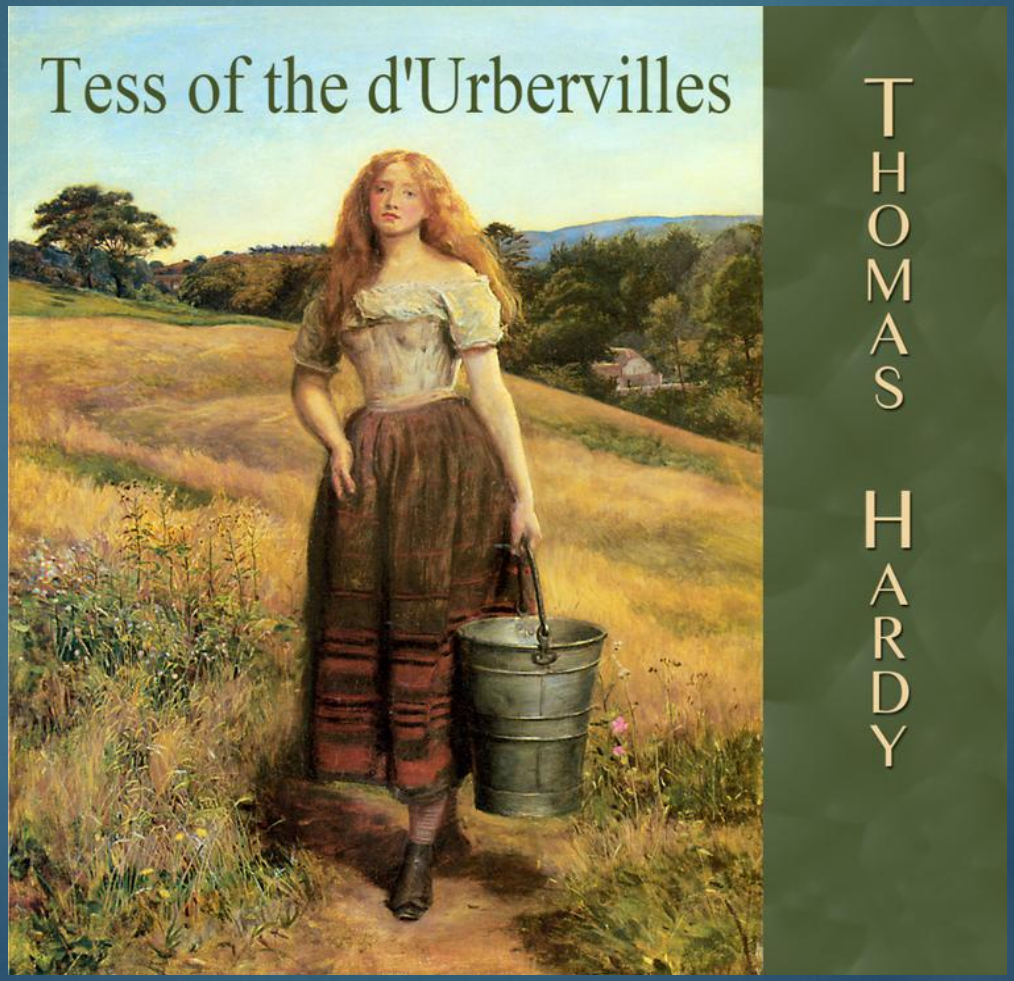
Tess of the d'Urbervilles –
'Is Alec a Rapist ?' – a reply
Melanie L. Williams



In his chapter 'Is Alec a Rapist?' Professor John Sutherland suggests that readings of the 'rape/seduction/ scene in *Tess of the d'Urbervilles* have been shaped by literary-political fashions, culminating, for Sutherland, in a modern interpretation which 'favours' rape and unfairly demonises the character of Alec d'Urberville: 'She who was seduced in the 1890's is she who is raped in the permissive 1960's'

- Note that Sutherland's analysis of the textual evidence of the sexual encounter is similar to the analysis that would take place in a legal context –

- certain facts, circumstantial evidence, points of view and verbal statements made by the parties to the encounter are selected as material to the case.

'Tess' versus Sutherland

- Just prior to the sexual encounter, Tess is obliged to accept a ride on horseback from Alec. Exhausted, she falls asleep momentarily and Alec places his arm around her waist. Tess responds with 'a little push' which almost unbalances Alex. Sutherland's gloss reads

'A little push…stresses that even when her body is dormant, Tess's purity is vigilant and well capable of defending itself. This is important, since she will be sleeping when the seduction/rape occurs'. (Sutherland: 206)

- - Sutherland is establishing the foundation of his view that Tess is more *participant* than victim.
- In making this connection between the early and later 'sleep' response however, he does not acknowledge a material fact provided by the text: the 'little push' ensues from a 'moment' of oblivion; whereas just prior to the later time when intercourse takes place, Tess we are told, 'was sleeping soundly'(*Tess:* 119).
- In addition, one may question whether the physical dormancy of sleep, momentary or otherwise, can be opposed by an autonomously active 'vigilant purity' which is 'well capable of defending itself' – Sutherland clothes an abstract virtue with independent and kinetic power.

- Reviewing the textual account of the ride on horseback prior to the sexual act, Sutherland concludes
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- 'Tess repulses his love-making as they ride, without ever distinctly denying that she loves him. *He is much encouraged by her lack of frigidity'* (Sutherland:207, italics added).
- Yet the text tells us otherwise: although Alec informs Tess that he has made gifts to her impoverished family, a statement which may be intended to increase Tess's sense of indebtedness to her rescuer, when asked:
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- 'Tess, why do you always dislike my kissing you ?'
- 'I suppose – because I don't love you.'
- …'What am I, to be repulsed by a mere chit like you?'
- 'Put me down, I beg you. I don't mind where it is, only let me get down sir please!' (*Tess:* 114-115)

- - the text indicates her clear discomfiture – she is told that they are hopelessly lost in the foggy forest, miles away from the village and feels so compromised by his gift to her impoverished family that we are told 'she wept outright'(*Tess*:117).
- In addition, the clear imbalance in status and power between Tess and Alec adds to her entrapment. There are instances of her will being overborne ('on one condition'; 'whatever you may yourself feel about it')
- Alec's remark 'That is devilish unkind !' invokes the humble response 'I beg your pardon, sir' whilst his 'what am I, to be repulsed so by a mere chit like you…I won't stand it!' is a clear assertion of social superiority.
- Tess's demeanour is awkwardly resistant, she 'writhes uneasily on her seat'(*Tess*:115-116) and asks to be released, behaviour not easily characterised as 'lacking frigidity'.

- Alec leaves Tess to rest deep in the forest and returns to find her 'sleeping soundly'. The narrator does not describe the sexual encounter, but discourses upon its significance, concluding that 'an immeasurable social chasm was to divide our heroine's personality thereafter'(*Tess*:119).

- Sutherland glosses this narrative as the 'lofty moralising' of a narrator who 'prates about olden times'(Sutherland:208).

- Certainly the narrative does not conclusively classify the sexual act, but the textual suggestion that Tess's guardian angel, like Tess, is asleep; that 'the coarse' (Alec) 'appropriates' the finer (Tess); reference to the 'possibility of retribution' and of 'the same measure' being 'dealt' 'even more ruthlessly' by Tess's mailed ancestors towards peasants of ancient times(*Tess*:119)

- The most likely explanation of this 'misunderstanding' –
- - **sexual ignorance.** Tess may not have understood the act of intercourse, a possibility not explored by Sutherland, although this was a common and now well documented phenomenon, resulting from the infantilising ignorance forced upon women.
- There are several 'classic' cases:
- *R v. Williams*, where a conviction for rape was upheld where a singing master had engaged in sexual intercourse with a girl pupil by pretending that it was a method of training her voice.
- *R v. Case*, a medical practitioner represented to a girl that he was 'treating' her medically; in *R v. Flattery*, a girl submitted to intercourse believing that the act was a surgical operation. (1923) 1 K.B. 340.(1850) 4 Cox 220.(1877) 2 Q.B.D. 410.

- Tess herself supports this contention, she later rebukes her mother

- 'How could I be expected to know ? I was a child when I left this house four months ago. Why didn't you tell me there was danger in men-folk ? Why didn't you warn me ? Ladies know what to fend hands against, because they read novels that tell them of these tricks'… (*Tess*:131)
- Sutherland dismisses this extensive plea (which indicates real anatomical ignorance – 'Ladies know what to fend hands against') with the gloss 'Nor, when upbraiding her mother for not warning her against men, does Tess claim that she has *<u>been raped</u>*' (Sutherland:208) – for Sutherland, failure to use the *word* 'rape' is conclusive. Yet not only was rape unsayable against a social superior, but, had the plot so centred upon the crime of rape, clear rape in Tess's mind and published abroad by her as such, insuperable demands would have been made upon the plot

- Then, as now, rape was one of the most difficult crimes to prove:
- - it generally occurs without witness other than the parties themselves;
- - fear, ignorance, unconsciousness (or a combination of these) can mask the non-voluntary stance of the victim.
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- It would seem that Hardy appreciated this. Of Tess's view of Alec, the narrator much later tells us
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- 'She had never wholly cared for him, she did not at all care for him now. She had dreaded him, winced before him, succumbed to adroit advantages he took of her helplessness; then, temporarily blinded by his ardent manners, had been stirred to confused surrender awhile: had suddenly despised and disliked him, and had run away '(*Tess*:130)

- Sutherland's *interpretation* of evidence is a departure from the indications in the text; it also relies upon omissions of evidence – albeit circumstantial.
- - Observing her later with the product of the encounter – an illegitimate child – Tess's peasant companions agree
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- 'A little more than persuading had to do wi' the coming o't, I reckon. There were they that heard a sobbing one night last year in The Chase; and it mid ha' gone hard wi' a certain party if folks had come along' (*Tess*:140)
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- - a clear textual suggestion that, although Tess may have borne her fate without recourse to law, there is a local impression, corroborated by unidentified witnesses, that Tess was the victim of non-consensual intercourse, which is rape.

‘Seduction’ and ‘rape’:

- Sutherland’s case in part springs from the verbal and conceptual anomaly that was played out in Victorian law, in the ambiguous relationship
- - between the words ‘seduction’ and ‘rape’.
- For some Victorian commentators - as for Sutherland - ‘seduction’ more readily implies mutuality, complicity. In present assumptions of sexual liberation and equality, ‘seduction’ is no longer a crime, yet we may still find ourselves speaking of a ‘victim’ of seduction.

Seduction and law:

- **Prior to and at the time of *Tess*, seduction could be subject to legal notice**
- **In English law, the terms of this legal response were rooted in the history of women as property. In *Jason v. Norton 1653*, where Norton entered the plaintiff's house and made an assault upon his daughter thereby 'getting a bastard child upon her', the action upon the case was one in the power of the plaintiff father 'for the loss of her service' - *per quod servicium amsit.***
- (1653) cited in Baker and Milson, (1986), 353.

- In the twentieth century American case of *Wendt v. Lentz*, an action for seduction, the defendant had sexual relations with the plaintiff's 'previously chaste' fifteen year old daughter. According to the case, this resulted in the girl becoming 'wild and unmanageable' and she was subsequently committed to a home as 'incorrigible'.
- The defendant was held not responsible for the plaintiff's loss of his daughters services, since it was concluded that the girl's 'abnormal' behaviour could not be wholly attributable to the defendant. The case gave rise to the legal critique by Edgerton (1929-30) that
- the defendant's unauthorised interference with the plaintiff's interests was not negligent, but intentional; and it is commonly recognised, both by the law and by public opinion, that the risk even of exceedingly unlikely consequences of an unauthorised and intentional interference should fall on the perpetrator rather than the sufferer. ***If A tramples the valuable plants in B's garden, it is no defense that he reasonably mistook them for weeds (Edgerton: 233-4)***
- (1928) 249 NY 253, 164 N.E. 42.

Father-daughter/property:

- **- in the bizarre displacement activity which often typifies law, the 'victim' of seduction is clearly identified as the *father* whose *property* has been interfered with. Even where that female chattel later exhibits such wrongful conduct as to make her analogous to a weed, that weed is still as much actionable property as the carefully tended valuable plant.**

- In *R v. Mycock [1871]* an action for abduction, Willes J uses a similar analogy
- 'the prisoner had no more right to deprive the father of the girl his property, as it were, in her, and his possession of her, than he would have a right to go into his shop and carry away one of his telescopes or optical instruments'.
- -The language and cases reveal that women were very far from being the autonomous beings that Sutherland's use of the word 'seduction' assumes; in some the masculine 'duel' over ruined property occludes evidence bearing a close resemblance to the facts of rape.
- This is because the focus of the action was upon the preservation of *physical* integrity; whether the girl consented or understood was irrelevant to the men of law. *R v Mycock* (1871) Cox C.C. 28 at 30.

Seduction – a tort and [sometimes] a crime

- Not only might seduction be classified as a trespass against property, a tort.
- In 1921, thirty-seven American jurisdictions maintained statutes defining seduction as a crime, defined subject to various limitations and exceptions, as
  - The act of a male person in having intercourse with a woman of chaste character under promise of marriage, or by the use of enticement or persuasion…in jurisdictions wherein the statute is not confined to seduction under promise of marriage, but expressly covers seduction, it is interesting to note that the statute has been construed to be broad enough to cover practically every case of intercourse with consent. The word 'seduce' (in such statutes) is used in its ordinary legal meaning and implied the use of arts, persuasions, or wiles to overcome the resistance of the female who is not disposed of her volition, to step aside from the path of virtue…Any seductive arts or promises, where the female involuntarily and reluctantly yields thereto, are sufficient (Humble, 1921:146)

- Yet **in the realm of contract too, woman may be effaced by her identity with property**
- **– in the English case of *Moss v. Moss*, consideration was given to whether a marriage contract could be annulled on the basis that the wife was pregnant by another man at the time of marriage.**
- **In the language of contract utilised by the court, the issue was 'whether the mistake about the condition of the bride, or indeed any bride found not to be intact, was a mistake as to her identity, or merely a mistake as to the *quality* of the bride *thing*.'(Williams M.,1999:189)** (1897) P.D. 459.

Sleep and consent

- In addition to women being tricked into allowing intercourse as a result of their sexual ignorance, caselaw establishes that rape can occur whilst the victim is asleep. In *R v. Young*, the prisoner 'proceeded to have connexion' with the victim, she 'then being asleep'. Held, the prisoner was guilty of the crime of rape.
- In *R v. Mayers*, Sarah Mayers testified that she
- 'fell asleep; the first thing after that which I remember was finding the prisoner in bed with me, he was agate of me when I awoke;…I cannot say that he did it altogether; his person was to mine…' Taylor, for the accused, argued that 'there was no evidence of force or intent to use force, or that she resisted the prisoner, and therefore the prisoner could not be found guilty of the attempt' but Lush J. concluded 'Yes, but if she was asleep, she is incapable of consent, and therefore it would be a rape' (or attempted rape) [1878]

- *In R v. Page 1846*, on the trial of an indictment for rape,
- 'it appeared that the prisoner had commenced having connexion with the prosecutrix, his own daughter, a girl about thirteen years of age, while she was asleep, but that she awoke before it was at an end and made no resistance, until she saw that a third person was present watching her'.
- It was held that under such circumstances (and with an established sexual history between father and daughter) 'the jury would not be justified in finding the prisoner guilty of rape'. In this case, a child's passivity was sufficient to undermine the charge, demonstrating at the very least some cultural and legal ambivalence. (1846) Cox C.L.C. 133.

- Nevertheless the cases do not cast doubt on the contention that penetration can be initiated whilst the victim is asleep. In 1987 Hom noted (Hom, 1987:1246)
- Some readers may consider it beyond the realm of credibility to believe that a man could engage in sexual intercourse with a woman before she awakens. Although rare, such occurrences have been reported in other cases.
- In *State v. Moorman* itself, a college student, 'in the hazy period between sleep and wakefulness… dreamed of having sexual intercourse. The dream however, became a nightmarish reality when the woman awoke to find a man, a slight acquaintance, *flagrante delicto'*(Hom:1246).

Rarely…

- ***R v. Woodhurst*** **was an indictment for carnal knowledge and assault of the ten year old daughter of the accused. The direction to the jury reviewed the issue of consent but concluded 'if the child submitted under the influence of terror, or because she felt herself in the power of the man, her father, there was no real consent'.**
- **(1870) Cox C.L.C. 443.**

- the novel is *not* about a girl who is aroused but cannot say so; this would have been easy to depict with weak protestations and coy refusals. Nor is it a tale of brutal rape. It reflects the much more common and subtle concatenation of circumstances which allowed young men to exploit their greater worldiness and ease with opportunism and were largely indulged by the world for doing so. Later, Alec admits this:
- What a blind young thing you were as to possibilities! I say in allearnestness that it is a shame for parents to bring up their girls in such dangerous ignorance of the gins and nets that the wicked may set for them, whether their motive be a good one, or the result of simple indifference(*Tess*:394)

Reviewing the evidence from the text:

- -Prior to the act, Tess is compromised by her relation to Alec, her employer's son; he has cajoled her, threatened her, made her feel indebted on behalf of her family and finally, deliberately or otherwise, disorientated her.
- Tess is left in the wood in an exhausted state. She falls into a sound sleep. Alex returns and embarks upon intercourse. At some point during this event Tess wakes up; she does not fully understand what is happening until it is too late – does not know what to 'fend hands' against.
- . By her own later account she was 'a child' who did noNevertheless, according to witness testimony, she is 'sobbing' at some stage in the encounterт know of the 'danger in men-folk' and even Alec describes her as having lived in a state of 'dangerous ignorance'.
- This suggests that, even if Tess was no longer asleep, penetration was initiated without her full understanding or consent and then, as now, this should have been classified as rape. It may be that penetration began whilst Tess was sleeping soundly and that, given her anatomical ignorance she was, upon waking confused enough for completion of the act to occur ('succumbed to adroit advantages he took of her helplessness').
- - Sutherland's analysis mirrors court prejudices…

- *TESS OF THE D'URBERVILLES AND R v AHLUWAHLIA*
- *Tess – 1895 novel*
- *R. v Ahluwahlia – 1992 criminal case for murder*


KIRANJIT AHLUWALIA
Abused by her husband for 10 years
SPOKEO

- Hardy understood the quiet, desperate mindset affecting those overpowered, physically, mentally or both, by the domination of another, especially where that leads to intense personal and social shame and the virtual destruction of individual autonomy and life choices
- [nb recent recognition of ‘coercive and controlling behaviour’ – Serious Crime Act 2015]

- Such insights are particularly interesting when one considers victims-turned perpetrators in 'real' life. There are a number of 'battered women' who have been tried for the murder of their partners having first suffered years of abuse at the hands of the deceased.

- **<u>Comparing the 'letters' written by 'Tess' with those written by one such victim, Mrs Ahluwahlia reveals interesting parallels:</u>**

- 'Deepak, if you come back I promise you - I won't touch black coffee again, I won't go town every week, I won't eat green chilli, I ready to leave Chandikah and all my friends, I won't go near Der Goodie Mohan's house again. Even I am not going to attend Bully's wedding, I (will) eat too much or all the time so I can get fat, I won’t laugh if you don't like, I won't dye my hair ever, I don't go to my neighbour's house, I won't ask you for any help....'
- (Note from Mrs Ahluwalia to her husband quoted in R v. Ahluwalia (1992) AllER 889 at 892.)
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- 'I must cry to you in my trouble - I have no-one else I think I must die if you do not come soon or tell me to come to you. Please, please not to be just, only a little kind to me!🕛if you would come I could die in your arms! I would be well content to do that if so be you had forgiven me!... If you will send me one little line and say I am coming soon, I will bide on, Angel, O so cheerfully!Think how it do hurt my heart not to see you ever, ever! Ah, if I could only make your dear heart ache one little minute of each day as mine does every day and all day long, it might lead you to show pity to your poor lonely one.... **I would be content, ay, glad, to live with you as your servant, if I may not as your wife; so that I could only be near you, and get glimpses of you, and think of you as mine...."(Letter from Tess** to her husband, Tess of the d'Urbervilles:456)

‘Dissociative’ mental states:

- 'But Angel had a vague consciousness of one thing, though it was not clear to him till later; that his original Tess had spiritually ceased to recognise the body before him as hers - allowing it to drift, like a corpse upon the current, in a direction **dissociated** from its living will.'
- (Description of Tess, shortly before her fatal attack on Alec d'Urberville, Tess of the d'Urbervilles, 467.)
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- 'Other neighbours rushed to the house. They found the door locked and saw the appellant standing at a ground-floor window clutching her son, just staring and looking calm. They shouted to her to get out of the house. She opened a window and said 'I am waiting for my husband' and closed the window again. She was prevailed upon to hand the child out and later emerged herself. She stood staring at the window with a glazed expression.'
- (Description of Mrs Ahluwalia, immediately after her fatal attack on Mr Ahluwalia, R v. Ahluwalia (1992) AER 889 at 893.)

- ***Sutherland, John.*** **"Is Alec a rapist?",** ***Great Puzzles in Nineteenth-Century Literature*****. Oxford:** ***O.U.P., 1996, 202-12***
- ***Williams, Melanie, 'Is Alec a Rapist? – Connotations of 'Rape' and 'Seduction': A Reply to Professor John Sutherland', Feminist Legal Studies, no. 7, 1999, 299-316***
- *[versions of the above also found in:*
- *Williams, Melanie, Secrets and Laws: Essays in Law, Life and Literature, London, Routledge-Cavendish, 2005.*
- *Williams, Melanie, Empty Justice: One Hundred Years of Law, Literature and Philosophy - Existential, Feminist and Normative Perspectives in Literary Jurisprudence, Cavendish, 2002].*
- *'Stolen Goods': The Sexual Harassment of Female Servants in West Wales during the Nineteenth Century J BARBER Rural History (1993) 4, 2, 123-136. Copyright © 1993 Cambridge University Press 123*