Relief in the Premises: Divorce as a Woman's Remedy in New York and Indiana, 1815–1870

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When Thomas Jefferson assessed the pros and cons of legalizing divorce before the American Revolution, he came out firmly on the side of divorce. "No partnership," he declared, in a rationale that prefigured the Declaration of Independence, "can oblige continuance in contradiction to its end and design." Among the few misgivings he had, however, was the problem of dividing marital assets, and while he was convinced a man could get a wife at any age, he was concerned that a woman beyond a certain age would be unable to find a new partner. Yet he envisioned divorce as a remedy for women. A husband, he noted, had "many ways of rendering his domestic affairs agreeable, by Command or desertion," whereas a wife was "confined & subject." That he assessed divorce as a woman's remedy while representing a client intent on blocking a wife's separate maintenance is not without irony. Still, in a world where the repudiation of a spouse was a husband's prerogative, he believed that the freedom to divorce would restore "to women their natural right of equality."[1]

The tensions implicit in Jefferson's views on divorce provide a fitting introduction to this essay. Divorce did, in fact, become widely available in the aftermath of the Revolution, and it fell increasingly within the purview of the courts. To the extent that women came to court as plaintiffs, it became something of a woman's remedy. To cast the remedial scope of divorce in legal terms, it afforded female plaintiffs "relief in the premises." That simple phrase, used regularly in equity petitions, sums up the full redress available to the petitioner at the hands of the court.

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But the subject is not simple, and while the primary concern of this essay is with tangible remedies such as alimony that can be traced through court records, the assertion of the right of divorce clearly embodied a quest for personal autonomy. Autonomy, freedom, independence, the pursuit of happiness: these notions, which extended from republican through liberal discourse on divorce, not only attest to its capacity to transform marriage as a social institution, but also account for the endemic opposition to its legitimization. In retrospect, fault divorce may be seen as a modest compromise, a way of stabilizing extralegal marital arrangements without obliterating the boundaries of marriage, but in the context of divorcelessness, it represented liberation.[2] Divorce, moreover, emerged in both the United States and France in the wake of revolution, and linked as it was to the recouping of natural rights, it held the potential to reallocate power to women by giving them the right to end a despotic union.[3] The real test of how power was allocated, however, took place in the courts, where the emancipatory possibilities that Jefferson had warmly projected were balanced precariously against compelling economic considerations. Relief, in short, was a complex matter.

Historians have long been intrigued with the social dimensions of the legalization of divorce. Beginning with Nancy Cott's pathbreaking studies of eighteenth-century Massachusetts, scholars have been inclined to yoke the existence of female divorce plaintiffs to women's rising expectations, and their growing autonomy in the context of a more companionate model of marriage.[4] Historical views of companionate marriage, in turn, have emanated from a broader body of scholarship that has charted a rising emphasis on the conjugal couple in modern Western culture and tended to underscore its liberating consequences.[5] Indeed, it is from this sanguine view of a new conjugal ideal that divorce has emerged as a logical corollary of romantic love, a symptom of heightened expectations in marriage, a safety valve for conjugal unhappiness, and a remedy freeing both men and women from the more repressive aspects of the traditional marriage contract.

Despite the proliferation of scholarship, however, there has been little work on precisely how divorce was implemented in the county courts during the formative stages of its legal development, which was roughly the first two-thirds of the nineteenth century.[6] In these years, when grounds and procedures were shaped on a state-by-state basis, the United States evolved from a virtually divorceless society, in formal legal terms, to one that provided divorces in the civil courts for a variety of grounds. And yet we know very little about divorce in this

period at the level where it touched the most lives, and as a result, we know very little about the role played by women in the divorce process.

This essay seeks to begin to fill the void. As with most other areas of antebellum American law, the choice of an appropriate jurisdiction in which to probe the ramifications of divorce is an almost insurmountable problem. Inasmuch as there is no representative state, much less a representative county, the patterns shared by two disparate jurisdictions comprise a promising focus.[7] Indiana and New York represent the liberal and conservative ends of the divorce spectrum for the period under consideration, and I draw on rural and urban counties within those states.

Indiana provided broad statutory grounds for divorce from its inception as a state, including the most liberal of provisions, a so-called omnibus clause giving judges discretion to grant decrees in situations that did not fit the statute. New York, in contrast, granted divorce for the single ground of adultery, besides the traditional grounds for annulment, from 1787 until 1966; in the nineteenth century, only South Carolina, which declined statutory recognition of divorce, surpassed New York in its conservatism. As for the counties under scrutiny, Monroe County, Indiana, was settled in the long course of westward migration, and it remained a farming community through 1870 and after. New York County, which encompassed Manhattan, derived much of its burgeoning population from successive waves of immigration. Manhattan was synonymous, of course, with phenomenal urban growth. By the 1820s, it had already begun to manifest a thriving manufacturing and service economy.[8]

The following cases illustrate the relief typically afforded female plaintiffs in the jurisdictions under consideration. There are two parallel, mid-century cases that are exceptional in their elaboration of detail. They are still representative, nonetheless, of basic patterns in the two counties. At the very least, drawing on such cases in disparate jurisdictions permits intelligent speculation about divorce as a woman's remedy in a broad, national context. Quantitative assessments of the percentage of female plaintiffs nationwide tell us that by the time of the Gilded Age, divorce was a woman's remedy.[9] Through a close reading of the divorce documents in two counties, it is possible to assess qualitatively what divorce remedied and what kind of remedy divorce was.

In December of 1849, Mary Warren, an Indiana farm wife, appeared before the Circuit Court of Monroe County to petition for a divorce from her husband Eli. Her petition alleged that Eli "has for a long

time treated your petitioner with great cruelty and inhumanity by beating her frequently so as to render it unsafe and improper for her to live with him," that he was often intoxicated, and that he persistently expressed his intention to abandon her and finally did so, leaving her with two minor children and no means of support. Having established two statutory grounds for divorce—cruelty and willful desertion—and having compounded them with an allegation of intemperance, the petition went on to outline her contributions to the marriage. The couple's first homestead, a small North Carolina farm they worked together, had been a wedding present from her father. They subsequently sold it and used the proceeds to purchase eighty acres in Indiana. During their marriage, her brother gave her five hundred dollars "for her own use" and fifty dollars each to their two children and Eli, which Eli then used to purchase another 160 acres in Monroe County.[10]

The balance of Mary Warren's long and finely detailed petition spelled out Eli's maneuvers in anticipation of her claim to alimony. It documented his sale of the bulk of their Indiana property, including some thirty acres of standing corn, seven large hogs, six head of cattle, and twenty sheep, all of which were conveyed without Mary's permission to a Robert Cowden for the sum of six hundred dollars. Cowden, meanwhile, was gathering up the corn, seizing the livestock, and had begun ejectment proceedings against Mary.[11]

As a document in social history, Mary Warren's petition exemplifies the tantalizing elusiveness of divorce sources, often obscuring as much as it reveals. It is clear that its opening allegations were formulaic, casting Mary in the role of the innocent and pathetic victim with Eli as the cruel and intemperate villain. In a state whose liberality in granting divorces made it the first major American divorce mill of the nineteenth century, other petitioners would cite the same grounds in almost the very same words.[12] Legal rules and conventions invariably converted all the complexities of a disintegrating marriage into a simple little tale, and as most divorces were uncontested, it tended to be a lopsided tale.[13]

But if we cannot trust Mary Warren and her attorney as tellers of the tale, we can rely on the tale itself to illuminate the legal process. Although the documents in the Warren divorce reduce the intimate travails of their marriage to the spare, impersonal terms of statutory fault, they tell us a great deal about the formal dissolution of a marriage. In particular, they provide a solid starting point for exploring both the extent and limits of divorce as a woman's remedy. Furthermore, embedded in the meticulous compilation of bequests, conveyances, and transactions that distinguish this divorce, there are traces of the

gritty resilience with which Mary Warren played her role as plaintiff in the process.

Mary Warren pressed her claims in two distinct actions. On her first round in court, she won a divorce, custody of her children, a temporary injunction restraining Cowden from removing the corn, and three hundred dollars still owed to Eli, a lump-sum settlement construed by the court as her alimony.[14] She returned to court at planting time in the following spring. After the injunction against Cowden dissolved and he rejected her offer to farm the acreage jointly, she sued for her dower in the land. Cowden had ejected her from thirteen acres she had laboriously plowed and was proceeding to plant it himself. The court appointed three commissioners to set out one-third part of the land by metes and bounds as her dower.[15] By combining her suit for divorce with a suit for dower, Mary Warren succeeded in getting the court to award her a portion of the family farm. To be sure, Eli Warren walked away from the marriage with at least three hundred dollars, but the divorce provided Mary with the remaining assets. The speed with which she moved, her knowledge and resourcefulness, the skill of her attorney, the liberality of Indiana divorce law, and the acquiescence of the court were all factors in her ability to get some relief, which was surely better than no relief at all.

The scope of her relief, however, merits closer considerations. The divorce itself did not free her from the abuses of an intemperate husband, if indeed that was the case; Eli provided her with that remedy by deserting her, at which point she came to court. By dissolving the marriage and providing Mary with the status of a single woman along with whatever Eli had left behind, the decree brought legal and economic order to the chaos created by Eli's desertion. The pattern of his desertion, which was but one more move in a life of moves, was multiplied many times over in nineteenth-century divorce records. Like countless other families, the Warrens had migrated westward from North Carolina into states carved out of the Northwest Territory, part of the steady flow of southerners into southern Indiana and beyond.[16] We have no way of knowing if the move contributed to the strains in their marriage, but geographic mobility was a common motif in nineteenth-century divorces if only because it touched so much of the population. At the time of the Warren divorce in 1850, innumerable husbands mysteriously disappeared in a quest for gold in California.[17] Divorce, then, was bound to have profound economic consequences for a woman deserted by her husband and separated from her family of origin.

Mary was fortunate to have been the recipient of gifts from her family and to have had some assets remaining in the marriage. If her

financial remedy hinged on Eli's unilateral sale of their acreage and, of course, the court's ready acceptance of his guilt and her innocence, it also relied on her contribution to their intermingled assets, which her petition had attempted to clothe with the legitimacy of a married woman's separate estate. Still, in Mary's case, where the farm was a small family venture, the desertion of her husband deprived her of the only adult male worker in the enterprise, leaving her with a workforce made up of herself, her fourteeen-year-old daughter, and her eight-year-old son. Her labor problem helps to explain her attempt to enlist Cowden in a partnership and the intensity with which she fought for the acreage plowed with her own labor. In the rural West of the nineteenth century, in the area now called the Midwest, where farming depended on the labor of both husband and wife, plowing and other types of heavy fieldwork were considered distinctly male tasks.[18] In consequence, Eli's desertion not only doubled Mary's workload but also relegated her to doing a man's work.

Mary Hermann, a German immigrant who petitioned for a divorce in the Supreme Court of New York County in 1857, was Mary Warren's wage-earning, urban counterpart.[19] A participant in the great transatlantic migrations of the nineteenth century, she too relied on the divorce process as a remedy for desertion—but New York was a different jurisdiction. Apart from the single ground of adultery, which rendered divorce more difficult, by mid-century its court calendars were choked with cases, and the legal costs of a divorce suit were high.[20] Nonetheless, litigants and their attorneys managed to thread their way through the formidable obstacles in the state's divorce statute with considerable ingenuity. Just as the Indiana judiciary accepted casual evidence of desertion—Eli Warren had not been absent for more than a few weeks, and Mary's attorney was the only witness to attest to his willful desertion—the New York judiciary accepted dubious, if not fraudulent, evidence of adultery.[21] Furthermore, by the time a divorce reached the courts, the defendant was often living with a paramour in a long-term relationship and raising a second family, a practice suggesting the tenacity of customary forms of self-divorce and pseudo-remarriage.[22]

Mary Hermann's petition alleged that in July of 1854, she returned from shopping to discover her husband Nicholas had deserted her, taking with him all their articles of value, including $1,681 she brought to her marriage. Inasmuch as she was a domestic in service, and in view of the exactness with which the sum was listed instead of being rounded off, there is a good chance that it represented her life savings rather than a dowry furnished by her family. The couple lived in an apartment owned by her employer, whose son, Frederick Geisenhower,

served as her attorney and translated the court proceedings from English into German for her. Her petition identified Nicholas Hermann as a wine and liquor dealer "doing a good business," and it requested alimony for Mary.[23]

Not only was a request for alimony uncommon in both Indiana and New York petitions, but Nicholas Hermann was among the few defendants to be served with a summons in person, file an answer, and make an appearance in court.[24] Nicholas had not gone far. Geisenhower, who located him in the city several months after his disappearance, found him living with a Maria Steinbinger in a relationship where they "passed as man and wife." By the time the divorce reached the court, there were two children from the second union. Although Maria Steinbinger admitted on cross-examination that she was aware Nicholas had a "a wife living," she asserted she was his "second wife."[25] In view of her own tenuous position, her assertion was undoubtedly self-serving, an effort to legitimize her two children and her union with Nicholas, but even the complaint delineating the union as an adulterous one identified her as Maria or Mary Hermann, thereby subtly acknowledging her status and ironically confusing her identity with that of the plaintiff.

Nicholas's answer acknowledged his second family and, at least technically, his adultery, but it averred that his "first wife" was perfectly capable of supporting herself while he earned just enough to support himself comfortably. More important, it provided a justification for his replacing the first Mary with the second by alleging that his first wife "was physically incompetent to enter into and consumate [sic] the marriage contract," and it carried a threat to force Mary to subject herself to a medical examination if she persisted in the suit. In the end, Geisenhower agreed to drop the request for alimony in return for the withdrawal of the assertion that the marriage was not consummated.[26]

Mary Hermann won a divorce, her court costs, and her $1,681. In accordance with the New York statute, Nicholas, as the adulterous spouse, was prohibited from remarrying so long as Mary was alive.[27] Mary's remedy, then, consisted in the return of her legal status as a single woman, the control over her own earnings, the recovery of what must have been the most valuable part of her personal property, the $1,681, and perhaps some satisfaction from the punitive prohibition against the remarriage of her guilty spouse. Yet the prohibition, which held serious legal consequences for the partners in the second union, probably had little immediate impact on their lives. They apparently considered themselves very much married, and should they have desired to formalize their union, it would not have been difficult to accomplish.[28]

Although we cannot validate Nicholas's counterclaim, which may have been nothing more than an adept legal ploy to defeat Mary's claim to alimony,[29] we can imagine the psychic costs of the suit to Mary. Her inability to speak English as well as her legal and economic reliance on her employer highlight the insularity of her world. She lived in a German-speaking community that could rival any eighteenth-century New England village for its lack of privacy and penchant for gossip.[30] Consider her humiliation as the focal point of a proceeding that not only discussed her physical capacity to engage in sexual intercourse but even alluded to her bad breath, reputed to be so unpleasant "that no man could live with her."[31]

The Warren and Hermann divorces exemplify the ambiguities in viewing divorce as a woman's remedy. When the details from the two cases are sifted and weighed, it becomes difficult to place them within the prevailing historical paradigm without extensive qualification. Consider the issue of autonomy: When we examine who was being freed from what, it seems more appropriate to link the two cases to a new independence for men from the bonds of matrimony than to a new autonomy for women. From the perspective of the plaintiffs, moreover, divorce seems to represent declining standards in marriage far more than rising expectations, at least with respect to the husband's obligation of support. As for the concept of companionate marriage, it may account for the actions of the two defendants or even for the doctrinal innovations in divorce,[32] but it obscures the role played by the two women as plaintiffs. Their husbands, after all, were long gone. Although the role played by female plaintiffs may reflect collusion, an effort to frame a mutual decision to divorce to fit the statutory requirements, there is considerable evidence to indicate that the desertion of women by men was widespread.[33] Indeed, the prevalence of desertion and the growing facility with which it was accomplished as the century unfolded suggest it became ever easier for *men* to find a new companion and start all over again. Thus as men created de facto divorces, women sought out legal ones.

As for the economic configurations in the two cases, they exemplify one of three remedies available to female plaintiffs. On a spectrum of possible legal results, ranging from provisions for alimony, through the wife's right to recoup her property and earnings, to a simple decree dissolving the marriage, the two cases fall squarely within the middle range. Although divorce left the two women with more financial security than most female plaintiffs, it was a security based on their own efforts and contributions rather than on legally enforced provisions from their husbands.

The foregoing pattern is an important one. Those women who fared best in the divorce process were those who already enjoyed some financial independence outside of marriage. We can speculate that such women comprised a disproportionately large percentage of plaintiffs in relation to the number of women in failed marriages precisely because they had the most to gain from the legal process and the most to lose from inertia.[34] Some female plaintiffs with their own trades, businesses, and property used the courts to good advantage to assert their financial autonomy by reacquiring single status. Martha Codd's divorce decree, for instance, ruled that the destitute Mathew Codd was to deliver over to her all her deeds, patents, agreements, and leases.[35] Such a remedy encompassed any property an innocent wife brought to or acquired during her marriage, even though, as in the Warren and Hermann divorces, it was not set apart in a trust or antenuptial agreement and was intermingled with the husband's assets.

The concept of separate marital property was firmly entrenched in the Anglo-American legal tradition, far more so than that of a community of goods. Despite the constraints of coverture, the notion that the gifts or dowry a wife brought to the marriage should return to her with its dissolution seemed to enjoy broad currency, even in advance of the married women's property acts.[36] The concept, moreover, could encompass the simplest household utensils. In their petitions, wives consistently catalogued the specific items they contributed to the marriage, such as a single article of furniture, a family Bible, a bedstead and bedding, or small amounts of cash. Though a husband was entitled by law to reduce his wife's personal property to his possession, if he lost it in an unsuccessful venture, or worse, squandered it in dissipation or absconded with it, petitioners cited the loss not only in calculating assets but as a moral indictment. Lavinia Moore contended that her husband sold off fifty dollars worth of personal property she brought to her marriage to pay his whiskey bill, and the remaining property in her possession, "the result of her own labour," did not exceed fifty dollars in value.[37] Male plaintiffs were no less attentive in delineating a wife's property and, of course, in asserting the absence of such property. In an 1822 petition in Indiana, Samuel Caring claimed "he never received any property with his said wife," and the circuit court ascertained that Harriet Caring had no property except for the wearing apparel she took with her when she abandoned Samuel.[38]

Alimony, by contrast, which was rooted in settlements for separations made by the English ecclesiastical courts, rested on the husband's obligation to support and literally to nourish the wife with a stipend out of his own property.[39] It evolved in nineteenth-century American

law to include a percentage of a husband's yearly wages and even lump-sum settlements. In 1852, Indiana limited alimony to a one-time, lump-sum settlement to be paid out at most over a few years.[40] Such settlements were rarely as ample as New York alimony provisions, which, at their best, approximated dower. As the master in chancery put it in an early New York divorce: "I have considered it as the general rule of the Court, allowing a sum for a separate maintenance, to make it by analogy to the Right of Dower of the Wife and to her interest under the Statute of Distribution if her husband was dead, intestate, subject however to alteration in the discretion of the Court according to the Circumstances of the Case."[41] Yet alimony never enjoyed the same legitimacy as either dower or the wife's separate estate, or the separate maintenance provisions in legal separations. It was subject always to considerations of the wife's behavior and to judicial assessments of her needs.[42] Once the marriage was over, the obligation of support was further eroded by the sheer practical difficulty of compelling support from an errant ex-husband.

In New York, where legal separation (a divorce from bed and board) was an alternative to divorce, it tended to provide women with far more favorable financial terms than a complete divorce.[43] Spouses usually came to court following a breakdown in their own private agreements, yet another way to end a marriage informally, and one that was employed by well-to-do families.[44] New York women also relied on legal separations to win guarantees preventing their husbands from the interference in the management and profits of their tenements, shops, boarding houses, schools, and wage labor. Furthermore, the formal continuation of the marriage could serve to reinforce the husband's traditional obligation to support the wife.

Emma Barron's suit demonstrates the financial possibilities in legal separations. She used the New York courts to secure continued support from her husband John with the stipulation that he "may not meddle" in her millinery business. At issue was a five hundred dollar loan made to Emma and secured by her allotment from John's salary as a second-assistant engineer in the navy during the Civil War, an event figuring prominently in post-1860 divorces. After John cut off her allotment, her attorney located him aboard a ship blockading the North Carolina coast. John's attorney, representing him as a patriot "endeavoring to suppress the rebellion against the said government," portrayed his client as harassed and undermined in that important endeavor by the machinations of his extravagant wife. He alleged that Emma entered the millinery business without John's permission, was known to the public

by a name other than her husband's, and illegally claimed New York as her domicile.[45]

The referee, an official whose report virtually determined the outcomes in all New York matrimonial actions, saw it otherwise.[46] He depicted the couple, who began married life as professional actors, as perpetually on the move, barely eking out a living, and returning from time to time to live with Emma's parents in New York. In Richmond, Virginia, where Emma and John took rooms near the theater, Emma did all the housework, supplemented their income by taking in boarders, and then appeared on stage in the evening. Their only child lived less than a month. Emma successfully demonstrated that she had been the principal means of their support, and although she had already paid off three hundred dollars of the controversial loan, she needed the allotment to sustain her business, which she characterized "as yet a mere experiment." The referee estimated the stock and furniture in her store to be worth two thousand dollars, four times her purchase price; yet he awarded Emma four hundred dollars yearly of John's one thousand dollar salary, noting that her health was precarious due to excessively hard work.[47] One year later Emma was still listed under milliners in *Trow's New York City Directory* as "Mme Barronne, Modes de Paris," specializing in "French Dress Making" and offering a "Choice Assortment of Mourning Goods."[48]

Emma Barron was precisely the sort of litigant who used matrimonial litigation to good advantage, although there were salient limits to her remedy. She could not remarry legally, and given John's history of nonsupport, it is unlikely his allotments continued for long. Nonetheless, she did indeed free herself from the constraints of a bad marriage bargain. Her motives in the action and her feelings toward her husband were summed up in a letter cited by John's attorney. She allegedly wrote to John, "Let me have your allotment, and you can go where you like, only leave me alone."[49] The circumstances of her marriage and the evidence of her dogged enterprise give us little reason to doubt the validity of the letter.

Most women, however, were not in comparable circumstances; they did not have independent sources of income nor did they have access to a husband's wages or assets. Because financial remediation was often contingent on a timely injunction restraining the husband from selling off his assets, a husband might mask his intention to leave while he liquidated his assets. The duplicity with which husbands functioned in anticipation of divorce is a striking pattern in these records, often with devastating consequences for the wives of shopkeepers and petty tradesmen. For Lydia Catlin, whose husband owned a dry goods store

in New York City, just such a strategy deprived her of a financial remedy. Charles Catlin went to Boston on a Thursday and telegraphed Lydia he would be back on Tuesday. Meanwhile, he instructed an employee to sell all his inventory and deposit the funds to cover a draft he had written. Lydia won a divorce, custody of their only child, and the right to apply for alimony at some future time should Charles ever reappear.[50]

On the other hand, Charles Catlin's actions indicate alimony was enough of a threat to motivate the secret liquidation of his assets. Alimony, then, could provide some leverage to wives anticipating divorce, as well as to husbands. Peter Bolenbacher responded to his wife Amelia's impending suit and demand for alimony in Maryland by placing five hundred dollars worth of real estate in trust for her use. She, in return, released her dower right in his Maryland realty and withdrew the suit. Nevertheless, the rest of the Bolenbacher case reflects the customary advantages men enjoyed in battles over alimony, for Peter was not only economically independent but also willing and able to travel to secure a divorce on his own terms. He sold off the rest of his Maryland holdings and divorced Amelia in Indiana, charging her with "lewd conduct" with Negroes in Maryland. If, as his petition asserted, Amelia's Maryland suit was designed "to frighten him" into taking her back, it was not quite frightening enough.[51]

As the Bolenbacher case indicates, attorneys developed and streamlined strategies for divorce. Extraneous information was progressively winnowed out of the process. Complaints detailed the place, date, duration, and intensity of the wrong committed and juxtaposed the plaintiff's pathetic innocence against the defendant's callous guilt in terms satisfying the requirements of the statute. The clearer the delineation of guilt and innocence, the better the chance of success. Contesting the complaint or filing a counterclaim could endanger the entire outcome and serve as a bargaining chip in financial arrangements.

If the development of sophisticated divorce strategies tended to encourage negotiation in advance of litigation, it also tended to discourage requests for alimony in truly adversarial divorces. Even when ample assets were available and the husband remained within the jurisdiction of the court, a request for alimony could be hazardous. It contributed to the likelihood the divorce would be delayed, contested, or even denied. Aside from the problem of conflicting estimates of the husband's total worth, there was always the risk of undermining the wife's assertion of her innocence and her husband's guilt, and guilt and innocence were the legal bedrock on which fault divorce rested. Awards of alimony might be adjusted accordingly.

Matilda Langdon, for example, petitioned for divorce in Indiana and requested custody of her only child, her court costs, and alimony. She estimated her husband Samuel's assets to be worth ten thousand dollars, "mostly in cash," presumably because he was "running his funds out of the state."[52] When Samuel appealed the circuit court's award of temporary alimony of one hundred dollars to be paid out in thirds at ninety-day intervals, the Supreme Court upheld the award. However, in a response to a separate application for permanent alimony, Samuel filed a bill of exceptions and counterclaimed Matilda's adultery.[53] Matilda won her divorce, nonetheless, with custody of their only child and seventy-five dollars yearly to be paid to the county clerk for her support until the sum of $750 was attained. A reduction from the temporary award, it amounted to little more than six dollars per month. If her assessment of Samuel's total worth was accurate, it was but a small fraction of what she might have received as Samuel's widow. More important, it was scarcely adequate to sustain her and her child and constituted a marginal form of relief.[54]

Most women received no financial relief at all. Part of the problem was the poverty of many defendants whose desertion was not always willful in the precise legal sense; rather, what began as a search to earn a living in another place ended in a failure to return.[55] Divorce, then, was often the result of the defendant's inability to support his family in a shifting, unstable economy. The spectrum of male defendants in New York City divorces included day laborers, seamen, tailors, grooms, servants, and petty criminals—the poorest and most marginal inhabitants of the city.[56] Indiana records, although less revealing, encompass bankrupt farmers and land speculators and propertyless rural migrants. The absence of formal requests for alimony in the vast majority of divorce petitions suggests there were no assets or earnings from which to allot it.

When Mary Jane Humphrey came to court in Monroe County in 1844, alleging that her husband Silas abandoned her "without any good cause whatever, with the intention of never returning to live with her again," she declared that they "accumulated no property during the time they lived together." She asked for "her bed and bedding that she received from her parents at the time of their intermarriage," and in the time-honored, all-purpose words of a petition in equity, "such other and further relief in the premises as may comport with integrity and good conscience."[57] The decree awarded her a divorce and her bed and bedding because they represented the available relief in the premises. Her simple petition with its traditional phrases and the court's equally simple decree comprise the most common pattern of divorce for women

in both jurisdictions, except that in New York the allegation of desertion would have been compounded with adultery.[58]

Because everything in these records points to the paucity of financial arrangements for women, the remedial dimensions of divorce would seem to encompass other forms of relief. Liberal statutes, after all, carried the promise of freeing the wife from a physically abusive husband, and as Robert Griswold has noted, state appellate courts expanded definitions of cruelty to incorporate aspects of mental cruelty.[59] Then too, the ability of women to take legal custody of their children reversed patriarchal common law assumptions.[60] Yet none of these remedies figure prominently in the divorces surveyed. Although cruelty did serve to validate a wife's leaving her husband's domicile and thus provided a defense against his counterclaim of her desertion, as a ground, it was scrutinized closely, and it was likely to be combined with desertion. Custody was rarely at issue in these divorces because of the absence of children or their maturity at the time of the divorce.[61] Although minor children routinely went to the innocent female plaintiff without a contest, custody battles could easily go the other way.

Henrietta Heine's suit pitting her and two adult children against her husband Solomon exemplifies the ferocity with which such battles were fought together with the risks they carried for female plaintiffs. She lost a bid for separation and for the custody of two minor sons whom Solomon had determined to send away to boarding school. Her complaint alleged that although Solomon was living apart from her, he came home from time to time to take meals and to beat her. She claimed that on one occasion he locked her up in the house and told her "he wanted her to die like a dog." Furthermore, both a son-in-law and an adult son testified that Solomon was planning to move to Texas. Solomon's answer contended that Henrietta was ignorant, unable to read or write German or English (her complaint was signed with an "X"), and unqualified to educate or "manage" the boys. Her physical problems, he asserted, resulted not from his cruelty to her, which he categorically denied, but from "the ordinary monthly disease to which females are ordinarily subject."

It is noteworthy that Henrietta's allocation of family assets, including her expenditures on food and clothing, went to the heart of this suit, which specifically tested the wife's relative autonomy within the bonds of marriage. Both Solomon and his adult son owned apothecary shops, and Henrietta had taken tea, herbs, flour, sulphur, and balsam from Solomon's shop and given it to their son. For Solomon the suit hinged on Henrietta's transfer of his property, an action he viewed as a conspiracy against him and contrary to Henrietta's obligations in the

marriage contract. As he noted, he had come to the United States with only enough for a few weeks, he had worked hard, and he had used the strictest economy so that his children would become "respectable and useful members of the community." Now he was being undermined by "a combination and Confederation" of the members of his own family, including his wife whose unilateral actions he characterized as "contrary to the Express Commands of this defendant." Her complaint was dismissed.[62]

The Heine case represents the bleakest scenario in the spectrum of possible results. Most women fared better than Henrietta Heine largely because their suits went unchallenged. Yet the principal form of relief divorce afforded them consisted in providing them with single status, and with it, the right to remarry. Although these were not inconsequential gains, they do not fully support the view that the presence of women in court as plaintiffs was a symptom of their autonomy, particularly since they were often contending with abandonment. Divorce, after all, embodied the uneven consequences of dissolving an essentially uneven partnership. It could help to restore to women "their natural right of equality," to cite Thomas Jefferson's hopeful assessment, only if they did not need to depend on the partnership financially. Otherwise, the overall costs could be devastating.

Financial constraints, moreover, were compounded with ideological ones. In a culture that increasingly invested middle-class women with a powerful moral influence over their husbands, which valorized the role of women in the domestic sphere, and indeed, imbued women with an idealized autonomy in the conjugal union, to succeed in divorce was tantamount to a more fundamental sort of failure.[63] A true woman was expected to exert her moral influence to prevent her husband from roving, or at the very least, to do nothing that would encourage him to cast about for a new companion. To be sure, the ideals of manhood were no less demanding. Earning a living was synonymous with being a real man, and a real man was expected to support his wife and children.[64] Nevertheless, in the course of incorporating these gender roles into the legal process, divorce imposed particular burdens on female plaintiffs. A woman subjected the intimate details of her marriage to the scrutiny of an all-male judiciary, and while the text of the divorce focused on her husband's guilt, the subtext revolved around her own impeccable innocence. Surely, when they balanced the value of the remedy against its psychic and economic costs, countless women opted for simpler, cheaper, extralegal alternatives. Surely they "passed" as spinsters, widows, wives, or as the prevalence of bigamy in these records

suggests, they remarried without ever coming within the purview of the courts.

Yet the willingness of some women to come to court for a formal delineation of their marital status is a measure of the value they attached to legal divorce. It may reflect a quest for identity, order, and respectability generated by the penetration of state law into areas of family life once regulated by religious and communal norms.[65] Given the option of a legal resolution of their status, women displayed a remarkable propensity to use it.[66] But if we define their agency as a form of autonomy, we need to distinguish it from autonomy in marriage. The most strikingly autonomous impulses by the women in these records—the occasional request to reassume a maiden name or the more common effort to assert clear control over property and wages—were directed toward their expectations outside of marriage.

Perhaps the nub of the problem in interpreting divorce as a woman's remedy emanates from conflating divorce itself with the end of marriage.[67] In the narrative imposed by the new legal ground rules, wives cast off cruel and adulterous husbands in an adversarial proceeding in court; more often than not, wives who had been cast off by husbands received a unilateral and essentially sympathetic hearing in court. While women pursued new legal identities in the local courts of the nineteenth century, men found anonymity in the expanding national landscape. It is more than coincidental that one New York witness associated the disappearance of a wayward husband with the festivities celebrating the opening of the Erie Canal.[68] Simply stated, there were more places to go and more ways to get there. In the rural hamlets, mushrooming cities, and on the frontier, life could begin anew. National expansion, improvements in transportation, the volatility of the economy—the whole socio-economic context in which American divorce law developed—both informed and transformed the nature of divorce as a legal remedy. Such a context suggests that even as divorce theoretically modified the asymmetrical relationship between men and women in marriage by punishing husbands for their faulty behavior and compensating their innocent wives, it simultaneously legitimized the very behavior it ostensibly discouraged.

Deserted men, however, participated in the same process, albeit in fewer numbers. If autonomy connotes the ability to bend life in one's own direction, a better indicator of women's autonomy with regard to marriage can be found in their willingness to abandon men. We should look, then, to female defendants. We should look to Amanda Edwards, who left her husband Charles because "she was unhappy with him" and eloped aboard the steamship *Great Western* with her lover from

Barcelona,[69] and to Rachel Augusthuys, who deserted her husband to live with a man in California.[70] In contrast to female plaintiffs, these women created their own divorces with their own remedies. Small wonder that their remedies entailed a dependence on new companions. Others returned to parental households or were compelled to rely on the aid of relatives and friends.[71]

A final point remains to be made about the connections between the right of divorce and a companionate model of marriage during the middle decades of the nineteenth century. A more affective, loving, conjugal ideal undoubtedly unleashed some dissatisfaction with marital realities, but the capacity to translate that dissatisfaction into an action to dissolve a marriage, in contrast to reacting to one that had already been dissolved, was bound up with all the contingencies in "the breadwinner ethic."[72] The extent to which women continued to rely on the financial support of men and men continued to have an obligation to support them shaped the way both men and women played out their roles in divorce. Inasmuch as couples in the nineteenth century invariably fused "modern" notions of love with traditional concepts of protection and support, we should not be surprised to find the interplay of similar elements in divorce. As one defendant warned his wife, "Remember Mary Ann, in how awkward a situation a female places herself when she attempts to live apart from a husband who loves and wishes to be kind to her and to protect her."[73] An heiress with a separate estate, Mary Ann successfully pursued a divorce from her reluctant husband precisely because she was not in so awkward a situation. For all those women who were, however, his warning alerts us to the real limits of divorce as a woman's remedy.

NOTES

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1. Written in 1771 or 1772, Jefferson's notes were developed in conjunction with

the possible divorce of a Dr. James Blair of Williamsburg, who retained him as a lawyer-legislator in the event that Mrs. Blair should insist on a separate maintenance. The Blairs, it seems, were already separated, and Jefferson was planning the precedent-setting case he might undertake on behalf of the husband before the Virginia legislature. His client, however, died in December of 1772, and the wife subsequently sued for her dower in his estate. Frank L. Dewey, "Thomas Jefferson's Notes on Divorce," *William and Mary Quarterly,* 3d ser., 39 (1982): 218–19.

2. On fault divorce as a stabilizing compromise, an unavoidably hypocritical bargain that sustained a strict moral code while tolerating a lax unofficial one, see Lawrence M. Friedman, *A History of American Law* (New York, 1973), 183; and idem, "Notes Toward a History of American Justice," in *American Law and the Constitutional Order,* ed. Lawrence M. Friedman and Harry M. Schieber (Cambridge, Mass., 1978), 17–18, 23.

3. Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge, 1988), 153–58, 175–85.

4. Cott duly noted the absence of financial support in Massachusetts decrees, but it is her subtle analysis of the links between women's use of the divorce process and a paradigmatic shift in marriage that has had enormous influence on subsequent scholarship. Although that scholarship has been far from monolithic, Cott has largely set the terms for relating divorce to the social construction of gender. As a result, scholars have placed divorce for women on a patriarchal-companionate continuum. See Nancy F. Cott, "Divorce and the Changing Status of Women in Eighteenth-Century Massachusetts," *William and Mary Quarterly,* 3d ser., 33 (1976): 586–614; idem, "Eighteenth-Century Family and Social Life Revealed in Massachusetts Divorce Records," *Journal of Social History* 10 (1976): 20–43. For close parallels, see Carl N. Degler, *At Odds: Women and the Family in America from the Revolution to the Present* (New York, 1980); and Robert L. Griswold, *Family and Divorce in California, 1850–1890: Victorian Illusions and Everyday Realities* (Albany, 1982). For a less sanguine view of divorce in early America, see Linda K. Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel Hill, 1980), 159–84; Kerber suggests that women's reliance on divorce usually represented "the gambit of the desperate." For a comprehensive analysis of the distribution of marital assets in separations and divorces in the same period, see Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill, 1986), 58–80; Salmon charts a slow and steady improvement in the legal status of married women, but is cautious about the effects of absolute divorce, noting that some women opted for a separation with a separate maintenance over a complete divorce without alimony. On the benefits divorce provided women in a patriarchal context, see Jane Turner Censer, "Smiling Through Her Tears: Ante-bellum Southern Women and Divorce," *American Journal of Legal History* 25 (1981): 24–47; and Lawrence B. Goodheart, Neil Hanks, and Elizabeth Johnson, " 'An Act for the Relief of Females . . .': Divorce and the Changing Legal Status of Women in Tennessee," *Tennessee Historical Quarterly* 44 (1985): part I, 318–39, and especially part II, 402–16, which draws on evidence from the lower courts. For a refinement of the concept of companionate marriage that emphasizes the role of women's decreasing economic dependence on individual men in their readiness to use the law independently, see Suzanne Lebsock, *The Free Women of Petersburg: Status and Culture in a Southern Town, 1784–1860* (New York, 1984). Michael C. Grossberg's overarching study of family law, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill, 1985) suggests a decline at one level in the relative autonomy of women with the emergence of what he calls "a judicial patriarchy" in the last decades of the nineteenth century. On divorce in the progressive era, see William O'Neill's pioneering

Divorce in the Progressive Era (New Haven, 1967), a work that develops the idea of divorce as a safety-valve for marriage. See also Elaine Tyler May, *Great Expectations: Marriage and Divorce in Post-Victorian America* (Chicago, 1980). Contrasting divorces from the 1880s with those from the 1920s, May notes a confluence between an improvement in alimony provisions in the 1920s together with women's rising expectations in marriage and greater participation in the labor force. For the problems engendered by contemporary patterns of alimony and child support, see Lenore J. Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America* (New York, 1985). Generally, however, there has been little emphasis by historians on some remarkably similar problems in the nineteenth century.

5. This trend is best exemplified by Lawrence Stone, *The Family, Sex and Marriage in England, 1500 to 1800* (New York, 1977); Edward Shorter, *The Making of the Modern Family* (New York, 1975); and for the United States, Degler, *At Odds.* For a critical review of this trend in scholarship on marriage, see John R. Gillis, *For Better, For Worse: British Marriages, 1600 to the Present* (Oxford, 1985), 3–5.

6. Divorce had been available in Puritan jurisdictions in the colonial era, but modern, national statutory patterns were established in the first half or two-thirds of the nineteenth century. For periodization and an overview of national trends, see Michael S. Hindus and Lynne E. Withey, "The Law of Husband and Wife in Nineteenth-Century America: Changing View of Divorce," in *Women and the Law: The Social Historical Perspective,* ed. D. Kelly Weisberg, 2 vols. (Cambridge, Mass., 1982) 2:133–53. Goodheart, Hanks, and Johnson, " 'An Act for the Relief of Females . . .' " do, in fact, cover the circuit courts of three Tennessee Counties in this period, but they do not focus on alimony provisions.

7. For a similar strategy, see May's reliance on both New Jersey and California in *Great Expectations.*

8. Indiana provided divorce for impotency, bigamy, adultery, abandonment, conviction of a felony, cruelty, and "in any other case, where the court in their discretion, shall consider it reasonable and proper that a divorce should be granted." Divorce was defined officially in 1833 as a proceeding in chancery. The circuit courts sat as both common law and chancery courts with jurisdiction over any county where the complainant resided, regardless of where the cause for the divorce took place. *Laws of Indiana,* 1831, c. 31; ibid., 1833, c. 33; Richard Wires, *The Divorce Issue and Reform in Nineteenth-Century Indiana* (Muncie, 1976). On South Carolina, see Salmon, *Women and the Law of Property,* 62, 64–66, 71, 74–76. On New York, see *Laws of New York,* 1787, c. 69; ibid., 1966, c. 254.

The Monroe County evidence consists of 112 divorce actions, all those recorded in the county from its inception in 1818 through 1870. They are recorded in Civil Order Books and Final Records, which are sometimes chronologically overlapping, cover the same cases, and extend beyond the period they are designated as covering. Evidence ranges from densely detailed accounts of a divorce to concise descriptions of the complaint and decree. Court papers were inaccessible. Yet these records invariably include alimony claims and awards and have the advantage of covering other legal actions by divorce litigants. They also record unsuccessful and suspended divorce actions. These records are available in the Office of the County Clerk, Monroe County, Bloomington, Indiana.

The New York County evidence consists of judgment rolls from 230 matrimonial actions (189 divorces, 21 separations, 17 annulments, and 3 actions related to former matrimonials) between 1787 and 1870. They are drawn from An Index to Matrimonial

Actions, 1784–1910 and are located in the archives of the Supreme Court of New York County, a jurisdiction equivalent to the Monroe County Circuit Court. Cases are indexed chronologically and by the first letter of the complainant's last name. This sampling consists of A-H matrimonials, roughly the first third of the alphabet, and is made up of all A-H matrimonials from 1787-1800, 1 of every 3 between 1801 and 1840, 1 of every 4 between 1841 and 1860, and 1 of every 10 between 1861 and 1870. Judgment rolls include original complaints, answers, proofs of service, depositions, examinations of witnesses, reports of the master in chancery or Supreme Court referee, decrees, and exhibits of letters, financial statements, and even some early photographs, all literally rolled together and tied with a red ribbon, faded now almost to a dull brown. Some of these rolls are extraordinarily rich in detail, but they, too, are uneven. One can never be certain from the rolls alone about subsequent alimony awards, but when used in conjunction with the index, where such awards should appear, they become more reliable. New York records do not include unsuccessful divorce actions; these were sealed and remain unindexed.

9. According to Carroll D. Wright's survey, between 1867 and 1886, 65.8 percent of the divorces in the United States were granted to women. *A Report on Marriage and Divorce in the United States, 1867 to 1886* (Washington, D.C., 1889), 170. Statewide for the same period, women accounted for 71 percent of the divorces in Indiana and 62.6 percent of those in New York. Although the New York statute undoubtedly discouraged the use of formal divorces and probably encouraged extralegal strategies, it is clear that the rate of divorce in New York County exceeded that in most of the state. In New York County in 1870, the average annual number of divorces per 100,000 persons was 28, exceeded in the state only by Cortland County, while in Monroe County, Indiana, it was 85. Estimating the divorce rate in relation to total population is misleading, but given the faulty recording of marriages and the considerable ambiguity over what constituted a marriage, it remains the most accurate available estimate. United States Bureau of the Census, Special Reports, *Marriage and Divorce, 1867–1902* (Washington, D.C., 1908–9), 1:95, 148, 165.

10. Bill of Complaint, Mary Warren v. Eli Warren, Final Record, 1838–1849. Mary Warren made no effort to prove her husband's intemperance, but it was added as a statutory ground to the state's already liberal provision in 1838. *Laws of Indiana,* 1838, c. 31.

11. Bill of Complaint, Warren v. Warren.

12. Notoriously lenient on the enforcement and verification of residence requirements, Indiana became the symbol of easy divorce in the nineteenth century. William Dean Howells's *A Modern Instance* portrayed a migratory Indiana divorce that was based on Howells's personal observations of divorce in an Indiana county court. On the role of Indiana in easy divorce, see Wires, *The Divorce Issue*; Nelson Manfred Blake, *The Road to Reno: A History of Divorce in the United States* (New York, 1962); and Horace Greeley, *Recollections of a Busy Life* (New York, 1883), 571–618. In the columns of Greeley's *New York Tribune* in 1860, Robert Dale Owen defended Indiana divorce policies against Greeley's assertion that the state was "a paradise of free lovers." Greeley, *Recollections,* 571.

13. James Boyd White astutely depicts the application of a legal rule to an individual case as resulting in a starkly simple narrative. *The Legal Imagination,* abridged ed. (Chicago, 1985), 114.

14. Decree, January 1850, Warren v. Warren.

15. Bill in Chancery for Dower, March 1850, Final Record, 1838–1849. The

disposition of the family dwelling is unclear from this evidence, but it is likely that it went to Mary.

16. On southern migration, see Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (New York, 1970), 48; Robert Wiebe, *The Opening of American Society: From the Adoption of the Constitution to the Eve of Disunion* (New York, 1984), 131–39.

17. Many New York matrimonials specifically link the disappearance of a husband to the gold rush while others refer vaguely to "the west." Mary Jane Cordier was remarried and had five children from her second union when her first husband, who she claimed "died in the mines," reappeared and successfully sued her for divorce. On appeal, the court held that her search for him was not sufficiently diligent. Jean Hyacinth Cordier v. Mary Jane Cordier (1864), GA121, C-3, and (1866), GA114, C-2.

18. John Mack Faragher, *Women and Men on the Overland Trail* (New Haven, 1979), 49–53.

19. Mary Hermann v. Nicholas Hermann (1857), GA268, H-2.

20. The cost of divorce in New York may very well have been defrayed by statutory provisions enabling poor litigants to sue without court costs or attorneys' fees in civil suits. The judgment rolls do not indicate if a plaintiff sued under the special provisions for the impoverished. "Of the Bringing and Maintaining of Suits by Poor Persons," *Revised Statutes,* 1829, vol. 2, c. 8, tit. 1, reiterated verbatim in the state's 1846, 1852, 1859, and 1875 revisions.

21. Evidence indicates that prostitutes were relied on as witnesses throughout the period under consideration. By mid-century, newspapers assailed the use of what was called hotel evidence. One editorial pointed to the rise of divorce rings with disreputable attorneys or "sharpers," who in alliance with prostitutes undertook "all the dirty work" necessary for successful divorce actions. "Divorce Made Easy," *New York Times,* October 10, 1869, p. 4; Blake, *Road to Reno,* 190–91.

22. On self-divorce, customary divorce, "besom divorce," and wife-sale, see Samuel Pyeatt Menefee, *Wives for Sale: An Ethnographic Study of British Popular Divorce* (New York, 1984); Gerhard O. W. Mueller, "Inquiry into the State of a Divorceless Society," *University of Pittsburgh Law Review* 18 (1957): 545–78; and Gillis, *For Better, For Worse,* 98–100.

23. Complaint, Hermann v. Hermann.

24. Most defendants failed to appear or to be represented, and after testimony by witnesses, their guilt was established "pro confesso," as if they had confessed. Because service of a summons was often not possible, it was satisfied in both New York and Indiana by the publication of the impending suit for a period of weeks in the local press.

25. Examination, Anna Maria Steinbinger (named in the complaint as Maria or Mary Hermann), Hermann v. Hermann.

26. Answer, Nicholas Hermann, in ibid.

27. Decree, in ibid. The prohibition against the remarriage of the guilty spouse, usually reiterated in New York decrees, was controversial from its inception in 1787. The New York Council of Revision vetoed it, and the legislature passed it over the veto. Blake, *Road to Reno,* 65–66.

28. If they married in New York and subsequently had the validity of the marriage tested in the state courts, it would have undoubtedly been deemed illegal. Given the state of record keeping, however, and the religious nature of marriage rites, there was little to prevent marriage in another state or even within the state. Isabella Eddy, who was guilty of adultery in a divorce, remarried in the state only to be exposed when

her second marriage failed, and her second husband won an annulment on the basis of her guilt and her subsequent remarriage. See the following cases from the Supreme Court of New York County: Edward Eddy v. Isabella Eddy (1865), GA131, E-1; on passing as man and wife in a second union, see, for example, Sarah Everitt v. William Everitt (1787), BA, E-1; Martha Haines v. Ezra Haines (1849), AL618, Lib 232; Elizabeth Creegan v. Bernard Creegan (1855), GA77, C-23; Theresa Girarden v. Emil Girarden (1858), GA271, G-2; Emma Broome v. John Broome (1852), GA9, B-2; Louisa Haskin v. William E. Haskin (1855), GA212, H-1; Cary Harris v. Mary Harris (1853), GA104, H-1. A spate of other cases involved defendants who assumed aliases in their second unions. As Carroll D. Wright noted, even by the 1880s, very few states had a comprehensive recording system for marriages. In Maryland, marriages celebrated far exceeded marriage licenses issued because marriage could take place either under a license or the publication of bans. *A Report on Marriage and Divorce . . . 1867 to 1886,* 18–19.

29. That Nicholas failed to pursue an annulment does not necessarily controvert his allegation that the marriage was unconsummated; it could reflect any or all of the following: his disinclination to use the legal process, his reluctance to pay its costs, and his determination to keep Mary's money.

30. In immigrant communities in particular and in the urban setting in general, where both male and female neighbors figure prominently as witnesses, lack of privacy emerges not only as a cultural phenomenon but as a result of physical crowding. In boarding houses, everyone seemed to know and care about everyone else's business.

31. Frederick Geisenhower, who served also as a witness, testified on cross-examination that Nicholas gave this as an explanation for his desertion. As a ground, it had a long history. John Boswell notes that bad breath was permitted as a cause for divorce in the thirteenth-century crusader Kingdom of Jerusalem. See *The Kindness of Strangers* (New York, 1988), 346–47 n. 83.

32. On the links between legal doctrines on divorce and a companionate marital ideal, see particularly Robert L. Griswold, "Law, Sex, Cruelty, and Divorce in Victorian America, 1840–1900," *American Quarterly* 38 (1986): 721–45; and idem, "Marital Cruelty and the Case for Divorce in Victorian America," *Signs* 11 (1986): 529–41.

33. Evidence includes allusions to aliases, transfers of property out of state, and documentation of long-term, second unions. Although it is likely that in collusive divorces, couples agreed that the wife would serve as the plaintiff, that does not mean that the initial decision to divorce was symmetrical.

34. This point owes much to Lebsock, *The Free Women of Petersburg,* 67–72.

35. Martha Codd v. Mathew Codd (1833), BA, C-40.

36. Gillis, *For Better, For Worse,* 199.

37. Lavinia Moore v. John Moore, August 1850, Final Record, 1838–1849.

38. Samuel R. Caring v. Harriet Caring, 1822, Civil Order Book, 1819–1827.

39. Salmon, *Women and the Law of Property,* 58–59.

40. *Indiana Revised Statutes,* 1852, vol. 2, c. 4, s. 22 stipulated: "The decree for alimony to the wife shall be for a sum in gross and not for annual payments, but the court in its discretion, may give a reasonable time for the payment thereof, by instalments, on sufficient security being given."

41. Sophia Dandy v. Timothy Dandy (1821), BA, D-299.

42. For judicial scrutiny of the wife's behavior in awards of alimony, see Norma Basch, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York* (Ithaca, 1982), 94–95.

43. The pattern of alimony awards in the two jurisdictions seems to suggest that

the degree of support given to the wife was related inversely to the liberality of the grounds, or to put it another way, the closer divorce came to contemporary "no-fault" standards, the less the likelihood of alimony.

44. When John De Peyster Douw separated from his wife Margaret in 1843, the couple entered into a tripartite separation agreement with Margaret's father, Stephen Van Rensselaer. The wife took custody of a five-year-old daughter, the husband of a four-year-old son. Van Rensselaer agreed "to idemnify the husband against the support of the wife that the wife might live where she saw fit." The wife agreed "to execute any deed of her husband's land that he might require." Their agreement emerged in Douw's subsequent suit for a divorce. John De Peyster Douw v. Margaret S. Douw (1853), GA78, D-1. For similar legal forms, see Joseph S. Ferrell, "Early Statutory and Common Law of Divorce in North Carolina," *North Carolina Law Review* 41 (1963): 620–21.

45. Answer, Emma D. Barron v. John M. Barron (1864), GA62, B-3. John's attorney asserted that Emma stated "she would rather be hanged" than live with John in Baltimore, and if he wanted to live with her, it would have to be in New York. Part of the case hinged, then, on the critical issue of domicile.

46. In New York divorce was restricted to courts with equity jurisdiction until 1848, when in accordance with the constitution of 1846, law and equity were merged. Thus the master in chancery and the referee performed the same functions in the two periods.

47. Referee's Report, Barron v. Barron.

48. *Trow's New York City Directory,* 1865, vol. 78, Commercial Register, 58.

49. Answer, Barron v. Barron.

50. Lydia Catlin v. Charles Catlin (1866), GA93, C-1.

51. Trust Deed, Exhibit A, Peter Bolenbacher v. Amelia Bolenbacher, August 1850, Final Record, 1838–1849. Exhibit B is a copy of a special legislative act sent by the Secretary of State to the Clerk of the Monroe County Court permitting Peter to file for divorce "without regard to the length of time the said Bolenbacher has been a resident citizen of this state." Bolenbacher's petition, moreover, acknowledged that Amelia brought $300 to their marriage.

52. Complaint, Matilda Langdon v. Samuel Langdon, 1847, Final Record, 1838–1849.

53. Bill of Exceptions, in ibid.

54. Decree, in ibid.

55. Paula Petrik underscores this problem in a study of Montana divorces. See "If She Be Content: The Development of Montana Divorce Law, 1865–1907," *The Western Historical Quarterly* 18 (1987): 261–91. For women's alignment with and economic reliance on kin in the divorce process, see also Marilyn Ferris Motz, *True Sisterhood: Michigan Women and their Kin* (Albany, 1983), 28, 122–24.

56. On the spectrum of litigants, see Petrik, "If She Be Content"; Griswold, *Family and Divorce in California*; and Lawrence M. Friedman and Robert V. Percival, "Who Sues for Divorce? From Fault through Fiction to Freedom," *Journal of Legal Studies* 5 (1976): 69.

57. Mary Jane Humphrey v. Silas Humphrey, 1844, Final Record, 1838–1849.

58. New York plaintiffs consistently cited desertion, intemperance, and cruelty in divorce petitions although they were not statutory grounds. What is particularly convincing in many allegations of desertion is the specificity with which plaintiffs and their witnesses documented desertion, especially when it entailed a long-term relationship with a paramour.

59. Griswold, "Law, Sex, Cruelty, and Divorce."

60. Michael Grossberg argues that in the long run, legal control over the child passed from the father to the judiciary. See his article, "Who Gets the Child? Custody, Guardianship, and the Rise of Judicial Patriarchy in Nineteenth-Century America," *Feminist Studies* 9 (1983): 235–60.

61. On the prevalence of desertion as a ground, see Wright, *A Report on Marriage and Divorce . . . 1867–1886,* 168–69. The absence of children may reflect the brevity of some marriages and the long duration of others, but there is no distinct pattern in either jurisdiction with respect to the number of years litigants had been married.

62. Henrietta Heine v. Solomon Heine, (1841) BA, H-256; Answer, in ibid.

63. For an analysis of the wife's moral responsibility in the culture of the early republic and her concomitant powerlessness in the face of evil, see Jan Lewis, "The Republican Wife: Virtue and Seduction in the Early Republic," *William and Mary Quarterly,* 3d ser., 44 (1987): 689–721. Although motherhood took precedence over wifehood by the 1820s, thereby marking a transition in domestic ideology, the attributes of the ideal republican wife continued to permeate nineteenth-century popular culture and to shape those reform movements in which women aimed to improve the morality of men.

64. Griswold, *Family and Divorce,* 120–40.

65. On the confluence between formal law and community norms, see Salmon, *Women and the Law of Property,* xii–xiii.

66. For extensive documentation of women's willingness to use legal resources, see Lebsock, *The Free Women of Petersburg.*

67. Lawrence M. Friedman, "Rights of Passage: Divorce Law in Historial Perspective," *Oregon Law Review* 63 (1984): 649–78.

68. Amy Champlin v. Guy Champlin, alias dictus Elisha Hinman, alias dictus Henry Hull (1827), BA, C-10.

69. Charles Henry Edwards v. Amanada M. F. Edwards (1842), BA, E-75.

70. Charles Augusthuys v. Rachael Augusthuys (1854), GA7, A-1.

71. Griswold, *Family and Divorce,* 82–83.

72. Barbara Ehrenreich uses the phrase in *The Hearts of Men: American Dream and the Flight from Commitment,* (Garden City, N.Y., 1984) as a baseline from which to explore post-1950s departures from the breadwinner ethic. For the nineteenth century, Christine Stansell notes the assumption that marriage was a bargain in which "men provided their wages in exchange for women's help and domestic services" applied not only to working-class marriages but also to middle-class marriages. The latter differed from their working-class counterparts in fusing these practical considerations with a celebration of romantic love. Christine Stansell, *City of Women: Sex and Class in New York, 1789–1860* (New York, 1986), 77.

73. Copy of Letter, Mary Ann Helen Bunner v. F. Charles Bunner (1835), BA, B-32.