


*Marital Breakdown and Divorce:  
An Historical Perspective*

by  
*Katherine S. Cain*

*Presented to the American Culture Faculty  
at the University of Michigan-Flint  
in partial fulfillment of the requirements for the  
Master of Liberal Studies  
in  
American Culture*

*November 15, 1996*

*First Reader*

  
\_\_\_\_\_

*Second Reader*

  
\_\_\_\_\_

**Marital Breakdown and Divorce:  
An Historical Perspective**

*Graduate Thesis  
Katherine Cain  
December 16, 1996*

## *Table of Contents*

Introduction	1
1. Divorce, An Ancient Institution	5
2. The American Family and the Wage Economy	30
3. The Spread of Divorce And Public Reaction	39
4. Fault Based Divorce and Efforts at Reform	56
5. The Consequences of Divorce for Women and Children	70
Conclusion	87
Bibliography	91

## **Introduction**

A proposal has been submitted in the state of Michigan regarding the current no-fault divorce law. The Flint Journal reported that Republican state representative Jessie Dalman has offered a proposed bill to try to return fault-based grounds to the Michigan divorce law. The reasoning and motives behind this bill are to make divorce more difficult to obtain, and therefore, to decrease the overall number of divorces. The bill's supporters also hope that this law change will increase the value of marriage. Currently any marriage irretrievably damaged can be dissolved easily and relatively inexpensively. No one needs to prove their spouse guilty of wrongdoing, and one spouse can divorce the other without consent. This particular no-fault divorce law has been in effect since 1972. Dalman's bill would limit the acceptable reasons for divorce to adultery, abandonment of more than two years, sexual deviancy, substance abuse, cruelty, and imprisonment of three or more years. Basically this bill would turn back the divorce-law clock to the pre-1972 fault-based law.

These facts were published in the February 24, 1995 opinion column of the Flint Journal. Not once in this publication did the authors cite the reason why the no-fault law was enacted in the first place. There were serious problems with the fault-based laws. Perjury, hostility in divorce proceedings, and ruined reputations were commonplace consequences of a Michigan divorce before 1972.

Another problematic aspect of this proposed bill is that it appears to be more concerned with the high number of divorces than with the real problems of no-fault divorce: the detrimental financial consequences of no-fault divorce for women and children. In reality, this bill cannot effectively lower the number of divorces. If this bill were to become law people would simply acquire their divorces out of state.

Indeed, divorce reform is necessary, but the answer is not a return to the antiquated fault-based laws of the past. Divorce rates were climbing steadily while fault-based laws were still in place. It is unrealistic to think that reinstating these laws would convince unhappily married couples to stay together. Effective divorce reform needs to concentrate less on lowering the number of divorces and more on helping the families of divorce cope with the emotional and physical repercussions of divorce.

One of the goals of Jessie Dalman's bill is to restore value to the institution of marriage. Democrats and Republicans consistently argue about family values. It was an especially hot topic during the presidential election of 1992, and it will continue to be so. On the surface it appears that family values have indeed taken a beating recently. The violence against women and children is evident in America's homes and schools. Teen suicide rates have quadrupled in the last forty-five years.<sup>1</sup> Homelessness and poverty have increased by twenty percent in America's children in this amount of time. Politicians blame all of this on the decline of family values. Both political parties claim to have a recipe for restoring family values to America. Their ideology comes from the traditional family of the 1950s, yet when one examines the history of family values, marriage, and divorce, the reality surfaces. Family values have not *declined*, they have *evolved*. Outside factors have changed virtually every American institution

including the family. This is not only realistic, it is to be expected. There are, however, serious problems in society concerning America's youth, violence, and education which stem in part from problems with the family. The evening paper and daily televisions newscasts are evidence of this, but the answer to these problems is not to turn back the clock. At this point that is impossible. The answer lies in understanding the history and evolution of the institutions of family, marriage, and divorce, and putting this understanding into a workable formula for the future.

The most important cause of this society's high divorce rates is the extensive amount of marital breakdown. Before divorce was easily obtainable there was little correlation between the divorce rate and marital breakdown. There is no accurate method for determining how many long-lasting marriages in the past were unhappy. People stayed in unhappy marriages for a combination of reasons including social norms and economic factors. Certainly there was marital breakdown long before divorce was legal or obtainable. There is plenty of evidence of this in court records.<sup>2</sup> Many people petitioned for divorces of bed and board -- now known as legal separations. Others abandoned or deserted their spouses or families. Domestic violence was common, especially against wives, and it was condoned politically, legally, and socially for centuries as proper discipline. The tolerance wives had for these conditions within the institution of marriage declined as economic, social, and political factors changed. Unless society can somehow undo individualism, industrialization, urbanization, and the advancement of women, then there is no turning back. Divorce is a part of our culture, and regardless of how many couples decide to end their unhappy marriages, divorce is a *positive* institution.

There is an ignorance in the United States regarding the laws and consequences of both the current divorce law and the fault-based system. This research is meant to investigate the gap between ideology and reality of marriage and divorce in today's society. To do this a short history of divorce in both the West and in the United States in particular, is essential. Without a knowledge of divorce and its history it is easy to assume that we can change the laws back and 'fix' things. Once the past is uncovered and understood then reforms can be more realistic and useful.

1. Stephanie Coontz, *The Way We Never Were: American Families and the Nostalgia Trap*. (New York: Basic Books, 1992), 2.
2. Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society*. (New York: Cambridge University Press, 1988).

## **Chapter 1**

### **Divorce: An Ancient Institution**

Before Western civilization was influenced by Christianity, divorce was easily accessible and sometimes did not require government involvement. This was the case in Ancient Rome where divorce was not considered a matter worthy of government intervention. Roman law allowed couples to divorce by simply declaring that their marriage had ended; no specific grounds were necessary.<sup>1</sup> Until the eighth century marriage was considered a breakable contract. Divorce was a part of many Western cultures either for a specific ground, such as homosexuality (in Germanic culture), or by mutual consent.<sup>2</sup> Germanic peoples also accepted unilateral divorce, that is, divorce instigated by only one partner. The Anglo-Saxons regarded marriage as a simple contract that could be dissolved by one or both partners at any time. There was a long tradition of divorce in pre-Christian England.

After Christian influence became a factor divorce was much more complex. It was still obtainable, however, laws pertaining to marriage and divorce were interpreted differently as the ideas of Roman Catholicism spread. The laws were constantly changing. In the eighth century efforts were made by Christian leaders to limit divorce. Charlemagne was largely responsible for this, and the Roman Catholic Church led a shift towards the idea that marriage was a sacrament and, therefore, could not be dissolved.<sup>3</sup> By the ninth century this idea was firmly entrenched in Christian culture. It was difficult to convince the Anglo-Saxons of England, however, due to their long history with divorce.<sup>4</sup>



By 1200 a very conservative canon law was in force that virtually eliminated divorce. Only the very rich and powerful were able to bribe Roman officials and get annulments. The institutions of marriage (and divorce) were ambiguous to people long into the fifteenth century. Catholic laws increasingly suppressed divorce, and secular laws often conflicted with canon laws. People had to resort to collusion and fraud to dissolve their marriages. The Roman Catholic Church frequently checked on the living arrangements of middle and lower class people to force them to remain married in every sense. Church wardens were required to relinquish this information to archdeacons until 1640.<sup>5</sup>

Henry V of England fought the Catholic church for several years to obtain an annulment from his first wife, Catherine of Aragon, after over twenty-four years of marriage. *After* his remarriage to Anne Boleyn the Catholic church denied his request. Henry's reaction was to leave the Catholic church and take his subjects with him to form the Anglican church. Though he changed the rules to fit his own situation the new church forbid divorce just as the Catholic church had. The entire process was costly to him, however, for in the eyes of both churches he illegitimized a daughter and future queen. Because he declared his first marriage null and void, his daughter Mary became illegitimate in the eyes of the Anglican church. Because he remarried Anne Boleyn before his marriage to Catherine was dissolved, his daughter Elizabeth was illegitimate according to the Catholic church.<sup>6</sup> Both eventually became Queen of England.

In 1563 the Council of Trent confirmed the Catholic church's review of marriage. Among other things it proclaimed marriage to be an indissoluble sacrament, and it clearly defined the rules of obtaining a Christian marriage. There was widespread disagreement with this act. As early as 1516,

Thomas More included a formula for divorce in his perfect society which greatly resembled modern no-fault divorce in his *Utopia*.<sup>7</sup> The greatest pressure against the Church's marital laws, however, came from the Protestant reformers, who ultimately changed the divorce route.

### **Influence of the Reformation**

Protestant reformers incorporated divorce into their doctrines. So influential were they that by the end of the sixteenth century all of the Protestant countries in Europe and Scandinavia legalized divorce -- except England. The two most influential reformers were John Calvin and Martin Luther. They renounced the Catholic principle that marriage was a sacrament because non-Christians also married. "Marriage was a holy thing, but if the Church considered it a sacrament for that reason, it could find a hundred sacraments in scripture."<sup>8</sup> If marriage was not a sacrament, they argued, then it was a dissoluble contract.

Luther's ideas regarding divorce differed from those of John Calvin. Neither Luther nor Calvin agreed with unilateral divorce or divorce simply on the grounds of incompatibility. Both men felt that divorce should be available by either spouse on the grounds of adultery. Luther added impotence and a spouse's refusal to fulfill conjugal responsibility to his list of grounds. Calvin disagreed with these last two, and he believed that if a married couple was miserable together they should live with their misery. Divorce doctrines began to spread to different areas. Germany, Scandinavia, and Sweden were greatly influenced by Luther's more lenient ideas about divorce. Calvin's ideas were accepted in Switzerland, Scotland, and Holland. At the time many people argued that divorce weakened the

institution of marriage. However, in addition, "...there is an argument to be made that permission of divorce in the Protestant Reformation reflected a higher estimation of marriage, a shift in emphasis away from the forms of marriage to its content..."<sup>9</sup> Reformers such as Calvin and Luther felt that divorce should be used only as a last resort to ending an intolerable marriage.

Ironically, England was the only Protestant country that had difficulty accepting this idea of marital dissolubility. There was no change in this until the mid-nineteenth century. Divorce in England was actually what the twentieth century would call a legal separation. Neither party could remarry. The husband continued to be financially responsible for his wife. Yet these separations were incredibly difficult to obtain, involving a long and expensive process. Only an ecclesiastical court could grant a legal separation. To obtain a divorce where remarriage was permissible one had to persuade Parliament to approve each divorce. This was a three step process. An ecclesiastical separation had to be granted for desertion or for a wife's adultery, monetary damages for a wife's adultery had to be won from her lover, and an Act of Parliament had to be passed. After these three separate legal cases had been completed and won, a Parliamentary divorce was granted, *which set no precedents for future cases*. Obviously only the very wealthy could afford all of these legal cases. Concerning divorce, "...the reformation had passed England by; it was to have effects not in Old England, where the Anglican Church proved to be an insuperable obstacle, but across the Atlantic, in the colonies of New England."<sup>10</sup>

Even after divorce became obtainable in most Protestant areas the divorce rate was negligible. "...there is little evidence that variations in the

strictness of divorce laws in any way influenced the degree of marital breakdown or adultery in a given society."11

### **Divorce in Pre-Industrial England**

It is essential to understand marriage and divorce in pre-industrial England in order to clearly comprehend American divorce. The Anglican church emphasized the importance of the family. Literature of the time stressed this and helped to define familial roles. Religiously, socially, and politically the family was the basic unit of existence. English marital roles were very clearly defined. Women were raised from childhood to believe that it was God's will that they should always obey their husbands.<sup>12</sup> All of a woman's property, her children, and her body legally belonged to her husband. Beating a wife was considered a husband's right to 'moderate correction'. In most cases, marital situations were less harsh than the law actually sanctioned. Wives were often able to manipulate their position with diplomacy and respect. Not every man abused his wife. "...in practice, patriarchy was usually by no means as brutal as it now sounds, since its full rigors were often softened by human understanding."<sup>13</sup> A wife was an essential partner in the economic interdependence of marriage whose contributions, though generally not monetary, were highly valued.

Men in a pre-industrial marriage had absolute authority over their family. In addition, it was the husband's responsibility to provide for his household. Even in the case of divorce or legal separation a man was responsible for the financial well-being of his wife until her death. Major family decisions were generally made by both husband and wife, but a man had the legal right to marry off his children, choose the family's living

arrangements and location, and make financial decisions without consulting his wife.

Not all marriages were legal. Secret marriages, clandestine marriages, contractual marriages -- either verbal or written, or simple cohabitation, were all present in pre-industrial England. Any type of marriage was an economic partnership. It was also a method of distributing property. The economic interdependence created by these circumstances made the bonds of marriage very difficult to break. A single person, male or female, found it very difficult to survive without a spouse in pre-industrial England.

The contract formed with a marriage was hard to break. This does not mean, however, that all marriages were happy. Many romantic ideas surfaced in the seventeenth and eighteenth centuries which often left couples disillusioned. Marital breakdown did occur. There is plenty of evidence of this in legal documents of the age. Incidents of wife beating, and women starved or imprisoned by their husbands in madhouses fill court records.<sup>14</sup> These were not, however, necessarily enough to gain a judicial separation. "As late as 1782, a judge declared that, if he had good cause, a husband might legally beat his wife with a stick no thicker than his thumb."<sup>15</sup>

Legal separations were difficult and expensive, so most people could not afford them. There were other options, however, for dissolving a marriage. Many of these options found their way across the Atlantic. Private separations, accomplished with a legal contract and a lawyer, were the answer for many middle and upper class couples who did not want the publicity of a legal battle. These contracts freed both partners privately, inexpensively, and conveniently, but they did not allow for remarriage.

There were far less formal ways to end an unhappy marriage. Men could enlist in the military, and simply choose not return home. Desertion was very common among the poor, and it left many wives and children destitute. Remarriage was bigamy, but because the wife usually had no means to take legal action against her husband, most cases of bigamy went unpunished. A mutual decision to stop cohabiting ended a marriage, though not legally. Though not as frequent, spouse murder and wife sale were also permanent, though of course, highly illegal methods to end an unfortunate situation. Suicide was the most desperate way to end an unhappy marriage. To a Christian, however, this had a devastating effect on the soul after death. In summation, no matter how intolerable the marriage was there was no legal method for the poor to divorce their spouse and remarry.

### **Pre-Industrial France**

Pre-industrial France has had a unique history of divorce. France had long held the Catholic belief that marriage was indissoluble. As with many things this changed briefly during the French Revolution, due to the enlightened ideas of the era. In 1792 divorce became obtainable through legal means for the first time. Prior to this, citizens of France could obtain legal separations only for grounds of wifely adultery, false accusations of adultery, violence or attempted murder, insanity and deadly hatred. Interestingly, most of these grounds were created to protect wives from the offenses of the husband. Men could sue their wives for adultery at any time or at any place, however, women could sue their husbands for adultery *only if the act had been committed in the marital home*.<sup>16</sup> Separations, however, had been rare. The first year separated people and couples involved in

unhappy marriages were able to divorce was in 1792. Amazingly, this French law was a no-fault law that allowed unilateral divorce and divorce on the grounds of marital breakdown. This very modern law also included provisions for alimony and custody of children. Yet by 1803 this law was repealed because many people felt divorce was too easy to obtain. The Napoleonic Law of 1803 (finalized in 1804) also allowed divorce for incompatibility, but limited unilateral divorce to those situations that included adultery and cruelty. Napoleon's law was more conservative and made divorce more difficult to obtain, especially by women. This 1803 law also gave parents increased power to forbid certain marriages of their children, and it restored the husband's absolute authority in the family.<sup>17</sup>

When the Bourbon dynasty was restored in 1816 under King Louis XVIII, divorce once again became illegal. This very brief episode in France's history is a unique glimpse at the possibilities liberal divorce laws can create. However, statistics and census records cannot allow us to understand what was happening in the minds of these people. During the nine years between 1792 and 1803, 20,000 divorces were granted in France.<sup>18</sup> One out of every four marriages ended in Paris alone. The numbers, especially when compared to other countries at this time, are amazingly high. Some couples were undoubtedly already separated and wanted to make their situation permanently legal. Evidence of this is the extremely high rates of divorce in 1792 versus any of the other years.<sup>19</sup> Most of the divorces were granted to women, and more were granted in the cities rather than rural areas. This also occurred during a war when many men had left for war or deserted their wives. Revolution and war also added instability to families. Many noble widows married common men during the terror for safety reasons, and later divorced them.<sup>20</sup> Because there are

many possible factors explaining the instability of France's families during this era, however, it would be a mistake to assume it was completely due to the liberal divorce laws. Certainly the laws led to the high divorce rate itself, however, the law by no means caused increased marital breakdown. As Phillips observes, "Although important in making divorce possible and in defining the range of conditions that can give rise to the legal dissolution of marriage, the formal terms of legislation constitute only one of the many influences on the incidence of divorce in a society."<sup>21</sup>

### **Family Life in the Colonies**

The marital roles that were so well established in England were carried across the Atlantic in the early seventeenth century. In America, the traditional law of England which had established the rights and responsibilities of each spouse according to gender, was maintained. Wives continued their subordinate lives as the mothers, homemakers, coworkers, and companions to colonial men. The legal responsibility of men to support the family remained. However, men were not expected to care for children's basic needs such as feeding and bathing. Men were influenced by their peers to avoid child care. Colonial marriage was a business partnership where each spouse contributed to the family's survival. A colonial woman who worked outside the home for monetary rewards was often criticized or shunned socially. These circumstances made marriage a very tight bond which did not break easily.<sup>22</sup> "The Old Colony family was, first of all, a 'business' -- an absolutely central agency of economic production and exchange."<sup>23</sup> Traditional law supported this family economy. Though a wife's contribution was usually not monetary, it was highly valuable.<sup>24</sup>



Though the traditional laws of England regarding marriage were easily transferred to the American colonies, the traditional laws of divorce were not. Rather, the issues and opinions concerning divorce differed from colony to colony.

In the Plymouth colony husbands and wives had three basic obligations to one another. A marriage consisted of, first of all, a peaceful relationship. Cohabitation was a requirement. Sexual exclusivity was the third obligation spouses had to one another. The family was the basic unit of society, partly because it was felt that marriage protected men and women from sexual temptation. Living alone was very controversial for Puritans who believed that lonely men or women could be led towards devil worship or witchcraft. Marriages were slightly different in Plymouth Colony from those in England, however. Women were expected to obey their husbands in colonial America as they had in Old England. Resistance or refusal to obey a husband was considered treasonous.<sup>25</sup> Part of this stems from the Puritan belief that women needed male guidance because they were weaker when it came to sin, and they were less able to make good moral decisions about right and wrong.<sup>26</sup> Unlike their counterparts in Old England, however, Plymouth women could own property and inherit property from their husbands. A one-third dower was *due* to Plymouth widows. Women could also make contracts and helped in family decision making. Yet, though legal circumstances for married women were slightly better, marital breakdown still occurred. In the Plymouth Colony marriage was a civil contract, and not a religious one. Because Puritans believed that marriage would not exist in Heaven, then, this contract was dissoluble. These beliefs were firmly entrenched when the Puritans absorbed Calvinist influence in their twelve year layover in Holland.

Upon arriving in the New World Puritans firmly believed that divorce, with remarriage, was justified in certain situations. For the first part of the seventeenth century adultery was a capital offense in Plymouth. Married women guilty of adultery could be executed. Men were executed only if their affair was with a married woman. By the end of the seventeenth century, however, this law changed because so many cases of adultery, both male and female, were occurring. Adultery was still a punishable crime, and it continued to be a solid ground for divorce. The court always tried to reconcile the spouses, and most spouses did forgive. Desertion of seven years or more was also a valid ground for divorce. Because the family economy depended upon the contributions of two spouses, the Puritans felt it unfair for a deserted spouse to exist without the financial support and companionship of a new spouse. Finally, bigamy was also a ground used for a Plymouth Colony divorce. Lonely colonists who had left their family back in England occasionally found a 'new' wife in the colonies, which posed a problem for New England. All in all, these rather conservative grounds kept the number of divorces in check. "Among the Puritans of New England divorce was permitted, but it was still regarded with disfavor, as a shameful act..."<sup>27</sup> Divorce was not a common occurrence.

### **The Family Labor Economy**

Though obtainable in certain areas, divorce in pre-industrial America was very rare. Certainly marital breakdown occurred and was quite possibly widespread, however, families stayed together nonetheless. Probably the most influential factor responsible for keeping families together was the family labor economy. Unlike the family consumer

economy of today, the family labor economy enabled families to be self-sufficient. Marriage was an economic partnership where each spouse was essential for survival. The ultimate goal of the family was to provide the necessities for every family member. Providing food was a major part of this objective. To achieve this goal every family member had to work towards the common familial good. In each household one could find elements of all the 'necessary' public institutions of today. Schools, vocational institutes, church congregations, charities, health institutions, and even foster families all had beginnings in the homes of pre-industrial America.<sup>28</sup> In maintaining order and achieving survival, all family members had to take part and work for the welfare of the family. Jobs were dispersed according to age, sex, and ability.

In many ways families in America were very similar to those of the pre-industrial families of France and England. As in America these European families were labor focused and produced most of the necessary products. They maintained survival as their underlying objective, and all family members participated. By 1750, however, major differences began to emerge. In England the ownership of land was increasingly being snatched up by large landowners. Fewer small farmers could keep up with the large farms. Eventually thousands of these small landowners were forced out of their land and were reduced to becoming day laborers. This resulted in an increasingly growing number of poor families. Gradually the economy changed from one of labor to one of wages.<sup>29</sup>

While the family in America operated on a very similar level, regarding employing every family member and living self-sufficiently, there was one great difference -- land. Land was abundant in America. Even for indentured servants there was a possibility of owning land and establishing

a farm. In this way the standard of living was much higher in America. Even for the very poorest servant there was hope for a better life.

The basic pre-industrial family unit was nuclear in structure. Seventeenth and eighteenth century families were also larger in comparison to those of modern day, and homes were very small. Housing in America was crowded. In the Plymouth Colony homes were usually one or two rooms totaling between two hundred and four hundred square feet.<sup>30</sup> When considering New England weather and how many months must have been spent constantly indoors, a twentieth century individual may marvel at the amount of self-discipline and self-control each family member must have exhibited. Privacy was rare, and yet, families got along. Court records of the Plymouth Colony show very few family disputes. Family members put forth a lot of effort to get along with their immediate kin, and to keep relations within the home amicable. Lines of authority within the family were clear. The father was the head of the family, and he had a more formal power over his household than is evident of families today. Legally and economically American pre-industrial society was patriarchal.

Life expectancy was quite short prior to the twentieth century, and death often took a spouse early in life. Second and third marriages were necessary during this period because it was very difficult for any single person to maintain economic stability, especially if there were young children in the picture. For this reason, second and third marriages took place quite quickly after the spouse's death. Men remarried quicker and more often than women. It was often hard for an older woman with children to find a new husband.<sup>31</sup> A surprising statistic shows that the average colonial marriage lasted only twelve years.<sup>32</sup> Obviously marriage was frequently interrupted by death during this era. "The loss of one partner usually meant the destruction of the

family economy. Although the jobs they performed may have differed, the work of husband and wife were equally necessary to the household."<sup>33</sup> It was necessary for the survival of many individuals, as well as entire families, to marry again quickly.

## **Divorce in the Colonies**

The Plymouth Colony and Massachusetts Bay Colony were joined as one colony in 1691, establishing laws regarding marriage and divorce within one year. Divorce was not new to the Massachusetts Bay Colony which had granted its first divorce in 1639 for bigamy. This colony's list of divorce grounds also included adultery, cruelty, desertion, impotence, and failure to provide.<sup>34</sup> A woman could sue for divorce on the grounds of adultery if she had one additional ground to combine with it. The fact that a woman could sue for a divorce in Massachusetts was unique for it was not possible in Old England.

The Colony of New Hampshire had a divorce law almost identical to that of Massachusetts. The data concerning this area is limited, but because New Hampshire was a part of the Bay Colony until 1680 the divorce laws probably evolved through the governing of Massachusetts Bay.

Connecticut also borrowed from Massachusetts' divorce law. The opinion of Connecticut's governors was that divorce was an effective way of decreasing familial distress.<sup>35</sup> Adultery, desertion, and male impotence were the initial grounds for divorce; fraudulent contract, and absence of seven years were added after 1667.<sup>36</sup>

In comparison to other colonies Connecticut was quite liberal concerning divorce, and though less populous than Massachusetts,

Connecticut had a higher divorce rate.<sup>37</sup> Massachusetts and Connecticut were the most heavily populated areas, and they also had the highest number of divorces. Between 1620 and 1699 New England reviewed 128 petitions of marriage dissolution. Many of these ended in separation and not in divorce.<sup>38</sup> Only a handful of couples petitioned for divorce in the other colonies that allowed divorce.

Rhode Island accepted divorce as a way to end an adulterous marriage, and to allow a deserted spouse to remarry. The laws concerning divorce were utilized as early as 1644 in Rhode Island when the first divorce was granted. Generally, the colonies of New England were far more liberal than the middle and southern colonies when it concerned divorce. By permitting any divorce at all they were breaking the English laws that governed them. England, however, turned a blind eye and ignored this disobedience.

The middle colonies, consisting of New Jersey, New York, Pennsylvania, Delaware, and Maryland were more hesitant to grant divorces. In New Jersey only three divorces were granted prior to 1692 when the governors assumed they had the power to grant divorces.<sup>39</sup> The situation was similar in New Netherland where Dutch and Calvinist ideas were practiced. Divorces were recorded in 1655, 1657, and 1664, but when James of York took over control in 1664 and renamed the colony 'New York', things changed.<sup>40</sup> The traditional law of England replaced the Dutch laws, and divorce became illegal. A few divorces were granted after 1664 by governors who were unaware of their loss of power. After 1675 there were no more divorces in New York.<sup>41</sup> Traditional English law was carried to other middle colonies that forbid divorce. Separations were legal, but rare in Pennsylvania. Only in 1682 did divorce for adultery become legal due to William Penn's Great Law, but the divorce had to be requested within

one year of the offense.<sup>42</sup> In 1700 bigamy became a valid reason for divorce, but only the innocent party could remarry. Adultery, bigamy and sodomy were punishable crimes. Very few divorces were granted in Pennsylvania before 1776.

There is no history of divorce for Delaware before the eighteenth century. Adultery was a whippable offense, but it did not result in divorce.<sup>43</sup> Maryland also forbid divorce, but not due to English law. Rather, this anti-divorce law revolved around Roman Catholicism and the marital indissoluble law of Rome.<sup>44</sup> The colony of Maryland was founded by English subjects who remained loyal to Roman Catholicism. Lord Baltimore founded Maryland after receiving a charter from King Charles I, and Maryland was considered free from the religious authority it faced in England.

Although marriage in the southern colonies was a civil contract as in New England, there was no divorce. Legal separation was possible, but the colonies of South Carolina, North Carolina, Virginia, and Georgia had no divorce provisions. Although the divorce rate was not an issue in the southern colonies, as in all the colonies of North America, marital breakdown was.

Recent decades have been filled with public concern over America's high divorce rates. Along with this is the political issue of family values. There is a belief among Americans that the family values of the nations' ancestors were stronger, their marriages happier and long-lasting, and the lives and families more simple and harmonious. This, however, is not the reality. Though the laws of New England allowed divorce, the grounds were far from liberal. Divorce *was* uncommon, and it carried an extremely powerful stigma. There is, however, evidence of widespread marital

breakdown in colonial America. The reasons for increased marital breakdown were complex, but they were present in all western countries.

By the 1660s the institutions of courtship and marriage were changing.<sup>45</sup> People were increasingly unhappy in their marriages. Adultery was more common. Parents began to be increasingly less involved in choosing the spouses for their children. Young adults began choosing their own partners, and they did so in a manner that involved love rather than economic reason. As Roderick Phillips points out, romantic love became all important in choosing a spouse.<sup>46</sup> William Penn wrote in his *Some Fruits of Solitude* that one should "Never Marry but for love; but see that thou lov'st what is lovely. If Love be not thy Chiefest Motive, thou Wilt soon grow weary of a Married State."<sup>47</sup> Literature of the era stressed this emotion in novels and essays. Glenda Riley also describes this change in courtship habits in her research; people were choosing their spouses on the basis of affection rather than good business sense.<sup>48</sup> This was a paradox: love was becoming the main criteria in choosing a spouse, yet marital unhappiness was increasing. There are several possible explanations for this. Romantic love promised an unrealistic life. A couple who married for love and expected the romance to continue throughout their lives, were quickly disappointed when this failed to happen. A marriage based on emotions rather than basic interests and cooperation was more unstable and prone to breakdown. For this reason parents often warned daughters against romantic novels so that they could avoid unrealistic expectations. Just as today, marital breakdown occurred in every social class during the colonial era. Though divorce was rare in New England, and non-existent in the South, unhappy marriages could be found everywhere.



Marriages contracted due to pregnancy sometimes lead to marital disharmony. Even in Puritan America pre-marital pregnancy was a problem. Louise Tilly researched rural England and found that between 1540 and 1835 "...between one-third and one-sixth of all brides were pregnant at their weddings."<sup>49</sup> Martha Ballard, a midwife in Maine at the end of the eighteenth century delivered many illegitimate and pre-marital babies. One was fathered by her own son, Jonathon. Eventually Jonathon married the mother, but marriages contracted under this condition were often less than harmonious. This was certainly the case Martha Ballard described in her diary regarding her son's marriage and the marriages of her neighbors.<sup>50</sup> Records of the colonial era, including the divorceless south, show evidence of marital arguments. Adultery, bigamy, desertion, violence, and advertisements in colonial newspapers offering rewards for runaway wives are proof of the marital upheaval.<sup>51</sup> Separations, both legal and informal, were not uncommon. Wives especially suffered for desertion because married women were legally non-persons.<sup>52</sup> A disgruntled husband could legally take any property a wife acquired after an informal separation. Even more devastating was the loss of the children, who by law belonged to their father. As John Demos concluded in his study of the colonial family, "Domestic peace...was achieved only with an element of real struggle."<sup>53</sup> It is clear that colonial marriage was far from the stable idealistic institution that many believe it was. It is also clear that marital breakdown did not necessarily lead to divorce because for most people divorce was simply not an option.

### **The American Revolution and its Influence on Divorce**

The American Revolution altered the positions and opinions of many people. The entire country changed politically, socially, economically, and personally. The early growth of a market economy and new methods of production began to alter the family as America's basic economic institution. Some of the functions of the family began to change with these advances. At the same time, political conflict over divorce was also increasing. After ignoring New England's blatant violation of Anglican divorce laws for several generations, the English government decided to act. In 1773 the English crown sent American colonial governors instructions to eliminate all divorce bills.<sup>54</sup> This sudden occurrence came just at the time when revolutionary ideas supported individual rights, the pursuit of happiness, and resistance to English law. Many influential thinkers such as Thomas Jefferson and John Locke viewed divorce as a person's right to dissolve a contract. The colonization of America was carried out by people who were unhappy with their homeland. They left to start over. In effect, it was a formal separation from their former lives. The American revolution was the divorce that followed the formal separation.

The institution of divorce was characteristic of American ideals -- both socially and politically. The characteristics of divorce fit perfectly with the ideals of democracy. "Americans have long exhibited a willingness to break unsatisfactory bonds and seek potentially more satisfying ties despite the costs."<sup>55</sup> Gradually many people began to view the right to divorce as the right of each citizen to end an intolerable marriage. To some divorce became part of the pursuit of happiness package.

Ideas concerning divorce changed during the American Revolution, but marriage itself began to change also. Americans were mobile, and territory was abundant. Constant relocation of the family was stressful. The war

itself, like every war, was disastrous for many families. Long absences, desertion, and increased opportunity for adultery by both spouses provided grounds for many divorces. Meanwhile, the companionate marriage emerged in which spouses were equals and friends. This type of relationship was characterized by mutual respect, reciprocity, and increased romance. Wives continued to be taught to respect their husbands, but many wanted equal respect in return. Wives increasingly divorced their husbands for adultery. No longer willing to accept the long-standing double standard of adultery, women wanted reciprocity in their marriages. Love and romance became of greater importance. Historical archives contain many love letters, essays, and other written material further stressing love as the basis of marriage. Love, or the lack of love, also became an issue in divorce. In the 1780s Massachusetts dealt with the issue of love in ten percent of its divorce petitions.<sup>56</sup> These petitions linked the lack of love in the marriage to the divorce itself. While the companionate marriage became more influential, the conventional customs also continued to exist. Some marriages were still being arranged. Many marriages were still based on practical matters and not on love. The two types of relationships and values produced confusion in relationships and families.

After the revolution and the achievement of independence each state developed its own divorce laws, and although every state's laws differed in the level of tolerance towards marital dissolutions, the number of divorce petitions increased throughout the new country. As soon as British rule ended some states began legalizing divorce. In 1777 Pennsylvania began granting divorces, and by 1785 it had the most liberal divorce laws in the country. The objectives in Pennsylvania courts were to decrease suicide, end cruelty in marriage, and lessen courtship fraud. The government of

Pennsylvania took the enlightened revolutionary position that citizens had the right to break the marriage contract.<sup>57</sup>

Most states enacted divorce laws soon after gaining independence. The northern states legalized divorce very early with differing grounds. All of the northern states accepted adultery by either spouse as a valid reason for divorce. Only New York limited its grounds exclusively to adultery in 1787.<sup>58</sup> A spouse guilty of adultery could not remarry in New York. Other states included grounds such as desertion, impotence, consanguinity, cruelty, and bigamy. These states also had provisions for alimony awards.

Southern states, formerly opposed to divorce under British control, also took steps to legalize divorce after the revolution. Maryland granted the first divorce in the South in 1790 to a husband whose wife had given birth to a mulatto child. Interracial adultery was a heated issue in the South. Within forty years Maryland was dissolving thirty marriages per year.<sup>59</sup> South Carolina was the only state in the country that refused to pass any divorce laws. The only way to end a marriage in South Carolina was to obtain a legal separation without the possibility of remarriage.

Divorce was not an issue among the slaves of the South because their marriages were not legal and binding. Slaves often married without legal papers, and most stayed together for long periods of time -- most until the death of the husband or wife. A slave marriage had to receive the blessing of the slaveowner. Many slaves were permitted to have church weddings.<sup>60</sup> Though *divorce* was not a threat, having a beloved spouse *sold* was.<sup>61</sup> Slaveowners divided married slaves by selling one of the spouses in almost one of every six marriages.<sup>62</sup>

Divorce rates were increasing in the late 1700s, but divorce still carried a powerful stigma. Between 1750 and 1800 there were eight hundred

divorces granted in America.<sup>63</sup> Divorce was used as a last resort, and it was still uncommon.

### Chapter One Notes

1. Michael Maran, *The Michigan Divorce Book: A Guide to Doing an Uncontested Divorce Without an Attorney Without Minor Children*. (E. Lansing: Grand River Press, 1989), 5.
2. Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society*. (New York: Cambridge University Press, 1988), 23.
3. Ibid., 24.
4. Ibid., 23.
5. Lawrence Stone, *Road To Divorce: England 1530-1987*. (Toronto: Oxford University Press, 1990), 5.
6. Anne Somerset, *Elizabeth I*. (New York: St. Martin's Press, 1991), 1-8.
7. Sir Thomas More, *Utopia*. Found in *The Norton Anthology of English Literature* vol. 1, 4th edition. (New York: W. W. Norton & Company, 1979), 447.
8. Phillips, *Putting Asunder*, pg. 44.
9. Ibid., 94.
10. Ibid., 133.

11. Stone, *Road to Divorce*, pg. 5.
12. Ibid., 2.
13. Ibid., 13.
14. Ibid., 199.
15. Stone, *Road to Divorce*, pg. 201.
16. Martin Lyons, *Napoleon Bonaparte and the Legacy of the French Revolution*. (New York: St. Martin's Press, 1994), 98-100.
17. Ibid.
18. Phillips, *Putting Asunder*, pg. 256.
19. Ibid.
20. Ibid., 266.
21. Ibid., 315.
22. Stone, *Road to Divorce*, pg. 7.
23. John Demos, *A Little Commonwealth: Family Life in Plymouth Colony*. (New York: Oxford University Press, 1970), 183.
24. Lenore J. Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America*. (New York: The Free Press, 1985), 4.
25. Stephanie Coontz, *The Way We Never Were: American Families and the Nostalgia Trap*. (New York: Basic Books, 1992), 10.
26. Demos, *A Little Commonwealth*, pg. 84.
27. Phillips, *Putting Asunder*, pg. 247.
28. Steven Mintz and Susan Kellogg, *Domestic Revolutions: A Social History of American Family Life*. (New York: The Free Press, 1988), 44.
29. Louise A. Tilly and Joan W. Scott, *Women, Work, and Family*. (New York: Holt, Rinehart and Winston, 1978), 104.
30. Demos, *A Little Commonwealth*, pg. 31.

31. Tilly and Scott, *Women, Work, and Family*, pg. 52.
32. Coontz, *The Way We Never Were*, pg. 10.
33. Tilly and Scott, *Women, Work and Family*, pg. 53.
34. Glenda Riley, *Divorce: An American Tradition*. (New York: Oxford University Press, 1991), 12.
35. Riley, *Divorce*, pg. 19.
36. Ibid.
37. Ibid., 21.
38. Phillips, *Putting Asunder*, pg. 242.
39. Ibid., 143.
40. Riley, *Divorce*, pg. 23.
41. Phillips, *Putting Asunder*, pg. 141.
42. Ibid., 142.
43. Riley, *Divorce*, pg. 25.
44. Phillips, *Putting Asunder*, pg. 143.
45. Stone, *Road to Divorce*, pg. 10.
46. Phillips, *Putting Asunder*, pg. 355.
47. William Penn, *Fruits of Solitude, in Reflections and Maxims. Part 1. Found in The Harvard Classics*, (New York: P.F. Collier & Son Corporation, 1969), 330.
48. Riley, *Divorce*, pg. 57.
49. Tilly and Scott, *Women, Work and Family*, pg. 39.
50. Laurel Thatcher Ulrich, *A Midwife's Tale: The Life of Martha Ballard Based on Her Diary 1785-1812*. (New York: Alfred A. Knopf, 1990).
51. Riley, *Divorce*, pg. 27.
52. Stone, *Road to Divorce*, pg. 50.
53. Demos, *A Little Commonwealth*, pg. 50.

54. Riley, *Divorce*, pg. 30.
55. Ibid., 5.
56. Ibid., 57.
57. Ibid., 45.
58. Phillips, *Putting Asunder*, pg. 155.
59. Riley, *Divorce*, pg. 35.
60. Mintz and Kellogg, *Domestic Revolutions*, pg. 72.
61. Herbert G. Gutman. "Persistent Myths About The Afro-American Family." *The American Family in Historical Perspective*. (New York: St. Martin's Press, 1983), 455.
62. Mintz and Kellogg, *Domestic Revolutions*, pg. 69.
63. Phillips, *Putting Asunder*, pg. 241.



## **Chapter 2**

### **The American Family of the Nineteenth Century**

#### **The Growth of Industrialization**

Over the past one hundred and fifty years the institution of the American family has changed drastically. Families have experienced demographic changes as well as structural, emotional, and organizational ones. One of the elements which is most responsible for this occurrence is the industrial urbanization of the United States. The decades between 1850 and 1890 show dramatic changes in economics and labor which, in turn, have had dramatic effects upon the American family. The industrial urbanization of the United States is particularly important in the development of the wage economy. Beneath the label of urbanization a host of forces have come together to change the institution of the family forever.

The industrialization and urbanization of the United States did not happen automatically. Both elements are woven together tightly, but they are different. Industrialization is the implementation of a mechanized system (which augments a division of labor) that uses technology and machinery to produce more products at a much faster rate. Industrialization influences values, goals, ideas and technology.<sup>1</sup> Urbanization is a product of industrialization in that the Industrial Revolution brought thousands of people to the cities to perform jobs. The people most affected by urbanization, in *this* instance, are those who moved into the cities to work in

an industrial setting. In the United States industrialization (and therefore, urbanization) became an influential process in the mid-nineteenth century.

The change from mercantile to industrial capitalism in the United States occurred slowly at first. In the beginning of the nineteenth century families began to lose their self-supporting system. As cash crops became more popular farmers began to grow more of the lucrative crops and less of others. People began to buy more of what they needed to run the home. They began to earn the wages necessary to purchase these items.<sup>2</sup>

During the first half of the nineteenth century factors changed which promoted widespread industrialization. The gold rush provided funds necessary to begin an industry. With the railroad came effective transportation. Technological advances, a surplus of excellent Western farmlands (and mechanized farming tools) and a steady supply of cheap immigrant labor hastened the industrialization process.<sup>3</sup> Along with it was the mass movement of rural and immigrant working class people to the cities.

### Urbanization and its effects

Obviously there were large cities in the United States before this revolution occurred, but an overwhelming proportion of the United States population had been rural. In 1790 the first United States census showed that of the 3,929,214 people living in the country, only five percent lived in urban areas.<sup>4</sup> By the mid-nineteenth century the numbers of urban residents had increased but still remained less than ten percent of the total United States population. By 1860 twenty percent of the population lived in an

urban area, and by 1910 that figure was forty-six percent.<sup>5</sup> Obviously urbanization had taken hold.

Once these rural Americans reached the city, however, urban life often fell short of their optimistic expectations. Laboring conditions for the working class were difficult. As more and more laborers poured into the factories the supply of jobs decreased rapidly. Machinery and technology were always lessening the need for human employees. Part-time and temporary jobs sustained many families, but employment of any kind was always insecure. Changes in product demands, economic recessions, bad weather, business bankruptcy, and even changes in season caused job losses.<sup>6</sup> For a laborer to keep a full-time job year round was rare. In addition, working conditions were unsanitary, stressful, and often dangerous in workplaces such as textile mills, shoe factories, and mines. Working hours were very long - between seventy and eighty hours per week at minimum pay. Job security required mobility.<sup>7</sup> Very few working class families were ever able to settle permanently in one area. The constant moving, job insecurity, and unstable wages made consistency (and plans for the future) impossible. Because unemployment and lay-offs were so frequent women and children found it necessary to work in order to sustain the family. Most working class families had more than one person providing the income. "...in many cases the father's earning accounted for less than one-fourth of the family's yearly income."<sup>8</sup>

Education and child care were increasingly problematic. Working wives and mothers often took jobs in the home such as laundry and sewing to make ends meet. "...this kind of low-paid household labor was the most common form of employment for immigrant women in the nation's largest cities..."<sup>9</sup> Working wives and mothers often had no time to cook or care

for the family's needs. Child-rearing ended often as soon as the child was able to join the labor force. The effects of this family employment are apparent. William J. Goode wrote that, "The lower-class family pattern is indeed most 'integrated' with the industrial system but mainly in the sense that the individual is forced to enter its labor market with far less family support - *his family does not prevent industry from using him for its own goals.*"<sup>10</sup> The actual number of married women in the paid labor force at this time is difficult to determine for many women did not consider piecework to be employment.<sup>11</sup> Karl Marx commented on the machinery and its effects upon the family. The machinery of the Industrial Revolution did not need to be run by a strong male; frail women and small children were capable of doing it much cheaper. "Thus we see, that machinery, while augmenting the human material that forms the principal object of capital's exploiting power, at the same time raises the degree of exploitation."<sup>12</sup> Marx also wrote of his concern for the society whose children were wage laborers to maintain the family's existence -- often at the expense of education.<sup>13</sup>

American literature - both fact and fiction- of the mid-nineteenth century often portrays small ragged children begging in the streets in desperation or stealing from pedestrians. In reading the essays and magazines of the time one can easily see that the population was concerned that the families of the working classes were falling apart and that the children were being neglected, overworked, and undisciplined. Labor movement leader Ira Steward wrote a pamphlet entitled "Shorter Hours and Higher Wages" in 1865. In his publication Steward condemned a work day of more than eight hours as excessive and monotonous. He also felt that increased wages could only occur after work hours were reduced.<sup>14</sup> The

1880 census reported that of the 172,544 people employed in cotton mills 112,859 were women and children.<sup>15</sup> Carroll D. Wright wrote of these census findings five years before he became the first United States Labor Commissioner that, "The factory system necessitates the employment of women and children to an injurious extent, and consequently its tendency is to destroy family life and ties and domestic habits, and ultimately the home."<sup>16</sup>

The housing shortages of industrial cities such as New York City, Chicago, and Boston allowed landlords to charge astronomical prices for a very minimal space - hardly even shelter. Tenements became a way of life in these cities for thousands of struggling families. The standard of living for most industrial working class people was poor at best. The typical family was at poverty level or below. Urban poor, especially immigrant families of Jewish or Slavic heritage, would supplement their income by renting out some of their valuable space to a boarder.<sup>17</sup> This was economically beneficial to the family and helpful to the boarder, who was often a lonely immigrant. Housing shortages were acute in these areas. Certainly these working and living conditions strained and oppressed the American working class families and their relationships with each other.

Another problem *immigrant* households had to deal with was the conflicting values of their own culture and those of American laws. Old World traditions often conflicted with the democratic ideals of this unfamiliar country. In Europe men had more power and authority over their families. By the mid-nineteenth century most lawmakers had become critical of the old laws which allowed a husband the right of 'moderate correction'.<sup>18</sup> For many years American women had held more legal rights than their European counterparts. They had more freedom and

choices; they also had the protection of the government. For these reasons incidents of domestic abuse among immigrant families, especially among the Irish and German, stood out conspicuously. "...among many immigrant groups in the United States, physical beating of a child or a wife was considered legitimate."<sup>19</sup> Divorce was much more obtainable in the United States, and many women accepted the shame of a divorce or separation rather than the continued violence.<sup>20</sup>

The elements of industrialization and urbanization tested the strength of the working class family. Poverty, unemployment, tenement life, disease, and wretched living conditions were all factors which forced the working class family to cooperate with each other. Kin was often the only source of support. "During critical life situations -- illnesses, unemployment, injury, housing shortages, or old age -- individuals often turned to kin for support."<sup>21</sup>

As society became increasingly commercial and industrial it became apparent that children were no longer an asset, and couples began to limit the amount of children they had.<sup>22</sup> Prior to 1800 women were giving birth to an average of seven or eight children in their lifetime. By 1850 this figure had decreased to five or six. By the beginning of the twentieth century women were having an average of only three or four children.<sup>23</sup> This decrease in the birthrate occurred throughout the country, not just in the cities.<sup>24</sup> The industrialization and urbanization of America changed family structure. The family became more flexible under the wage economy. While divorce was impossible to most couples prior to urbanization, it increasingly became a more common option for families afterwards.

As the citizens of urban America began to change their environment, ideas, and family structure the rural areas did not remain unaffected for very long. As with any new progressive idea that occurs in the city eventually it makes its way into the country. These structural changes in the family also occurred in rural areas. It has taken many years, and the rural areas still show some rather antiquated ideals, but the institution of the family has endured great changes *throughout* the country. "...the family economy declined...under the impact of industrialization and the penetration of the wage economy to all sects of the economy, and to rural as well as urban areas."<sup>25</sup> The city is the carrier of new ideas and industrialization, and urbanization has in the long run caused much greater personal independence and freedom. Certainly, urbanization caused extreme hardship for many families, however, because of urbanization the family was forced to adapt to more modern conditions. People often look back at the self-sufficient family of the pre-industrial era as a 'better' way of life, however, the way of life that people recall would not be compatible with today's economical and political systems. The structural changes made over the past one hundred years - including increased divorce rates, smaller families, and remarriage -- are by-products of the modernization that the family has undergone. The family values that existed in the pre-industrial family were not greater than those of today -- they were different altogether. Trying to bring them back is not only unnecessary, it is impossible.

## Notes

1. Bernard Carl Rosen, *The Industrial Connection: Achievement and the Family in Developing Societies*. (New York: Aldine Publishing Co., 1982), 5.
2. Steven Mintz and Susan Kellogg, *Domestic Revolutions: A Social History of American Family Life*. (New York: The Free Press, 1988), 84.
3. Mintz and Kellogg, *Domestic Revolutions*, pg. 84.
4. Philip M. Hauser, ed., *The Study of Urbanization*. (New York: John Wiley & Sons, Inc., 1965), 35.
5. Rudy Ray Seward, *The American Family: A Demographic History*. (Beverly Hills: Sage Publications, 1978), 21.
6. Mintz and Kellogg, *Domestic Revolutions*, pg. 85.
7. Ibid., 84.
8. John E. Bodnar, "Socialization and Adaption: Immigrant Families in Scranton, 1880-1980" George E. Pozzetta, *American Immigration and Ethnicity: Demography, Fertility, Housing, Kinship, and Urban Life*. (New York: Garland Publishing Co., 1991), 38.
9. Mintz and Kellogg, *Domestic Revolutions*, pg. 89.
10. William J. Goode, "World Revolution and Family Patterns", Jerome and Arlene Skolnick, *Family in Transition: Rethinking Marriage, Sexuality, Child-Rearing, and Family Organization*. (Boston: Little, Brown, and Co., 1977), 54.
11. Louise A. Tilly and Joan W. Scott, *Women, Work, and Family*. (New York: Holt, Rinehart and Winston, 1978), 125.



12. Karl Marx, "On Family Life Under the Factory System" Jerome and Arlene Skolnick, *Family in Transition: Rethinking Marriage, Sexuality, Child-Rearing, and Family Organization*. (Boston: Little, Brown, and Co., 1977), 42.
13. Ibid., 46.
14. "Illinois Sweatshops", Illinois Bureau of Labor Statistics, *Annals of America* (Chicago: Encyclopaedia Britannica, Inc. 1968), 375.
15. David A. Wells, "Machines and Economic Change", *Annals of America*. (Chicago: Encyclopaedia Britannica, Inc., 1968), 228.
16. Mintz and Kellogg, *Domestic Revolutions*, pg. 85.
17. Ibid., 84.
18. Elizabeth Pleck, "Challenges to Traditional Authority in Immigrant Families", *The American Family in Historical Perspective*. Michael Gordon, ed. 3rd edition. (New York: St. Martin's Press, 1983), 504.
19. Ibid.
20. Ibid., 509.
21. Mintz and Kellogg, *Domestic Revolutions*, pg. 88.
22. Ibid., 51.
23. Ibid.
24. Ibid., 52.
25. Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society*. (New York: Cambridge University Press, 1988), 376.

## **Chapter 3**

### **The Spread of Divorce and Public Reaction**

#### **Divorce Travels West**

The divorce rates rose quickly after 1850. The United States became infamous as the divorce capital of the world.<sup>1</sup> Canada was very concerned about the United States divorce laws and rates. Being more conservative, they felt that Americans were lacking social restraint. The divorce rate in the United States was 230 times higher than Canada's - where divorce was obtained through an act of Parliament.<sup>2</sup>

Divorce continued to fall within the laws of each state. As new states and territories were added to the union divorce legislation became more liberal. The farther West Americans traveled the more liberal divorce laws they created. Minimum residency requirements were short, and they were rarely enforced. Originally states such as Nebraska and Nevada required a six month residency to obtain a divorce. South Dakota later reduced it to only ninety days because of pressure exerted by businessmen who felt that the divorce business helped the economy. "Haste set the stage for the adoption of permissive divorce statutes and short residency requirements on more than one occasion."<sup>3</sup> States including Utah, Indiana, Ohio, Illinois,

South Dakota, North Dakota, Wyoming, Nevada, Arizona, Colorado, and California *all* had a reputation at one time or another as a divorce mill.

Meanwhile, states on the East Coast also liberalized divorce law by adding to their list of grounds. Drunkenness became an issue, as did the ambiguous ground of 'cruelty'. These additions made divorce easier to obtain. If the grounds in one state were unacceptable one could simply migrate to a more divorce-friendly state. Migratory divorce was a serious business. Lawyers from the Western liberal states would advertise their services in more conservative states. These liberal divorce laws, in addition to the increasing divorce rates, raised the eyebrows of conservatives everywhere. In 1889 the Department of Labor conducted a study to determine the exact numbers of divorces being obtained. The figures showed that the number of divorces had increased from 9,337 in 1867 to 25,535 in 1886.<sup>4</sup> One out of every fourteen to sixteen marriages was ending in divorce.<sup>5</sup>

More concerns about the divorce rate were raised, and opponents of divorce began to rally. Reports of western divorce mills added fuel to the debates against divorce. The divorce debate had two sides. The conservatives supported a return to the traditional patriarchal family. They advocated self-sacrifice and the suffocation of individualism to maintain the family unit. Their opponents maintained that marriage was the problem, not divorce. They felt that liberal laws allowed people the freedom to pursuit individual happiness.<sup>6</sup> Many opponents of divorce blamed the women's rights movement for the increased rates of divorce. In actuality this movement was split regarding the issue of divorce. Elizabeth Cady Stanton supported the idea of liberalizing divorce, however, other women's rights

advocates argued that divorce was immoral.<sup>7</sup> Amidst all of the debate the divorce rate continued to increase.<sup>8</sup>

Once again, as in the brief episode in Revolutionary France, opponents of divorce perceived liberal divorce laws and high rates of divorce to be the causes of marital breakdown. However, as in the past, divorce was only one symptom of marital breakdown. The divorce rates in the last half of the nineteenth century continued to rise regardless of the reforms.<sup>9</sup>

During the divorce debate in the 1880s South Carolina was the only state that still prohibited divorce of any kind. Legal separation without the possibility of remarriage was the only legal way to end a marriage. Marital breakdown continued to occur in South Carolina. “The situation in South Carolina seemed to prove some reformers’ point that the problem demanding attention was marriage, rather than divorce, for even when divorce was non-existent, marriages broke down.”<sup>10</sup>

### **The Rise of Individualism**

While people continued to be divided on the issue of divorce, the actual rates rose dramatically towards the end of the nineteenth century. One of many factors contributing to this was the increase of individualism. Individualism has had a long history in the United States. The 'individual's rights' which this country was founded upon were the result of the individualistic thought of the Enlightenment. Individualism continued to grow as social, economic, and political changes occurred and the influence of institutions such as marriage and divorce were threatened.<sup>11</sup>

Industrialization, urbanization, and the rise of the wage economy helped to promote this ideology of individualism. The pursuit of personal

happiness urged people towards quick gratification, and this was sometimes achieved at the expense of their families, jobs, and relationships.

Individualism was a concern with self. Personal and sexual gratification in careers and marriages became prominent during this time, and it changed the way people related to one another. Parental roles began to change as more women went to work. Fathers began to be less disciplinarian.

Children for the first time began to be regarded as beings who needed to be psychologically healthy and respected. These children carried these attitudes into their own marriages. Individualism was affected by the loss of authority in the family. Children being educated in the public school systems were also being greatly affected by their peers. The peer pressure of modern day certainly has ties to the early 1900s.

A sexual revolution occurred in the first two decades of the twentieth century. Young women were much less conservative, dressed in single layers, cut their hair short, smoked, and danced flirtatiously. As Steven Mintz and Susan Kellogg assert in *Domestic Revolutions*, over two million women joined feminist and suffrage movements during this era.<sup>12</sup> Women were also improving their education and working outside of the home more. Dating replaced the courting method of mate selection. Drinking and pre-marital sex became popular as depicted in Ernest Hemingway's 1926 novel, *The Sun Also Rises*.

Many people saw these changes as outrageous and detrimental to life. The rebelliousness of the teens, who by the 1920s had developed their own culture, was considered a serious crisis. Pre-marital sex, increasing divorce rates, illegitimacy, and a decreasing birthrate worried a majority of the population. "Especially in America, the term 'family decline' referred not only to the negative impact of urban industrialism but more generally to a

moral decline focused on the marital instability that accompanied the growth of individual rights and sexual permissiveness."13 Of course, individualism does not, in itself, lead to divorce, however, it has had an effect. Individual human rights are expressed in individualism, and it is every person's right to escape an unhappy or harmful situation. Before individualism was incorporated into society this was not necessarily considered true. It took centuries for divorce law to include physical or mental cruelty as grounds for a divorce. The ground of incompatibility in a marriage took even longer. For the first time in history large numbers of Americans were choosing to end their unhappy marriages instead of living in them as their ancestors did.

One key factor which contributed to the increased divorce rates of the twentieth century was the changing expectations many people brought to their marriages. Of pre-industrial marriages historian Roderick Phillips commented, "What is important is that the marriages lasted not necessarily because the spouses were morally superior to later cohorts of husbands and wives, nor because they loved each other more deeply or cared more for their children nor because they worked harder at their marriages and were less fickle than their descendants, but simply because there was nothing else they could do, and they accommodated themselves to that reality."14 Because of legal, economic, and social changes, however, people no longer had to accept marital breakdown as permanent; they could end it with divorce.

The expectations people had when they married often left them disappointed. The unrealistic ideals of romantic love had been a problem for centuries, but other factors also emerged. A lack of emotional satisfaction in marriage, such as friendship or companionship, became

problematic in many relationships. However, other expectations often took precedence. Many women were going into the paid labor force out of necessity, and as a result some realized they could make it on their own. "The availability of work did not cause marriages to breakdown, but it did enable women to survive outside marriage."<sup>15</sup> No longer were they so willing to accept oppression or physical or emotional abuse from their husbands. Meanwhile, their spouses expected their wives to stay home in the woman's domain. Wives were traditionally expected to deal with domestic chores such as homemaking and child rearing. Men were legally bound to support their wives, and they felt threatened by their wife's economic independence.<sup>16</sup> Women also became less tolerant of their husband's adultery. As early as the 1870s two-thirds of the divorces were filed by women.<sup>17</sup>

Most spouses entered marriage with the assumption that labor and responsibilities would be divided. This expectation also fell short on many occasions. Self-fulfillment, sexual gratification, and personal happiness: these are the expectations for marriage which had grown out of individualism. When a decrease in tolerance for a spouse's behavior was combined with this, marital breakdown was often the result. "Long-term unions were impossible in a country where men and women worshipped individualism."<sup>18</sup>

A combination of social and economic factors led to increased divorce rates. The Industrial Revolution and its effects on population, demographics, and wages had frayed the economic strings which had tied pre-industrial marriages together so tightly. Individualism and unrealistic expectations did not blend well with the traditional roles of marriage. In addition to this, mental attitudes towards religion and sexuality were

changing and becoming more progressive.<sup>19</sup> While the divorce rates were continually increasing, the idea of divorce was becoming slightly more acceptable. Some Americans believed that divorce was a positive force, however, there were still many who felt that if divorce were restricted then the traditional family roles could be maintained.

### **Political Factors**

While economic and social factors were pulling on marriages, politics also had an impact. After every war in the United States there has been an increase in divorce. These figures held true for the Civil War and World War I. War is a very stressful time for all citizens, and it is especially so for anyone contributing to the war effort. Farms were destroyed or lost during the Civil War. Government and military jobs separated families for extended periods of time in both conflicts. Oncoming war urged many young and innocent people to the altar prematurely. Just prior to the United States' participation in World War I there was a significant (50 percent) increase in marriages.<sup>20</sup> Many of these people would not have married if not for the overall military instability and the obligation of long-term absence. The long separations married couples experienced were harmful to even the strongest of marriages. Adultery was also a serious problem because both spouses had increased occasion to stray. By 1917 venereal disease had become such a problem in the British forces that one of every five soldiers was infected and all were supplied with condoms.<sup>21</sup> Returning soldiers occasionally came home to pregnant wives or found children who were conceived during their tour of duty. Many soldiers returned with what



today would be called Post Traumatic Stress Disorder. These occurrences took a serious toll on marital relationships.

### **Divorce From the 1920s-1950s**

The continual liberalizing of divorce laws in the 1920s did not result in a rush to the divorce courts. Residency requirements were shortened in some states, and migratory divorce was at its peak. New York continued to grant divorces for adultery only. South Carolina still prohibited divorce altogether. Couples in these states tended to obtain migratory divorce or separations. There were many states that had short residency requirements. In 1927 Nevada had a residency requirement of three months. In 1931 it was reduced to only six weeks and no longer required witnesses.<sup>22</sup> The national divorce rate increased by 1924 to one divorce out of every seven marriages.<sup>23</sup> Though the divorce rate was gradually increasing, the occurrence of the Great Depression in 1929 made divorce suddenly unaffordable. There was a temporary decline in the divorce rate after 1929 in the United States. These findings show that the United States divorce rates were affected by the economy more than any other country. "The decline in the American divorce rate between 1930 and 1933 effectively meant that there was a deficit between 100,000 and 150,000 in the number of divorces that would have been granted had the divorce rate continued."<sup>24</sup>

People chose to stay married because they had no other alternative. Divorce was a luxury which unemployed people could not afford. In addition to this, the government gave people incentive to stick together; families received financial assistance more than people who were single or divorced. Government work project jobs were also given to men with

families before they were supplied to others. Many women were laid off or admonished for working when men needed the jobs to support families. Fewer women could afford to be independent, and these women needed the support of their husbands. For the decade of the 1930s the ideas and values of individualism were shelved only to be brought out again after the Second World War. The divorce rate slowed dramatically, but cases of family abandonment skyrocketed as men either left their family to find work or could no longer bear the responsibilities of caring for their families. The confidence and self-esteem of men fell along with the standard of living which was devastating the American family. The birthrate dropped, and so did the marriage rate. "...altogether 800,000 marriages were postponed by the depression, "and "there were 170,000 fewer divorces than would have occurred had pre-depression trends continued."<sup>25</sup>

World War II brought prosperity and affordability of divorce again, however, the men were not here to divorce. Beginning in the 1940's people married younger than any other time in the twentieth century.<sup>26</sup> The marriage rate just prior to the United States' entry into World War II skyrocketed, just as it had prior to World War I. Couples married quickly and impulsively. There were several reasons for this. With wartime production, jobs and wages became plentiful. Men with dependents were able to postpone military duty so some married rather than be drafted. Some women, labeled 'Allotment Annie's', married GIs to claim the monthly pension check and receive the \$10,000 insurance policy.<sup>27</sup> These impulsive pre-World War II marriages contributed to both the later baby boom and the increased divorce rate after the war. In all, three million more Americans married just before World War II than could have been expected.

During the war women were replacing the men in the workplace. Jobs never before available to women were 'necessary for the war effort'. These jobs were beneficial to women's ego and confidence as they allowed them a sense of independence and importance never before achieved. These new jobs and feelings caused problems for their marriages later. As early as 1938 Willard Waller, in a book of family functions and roles, predicted a negative impact on married women in the labor force. "...the employment of wives often created an opposition of interests in the family, in contrast to the interdependence found in pre-industrial families."<sup>28</sup> Many people were told that wives who were working outside the home were undermining their husband's self-images. Indeed, when the men returned home and wives returned to housework tempers flared.<sup>29</sup> Men could not accept the changes their wives were now accustomed to -- independence and self-sufficiency. Women lost not only their jobs but their confidence and independence as well. The media demanded that the wife's place was no longer in the workplace but at home in the traditional role. This may have contributed considerably to the soaring divorce rates that occurred immediately following the war, particularly between 1945 and 1947.<sup>30</sup> One out of every four marriages was ending in divorce by 1946.<sup>31</sup> The rate quickly steadied, however, as the country entered a time of peace and prosperity -- the 1950s.

From 1945 to 1955 the age of first marriage decreased further while the marriage and birth rates increased dramatically for the first time in the twentieth century. Just prior to the beginning of the twentieth century men were getting married in their mid to late twenties. Young women were marrying around the age of twenty-four. In the 1950s these figures dropped dramatically. "The average age of marriage for men dropped to just twenty-

two; for women, to twenty.”<sup>32</sup> The country experienced ten years of marital stability.<sup>33</sup> Although many modern critics point to this era as a time of normalcy, in actuality the reverse is true. Divorce rates had been increasing steadily since the mid-nineteenth century. The episode of low divorce rates during the 1950s was unprecedented -- not normal. There are several possible factors which influenced this phenomenon. The economy during this post-war period was one of prosperity. The stability created influenced the family life. Employment opportunities of various types could be found relatively easily. Social attitudes towards marriage and the family were very conservative. Stephanie Coontz states... "Not only was the 1950s' family a new invention; it was a historical fluke, based on a unique and temporary conjecture of economic, social, and political factors."<sup>34</sup>

A drastic housing shortage and the abundance of well paying jobs forced the building of the American suburbs. During the war people had been employed and had been able to save money. Due to a lack of consumer options, the savings and war bonds collected enabled many to own their own homes for the first time. In 1960 sixty-two percent of families in America owned their home in suburbia.<sup>35</sup> Economic prosperity was promoted by the government; low cost loans were supplied to Americans wanting home, college, of government jobs. Stability in the economic arena convinced many people to marry and have families at a younger age. Working class mothers felt lucky to stay at home and raised their children. They had long been jealous of this middle-class luxury, and they happily took their place in the suburbs. Due to a favorable economy many working class families jumped into the middle class category. As Americans were building suburbia, the middle class community increased in size to sixty percent of the population in the United States.<sup>36</sup>

Suburban life itself had an effect upon the institution of marriage. Women stayed home with their children all day while husbands spent more time in the workplace and new time commuting to their jobs. Days were often very long for wives who were pressured by the media and society to stay home. The divorce rate had declined back to the 1940 figure. "In 1940, 1.4 percent of the population had been divorced; twenty years later that figure had climbed to just 2.5 percent."<sup>37</sup> At the same time women began having more children than their mothers had, and they had them at a younger age. "Nearly one-third of all American women had their first children before they reached their twentieth birthday."<sup>38</sup>

Continued education was discouraged as abnormal for women. Fewer and fewer women pursued careers as society asserted that women belonged at home.<sup>39</sup> Those women who were educated felt trapped in a private house full of work and children. "The hybrid idea that a woman can be fully absorbed with her youngsters while simultaneously maintaining passionate sexual excitement with her husband was a 1950s invention that drove thousands of women to therapists, tranquilizers, or alcohol when they actually tried to live up to it."<sup>40</sup> Indeed, unlike June Cleaver, real women of the 1950s were *not* the happy stereotype recent generations have believed. It *was* a time of prosperity -- the first in twenty years, but present day critics of the modern 'decline of marriage' look back on the 1950s as a normal time in American history. This was not the case. As Andrew Cherlin notes, "...we shouldn't assume that all the changes since the 1950s were deviations from the usual way of family life in the United States."<sup>41</sup> The decade of the 1950s was not the ideal that many people with selective memories remember it to be.

External forces such as the Great Depression, World War II, and sudden prosperity of the 1950s were strong enough to regenerate antique ideas and values that had not existed since the nineteenth century. In reality, the images of the 1950s' family presented today are an illusion. Women had few options but to remain in the home. The jobs which were available to women in the labor market were low-paying and often disheartening. In addition, frequent childbirth kept women from working. Employers, who often did not want their female workers to appear pregnant, could terminate a woman's employment if her condition became apparent. Women were expected to return to the 'woman's sphere' of the Victorian era.

There were many women who did not want to return to the home full time. "A recent study of hospitalized 'schizophrenic' women in the San Francisco Bay Area during the 1950s concludes that institutionalization and sometimes electric shock treatments were used to force women to accept their domestic roles and their husband's dictates."<sup>42</sup> Many women were dissatisfied with being labeled a 'housewife'. The lack of social prestige, the monotony and loneliness of housework, and the overall sense of powerlessness to change their situation left many women feeling trapped in their domestic roles. Evidence of discontentment in some American families surfaced in the 1950s. Police arrested a group of suburban housewives in Long Island, New York for prostitution. Rumors of 'wife swapping' circulated in San Francisco. Housewives' addictions to drugs and alcohol were being reported, and thirty-three children were battered to death in their homes in a single year.<sup>43</sup>

The golden decade was less than harmonious for men as well. Unmarried men were viewed as immature, irresponsible, and even homosexual.<sup>44</sup> Promotions and job opportunities were given to men who

accepted the traditional family values. "The 1950s pattern of family life -- characterized by high rates of marriage, high fertility, and stable rates of divorce which many continue to regard as an ideal, was the product of ...an unusual series of historical, demographic, and economic circumstances unlikely to return again."<sup>45</sup> Unlike the utopia grandparents of today claim it was, in actuality the decade of the 1950s was an abnormal occurrence which quickly ended. By 1957 the baby boom had ended. Women's wages increased, especially in the service sector of the labor force. Housewives, eager to gain a sense of independence and earn the extra money needed to meet the rising costs of raising more children, once again went to work. Many women decided to get a higher education, postponed marriage for career opportunities, and gave up the traditional roles of the 1950s. The individualism which had sprouted at the beginning of the century, been shelved during the depression and World War II, resurfaced in full force in the 1960s. Sexual gratification, love in a marriage, and a satisfying career became more important than maintaining the traditional family roles.

### Chapter 3 Notes

1. Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society*. (New York: Cambridge University Press, 1988), 439.
2. Ibid., pg. 461.
3. Glenda Riley, *Divorce: An American Tradition*. (New York: Oxford University Press, 1991), 85.
4. Phillips, *Putting Asunder*, pg. 85.
5. Riley, *Divorce*, pg. 94.
6. Ibid., pg. 71.
7. Phillips, *Putting Asunder*, pg. 501.
8. Riley, *Divorce*, pg. 94.
9. Phillips, *Putting Asunder*, pg. 507.
10. Riley, *Divorce*, pg. 69.
11. Stephanie Coontz, *The Way We Never Were: American Families and the Nostalgia Trap*. (New York: Basic Books, 1992), 193.
12. Steven Mintz and Susan Kellogg, *Domestic Revolutions: A Social History of American Family Life*. (New York: The Free Press, 1988), 112.
13. David Popenoe, *Disturbing the Nest*. (New York: Aldine de Gruyter, 1988), 30.
14. Phillips, *Putting Asunder*, pg. 403.
15. Ibid., pg. 592.



16. Lenore J. Weitzman, *The Divorce Revolution: The Unexpected Consequences for Women and Children in America*. (New York: The Free Press, 1985), 2.
17. Riley, *Divorce*, pg. 78.
18. Ibid., pg. 123.
19. Lawrence Stone, *The Road to Divorce: England 1530-1987*. (Toronto: Oxford University Press, 1990), 412.
20. Phillips, *Putting Asunder*, pg. 517.
21. Ibid., pg. 519.
22. Riley, *Divorce*, 137.
23. Mintz and Kellogg, *Domestic Revolutions*, 109.
24. Phillips, *Putting Asunder*, 553.
25. Mintz and Kellogg, *Domestic Revolutions*, pg. 137.
26. Andrew J. Cherlin, *Marriage, Divorce, and Remarriage*. (Cambridge: Harvard University Press, 1981), 2.
27. Mintz and Kellogg, *Domestic Revolutions*, pg. 154.
28. Cherlin, *Marriage, Divorce*, pg. 53
29. Mintz and Kellogg, *Domestic Revolutions*, pg. 172.
30. Phillips, *Putting Asunder*, pg. 555.
31. Mintz and Kellogg, *Domestic Revolutions*, pg. 171.
32. Ibid., 179.
33. Phillips, *Putting Asunder*, pg. 560.
34. Coontz, *The Way We Never Were*, 28.
35. Ibid., 25.
36. Ibid., 25.
37. Mintz and Kellogg, *Domestic Revolutions*, pg. 79.
38. Ibid., 79.

39. Ibid., 181.
40. Coontz, *The Way We Never Were*, pg. 9.
41. Cherlin, *Marriage, Divorce*, pg. 7.
42. Coontz, *The Way We Never Were*, pg. 32.
43. Mintz and Kellogg, *Domestic Revolutions*, pg. 194.
44. Ibid., 181.
45. Ibid., 237.

## Chapter 4

### Fault Based Divorce and Efforts at Reform

The decade of the 1960s brought tremendous changes to this country. Political, social, and private arenas of this society were altered as views became less conservative. Behaviors and attitudes shifted as people became involved in the feminist movement, the Civil Rights movement, and anti-war demonstrations. The sexual revolution was in full swing as women re-entered the labor force. Sex education became a legitimate topic in schools, and contraception became as easy as a prescription. Values and ideals of the 1950s dissolved or became antiquated. These changes found their way into the institution of marriage, and the divorce rates, which had stabilized in the 1950s, skyrocketed after 1963.

As the concerned public observed the divorce rates with alarm, many felt that divorce reform was necessary. By the 1960s fault-based divorce requirements were outdated and inappropriate. Arguments in favor of changing the fault-based grounds arose. Many lawmakers felt that there were two main reasons why fault-based grounds for divorce were obsolete. The first, and most obvious problem with fault-based grounds was that the fault committed in the marriage was generally a *symptom*, and not a *cause* of the actual marital breakdown. The second problem with fault-based grounds was that perjury, collusion, and fraud became commonplace in the country's court system.

The law which required that a party prove a spouse guilty of a marital crime in order to obtain a divorce often humiliated and emotionally traumatized separating families. Personal and lurid topics and conversations were exhibited in a court filled with family and friends. This was detrimental to reputations, and often ruined lives. An innocent spouse used these charges of fault to obtain a divorce, and then used them again for purposes of custody, alimony, and child support. "Proving the other's guilt might not only make one feel morally superior, but might also pay off in a better property settlement."<sup>1</sup> Fault-based divorce proceedings were often bitter battles in which the innocent party had the most power.

Collusion was very common prior to the no-fault reforms of the 1970s. Most states required that only one spouse be guilty of wrongdoing. If both spouses committed a marital error then a divorce was not obtainable. This doctrine of recrimination became an excuse for many people to obtain migratory divorces in more divorce-friendly states. In Michigan recrimination was in the law books until 1972 and convinced many Michiganders to obtain migratory divorces.<sup>2</sup> Las Vegas was still a very popular choice for a migratory divorce. People were also obtaining divorces in Mexico.<sup>3</sup> The 1966 case of Fish Vs. Fish in Michigan demonstrated how senseless the law of recrimination was. A divorce for this desperate couple was prohibited because both spouses had committed a marital offense.<sup>4</sup> One standard method of avoiding this law was to report only one spouse's guilt and not the others. The court considered this collusion, but it was rarely able to prove it.

The long-standing divorce laws that required fault-based grounds did serve a useful purpose. Cruelty was by far the most popular ground used for divorce, and it was an ambiguous charge. However, any charge of fault was

humiliating -- often to both spouses. In this way fault-based grounds provided practical, psychological, and moral obstacles to divorce. Some cooperation between spouses was necessary because unilateral divorce was not possible. The entire process of divorce was regarded with distaste by many.<sup>5</sup> New York was notorious for fraud in divorce courts because prior to 1968 New York maintained restricted divorce for adultery only. Agencies popped up which would create the illusion of adultery. They provided mistresses, private investigators, and conveniently placed cameras in order to 'catch' the wayward spouse.<sup>6</sup>

By the late 1960s there was little doubt that fault-based divorce laws needed reform. The no-fault divorce laws, meant to create more amicable and egalitarian divorces were part of a conservative effort, Weitzman reminds us, "...to stem the rising tide in divorce'."<sup>7</sup> The logic in this effort comes from the inclusion of a family court, which would counsel and advise couples considering divorce.

### **The Cultural Shifts of the 1960s and 1970s**

The entire familial institution has changed rapidly and dramatically since the 1960s. Much of this is due to the vast social changes which began after the decade of the 1950s. Characteristics of the 1960s included skyrocketing divorce rates, and therefore, an increased number of female-headed households. Illegitimacy increased, but overall the birthrates declined drastically. The 1958 figure of 3.8 children per woman decreased to only 1.9 by 1973.<sup>8</sup> The illegitimacy rate has risen from five to eighteen percent for whites and from twenty-five to sixty-three percent for blacks in

the last thirty years.<sup>9</sup> One of the most influential factors which changed the American society in the 1960s was the sexual revolution. The rules for sexual activity were virtually rewritten in the 1960s. Pre-marital sex was no longer stigmatized as it had been. Steven Mintz and Susan Kellogg assert that while more than half of all young brides were virgins when they married in 1960, only one in five postpones sexual intercourse today.<sup>10</sup> Sexual intercourse outside of marriage and overall permissiveness became the norm in the 1960s and 1970s. Seventy-five percent of women in America were engaging in pre-marital sex by the mid-1980's.<sup>11</sup>

Another very important occurrence of the era was the women's liberation movement which charged the institution of the family with the exploitation of women. "Feminists denounced the societal expectation that women defer to the needs of spouses and children as part of their social roles as wives and mothers."<sup>12</sup> More and more young women chose to avoid the marriage 'trap' and pursue a college education or professional career. Marriage rates dropped and divorce rates increased. By the mid 1970s fifty percent of all new marriages were ending with divorce or separation.<sup>13</sup>

In looking back through the century the 1970s were much more consistent in marital and divorce patterns than were the 1950s. Changes in this society's economic system turned the familial institution upside down. The family labor economy had held families together. The family consumer economy, characterized by only one breadwinner sufficient to supply a family with more than the necessities, was no longer the norm by the end of the 1960s. Married women, even those with small children, made their way back into to the labor force in the 1960s and 1970s. In effect, society has reverted back to the family wage economy now that most families require

the wages of more than one spouse to make ends meet. The proportion of women in the work force has only continued to increase since 1960 and includes mothers of pre-school children who now need to pay for child care.<sup>14</sup>

The deteriorating economy itself is a major factor in the increase in divorce. Insufficient funds is the biggest reason why women are finding a second income irresistible. Women have experienced a sense of achievement and personal reward, and though few women earn enough to be self-sufficient, many find their new careers fulfilling. Though this is a positive step for women, it is often viewed as a factor of marital instability. The dual income, however, may actually release some of the tensions from the husband's shoulders to make ends meet. In this instance, wives working outside the home may actually decrease the divorce rate. Confusion over proper household roles also occurs frequently. It seems impossible to find the time to keep up the household as childhood nostalgia suggests it should be. Husbands often find themselves doing chores their own fathers would have labeled as 'woman's work'. Family historian Carl N. Degler believes that new opportunities for women's careers may be linked to the overall increase in modern day divorce because unhappy working women may find themselves no worse off without a husband.<sup>15</sup> Though married women's participation in the work force may be linked to the divorce rate, however, it is not a direct cause. It is more probable that the sense of independence and self-sufficiency women receive from working allows them an otherwise impossible option to escape an already unsuccessful partnership. "Nevertheless, it appears that on balance a woman's' income reduces her dependence on her husband and makes it easier for a couple to end an

unhappy marriage."<sup>16</sup> All of these changes have drastically affected the divorce rate.

There are, of course other factors which have increased divorce rates, but none are the creations of the immediate generation. One cannot say that the decline of the institution of marriage (if any) has occurred in only the last three decades. The changes in the family and marriage have often been from structural forces. These structural forces, however, create changes in values, ideas, and beliefs. Such is the case with the prevalent individualism of the entire century. The fact that mortality rates have fallen drastically over the past century cannot be dismissed as having great influence over the divorce rate. Marriages were dissolved by premature death frequently before 1900. "...by 1900 marriages had the potential to last twice as long as eighteenth-century marriages, and modern marriages can last more than three times longer than those entered into two centuries ago."<sup>17</sup> According to historian Lawrence Stone, this is not an exclusively American phenomenon. He even suggests that modern high divorce rates simply compensate for the fall in mortality rates. "...the proportion of marital dissolutions by death or divorce in England and Wales at early stages in marriage was much the same for the cohort marrying in 1826 as for that marrying in 1980."<sup>18</sup> While these figures are enlightening they do not fully explain why marriages of shorter duration (less than four years) and those of younger couples tend to dissolve more frequently.

Communication is, and has been, considered to be the key component of a successful marriage since the 1920s. Sexual satisfaction of both partners has replaced the traditional means to reproduction. Contraceptives, available in various forms since 1922, have helped to change the ideas and purpose of sexual intimacy into more of an expression of love and a



physical and mental necessity rather than the means to children. Ideals have also changed in that couples no longer intend to stay in a marriage if they are miserable. Many people today accept the idea that unhappy couples, even those with children, may be better off ending a marriage. The increase of divorce in this country has removed the negative associations with it. Though still not an easy option, people are no longer publicly disgraced if their marriage fails. This decrease in the idea of marital permanence may make true commitment more difficult to make in the long run. If one enters a marriage with an idea that it may someday end in divorce that person may be less willing to make the compromises, sacrifices, and commitments to make the relationship permanent.

Another factor in the high-divorce equation is the maturation of the Baby Boomers. Born and raised in the prosperous 1950s these Americans, on average, had a high standard of living. With recent recessions, hiring freezes, and increased competition (from their own numerous peers), their standard of living may be less than they had hoped it would be. Men and women of this generation tend to marry at a later age. The median age of first marriage in 1970 for men was 22.5. Young women in 1970 were marrying at an average age of 20.6. In 1988 these figures were higher. The median age for a man marrying for the first time was 25.5. Young women marry at the later age of 23.7.<sup>19</sup> Many people have remained single. Many have chosen to postpone having a family. These facts may stem from the theory regarding the lower standard of living held by the younger generation.<sup>20</sup>

Increased divorce itself has had an impact on family structure. Families have altered drastically as people divorce and remarry. Many people choose to remain single rather than risk a potential divorce. Some

women, not wanting to commit to a marital relationship, choose to have children out of wedlock. Illegitimacy has quadrupled since the 1960s. Obviously, many of these children are the results of unwanted pregnancies, but the negative stigma attached to having children without fathers has diminished. So many children are born out of wedlock that no one is labeled a 'bastard' in the traditional sense. Millions of children are being raised in single-parent households -- whether from divorce or illegitimacy. Society seems to be more relaxed about many other issues that were a source of disgrace in the past. People choosing to remain single are not necessary labeled negatively anymore. The changes in the family and marriage institutions have decreased the negative social aspects of these decisions. Cohabitation is widely accepted today, and seldom leads to the disdain of disapproving parents. These are changes in values and beliefs -- which are products of the changes in family and marital structures over the past century.

The public concern over the high rates of divorce stems from the results of divorce which can be seen everywhere. If divorce was easy and could be done with no negative side effects the divorce rate would be much higher than it already is; it also would probably not be seen as a problem at all. The effects are, however, very apparent. One of the most negatively affected groups, regarding standard of living, are women who are divorced. The chance that women will be reduced to poverty after divorce is very high. The children are dragged down to the decreased standard of living as well. Women who have been married for many years and never worked in the labor force are hit especially hard. They often have no resources to fall back on and must try to make ends meet. For women with young children the work force often pays too little to provide both support and day care.

Jobs may be difficult for newly divorced women to find as employers tend to use marriage as a job prerequisite.<sup>21</sup> "The result of divorce, in an overwhelming number of cases, is that men become singles and women become single mothers."<sup>22</sup> This will be discussed further in the next chapter.

Divorce rates are much higher among the poor and minorities in this country. A number of factors influence this equation. A lack of education often affects employment opportunities. Employment (and unemployment) greatly affect mobility of these families. Among minorities there is also the problem of discrimination in employment and housing. All of these factors lead to increased stress for the family.<sup>23</sup> Married women, if they are already living in poverty, have very little to lose by leaving the situation altogether. If there is domestic or emotional abuse there is even less incentive to stay.

### **No-Fault Divorce**

By the middle of the 1960s it was obvious that divorce was spreading through Western society at an alarmingly rapid rate. The high number of divorce cases in the courts and the disturbing amount of collusion and fraud in the system forced many lawmakers to consider drastic divorce reforms. California became the first state to adopt the no-fault divorce reforms. The Governor's Commission, established by Governor Ronald Reagan, was established to study divorce and propose options. In doing so, the Commission borrowed some of the reforms of England, which had adopted a system of divorce which required no grounds in 1969. "...the only just ground for divorce was as relief from the irremediable breakdown of a

marital relationship.”<sup>24</sup> One year later, in 1970, California abolished the need for fault-based grounds to obtain a divorce.

The Governor’s Commission of California hoped to achieve several goals with the new no-fault law. They hoped to stabilize or possibly decrease the divorce rate by establishing a family court which would promote reconciliation. This family court would also counsel and help those families who were beyond reconciliation by guiding them through the divorce process. With this family court they hoped to alleviate the negative repercussions of divorce such as alcoholism, juvenile delinquency, and crime.

To lessen the economic discomfort of divorced men, the Commission hoped to make property settlements more equal. Many men had complained that their payments after divorce were too high and prohibited them from establishing and supporting a new family. The primary goal of the Governor’s Commission of California was to reduce hostility in the divorce courts. They proposed an amicable divorce law which would eliminate the bitterness that the fault-based divorce laws encouraged. The Commission’s first suggestion was that which was borrowed from England -- the elimination of fault-based grounds. In addition to this, a person could obtain a divorce unilaterally -- he/she did not need a spouse’s consent for a divorce. The Commission also proposed a system of equal property settlements -- also regardless of fault. California’s new law tried to concentrate on the present and the future of divorced families and, unlike the traditional fault-based law, did not penalize spouses for past mistakes. It was hoped by many lawmakers that no-fault laws would solve the problems plaguing the familial institution. However, conservative lawmakers feared that the instances of marital adultery would increase with

this law, and promote marital misconduct. Unfortunately, the proposal of the family court was thrown out at the last minute at the insistence of those who felt that it was presumptuous and unprofessional. Without the adoption of the family court the no-fault reforms were uncertain at best because the whole premise of reducing the divorce rate required family counseling in order to work.

Within ten years most states had followed California's lead and had adopted some form of no-fault divorce. Michigan adopted no-fault divorce with a twist in 1972. Only one ground is required; "There has been a breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved."<sup>25</sup> Michigan lawyer Michael Maran disagreed with the partial no-fault method this state adopted in his book about divorce. "...the half-baked law of 1972 - no-fault grounds for divorce, but with fault intact for all the other divorce issues - is still our law today."<sup>26</sup> The current Michigan divorce law allows divorce for any reason; no fault or grounds is necessary. Michigan judges can, however, use fault when determining custody, support, and property settlements.<sup>27</sup> A statutory waiting period is required to obtain a divorce in this state; a childless couple filing for divorce will wait sixty days, while spouses with minor children will wait six months.<sup>28</sup>

While the divorce law in Michigan is more confusing than many other no-fault states, it has some advantages to it that Michael Maran did not mention. Fault is still frequently taken into consideration by the judge in determining support and custody of minor children. This can lead to negotiations between spouses which are impossible in true no-fault states. "...these optional no-fault systems retain many of the structural features and

consequences of the traditional system.”<sup>29</sup> This is very important for several reasons. One consequence of a true no-fault divorce law is that the power is shifted to the spouse who wants the divorce. In effect, it eliminated punishment for any marital misconduct. “The economic messages of the new law are clear : it no longer “pays” to invest in the marital partnership - to be a faithful breadwinner or a devoted homemaker.”<sup>30</sup> In Michigan, however, fault can still be used by the innocent spouse as a tool for negotiation.

The objective of lawmakers to reduce the hostility and bitterness in divorce court was achieved by no-fault reforms. However, other problems emerged which were predictable as soon as the idea of the family court was dismissed. In the words of Lenore Weitzman, “The reformers were so preoccupied with the question of fault and its role in both obtaining a divorce and securing a financial settlement, that few of them thought sufficiently about the consequences of the new system to foresee how its fault-neutral rules might come to disadvantage the economically weaker party.”<sup>31</sup> Without the inclusion of the family court to advise and counsel potential divorce seekers, the no-fault reforms only made divorce less expensive and easier to obtain. They did nothing to help the families of divorce cope with the emotional trauma. No one faced emotional trauma from divorce more than the children of divorce. There was optimism by lawmakers that the no-fault divorce reform would alleviate some of the problems children of divorce faced -- drug abuse, alcoholism, and juvenile delinquency. The elimination of the family court proposal destroyed the basis for this optimism.. The most distressing consequence of the no-fault system - in all states - is its effect on the women and children of this

society. "By the mid-1980s, it was apparent that American's honeymoon with the concept of no-fault divorce was over."<sup>32</sup>

### Notes

1. Lenore J. Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences For Women and Children in America*. (New York: The Free Press, 1985), 13.
2. Michael Maran, *The Michigan Divorce Book: A Guide to Doing an Uncontested Divorce Without an Attorney Without Minor Children*. (E. Lansing: Grand River Press, 1989), 6.
3. Glenda Riley: *Divorce: an American Tradition*. (New York: Oxford University Press , 1991), 142.
4. Maran, *Michigan Divorce*, pg. 6.
5. Weitzman, *The Divorce Revolution*, pg. 10.
6. Riley, *Divorce*, pg. 144.
7. Weitzman, *The Divorce Revolution*, pg. 16.
8. Paul C. Glick, "A Demographer Looks at American Families", Jerome and Arlene Skolnick, *Family in Transition: Rethinking Marriage, Sexuality, Child Rearing, and Family Organization*. 2nd edition, (Boston: Little, Brown, and Company, 1977), 91.
9. "National Review" vol. 48: 70-1, March 11, 1996.
10. Steven Mintz and Susan Kellogg, *Domestic Revolutions: A Social History of American Life*. (New York: The Free Press, 1988), 204.
11. Stephanie Coontz, *The Way We Never Were: American Families and the Nostalgia Trap*. (New York: Basic Books, Inc., 1992), 180.
12. Mintz and Kellogg, *Domestic Revolutions*, pg. 207.





13. Ibid., pg. 205.
14. "What's Happening to American Marriage?" *USA Today*, May 1993, 27.
15. Andrew J. Cherlin, *Marriage, Divorce, and Remarriage*. (Cambridge: Harvard University Press, 1981), 53.
16. Ibid., pg. 54.
17. Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society*. (New York: Cambridge University Press, 1988), 393.
18. Lawrence Stone, *The Road to Divorce: England 1530-1987*. (Toronto: Oxford University Press, 1990), 133.
19. "Statistical Abstract of the United States 1995", The US Department of Commerce Economics and Statistics Administration, *The National Data Book* 115th edition (Wash. DC: US Government Printing Office, Sept. 1995), 103.
20. Cherlin, *Marriage, Divorce*,
21. Richard R. Peterson, *Women, Work, and Divorce*. (New York: State University of New York Press, 1989), 7.
22. Ruth Sidel, *Women and Children Last*. (New York: Penguin Books, 1986), 101.
23. Riley, *Divorce*, pg. 133.
24. Stone, *The Road to Divorce*, pg. 407.
25. Maran, *Michigan Divorce*, pg. 21.
26. Ibid., pg. 15.
27. Ibid., 15.
28. Ibid., pg. 54.
29. Weitzman, *The Divorce Revolution*, pg. 42.
30. Ibid., 30.

31. Ibid., pg. 19.

32. Riley: *Divorce*, pg. 165.

.

## **Chapter 5**

### **The Consequences of Divorce for Women and Children**

In an effort to make settlements more fair, the no-fault divorce law enacted in the 1970s required equal distribution of property. In most states the courts attempt to divide all divisible property down the middle with equal portions to both spouses. This is slightly different in Michigan which still allows fault to be used for property settlements and child custody.<sup>1</sup> In all states both spouses are presumed self-sufficient and equal under the law. At first glance this appears acceptable and, in fact, most divorced couples feel it is very fair. However, it is this section of the no-fault law that causes so much of the problem. Equality is not necessarily fair.

Dividing a couple's largest asset -- the family home -- has often been difficult. Under the traditional no-fault based law the home was awarded to the custodial parent --usually the mother. No-fault, however, has changed this policy. Many states simply order the family home to be sold and the equity divided between the divorcing spouses. Often it is the children who suffer the most from this decision; the child loses a home. Too frequently the emotional stress endured by a child who has lost the comfort of a family home is overlooked. For far too long society has expected children to cope with the trauma of divorce on their own. A child involved in a divorce has lost the continued and guaranteed presence of one of his parents. Ninety percent of the time this child will be in a household with a female as its head, and economically the child's standard of living will plummet. To add to this emotional stress the home may be sold, the child will move into a smaller home in a less expensive neighborhood. A parent has been lost, as well as the home, friends, and stability. "Probably most children would be

able to adjust satisfactorily to only one of these changes, but their rapid and simultaneous occurrence can be overwhelming to almost any child."<sup>2</sup>

When one remembers the reasons why the California Commission proposed the family court in the first place -- to *lessen* juvenile delinquency, crime, and alcoholism -- the irony becomes painfully clear.

Joint ownership of a home is used by some courts to settle the dilemma. In this instance either the custodial parent pays the other spouse half of the equity or gives him/her a note to be paid when the house is sold. This allows the custodial parent and the children to remain in their home. Problems arise in this situation also. Non-custodial parents are often unwilling to wait to receive their half of the equity and demand payment up front. Rarely are custodial parents financially able to do this after paying divorce court fees. When a family business is divided it is generally given to the husband to run. Ironically, while the home is ordered to be sold or the equity is divided immediately, the spouse given power of the business will generally *not* have to divide the equity immediately.<sup>3</sup> In other words, a wife can expect to pay out half of the equity in the home immediately, but she will be forced to wait for her half of a business.

Marriage is a partnership, and when that partnership ends all marital goods are divided equally for it is assumed that both spouses worked together to increase their marital assets. California set an example of dividing property in half. States vary slightly in how they determine equality in property settlements. Divisible property includes cash, savings, stocks and bonds, vehicles, houses and furnishings, tools, debts, and businesses. Some forms of property are more difficult to divide, however. Lenore Weitzman discusses this property as 'New Property.'<sup>4</sup> Only recently has New Property become an issue. New Property can be defined as career

assets, retirement pensions, insurance, inheritances, and goodwill. Some of these items are divisible, and some are not; often it depends on the judge on the case. A college education has recently been considered divisible property by the courts if the spouse assisted (financially) in the acquisition of the degree or license.<sup>5</sup> This has been the case in Michigan, however, some states still refuse to accept a degree or license to practice as divisible property. Future earning potential is considered by many to be too speculative to divide. However, when one considers that the average divorcing couple has only \$20,000 in assets, it is clear to see that the future earning capacity is worth far more than existing property.<sup>6</sup> Generally a husband's earning capacity and career assets are far higher than the those of the wife. If career assets and earning capacity are not divided, than the division is unequal. There is little doubt that a college education is a key factor in future earning potential. There is a lot of debate, however, if education can be a divisible piece of property in the divorce court. This is a particularly important issue if one spouse has a college degree or license to practice and the other does not. While California awards alimony to spouses (usually wives) who are less educated, other states have only begun to achieve equity between the spouses. Often it all come down to the decision of the judge on the case. A fair decision could be reached by using spousal support to provide educational advancement for the less-educated spouse.

A husband's career is often given more precedence over the wife's in a marriage. Wives often postpone or abandon their career objectives completely to support their husbands career. Most wives use their skills in one way or another to further their husband's economic and job opportunities. Whether they are typing, entertaining, providing secretarial

services, or just managing the household and finances, wives are assisting their husband's career. It is common for a wife to plan everything from daily meals to what her husband wears to work (coordinating, laundering, or shopping). She will keep the children occupied while her husband works at home or on a degree, and she will type his papers for him. As Lenore Weitzman, a leader in divorce reform data, has stated, "This couple has invested its joint resources in the 'human capital' of the bread winning spouse."<sup>7</sup>

A type of New Property rarely discussed outside of the courts is that of goodwill. Goodwill includes assets such as future opportunities or increases in income which would be directly linked to past efforts by both spouses. California has come to value it highly and compares it with the value of the family home.<sup>8</sup> Other states, however, are less willing to accept it as divisible property.

The division of New Property is gaining acceptance, as it should. "This is one of the most innovative and rapidly changing areas of family law, and the changes are visible in both legislative and case law development throughout the United States."<sup>9</sup> However, frequently there are items of great value which are still not being considered divisible by the court system. Pensions are being divided regularly in most states, but insurance benefits (particularly medical insurance) are being ignored. This is especially important for older housewives who are still too young to apply for Medicaid. This is disregarded as divisible property, but the security of health insurance is extremely important. It is also a relatively easy problem to solve. Most employers who offer health insurance to their employees have group rates which could be added (if ordered by the court) to cover ex-wives as well as children for a relatively small fee. This small

concession would offer a sense of security to millions of women who are left without insurance after a divorce. Though property is supposedly divided equally, divorced women often get less than half of the true value of the marital assets. This amount is further reduced when there are children in her home for whom she is financially responsible. "The reality of a wife's economic position usually does not become evident until there is a divorce, because it is only then that the property of the spouses is divided, and provisions for spousal and child support are made."<sup>10</sup> A divorced mother's economic situation is absolutely vulnerable, and she is virtually powerless to change it.

The assumption that divorced women can be self-sufficient is a misguided one. Women have *never* had the same opportunities for employment as men have, and while employed they continually face discrimination in jobs and salary. Women in this society earn up to thirty percent less than men doing the same job. Occupations differ widely, also. While men are working in the professional career areas, women are usually working with other women in jobs which are inadequate to support a family. "...those occupations most populated by women workers are the lowest paid of all occupations."<sup>11</sup>

No-Fault divorce laws imply that women are equal. To prove this they require divorced women to have the equal opportunity to be self-sufficient. Unfortunately, the law precedes the reality. Most women cannot maintain the same standard of pre-divorce living. After a divorce women often have dependent children to support as well. The additional expense of child care, the great reluctance of men to pay child support, the lack of social and institutional support, and the secondary employment status that women maintain result in women's standard of living being greatly reduced.

A divorced woman will face unfair emotional and physical consequences due to the no-fault law's professed equality. After a full day in the paid labor force, a woman goes home to another full-time domestic job. Including housework, child care, and paid labor, women work approximately eighty-five hours per week compared with men's seventy hours.<sup>12</sup> If they have children they also have unequal responsibilities. Because women are expected to be self-sufficient after divorce, the courts deny alimony awards to them. Under the no-fault law few men have to contend with alimony payments, and those who do pay alimony pay less money and for a very short period of time. On average the few women who *do* receive alimony in this country receive it for only two years.<sup>13</sup>

While the courts are supposed to take many factors into consideration while determining alimony, including standard of living, it more often focuses on the earning capacity of the wife. Regardless of her employment record she will be expected to support herself after her divorce, and her husband will be free of his financial obligation to her. A woman's income will be reduced, on average, to twenty-seven percent of her former standard of living in the first year after divorce. Meanwhile, her former husband's standard of living will experience a forty-two percent *increase*. Many of these women are driven into poverty.<sup>14</sup> Many have dependent children they must support on this greatly reduced income. In effect, the ex-husband keeps over two-thirds of his income while his former wife and children will divide the remaining third.

Due to the strong support the courts give to men to avoid exhausting their earnings, women often suffer the most economically and psychologically. Even before the no-fault laws were enacted men had complained for years that their spousal and child support payments were too



high and drained their financial resources. The no-fault laws, designed to promote equality between divorcing spouses, limited the amount of money men had to pay for support so that they could go on to remarry and possibly have another family. The divorce laws have created "...a climate of opinion which proudly declared that women could take care of themselves as well as men could, and that the union of a man and a woman was an egalitarian arrangement which could be ended at the whim of either."<sup>15</sup> Equality is not possible under the current no-fault divorce laws. An equal rights policy is unfair when women of divorce have children to take care of. Women have been declaring that they are capable and worth equal pay in the labor market since the 1960's. The reality of the situation, however, is that women do *not* receive equal pay. Women do not receive equal treatment and the no-fault laws assume that they do. Especially when there are children involved women need *more*.

Though women have become a large part of the labor force in the last twenty years, many middle and upper class women do not work outside the home. The figures are decreasing every year, however, and in 1994 over forty percent of adult women were not engaged in the labor force. This is one percent less than in 1993.<sup>16</sup> These women usually have little work experience and are worth very little in the job market. Their incomes are very low, and their standards of living decrease rapidly. For women who were already poor while married, increased poverty is an immediate and guaranteed result of divorce. They do not receive alimony, and if their ex-husbands are unemployed there will be no child support ordered by the court.

Women who are divorced after a marriage of short duration are penalized economically. Under the law there are three groups of women

who are not expected to be self-sufficient: mothers of pre-school children, women in need of education or job-training, and older housewives. The court system views these women as having given little to the marital partnership, and in return, they are usually denied alimony. These are the young women who often are the mothers of pre-school children who are supposed to be exempt from self-sufficiency. Ruth Sidel discusses the feminization of poverty in *Women and Children Last* where she states, "On their own they could have managed; with children to care for, they have virtually no way to manage without outside help."<sup>17</sup> The situation is similar for older housewives who experience divorce. This is another group which the law is supposed to grant exemption to the self-sufficiency rule, however, this is rarely the case. Unless their former husbands are notably wealthy they are generally denied alimony. "For the older woman, often without job skills, experience in the labor market, or any real assets in her own name, divorce often means more than a sharp drop in income; for some it means outright poverty."<sup>18</sup> The fact that so many of these newly divorced women are dragged into poverty is even more alarming when one considers the children who are with them.

It is difficult for many people to imagine that there are children in an advanced society such as the United States who live in squalor. Yet the reality is that one of every eight children in America goes hungry.<sup>19</sup> In 1988 twelve million American children were living below the poverty level.<sup>20</sup> In 1993 this figure was twenty-two percent of the total population of children in America.<sup>21</sup> The no-fault divorce laws have not helped the situation. Steven Mintz and Susan Kellogg note that nearly half of poverty-stricken children live in single-parent families.<sup>22</sup> Most of these families are

headed by the women who are viewed as capable of supporting themselves by the court system which denies them adequate support.

The issues of child custody have also changed since the no-fault divorce laws were enacted. Joint custody is increasingly the answer for divorcing couples. Many states prefer joint custody. However, many fathers do not want the responsibility of either joint or full custody, and mothers, therefore, are awarded custody ninety percent of the time.<sup>23</sup> There are several reasons for this. Few fathers even ask for full custody because the responsibility of taking care of children interferes with their careers. (The premise is that the complete responsibility of full custody is acceptable for women and *their* careers.) Another reason why children are usually awarded to mothers is due to traditional assumptions by many judges that it is in the best interests of children to stay with their mothers. However, fathers who *do* request custody are increasingly getting it. According to Lenore Weitzman, two-thirds of those fathers who were petitioning for full custody of their children by 1977 were successful in this objective. By 1985 thirty states were favoring joint custody instead of sole custody by one parent.<sup>24</sup> This creates problems for women who want custody of their children, and often have few financial resources to hire adequate court counsel. Unfortunately, vindictive men have used the threat of taking custody as a lever to persuade their ex-wives to take less property or smaller support awards. Husbands generally have more money and can pay for better court representation; the longer they litigate, the more likely the ex-wife will give in due to lack of funds. This causes great emotional stress for mothers who are stuck with a difficult decision; do they take a smaller property settlement - making self-sufficiency even harder - or do they give up custody of their children? Most women want their children,

and society condemns women who choose not to seek full custody.<sup>25</sup> This situation actually affects both spouses for there are women who take custody to hurt their ex-husbands. The no-fault system gives people more power to use their children against each other. Fault based grounds required more cooperation from the spouse who was at fault because he or she had less bargaining power. As Lenore Weitzman observes, "...children who were most distressed after divorce were those who were caught in the middle of their parents' continuing hostilities."<sup>26</sup>

The number of female-headed households is on the rise in America. The number is significant in terms of psychological, emotional, and economic stress due to the lower incomes of women. By 1990, women headed 16.5 percent of American households, and the figure among Black families was much higher - 43.8 percent headed by women.<sup>27</sup> Many of these households suffer the economic and emotional loss of a father due to divorce.

The issue of child support has received a lot of attention lately. National and local newspapers have covered topics such as 'deadbeat dads', 'deadbeat moms', child support enforcement, and most recently, an effort to control the use of child support payments. The fact is that few fathers pay child support at all. (Of course, the blame cannot all fall on fathers, for there are a few mothers who fail to pay also, however, most non-paying, non-custodial parents are men.) A recent government report showed that less than half of all non-custodial parents who were ordered to pay child support by a court actually paid the full amount. As many as twenty-five percent of custodial parents who were awarded child support received none.<sup>28</sup>

Donna Shalala, Secretary for the Department of Health and Human Services summarized the situation of child support in America, "Only about half of single parents have any child support in place at all. And even for those who have awards, payment is too often unreliable. It is shameful and unacceptable that so many of our children should be living without the support of both parents."<sup>29</sup> The decreased standard of living - often poverty- that custodial parents face (usually women) after divorce is exacerbated when there is no child support. A woman can barely survive on her own, but when she must divide her income (and property settlement) between herself and her children the inequality is blatantly obvious. Many single mothers have to go on welfare after a divorce, meanwhile their ex-husbands are enjoying an increase in their disposable incomes. Rarely are children oblivious to these facts. They learn to be resentful of the way their fathers live.

Child support awards are rarely adequate when they *are* paid in full. Judges and lawyers always underestimate the cost of raising a child, and therefore, child support rarely covers the expense of day care, let alone half of the shelter, food, transportation, medical bills, clothing, education and entertainment. The result is that millions of children are living without the necessities. One of the most shocking facts regarding the high rate of unpaid child support is that it is not isolated only to poor men. Middle and upper class fathers are just as guilty of nonpayment as their lower income counterparts. One publicized example of this was the imprisoned deadbeat Dad -- Jeffrey Nichols. Nichol's arrest for failure to pay court-ordered child support was reported in the New York Times in August, 1995.<sup>30</sup> In an interview with *Good Morning America*, Mr. Nichols discussed his situation and admitted his mistakes after recently being released from prison. During

this interview Mr. Nichols admitted that he regrets not paying at least part of the \$600,000 he owed for child support over a period of several years. When the court ordered his child support payments he felt that they were too high so he paid nothing. He believes that his refusal to pay the support was his form of escape from the divorce in general. Mr. Nichols says he loves his children, but he has not seen them in over five years, and, his refusal to pay forced them to obtain blood tests to prove his paternity.<sup>31</sup> Mr. Nichols is a wealthy man yet his children suffered financially. The Nichol's case is not an uncommon one except for the fact that he was prosecuted. There are many children on welfare in single-mother homes who have doctor, lawyer, and executive fathers refusing to pay child support.<sup>32</sup> An interesting fact, provided by a government report, shows that the average income of mothers who actually receive child support is \$18,144. Custodial fathers who receive regular child support have average yearly earnings of \$33,579.<sup>33</sup> A study in Michigan showed that even if child support were aid in full an incredible ninety-seven percent of divorced women and children would still be living in poverty.<sup>34</sup> This shows how inadequate the awards are in the first place. These figures also help to show the distinction between lower class (often minority) women and those of the middle and upper class. As already mentioned the *average* yearly income of a mother receiving child support is \$18,144.<sup>35</sup> According to the U.S. Census Bureau, in 1991 the average woman working alone earned \$16,692. However, these figures vary dramatically according to race and class. A single *Black* woman earned an average of \$12, 125.<sup>36</sup> This is significantly less than the overall average. This \$4,000 difference must also be taken into account when comparing the incomes of single mothers; a Black (or

Hispanic) mother receiving child support is going to be earning significantly *less than* that average of \$18,144 per year.

Why are men refusing to pay their court-ordered child support? One of the biggest reasons child support is not paid is lack of enforcement. Fathers know they will not be punished; their visitation rights will not even be revoked for failure to provide support. In areas where child support is enforced by punishment or jail time the rates of compliance are greatly increased. There are other reasons for failure to pay including manipulation of ex-wives, personal issues such as new relationships and children, and anger at ex-wives for the divorce. A survey in California showed that not only can men afford to pay it, but they also feel it is a reasonable amount to pay.<sup>37</sup> Wage assignments, where the payment is deducted from a man's paycheck, is a touchy subject to some for a few employers find it cumbersome. However, data reveals that men *like* wage assignments or paying through the court because they do not have to decide whether to pay it or not. They know that their entire paycheck belongs to them because the child support has already been deducted.<sup>38</sup> Another reason why men prefer wage assignments is because they do not have to explain or defend the support payments to any new wives or girlfriends. All this, and yet wage assignments are uncommon outside of California. All of this ignores those who suffer the most -- the children of divorce. America claims to have a history of putting children first -- yet is it all rhetoric. "There seems to be an erosion of commitment to social obligations in general, and to children in particular, within America."<sup>39</sup>

The rights and privileges in this society are not directed towards the children but towards the *fathers* of these children. In an effort not to damage men's economic and employment opportunities and to further their

happiness by allowing economic security to provide for a 'new' family, judges order inadequate payments. The no-fault laws, designed with a priority towards equal division of every marital asset, tie the hands of judges who know that women are receiving a less than fair settlement. There seems to be nothing left for the children at all. In England a child is assumed to have a right to some of the property. In the United States children have no such thing. The husband's rights are given top priority. The new law currently being discussed in the Michigan Senate will require women receiving child support to document their expenditures.<sup>40</sup> This is just another case where men can put their thumb on their ex-wives - at the expense of their children. A society which puts children first does not allow such nonsense.

In actuality, it is not the replacement of the fault-based divorce laws by no-fault which has caused all these consequences to women and their children. It is the system which accompanies these laws which has done the damage. The extermination of the idea of the family court, the no-fault divorce laws requiring equality between spouses (which defies reality), and the blatant neglect of millions of poverty-stricken women and children in America are the elements to blame for the position of divorced women and children in America. As Weitzman concludes, "...to grant equal rights in the absence of equal opportunity is to strengthen the strong and weaken the weak."<sup>41</sup> No-fault laws which accompany familial institutional support have proven to be successful in other countries. Sweden, Norway, England and France all contain no-fault divorce laws, but their women and children do not suffer the levels of poverty that American women and children do. Standards of living are maintained through adequate and enforced child support, alimony, health and daycare, tax breaks and governmental



supplements. These societies do not allow non-custodial parents to ignore their responsibilities. Of course these societies have different systems which could not be easily transferred to America, however, the European outlook of providing for their children as their greatest resource should be America's top priority as well.

### Chapter 5 Notes

1. Michael Maran, *The Michigan Divorce Book: A Guide to Doing an Uncontested Divorce Without An Attorney Without Minor Children*, (E. Lansing: Grand River Press, 1989), 15.
2. Lenore J. Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America*, (New York: The Free Press, 1985), 13.
3. Ibid., 97.
4. Ibid., 120.
5. Maran, *Michigan Divorce*, pg. 59.
6. Weitzman, *The Divorce Revolution*, pg. 24.
7. Ibid., 111.
8. Ibid., pg. 122.
9. Ibid., 142.

10. Riane Tennenhaus Eisler, *Dissolution: No-Fault Divorce, Marriage, and the Future of Women*, (New York: McGraw-Hill Book Co., 1977), 33.
11. Margaret L. Anderson, *Thinking About Women: Sociological Perspectives on Sex and Gender*, (Toronto: Maxwell Macmillan Canada, 1993), 117.
12. Ibid., 137.
13. Weitzman, *The Divorce Revolution*, pgs. 33 and 44.
14. Mary Ann Mason, *The Equality Trap: Why Working women Shouldn't Be Treated Like Men*, (New York: Simon & Schuster, Inc., 1988), 22.  
 -Steven Mintz and Susan Kellogg, *Domestic Revolutions: A Social History of American Family Life*. (New York: The Free Press, 1988), 227.  
 -Weitzman, *the Divorce Revolution*, pg. 36.
15. Mason, *The Equality Trap*, pg. 14.
16. "Statistical Abstract of the United States 1995", The US Department of Commerce Economics and Statistics Administration, *The National Data Book* 115th ed. (Wash. DC: US Government Printing Office, September, 1995), 403.
17. Ruth Sidel, *Women and Children Last: The Plight of Poor Women In Affluent America*, (New York: Viking Publishers, 1986), 28.
18. Ibid., 160.
19. Stephanie Coontz, *The Way We Never Were: American Families and the Nostalgia Trip*. (New York: Basic Books Inc., 1992), 4.
20. Mintz and Kellogg, *Domestic Revolutions*, pg. 241.
21. "Statistical Abstract," 480.
22. Mintz and Kellogg, *Domestic Revolutions*, pg. 307.

23. Wietzman, *The Divorce Revolution*, pg. 49.
24. Ibid., 233.
25. Eisler, *Dissolution*, pg. 48.
26. Weitzman, *The Divorce Revolution*, pg. 248.
27. Anderson, *Thinking About Women*, pg. 153.
28. "Less Than Half of Absent Parents Pay Child Support," *The Flint Daily Journal*, 13, May 1995.
29. Ibid.,
30. Mary Jo White "Collecting Child Support is a Federal Matter," *The New York Times*. August 14, 1995.
31. Interview on *Good Morning America* with Jeffrey Nichols, December 11, 1995.
32. Ibid.
33. "Less Than Half of Absent Parents Pay Child Support,"
34. Weitzman, *The Divorce Revolution*, pg. 274.
35. "Less Than Half of Absent Parents Pay Child Support,"
36. Andersen, *Thinking About Women*, pg. 127.
37. Weitzman, *The Divorce Revolution*, pg. 304.
38. Ibid., 305.
39. Coontz, *The Way We Never Were*, pg. 4.
40. "Child Support Bill a Nightmare" *The Flint Daily Journal*, 4, Nov. 1995.
41. Weitzman, *The Divorce Revolution*, pg. 213.

## Conclusion

Representative Dalman's primary goal in reforming divorce laws is to reduce the divorce rate. Her answer to this is to return Michigan to the fault-based laws of pre-1972. Her idea has merit in that her proposal would make divorce more difficult to obtain for those who have dependent children. However, decreasing the divorce rate should not be the top priority in the 1990s. If decreasing the divorce rate is the primary motive behind Dalman's proposal then her efforts are misguided as well. The following graph shows that the divorce rate peaked in 1981. Since the mid 1980's the national divorce rate has not only steadied, it has actually decreased. 1

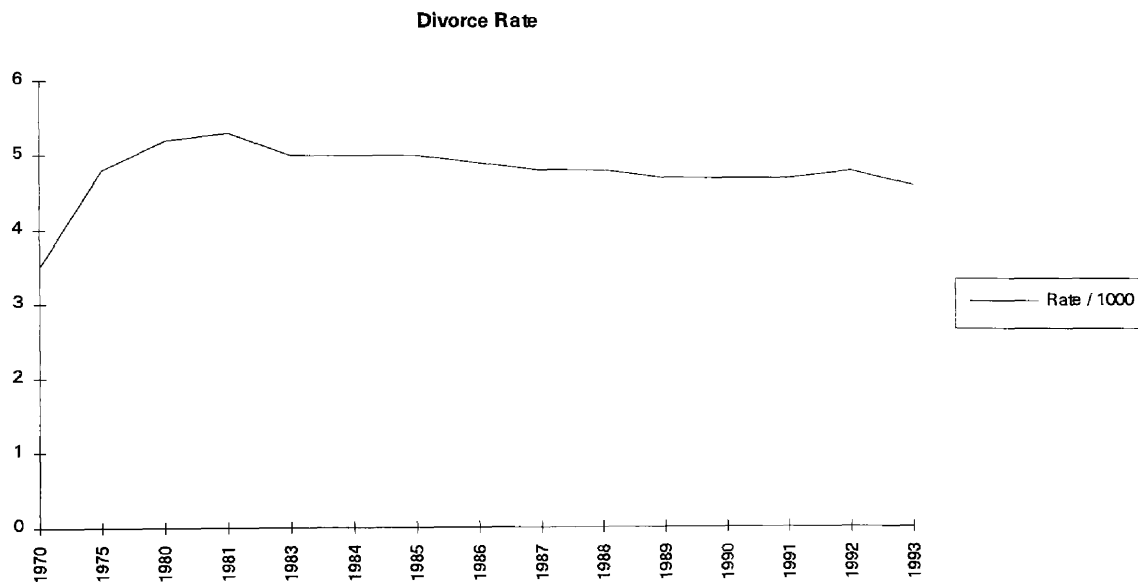


Figure 1 US Divorce Rates 1970-1993

Using divorce as a positive institution to maximize overall happiness for everyone involved should be the most important reason to reform the divorce laws. Forcing unhappy people to stay married will not be the best

way to accomplish this. The divorce laws definitely need to be reformed, but the no-fault laws have not been a total failure. Divorce is more amicable and less fraudulent since the early 1970s. It has also enabled miserable working class people to afford a divorce, and the courts are less filled with divorce cases. However, a return to fault-based divorce laws would also be inappropriate and disastrous. If lawmakers want to make divorce more difficult in order to give people incentive to stay together, a mandatory separation would be an easy way to do this. Reform, however, needs to come in a way which will provide women and children security after divorce. A return to fault-based laws would be even worse because judges would still require women to be self-sufficient after divorce. Such a proposal would not help women and children in any way. To propose a bill to reform divorce without even attempting to lift single mothers and their children out of poverty is to deny the problem altogether.

Divorce laws should allow unhappy people out of a broken marriage. Divorce reform is needed which will achieve divorce while providing social and financial security to all parties involved. This would involve maintaining the standards of living of women and children, as well as men. One of the best ways to achieve this would be to enforce child support awards. Sweden is one country which has put its children first. Child support is enforced by the government. Payments are paid directly to the government, the checks are dispersed by the government to the custodial parent. National health care and daycare are two forms of institutional support which help married families as well as those who are divorced. Tax breaks and income supplements are given to custodial parents to provide an adequate standard of living and provide incentive to work. (This is unlike the welfare system of the United States which penalizes women for working

by reducing their aid and taking away their health benefits. France and Norway have similar laws to those of Sweden.)<sup>2</sup>

A few states have made efforts to correct the problem of widespread poverty among women and children. Wisconsin has developed a child support tax. Non-custodial parents pay a percentage of their gross income which is determined by the number of children. New York has extended dependency (and child support) to age twenty-one. Delaware and Minnesota have also made attempts to enforce child support and make it more adequate. However, these attempts are too few to really change much. There are many options when considering divorce reform, but reverting back to the obsolete laws prior to 1972 would accomplish nothing.

Representative Dalman's proposal to limit divorce in the state of Michigan has gained popularity in other states as well. Idaho, Illinois, Pennsylvania, Virginia, Georgia, and Iowa are all reconsidering their no-fault divorce laws.<sup>3</sup> History tells us, however, that divorce laws do not affect the amount of marital breakdown in a society. The American family of the 1990's is very different from its pre-industrial counterpart. If divorce becomes unobtainable the result will not be a decrease in divorce, it will be an increase in unhappiness. Forcing miserable people to stay together would be counterproductive. It would be much more beneficial for everyone if reforms were enacted that would help the family adjust to divorce rather than pretend marital breakdown does not exist.

## Notes

1. "Statistical Abstract of the US 1995" 115th ed. *The National Data Book*. US Department of Commerce, Economics, and Statistics Administration. (Wash DC: US Government Printing Office, Sept. 1995), 102 and 73.
2. Lenore J. Weitzman, *The Divorce Revolution: The Unexpected Consequences for Women and Children in America*. (New York: The Free Press, 1985), 310, 393-5.
3. John Leland, "Tightening the Knot," *Newsweek*. 127: 72-3, Feb. 19, 1996.

## Bibliography

- Anderson, Margaret L. *Thinking About Women: Sociological Perspectives on Sex and Gender*. Toronto: Maxwell Macmillan Canada, 1993.
- Arendell, Terry J. "Women and the Economics of Divorce." *Signs*. 13: 121-35, Autumn 1987.
- Bodnar, John E. "Socialization and Adaption: Immigrant Families in Scranton, 1880-1980." George E. Pozzetta, *American Immigration and Ethnicity: Demography, Fertility, Housing, Kinship, and Urban Life*. New York: Garland Publishing Co., 1991.
- "Breaking the Divorce Cycle." *Newsweek*, 13 January, 1992: 48.
- Cherlin, Andrew J. *Marriage, Divorce, and Remarriage*. Cambridge: Harvard University Press, 1981.
- "Children Victims of Failure to Pay Support." *The Flint Daily Journal*, 2 July, 1995.
- "Child Support Bill a Nightmare." *The Flint Daily Journal*. 4 November, 1995.
- "Choosing Mates - The American Way." *Society*, March/April 1992: 76.
- Coontz, Stephanie. *The Way We Never Were: American Families and the Nostalgia Trap*. New York: Basic Books, 1992.
- "County Targets Deadbeat Dads in Crackdown." *The Flint Daily Journal*, 13 June, 1995.
- "Dads Have Tarnished Image." *The Flint Daily Journal*, 18 June, 1995.
- "Deadbeat Moms Also Targeted." *The Flint Daily Journal*, 16 June, 1995.
- Demos, John. *A Little Commonwealth: Family Life in Plymouth Colony*. New York: Oxford University Press, 1970.
- "The Divorce Debate." *The New York Times*, Feb. 15, 1996.
- Eisler, Riane Tennenhaus. *Dissolution: No-Fault Divorce, Marriage, and the Future of Women*. New York: McGraw-Hill Book Co., 1977.
- Gallagher, Maggie. "Why Make Divorce Easy?" *The New York Times*, Feb. 20, 1996.



- Glick, Paul C. "A Demographer Looks at American Families." in *Family in Transition: Rethinking Marriage, Sexuality, Child Rearing, and Family Organization*, 2nd edition, by Jerome H. and Arlene S. Sklonick. Boston: Little, Brown, and Co., 1977.
- Goode, William J., "World Revolution and Family Patterns, In *Family in Transition: Rethinking Marriage, Sexuality, Child Rearing, and Family Organization*, 2nd edition, by Jerome H. and Arlene S. Sklonick. Boston: Little, Brown, and Co., 1977.
- Graham, John W., "Why Did Child Support Award Levels Decline 1978-1985?" *The Journal of Human Resources*, 30: 622-32. Summer 1995.
- Greven, Philip J., Jr. "Family Structure in Seventeenth Century Andover Massachusetts." In *American Family in Historical Perspective*, edited by Michael Gordon. New York: St. Martin's Press, 1983.
- Gutman, Herbert G., "Persistent Myths About The Afro-American Family." In *American Family in Historical Perspective*, edited by Michael Gordon. New York: St. Martin's Press, 1983.
- Hauser, Philip M., ed. *The Study of Urbanization*. New York: John Willy & Sons Inc., 1965.
- "Illinois Sweatshops." Illinois Bureau of Labor Statistics, *Annals of America* vol. 11. Chicago: Encyclopaedia Britannica, Inc., 1968.
- Johnson, Dirk, "Attacking No-Fault" *The New York Times*, Feb. 12, 1996.
- Kett, Joseph F. "The Stages of Life 1790-1840." In *American Family in Historical Perspective*, edited by Michael Gordon. New York: St. Martin's Press, 1983.
- "Land of Dad Data." *The Flint Daily Journal*, 18 June, 1995.
- Leland, John. "Tightening the Knot." *Newsweek*, Feb. 19, 1996.
- "Less Than Half of Absent Parents Pay Child Support." *The Flint Daily Journal*, 13 May, 1995.
- Lyons, Martin. *Napoleon Bonaparte and the Legacy of the French Revolution*. New York: St. Martin's Press, 1994.
- Maran, Michael. *The Michigan Divorce Book: A Guide to Doing an Uncontested Divorce Without an Attorney Without Minor Children*. E. Lansing: Grand River Press, 1989.
- Marx, Karl. "On Family Life Under the Factory System" In *Family in Transition: Rethinking Marriage, Sexuality, Child Rearing, and Family Organization*, 2nd edition, by Jerome H. and Arlene S. Sklonick. Boston: Little, Brown, and Co., 1977.

- Mason, Mary Ann. *The Equality Trap: Why Working Women Shouldn't Be Treated Like Men*. New York: Simon & Schuster, Inc., 1988.
- Milbank, Dana. "No-Fault Laws Assailed in Michigan." *Wall Street Journal*. Feb. 19, 1996.
- Mintz, Steven, and Susan Kellogg. *Domestic Revolutions*. New York: Collier MacMillan Publishers, 1988.
- More, Sir Thomas. *Utopia*. Found in *The Norton Anthology of English Literature vol. 1*, 4th edition. New York: W.W. Norton and Co., 1979.
- National Review*. vol. 48: 70-1, March 11, 1996.
- Nichols, Jeffrey. Interview with *Good Morning America*. December 11, 1995.
- Noble, June and William. *The Custody Trap*. New York: Hawthorne Books, Inc., 1975.
- Penn, William. "The Fruits of Solitude in Reflections and Maxims Part 1." In *The Harvard Classics*. New York: P.F. Collier & Son Corp., 1969.
- Peterson, Richard R. *Women, Work, and Divorce*. New York: State University of New York Press, 1989.
- Phillips, Roderick. *Putting Asunder: A History of Divorce in Western Society*. New York: Cambridge University Press, 1988.
- Pleck, Elizabeth. "Challenges to Traditional Authority in Immigrant Families." In *American Family in Historical Perspective*, edited by Michael Gordon. New York: St. Martin's Press, 1983.
- Popenoe, David. *Disturbing the Nest*. New York: Aldine de Gruyter, 1988.
- "Restore Value to Marriage, Make Divorce More Difficult." *The Flint Daily Journal*, 24 February 1995.
- Riley, Glenda. *Divorce: An American Tradition*. New York: Oxford University Press, 1991.
- "Rise in Illegitimate Births." *The National Review*. 48: 70-1, March 11, 1996.
- Rosen, Bernard Carl. *The Industrial Connection: Achievement and Family in Developing Societies*. New York: Aldine Publishing Co., 1982.
- Seward, Rudy Ray. *The American Family: A Demographic History*. Beverly Hills: Sage Publications, 1978.
- Sidle, Ruth. *Women and Children Last: The Plight of Poor Women in Affluent America*. New York: Viking Publishers, 1986.

- Smith, Daniel Blake. "Autonomy and Affection: Parents and Children in Chesapeake Families." In *American Family in Historical Perspective*, edited by Michael Gordon. New York: St. Martin's Press, 1983.
- Somerset, Anne. *Elizabeth I*. New York: St. Martin's Press, 1991.
- "A Split Verdict on America's Marital Failure." *Newsweek*, 13 January, 1992: 52.
- Stone, Lawrence. *Road to Divorce: England 1530-1987*. Toronto: Oxford University Press, 1990.
- Tilly, Louse A. and Joan W. Scott. *Women, Work, and Family*. New York: Holt, Rinehart and Winston, 1978.
- Uhlenberg, Peter. "Death and the Family." In *American Family in Historical Perspective*, edited by Michael Gordon. New York: St. Martin's Press, 1983.
- Ulrich, Laurel Thatcher. *A Midwife's Tale: The Life of Martha Ballard Based on Her Diary 1785-1812*. New York: Alfred A. Knopf, 1990.
- US Department of Commerce Economics and Statistics Administration. "Statistical Abstract of the United States 1995" *The National Data Book*, 115th ed. Wash DC: US Government Printing Office, Sept, 1995.
- Weitzman, Lenore J. *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America*. New York: The Free Press, 1985.
- "What's Happening to American Marriage?" *USA Today*, May 1993, pg.27.
- Wells, David A. "Machines and Economic Change." *Annals of America* vol. 11. Chicago: Encyclopaedia Britannica, Inc., 1968.
- White, Mary Jo. "Collecting Child Support is a Federal Matter." *The New York Times*. August 14, 1995.