

**MARRIAGE
CONTRACTS AND
FARCICAL
CONSIDERATION IN
*IGNORAMUS*¹**

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Despite the growing number and popularity of studies of law as an early modern English literary theme (White, Tucker, Shupack, Kornstein, Dolan) and of law and literature as parallel linguistic systems imposing artificial order by means of fictions (Aristodemou, Posner, Polloczek) and informing each other's constructs of selfhood (Hutson, Wilson, Kahn), one of the most notorious of English renaissance "legal plays," the Latin farcical comedy *Ignoramus* by George Ruggle, has attracted scant critical attention in the last twenty years. Performed twice before James I at Cambridge in 1615 and translated into English three times during the reign of Charles II, *Ignoramus* is chiefly remembered as a veiled attack on the chief justice of the Court of King's Bench, Sir Edward Coke, and as evidence of James's worsening political relations with the London barristers. Yet in presenting its lawyerly vice figure as cunning in the drafting and defence of contracts, and as applying such legal formulae as *quid pro quo* to purely sentimental questions, the play also highlights early modern insecurities about the limits of the new ways of making bargains. In this paper, I'll focus on conflicting contractual obligations in the first English version of the text, Ferdinando Parkhurst's *Ignoramus, the Academical-Lawyer* (1662); in addition to analysing the limits and logic of contract in *Ignoramus*, I'll attempt to address the question of whether the play's legal outcome—*Ignoramus* is trumped by a pre-existing pre-marital contract—was in fact valid at common law in the seventeenth century.

Despite the growing number and popularity of studies of law as an early modern English literary theme (White 1996, Tucker 1984, Shupack 1997, Kornstein 1994, Dolan 1996) and of law and literature as parallel linguistic systems imposing artificial order by means of fictions (Aristodemou 2000, Posner 1998, Polloczek 1999) and informing each other's constructs of selfhood (Hutson 1998, Wilson 2000, Kahn 2000), one of the most notorious of English renaissance "legal plays," the Latin farcical comedy *Ignoramus* by George

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Ruggle, has attracted scant critical attention in the last twenty years. Performed twice before James I at Cambridge in 1615 and translated into English three times during the reign of Charles II, *Ignoramus* is chiefly remembered as a veiled attack on the chief justice of the Court of King's Bench, Sir Edward Coke, and as evidence of James's worsening political relations with the London barristers.² It is also, to anyone with some knowledge of the history of English law, as impressive a collection of bad legal puns as has ever been assembled. Yet in presenting its lawyerly vice figure as cunning in the drafting and defence of contracts, and as applying such legal formulae as *quid pro quo* to purely sentimental questions, the play also highlights early modern insecurities about the limits of the new ways of making bargains. In this paper I focus on conflicting contractual obligations in the first English version of the text, Ferdinando Parkhurst's *Ignoramus, the Academical-Lawyer*, first performed in 1662,³ in addition to analysing the limits and logic of contract in *Ignoramus*, I attempt to address the question of whether the play's legal outcome — *Ignoramus* is trumped by a pre-existing pre-marital contract — was in fact valid at common law in the seventeenth century.

In Ruggle's lifetime, the medieval law of covenant had finally been displaced. Under the old law, agreements or bargains were tested by oath. A supposed debtor might swear on the gospels that he owed no debt. To support this, he would produce a group of twelve neighbours, who would swear to the same effect. This procedure, known as wager of law, was intended for villages where everyone knew everyone else and their business. In sixteenth- and seventeenth-century London, litigants paid professional compurgators, and the courts accepted the testimony of strangers, on oath, such proof being regarded as the end of the process. Hence oral agreements were, for some time, hardly worth taking to court; indeed, the central courts would not hear disputes involving bargains struck informally. Subject to more sophisticated procedure, though far fewer, were written and sealed agreements. Of these the most popular was the bond, the agreement to perform an action (e.g. to pay a sum of money, such as double the money owed) for failure to keep an agreement by a certain day, of which Antonio's with Shylock in *The Merchant of Venice* constitutes an unlikely but dramatically effective variant. Elsewhere,

²See the article on Ruggle in the *Dictionary of National Biography*, as well as the lamentably brief though valuable discussion of *Ignoramus* in Wilfred Prest (1986: 187).

³Parkhurst's *Ignoramus* was not published. Of the three manuscript versions, I have used the "C" text occupying pages 1-163 in E. F. J. Tucker's 1970 critical edition. Readers interested in Ruggle's Latin original may wish to consult Dana F. Sutton's on-line critical edition (<<http://eee.uci.edu/~papyri/ruggle/>>). Parkhurst's first draft translation, the much longer "A" text, is the principle source used for the English version which Sutton has published alongside the Latin text.

Shakespeare likened these commercial agreements to lovers' demands on one another:

“Pure lips, sweet seals in my soft lips imprinted,
What bargains may I make, still to be sealing
To sell myself I can be well contented,
So thou wilt buy, and pay, and use good dealing;
Which purchase, if thou make, for fear of slips
Set thy seal manual on my wax-red lips.

“A thousand kisses buys my heart from me;
And pay them at thy leisure, one by one.
What is ten hundred kisses unto thee?
Are they not quickly told and quickly gone?
Say for non-payment that the debt should double,
Is twenty hundred kisses such a trouble?” (*Venus and Adonis* 511-22)

By Tudor times suits to compel the fulfillment of such a bonded promise were the most common class of case in the court of Common Pleas. Bondless litigants, if parties to partly executed contracts, turned to suits for debt rather than breach of covenant. It was enough to show, *quid pro quo*, that one end of the bargain had been upheld.

As the old law of contract was not satisfactory, courts and litigants came to side-step it. Breach of covenant came to be treated as a trespass, i.e. a non-criminal action causing harm. To be seen as trespasses, bad bargains had to be interpreted in terms of their consequences. If a man bought a lame horse and the vendor had not told him it was lame, he could allege deceit on the vendor's part and sue for damages, as could a brewer who had paid for barley—upon which he relied for his livelihood—and did not receive it. Over time, various strands of legal thinking about the non- or mis-performance of the terms of a deal came together, and bondless debtors were allowed to dodge the wager of law by arguing that they needed the missing money to pay their own debts or close a deal. This innovation, dating from the 1530s, proved flexible and did much to attract London commercial suits to the central courts. It also generated disagreement between courts, leading to great confusion in the assize circuits and, in 1597-1602, to a famous text case named after one of the litigants, a Mr. Slade. Slade had agreed, orally, to sell a crop of wheat and rye to a man named Morley for £16. Morley had taken delivery of the crop without paying and the only bad consequence Slade could allege was his own loss. All the judges in England were convoked to decide whether Morley could be sued for trespass, and heard the arguments of Sir Francis Bacon and Sir Edward Coke, among others. By a split decision, they effectively did away with wager of law. Future cases would be determined on testimony in court before jurors.

Central to these new developments in contract law was the doctrine of consideration. Lawyers speak of “valuable consideration” sufficient to bind the parties to a contract. It may consist of some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. The formula is that A makes a promise *in consideration* of what B will promise to do (or refrain from doing) for A. Without consideration, a promise is an unenforceable agreement of the kind known to the law as naked pacts. It was in defining consideration that the courts had to grapple with human emotions. In both 1588 and 1600 they were called upon to decide whether love and natural affection were grounds for an action of *assumpsit*, the principle class of cases to enforce or void contracts (Holdsworth 1951 8. 18). Without an express *quid pro quo*, the judges held, there was no consideration. To complicate matters, equity had its own conception of the doctrine, illustrated by a 1677 Chancery decision according to which there existed “apparent consideration of affection from the father to his children” (Holdsworth 1951 8. 12). Some feelings, then, could sometimes bind contractually, despite the common-law requirement that consideration be certain. As critics such as Luke Wilson and Lorna Hutson have suggested, legal inquiry into the actionability of promises may have provided the intellectual framework for much Renaissance literary inquiry into the relationship between one’s inner self and outward actions, between intending agents and consequences; and, as the founder of modern English legal history, Sir Henry Maine, once suggested, “the movement of progressive societies has hitherto been a movement from status to contract” (Maine 1876: 170), that is, from assigned to negotiated roles.

Such considerations, if you’ll excuse the pun, are the focus of Parkhurst’s treatment of the limits of the contractible in *Ignoramus*. There are three contracts in the play. The first is a marriage brokerage agreement made between Ignoramus, an English lawyer, and Rodrigo Torcol, a Portuguese merchant; it affects Rodrigo’s supposed niece and ward, Rosabella, whom a hopeful Ignoramus calls his “Goods and Chattles” and “Chattle-personall” (1.3.11). The manner in which it is arranged is itself a parody of a three-part process described by the social historian Martin Ingram:

Preliminary marriage negotiations were “ended” at a prearranged meeting, in the presence of impartial witness, between the couple, members of their families and other interested parties.... Matters of property might be thrashed out and agreements made either verbally or —especially at higher social levels, and increasingly over time— in writing. A relative, a respected neighbour or sometimes a minister then undertook to contract the couple. (Ingram 1987: 196)

Ignoramus follows this sequence of events, with some distortion at each stage. The brokerage deal, committed to writing before the meeting, is very much the focus and lends a distinctly business flavour to the proceedings. In the meeting itself both sentimental and practical matters are discussed in terms so densely and specifically legal that the bride-to-be is left stupefied; and Ignoramus officiates his own betrothal. As Ignoramus reminds Torcol:

it was agreed, indented and condescended to, between Ambidexter Ignoramus for his parte, and Rodrigo Torcol for his, that if I (the said Ambidexter) paid you (the said Rodrigo) six hundred Crownes legale monete, I should have your Ward Rosabella under Covert-Barne; you acknowledge the contract?
(1.3.16-21)

The choice of the term “contract” rather than “bargain,” “agreement,” or “undertaking,” is significant, for “contract” long retained the meaning of “an agreement between two or more for the buying and selling of some personal goods whereby property is altered” (Baker 1990: 360). Rosabella is clearly the property at issue—she is to be delivered to Ignoramus for his “use” (3.2.25)—and the choice of terms has the effect of underlining the unseemliness of bargaining for her. As Rosabella herself remarks later in Act One: “I am now become as priz-goods, tendered to sale at who gives more / and am contracted for” (1.5.97-99).

This executory contract under seal is later revealed to be a bond (4.8.60-75). As such marriage brokerage (or, to use the legal term, brocage) agreements violated neither common law nor any standing legislation, they came to be challenged in Chancery, the court of equity. The object of the bond was difficult to regulate. Although church weddings were common, under English law marriages could take place in the home or the open air and required no special wording: any explicit expression of mutual consent would do, as in the case of *The Tempest*'s Miranda and Ferdinand (3.1.83-89).⁴ Another such match takes place off stage in the final scene of *The Merry Wives of Windsor*: Anne Page and Fenton, who had deceived Anne's unwanted suitors and slipped away, return to declare that their union, “long since contracted” (5.5.210), is now a fact. Even so considerable a legal figure as Sir Edward Coke married his second wife in a private house (Baker 1990: 548).

Years later Coke was to tie his daughter to a bedpost, putting her to the whip until she agreed to marriage with a member of the family of the Duke of Buckingham (Hufton 1995: 118-19). Yet in the first half of the seventeenth century Chancery had established “the general principle that the marriage

⁴Baker (1990: 545-50), Ingram (1987: 132-33), and Stone (1977: 30-37) all provide illuminating discussions of marriage contracts in the period. See also Macfarlane on the polemical issue of the extent of parental control over the choice of partners (1986: 124-27).

contract ought to be the result of the free consent of the parties” (Holdsworth 1951 6. 646).⁵ This doctrine led the court to cancel bonds promised for effecting a marriage, though for some time doubts persisted as to whether Chancery would deem these contract void if neither fraud, coercion, nor total failure of consideration could be demonstrated. Finally, in the 1695 case of *Hall vs. Porter*, the House of Lords ruled that all marriage brocage agreements were void because of their tendency to vitiate “the freedom of consent which the policy of the law required in the formation of a marriage contract” (quoted in Holdsworth 1951 6. 647). It was said that the “not vacating” of such bonds in a court of equity would be “of evil example” to guardians, among others.

Evidently such bonds were sufficiently common to be made the stuff of comedy by Ruggle and Parkhurst. What, though, of the law in the play? Could this contract be enforced? The manner of payment is far from orthodox: when Ignoramus sends a clerk to deliver the indenture and 600 crowns to Torcol, the servant is duped by some friends of Antonius (Rosabella’s beau, whom she eventually marries after having escaped from Ignoramus’s clutches) into delivering the money and document to them (they exchange the money for another woman wearing a veil). One of these friends then disguises himself as Ignoramus’s clerk and proceeds to Torcol’s house, where he hands over the 600 crowns and makes off with the real Rosabella. Has Ignoramus held up his end of the bargain? He certainly thinks so, for he tells Torcol, “vous avez forfeit l’obligation” (4.8.75-6), insisting that “it’s a clear case” (4.8.76) and demanding the penalty of one thousand crowns (4.8.75); and he is likely in the right, legally. Yet a number of issues other than breach of contract should be considered. The first involves Rodrigo’s capacity to make such a bargain in the first place. Under English law, guardians had a right to choose a spouse for their wards, as the King of France does for his unwilling ward Bertram in *All’s Well that Ends Well* (2.3.101-56); and a ward who refused was obliged to pay compensation. Now Torcol is revealed, in Act Five, to be neither Rosabella’s uncle or her guardian (she was stolen from her birth parents and later sold to Rodrigo’s late brother, who adopted her). His guardianship might be challenged on this ground. In fact, this possibility occurs to no-one: when in the play’s second-last scene Ignoramus threatens to sue for wrongful dispossession (5.7.18-19; the choice of term is a further indication that he views his would-be wife as property), he is merely bought off.

⁵Consent could only be given freely once the age of puberty had been reached, fixed legally as twelve for girls and fourteen for boys (Ingram 1987: 173). As of 1604, those under the age of twenty-one were compelled to secure parental consent before they could undergo a church marriage, on which certain property rights depended. Given the confused state of English marriage law, this requirement limited but did not invalidate teenaged clandestine marriages.

A second issue involves Rodrigo's manner of persuading Rosabella to contract marriage with Ignoramus: he threatens to prostitute her or sell her into slavery if she does not consent (1.4.1-8). Duress renders the contract voidable, that is, void if Rosabella should choose to renounce it, and valid if she should prefer to correct this defect, presumably by insisting that her consent (implicit in 1.4.61; given—or procured—ceremoniously in 1.4.90-2) was free, though of course this would depend on the outcome of litigation. Had such a case come before a seventeenth-century judge, the ruling would be far from certain, for the courts had taken to interpreting "duress" narrowly (Ingram 1987: 174-75).⁶ Perhaps, then, her marriage contract could not have been enforced; if so Torcol could not be said to have met his obligation. Then again, it is possible that Rosabella's marriage should never have been the object of a pact for the simple reason that she'd already been espoused, to which issue I shall return presently.

For the second and third contracts in *Ignoramus* are marriage contracts, which Parkhurst does his best to muddle.⁷ Indeed, much of the play's comedy resides in Ignoramus's inability to approach Rosabella in any terms other than those of feudal tenure, litigation, and contract. For example, when Torcol arranges a first meeting between the lawyer and Rosabella in fulfillment of the familiar negotiation-meeting-betrothal pattern, Ignoramus begins with some lawyerly hemming. He then addresses his remarks to an absent jury and Madame Justice Rosabella (1.4.31-2) and proposes that they "make a free marriage in frank-pledge" (1.4.38-9). This term, which is not in Ruggle (Tucker 1980: 256-7), refers to the medieval pledging of freemen to good behaviour.⁸ After having tried his hand at wooing the lady with awful verses in Law Latin (1.4.27-56; "Et dabo Fee-Simple, si monstras Love's pretty dimple" is representative), Ignoramus alludes to a writ compelling the fencing off of a piece of land (1.4.61) as a way of suggesting that Rosabella should not see other men. Two references to contract form the conclusion to this encounter: Ignoramus reads to Rosabella an elaborate though occasionally burlesque

⁶The prevailing construction of "duress" in marriage contract cases was "'force or fear' sufficient to sway a 'constant' man or woman," which makes the character of the party alleged to have contracted marriage under duress germane to the outcome of the case (Ingram 1987: 174-75).

⁷Perhaps this is due to the decline in prominence of informal marriage contracts, which, though still notorious in Ruggle's lifetime, were described by one late seventeenth-century jurist as "now in great measure worn out of use" (Ingram 1987: 133).

⁸This reference is reinforced later in the play: Rodrigo and Ignoramus come across Rosabella at the house of Theodorus, the father of Antonius, where she and her lover are staying in the guise of Antonius's twin brother and his wife. On seeing his would-be betrothed, the lawyer once again waxes poetical, declaring himself "Bound ... in Franck-pledge to thee, and yet am in Free Soccage" (4.9.57-8). The latter term denotes a kind of non-chivalrous tenure or set of conditions under which land was held, the implication being that Rosabella is Ignoramus's feudal lord.

jointure, a deed normally settling an estate on a wife for her lifetime after her husband's death. This does not constitute but may echo the practice of drafting conditional marriage contracts, agreements to marry if certain conditions (such as property settlement) were met (Ingram 1987: 190), very like the consideration of common-law contracts. Although there is no explicit assent to such an agreement, both its terms and Ignoramus's logic are distinctly commercial. The jointure fixes the term as "durante placito," a play on the expression "durante bene placito" or "during [the Crown's] pleasure." In a play liberally sprinkled with sexual puns on habeas corpus, the meaning here is quite clear: financial security is being offered in exchange for sex. "Now you must love me quid pro quo, my little Vagabond," Ignoramus insists, invoking the well-known formula meaning "something for something," a form of consideration. A moment later he demands to "seal and deliver" one kiss (which he promptly steals) by way of "contract before witnesses," a wily stratagem designed as evidence of a contract in the absence of spoken assent, for the courts sometimes based their decisions on ritual actions such as a kiss or the giving of tokens when the reported words of a spoken espousal were in dispute. Just before kissing Rosabella he declares that he'll have a *quare impedit* for her, an action meaning "wherefore he hindered" used to recover a presentation to a church living. Of course, the marriage precontract hindered others from contracting marriage with either party unless the precontract was dissolved by mutual consent. Ignoramus clearly hopes to do the hindering.

Yet in the end, of course, it is Ignoramus who is hindered when a servant reveals the truth of Rosabella's identity and provenience. Her true name is Isabella. Her unnamed mother was the first wife of Manlius, an alderman of London, the first husband of the Dorothea. After the death of Manlius, Dorothea married Theodorus, a French merchant, and had by him twin sons, Antonius and Antoninus. The former is Rosabella's lover, who is thus her younger adoptive brother. (As there are no blood ties, consanguinity is not an issue.) Yet as Theodorus tells Antonius, "Isabella ... we betrothed to thee, e're thou wer'st capable of knowledge" (5.6.113-14). An amber token of this espousal is conveniently produced bearing a symbol of wedlock and the inscribed letters "A" and "I,"⁹ evidence countering Ignoramus's stolen kiss. This betrothal, if indeed a pre-contract, would render Rosabella / Isabella incapable on contracting marriage with anyone else, thus voiding her dubious agreement with Ignoramus. Indeed, without knowing of this contract, Rosabella tells Theodorus that she is already Antonius's wife (5.4.48), leading the audience to conclude that a felicitous clandestine marriage has taken place. This solution is not as neat as it may seem, for infant betrothal hardly entails free consent, and children

⁹See Hufton (1995: 101) and Ingram (1987: 129) on infant betrothals in sixteenth- and seventeenth-century Europe and England, respectively.

under the age of seven could not be betrothed under English law. In the end, the technical legal issues raised in the play are never satisfactorily resolved, though as Ignoramus makes it clear that he will not press his claim it is clear that no court of common, canon or equity law will ever hear this case. Judges of various courts might well have ruled all three contracts void: the agreement between Ignoramus and Rodrigo, in Chancery, as being in the nature of marriage brokerage; the pre-contract between Ignoramus and Rosabella, in church courts, on grounds of duress and lack of explicit assent; and the infant betrothal, also in church courts, because of a lack of the contracting parties' lack of understanding of what was taking place. As for the frequently muddled use of legalisms in discussing the plays' contracts and their terms, it seems a pity to quibble with Ruggle and Parkhurst's abuse of the lawyers' "terms of art." Though they echo social concerns with the growth of contract and the evolution of its law, their aim was otherwise, and too technically correct a play would have provided fewer laughs. Their audiences were not learned in the law and, as Johnson was to write in the succeeding century, "The stage but echoes back the publick voice. / The drama's laws the drama's patrons give" (1964: 89).

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