a child; Bracton took up the task as an adult. He borrowed extensively from previous authorities, including William de Raley (also known as William Raleigh) and Ranulf de Glanville (author of *Tractatus de legibus et consuetudinibus regni Angliæ* [1187-1190]).

²¹ Bracton, II:123.

²² Bracton, II:182.

²³ Edward Coke, *The Selected Writings and Speeches of Sir Edward Coke*, ed. Steve Sheppard (Indianapolis: Liberty Fund, 2003). II:126.

²⁴ Bracton emphasizes that for expressions of volition to be valid, it is important to determine whether the giver is of sound mind and body. In one case, objective parties visited a man “to see his condition and whether he was competent or not, and also to hear whether he had granted lands during his sickness and incompetence”; in a different case observers determined “in what condition he then was, that is, whether *compos mentis* and of good memory when he made that gift or not” (Bracton, II:61).

²⁵ See Matthew R. Lyon, “No Means No?: Withdrawal of Consent During Intercourse and the Continuing Evolution of the Definition of Rape,” *The Journal of Criminal Law & Criminology* 95:1 (2004), 277.

²⁶ William Blackstone, *Blackstone’s Commentaries on the Laws of England* ed. Wayne Morrison (1765-1769; London: Routledge-Cavendish, 2001), lix.

²⁷ Andrew Horn [attributed author], *The Booke Called the Mirrour of Justices Made by Andrew Horne; With the Book Called the Diversity of Courts and Their Jurisdictions; Both Translated out of the Old French into the English Tongue by W.H. of Grays Inn* (London, 1632), Chapt. II, Sect. 27 (“Of Contracts”), 104. Early English Books Online, last consulted June 30, 2012.

²⁸ Michele Alexandre, “Girls Gone Wild and Rape Law: Revising the Contractual Concept of Consent & Ensuring an Unbiased Application of Reasonable Doubt When the Victim is Non-Traditional,” *American University Journal of Gender, Social Policy & the Law*, 17:1 (2009), 56. Alexandre proposes “a change from the current, implicit, contractual idea of consent to a continuum-based idea of consent. The continuum-based idea of consent directly contradicts the

idea that consent is finite in time and cannot be withdrawn once given. Instead, it considers that the withdrawal of consent can occur at any time during sexual interaction(s)” (55).

²⁹ Kramick, 456. Locke states in *The Second Treatise on Government* that

every Man, that hath any Possession, or Enjoyment, of any part of the Dominions of any Government, doth thereby give his *tacit Consent*, and is as far forth obliged to Obedience to the Laws of that Government, during such Enjoyment, as any one under it; whether this his Possession be of Land; to him and his Heirs for ever, or a Lodging only for a Week; or whether it be barely traveling freely on the Highway; and in Effect, it reaches as far as to the very Being of any one within the Territories of that Government.

(Locke, *The Second Treatise on Government* [New Haven: Yale University Press, 2003], 153).

³⁰ David E. Coke and Alan Borg, *Vauxhall Gardens: A History* (New Haven: Yale University Press/Paul Mellon Centre for Studies in British Art, 2011). See also editor Linda Bree’s note in *Amelia* (Fielding, *Amelia*, XII.ix.394) on the prevalence of sexual intimidation in the Vauxhall gardens.

³¹ Matthew Hale, *Historia placitorum coronae*, ed. Sollom Emlyn (London, 1736), II:628.

³² On Hale’s prominence see, for instance, Harold J. Berman, “The Origins of Historical Jurisprudence: Coke, Selden, Hale,” *Yale Law Journal* 103: 7 (1994); and Jill Elaine Hasday, “Contest and Consent: A Legal History of Marital Rape,” *California Law Review* 88:5 (2000).

³³ Zirker, introduction to Fielding, *An Enquiry*, 4n3.

³⁴ See, for example, Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (New York: Ballantine Books/Fawcett, 1975), 29.

³⁵ A representative endorsement is made by the legal scholar Ronan Deazley, who states that while the Middle Temple barrister Theodore Barlow prepared his 1736 abridgement of Hale’s work for “students of the Common Law,” “as opposed to more experienced practitioners who would otherwise rely upon Hale’s work [in the original, unabridged version] or William Hawkins’s *Treatise of the Pleas of the Crown*” (Deazley, “*The Statute of Anne and the Great Abridgement Swindle*,” *Houston Law Review* 47:4 (Symposium 2010), 809. Editions of Hawkin’s work were published in 1716, 1724, and 1739.

³⁶ William Hawkins, *A Treatise of Pleas of the Crown*, ed. John Curwood, 8th ed. (2 vols.) (London, 1824), Bk. I, Ch. 16, Sect. 7, 124.

³⁷ Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0, last accessed 25 June 2012), September 1737, trial of [no names supplied] (case reference number t17370907-44).

³⁸ Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0, last accessed 24 June 2012), May 1780, trial of James Purse (case reference number t17800510-57).

³⁹ Elaine Scarry, “Consent and the Body: Injury, Departure, and Desire,” *New Literary History* 21 (1990): 867.

⁴⁰ Jonathan Brody Kramnick, “Locke, Haywood, and Consent,” *ELH* 72:2 (2005), Special Issue: Essays in Honor of Ronald Paulson, 468.

⁴¹ Endemic corruption bars half-pay officers such as Booth from advancement, while legal restrictions bar women such as Miss Mathews and Mrs. Bennet from most avenues of earning an income independent of men’s assistance, even as sexual mores brand them and others engaging in extramarital sex as harlots with whom polite folk do not associate. Fielding caustically unveils the tendency of society and the legal system to treat society’s more vulnerable members

(men without significant financial resources, women of all classes) as congenital wrongdoers acting in a vacuum where their responsibility is never mitigated by others' influence.

⁴² Frances Ferguson, "Rape and the Rise of the Novel" *Representations* 20 (Fall 1987), Special Issue: Special Issue: Misogyny, Misandry, and Misanthropy, 96.

⁴³ Macpherson, 98.

⁴⁴ Macpherson states that "The only harm men suffer in a Fielding novel is the harm of being called guilty when they are innocent" (Macpherson, 111).

⁴⁵ Dickie vouchsafes this single sentence regarding *Amelia*: "All this [i.e., Fielding's commitment to the notion that "female tears were hypocritical"] changed with *Amelia*, but the heroine's tears and swoons were painfully unconvinced [*sic*] and mercilessly spoofed by Fielding's enemies." Dickie, 582.

⁴⁶ In the short run, careless actions deprive one's dependents of necessities; in the long run, such actions can lead to permanent embitterment or death. *Amelia*'s children starve after their father consents to the inveiglements of his merry fellows, and the novel features accidents and deaths that are a direct result of good-natured consent given in the heat of the moment: Mrs. Bennet's first husband dies from a blow sustained during a fight over her adulterous tryst, and her child dies of neglect, as does the illegitimate child that Miss Mathews bears for Hebberts. Another kind-hearted prominent character, Captain Bath, agrees to a duel and is killed, and good-natured Robinson dies in prison despite his attempts to reform. In a similar vein, the perfunctory pairings-up of the supposedly "comic" endings are more akin to the resigned couplings at the finale of Shakespeare's problem plays than to the ecstatic, dew-kissed marriages of his comedies: few would argue that Mrs. Bennet or Miss Mathews will be satisfied in unions with men to whom they cleave out of necessity and convenience rather than love and respect.

⁴⁷ An earlier critic of the novel also noticed this development: the scholar Walter Raleigh, in detailing similarities between Will Booth and Tom Jones, finds the Booth displays “perhaps a truer and deeper repentance for his faults than the buoyant Mr. Jones ever succeeded in experiencing” (Raleigh, *The English Novel* (London: J. Murray, 1896), 176).

⁴⁸ Rawson observes that “Wild differs from his own historical original in not offering a gesture of repentance” and notes “Fielding’s insistence that ‘poetical justice’ and ‘conservation of character’ have been not only been scrupulously observed but shown to be interrelated” (Rawson, *Henry Fielding and the Augustan Ideal Under Stress* [London and Boston: Routledge & Kegan Paul, 1972], 125).

⁴⁹ A controversial neologism, “gray rape” has been defined by Laura Sessions Stepp as “sex that falls somewhere between consent and denial and is even more confusing than date rape because often both parties are unsure of who wanted what.” See Sewell Chan, “‘Gray Rape’: A New Form of Date Rape?,” *The New York Times*, October 15, 2007, n.p. See also Laura Sessions Stepp, *Unhooked: How Young Women Pursue Sex, Delay Love, and Lose at Both* (New York: Riverhead Books/Penguin, 2008), 248-249.

⁵⁰ Eliza Haywood, *The History of Miss Betsy Thoughtless* (Oxford: Oxford University Press, 1997), 13.

⁵¹ John Zomchick, *Family and the Law in Eighteenth-Century Fiction: The Public Conscience in the Private Sphere* (Cambridge: Cambridge University Press, 1993), 134.

⁵² Henry Fielding, *Tom Jones* [1749], ed. Fredson Bowers, *The Wesleyan Edition of the Works of Henry Fielding* (1749; Oxford: Wesleyan University Press, 1975), 381.

⁵³ Hale, *Historia Placitorum Coronae*, 472.

⁵⁴ Dana Y. Rabin, “Searching for the Self in Eighteenth-Century English Criminal Trials, 1730-1800,” *Eighteenth-Century Life* 27:1 (2003): 86.

⁵⁵ Henry Fielding, *An Enquiry into Causes of the Late Increase of Robbers* [1751], in Fielding, *An Enquiry into the Causes of the Late Increase in Robbers and Other Writings*, ed. Malvin R. Zirker (Oxford: Oxford University Press, 1988), 85. Battestin has shown that Fielding, early in his career, parodied Thomas Wilson’s tract *Distilled Spirituous Liquors the Bane of the Nation* (1736); Fielding especially mocked Wilson’s claims that gin caused laborers and others to act out of character and “as if possessed by an Evil Spirit, it makes them mad and desperate, ready prepared for the most bold and daring mischiefs.” Yet, as Battestin notes, Justice Fielding came to share Wilson’s views after reviewing cases involving “the political ill consequence of this drunkenness” (Battestin 89).

⁵⁶ Blackstone, *Commentaries on the Laws of England*, Vol. IV, ¶26: 21.

⁵⁷ Terry Castle finds that “the reader cannot help being left uneasy... The secret passion between Amelia and the sergeant is simply left unneutralized... and our conception of the heroine has been profoundly altered. Her erotic invulnerability has in fact been the characterological basis on which the logic of *Amelia*’s allegory depended. Yet as a result of that emotional *célaircissement* with the sergeant, she is abruptly revealed to us as one likewise responsive to illicit passion... However obliquely, the reader is invited to imagine an alternative future for Fielding’s heroine, one characterized not by unwavering fidelity to Booth and the ineffable complacency of the paragon, but by the divisive patterns of erotic discovery” (Castle, 242).

⁵⁸ John Richetti, *The English Novel in History 1700-1780* (New York: Routledge, 1999), 147.

⁵⁹ Catherine Talbot expresses her bafflement thus: “Amelia makes an excellent wife, but why did she marry Booth?” (Talbot, [letter to Elizabeth Carter, 1752], in Ronald Paulson and Thomas

Lockwood (eds.), *Henry Fielding: The Critical Heritage* [London: Routledge and Kegan Paul, 1969], 350; also cited in Potter, 146-147).

⁶⁰ Message board response from Paul Keene [authentic name], Yale University Divinity School Alumnus, in response to David Burt, “Consent Workshops Revamped,” *The Yale Daily News* 2 September 2001, p. 1.

⁶¹ Jordi Gassó and Sam Greenberg, “DKE apologizes for pledge chants,” *The Yale Daily News*, 15 Friday, October 15, 2010, 1.

⁶² Keene, *op. cit.*

⁶³ Burt, 1.

⁶⁴ Such agreements resemble the policy of binding arbitration enforced by Dr. Harrison in his village, as described by Booth to Miss Mathews:

Nothing, however, can be imagined more agreeable than the life that the doctor leads in this homely house, which he calls his earthly paradise. All his parishioners, whom he treats as his children, regard him as their common father. Once in a week he constantly visits every house in the parish, examines, commends, and rebukes, as he finds occasion. This is practised likewise by his curate in his absence; and so good an effect is produced by this their care, that no quarrels ever proceed either to blows or law-suits; no beggar is to be found in the whole parish; nor did I ever hear a very profane oath all the time I lived in it.

Not only is this account suspect, coming as it does from the oblivious Booth (who remains unaware of other men’s predatory designs on his wife), but Dr. Harrison’s judgment is shown to be wrong elsewhere in the novel. The insistent eradication of indications of human fallibility

from the parish seems sinister. By dint of their initial decision to live in the parish, inhabitants give up their right to sue, and Dr. Harrison seems invested in maintaining his perfect record.

Furthermore, the legal historian Amalia D. Kessler has found that such binding arbitration practices were popularly understood to be an onerous circumscription of liberty. Kessler notes that “[m]odern-day mediation is widely understood to be a means by which a neutral third party helps the disputants to identify and reach a compromise.” Yet in analyzing eighteenth- and nineteenth-century cases, she finds that actual practices were not neutral, and favored the powerful: “Seeking to encourage deference to social superiors, rather than individual autonomy, conciliation is conducted by a third party who is not a mere neutral, but instead a recognized figure of authority within the community” (Kessler, “Deciding against Conciliation: The Nineteenth-Century Rejection of a European Transplant and the Rise of a Distinctively American Ideal of Adversial Adjudication,” *Theoretical Inquiries in Law* 10:2 [2009], 428). As a judge who tenaciously resisted corruption, Fielding was familiar with such gaps between judicial ideals and actual practice. Kessler reports that American colonists refused to accept conciliation (widely practiced in eighteenth- and nineteenth-century Europe) as a valid forum for settling disputes. Significantly, the only exception to the Stateside shunning of arbitration were courts established for blacks in the Reconstruction South, since former slaves did not have the same leverage as did whites to refuse such juridical practices.

Zomchick’s sanguine impression of Dr. Harrison’s pastoral role thus seems misguided. Zomchick avers that “Harrison embodies and expresses an ideal of public service” and gushes that “Harrison emerges from Booth’s description as a rustic Lycurgus, a peacemaker whose equitable judgment saves his society from litigiousness” (Zomchick, 143). Here Zomchick approvingly cites Cynthia Griffin Wolff, who describes Harrison as “Fielding’s principal

advocate of order..., a minster and representative of the highest of all laws” (Wolff, “Fielding’s *Amelia*: Private Virtue and Public Good,” *Texas Studies in Literature and Language* 10 (1968), 43, cited in Zomchick, 143). Zomchick claims that “Even in the city, Harrison’s patriarchal authority can control fractious interests, given the right circumstances,” but later acknowledges that “Harrison’s authority is dependent upon his presence” (144). If Fielding meant to promote as ideal a model of civic governance in which initial acquiescence to authority is binding, it is strange that he would show Harrison to be ineffectual beyond the limited confines of the village, and that he would relegate his depiction of the “ideal” to a single paragraph in hundreds of pages of the novel, rather than promoting it throughout the novel.

⁶⁵ Martin E. Spencer, “The Idea of the Person as Collective Representation,” *Human Studies* 4:3 (1981): 260.