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When Marriages Fail:
Divorce in Nineteenth-Century Texas

by

Francelle L. Blum

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APPROVED: THESIS COMMITTEE:

John B. Boles, William P. Hobby
Professor of History; Editor, Journal of
Southern History

Ira D. Gruber
Ira D. Gruber, Harrison Masterson Jr.
Professor of History

Caroline Field Levander, Professor;
Director, Humanities Research Center

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ABSTRACT

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Divorce in nineteenth-century Texas was rooted in social customs as much as law, with class, gender, and race serving as strong influences on marital experiences and decisions to divorce. Legal divorce took place primarily at the local level, with the option of appeal to the Texas Supreme Court. Under Mexican rule, Anglo settlers had no option for divorce, and marital status was itself often uncertain, resulting in the practice of bond marriage (marriage by contract). For a short time under the Republic of Texas, a few Texans sought legislative divorce. However, judicial divorce soon became the standard practice and remained so throughout the century. This study is based on a reading of 1,578 local divorce cases from Harrison and Washington Counties. An extensive database including all available information on the litigants of each case provides insight into the influences of class, race, gender, kinship, and community on divorce.

Although culturally very southern, Texas was also a western frontier and a community-property state. A combination of property protections based on Spanish law, frontier attitudes, and southern paternalism assured Texas women of a relatively high
legal status. The Texas divorce law of 1841 remained intact throughout the nineteenth century with only minor changes. With remarkable legal persistence, social factors were the most evident influences on marital expectations and divorce.

Chapters are laid out chronologically. Chapter One examines the statutory context of Texas divorce. Chapter Two addresses marital dissolution in the earliest phase of Anglo settlement and under the Republic of Texas, with an emphasis on frontier circumstances and changing political identities. Chapter Three examines divorce under antebellum statehood with an eye toward social hierarchy. Chapter Four discusses the impact of the Civil War and the actions of divorce seekers in postwar Texas, with emphasis on kinship and community influences as well as changing expectations for marriage. Chapter Five deals with the unique experiences of African American divorce seekers in Texas after 1865.
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Thanks also to my colleagues at the *Journal of Southern History* and *Papers of Jefferson Davis*, especially Patricia Burgess, Randal Hall, Evelyn Nolen, and Lynda Crist. As a friend and colleague, Carolyn Neel’s intellectual and practical wisdom as well as her constant faith in me have been highly instrumental in bringing about the
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Finally, I want to thank my family who have taken pride in my work and encouraged me to this end. My sister, Janis Forehand, deserves special recognition for her unfailing and constant belief in me. So, too, does Rodney Forehand, who helped me with technical support and in the creation of the computer database used for this project. Finally, my husband, William Blum, has brought me to the conclusion of this project with loving support.
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References
Chapter One
Background and Statutory Context of Texas Divorce

“The increase of divorce is a marked feature of our modern social life. So rapid has been its growth in these late years that thoughtful men have taken the alarm and vigorous efforts are now being put forth to arrest the spread of this evil,” declared Jonathon Smith in an 1884 speech before the Social Science Club of Clinton, Massachusetts. Smith’s remark denotes the anxiety of many Americans over an ever-growing national divorce rate. By 1880 a major movement for divorce reform and a campaign for uniform divorce laws developed in the eastern states. Concern over the so-called divorce mills of the more liberal western states accentuated fears that the American family, considered the most basic unit of civilized society, lay in the path of ruination.¹

The divorce question, however, did not originate in the last two decades of the nineteenth century. Rather, the moral and legal aspects of divorce had troubled Americans throughout the nineteenth century and, to a lesser extent, the eighteenth century. As early as the 1820s the topic had become a theme for popular literature,

sermons, and newspaper commentary. Antebellum interest climaxed in the 1850s, with
reformers such as Horace Greeley and Elizabeth Cady Stanton taking leading roles in the
public debate over the propriety and efficacy of liberal divorce laws.²

In 1853 Greeley, who was perhaps the most vocal opponent of liberal divorce,
engaged in a three-way newspaper debate with Henry James Sr. and Stephen Pearl
Andrews. Arguments revolved about the philosophy espoused by Andrews that the
individual is sovereign and is therefore unbound by man-made institutions—even
marriage. Andrews, an advocate of free love, rejoiced at the social changes that made the
dissolution of marriage easier, saying, “The restraints of marriage are becoming daily
less. Its oppressions are felt more and more. There are today in our midst ten times as
many fugitives from matrimony as there are fugitives from slavery.” Neither Greeley nor
James came close to approximating Andrews’s radical rejection of the institution of
marriage, but both agreed that the nation faced a serious social problem in the breakdown
of marriage. James’s arguments, similar to those of other legal reformers, promoted the
development of more liberal divorce laws and reforms within marriage. Greeley took the
most conservative position, arguing that the law should actively promote marriage and
discourage divorce. The extensive public correspondence between these three men on the
topic is but one example of the level of emotional intensity and public interest inspired by
divorce.³

² Halem, Divorce Reform, ibid.; Roderick Phillips, Putting Asunder, 456–62; Riley, Divorce: An American
³ Stephen Pearl Andrews, ed., Love, Marriage, and Divorce: A Discussion Between Henry James, Horace
Greeley, and Stephen Pearl Andrews (Boston: Benj. R. Tucker, Publisher, 1889), 88. Halem, Divorce
Reform, 25.
Like Andrews, Elizabeth Cady Stanton welcomed any changes that promoted greater access to divorce as a way to free women from bad marriages. In a bold move, she introduced the topic to a woman’s-rights convention in 1856. Her advocacy of liberal divorce law and her frank references to sexual abuses by lustful husbands shocked her audience and triggered a fractious debate. Undeterred by the controversy, Stanton fought to keep the issue in the foreground, and her speech to the woman’s-rights convention of 1860 elevated the topic to a principal issue. Within the women’s movement, debate raged over the morality of divorce and the various degrees to which divorce might be acceptable.4

Addressing the New York State legislature in 1861, Stanton articulated her argument that marriage should be defined as a man-made, private institution and therefore dissolvable by the will of the spouses. She appealed to the humanitarian inclinations of her audience by pleading on behalf of the unhappy wife who “unconscious of the true dignity of her nature, of her high and holy destiny, consents to live in legalized prostitution . . . her flesh shivering at the cold contamination of that embrace!” Stanton pleaded for the children of the “drunken, brutal [father],” who “flee to the corners and dark places of the house” for safety yet willingly rush to aid their mother, “dragged about

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the room by the hair of her head, kicked and pounded, and left half dead and bleeding on the floor!” The bill for which she lobbied failed to pass by a narrow margin.\(^5\)

To opponents of easier access to divorce such as Horace Greeley, Stanton’s adamant espousal of liberal divorce laws attacked the family as the basic unit of civilized society, thus threatening the very foundations of the American social fabric. The Greeley-Owen debate of 1859, published in *The New York Tribune*, brought opposing views into many private homes for consideration and raised the level of awareness among the reading public. In a series of editorials Greeley debated Robert Dale Owen, author of a then recent Indiana divorce-reform statute. The debate took place as New York legislators considered a bill similar to the Indiana law. Indiana had earned a reputation as a divorce mill during the 1850s, and moralists such as Greeley hoped to prevent the further deterioration of American society.\(^6\)

However, despite the antebellum passion generated by the divorce question, the issue soon gave way to the greater urgency of the Civil War. Although family issues remained important to individuals, the political and social upheaval of war and Reconstruction overshadowed public concern about marriage. That did not slow down the rising rate of marital dissolution, however; nor did it mean a permanent withdrawal of concern. In 1860 there were 0.2 divorces per 1,000 persons, or 1.2 divorces per existing marriages; by 1880, the rate per 1,000 marriages had risen to 2.2; and by 1900, to 4.0. While these numbers seem miniscule to the modern reader, the escalation brought great

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\(^5\) "Address of Elizabeth Cady Stanton on the Divorce Bill Before the Judiciary Committee of the New York Senate in the Assembly Chamber, February 8, 1861," (Albany: Weed, Parsons and Company, Printers, 1861).

consternation to nineteenth-century observers, as it represented a rate that far
outdistanced population growth. Between 1870 and 1880, the divorce rate increased 80
percent, whereas the population grew only 30 percent. Between 1880 and 1890 the
divorce rate increased by 70 percent, compared to a population increase of 26 percent.\textsuperscript{7}
By 1880 the steadily increasing divorce rate prompted a renewal of interest and triggered
a reformist reaction. In 1889 Stephen P. Andrews demonstrated the persistence of
American interest when he resurrected the above-mentioned antebellum debate with
Greeley and James for publication.\textsuperscript{8}

Concern about divorce continued with greater intensity in the northeast than ever
developed in the western or southern states. Worried citizens there formed the New
England Divorce Reform League in 1881, which was reorganized as the National
Divorce Reform League in 1885. The group dedicated itself to determining the causes of
the divorce “evil” and to encouraging legislative and social remedies on the national
level. Under the leadership of the Reverend Samuel W. Dike, the league strove to ally
Christian efforts with the scientific methods of social scientists. As a major goal, the
league sought uniform divorce legislation to replace the wide variety of statutes across
the states. One of its most significant successes came in 1887 when it convinced

\textsuperscript{7} Phillips, \textit{Putting Asunder}, 462–63; The divorce rate per 1,000 population rose from 0.2 in 1860 to 0.7 in
1900. The rate per 1,000 persons for 1990 was 4.7 divorces, and 3.6 per 1,000 persons in 2005. Table 121:
“Marriages and Divorces—Number and Rate by State: 1900–2005,” of The 2008 Statistical Abstract (U.S.
Census Bureau, online), accessed at http://www.census.gov/compendia/statab/cats/births_deaths_marriages_divorces/marriages_and_divorces.html
on February 6, 2008.

\textsuperscript{8} Andrews, \textit{Love, Marriage, and Divorce}. 
Congress to commission a statistical report, prepared by Carroll D. Wright, on divorce throughout the United States. The resulting document, commonly referred to as the Wright Report, was an exhaustive and meticulous statistical analysis based on local and state documents for the years 1867 through 1889.  

The Wright Report concluded that 328,716 couples divorced during the two decades covered, and the United States experienced a 157 percent increase in divorce between 1867 and 1886. In the 1870s alone the divorce rate increased almost 80 percent nationwide, while the national population grew at a much slower pace of 30 percent. By comparison, the Texas population increased 94 percent during the same period, with a divorce increase of 382 percent. The findings of the report confirmed fears that with increasing regularity marital troubles were solved through the practical and legal dismantling of the family unit. The realities of broken marriages surfaced in almost every community. No longer were nineteenth-century Americans familiar with divorce only in the abstract or as an extreme and rarely used option for troubled marriages. They now saw it as a reality in their own communities. While divorce remained rare by modern

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9 Rev. Daniel Merriman, D.D., “Report of the Committee on Marriage and Divorce” (Boston: National Divorce Reform League, 1893) Special issues of 1893, no. 2; Riley, An American Tradition, 108–18; Samuel Warren Dike, “Perils to the Family,” An Address delivered before the Evangelical Alliance Conference at Washington, D.C., Dec. 8, 1887; “Statistics on Divorce,” Reprint from the Ninth Annual Report of the National Divorce Reform League, 1889; Michael Grossberg, Governing the Hearth: Law and Family in Nineteenth-Century America (Chapel Hill and London: University of North Carolina Press, 1985), 90. Department of Labor, A Report on Marriage and Divorce in the United States, 1867–1886, Report prepared by Carroll D. Wright, Commissioner of Labor, February 1889 (Washington: Government Printing Office, 1889), hereafter referred to as Wright Report. The report contains data gathered from 2,496 counties throughout the United States, representing 98 percent of the national population. The Wright Report is significantly accurate collection of data in that it succeeded in procuring such a larger percentage of county data. However, it is not complete. Not all counties in all states were able to submit data for various reasons. Second, only divorces that had actually been granted were reported. This fails to account for the many divorce seekers who had their suits dismissed or withdrew their petitions, and it does not show the divorces that were pending adjudication. Francelle LeNae Pruitt, “‘But a Mournful Remedy’: Divorce in Two Texas Counties, 1841–1880,” M.A. Thesis, University of North Texas, 1999.
standards, for many people a divorce within one’s family or community was not an
unprecedented or anomalous occurrence. And these alarming statistics said nothing about
the number of marriages that had been dissolved informally and were thereby
undetectable through public documentation. ¹⁰

The state of Texas was clearly no exception to this upward cycle of marital
disruption. Texas, in fact, boasted an escalation of 1,357 percent in its divorce rate for the
same period, 1867 to 1886, which gave it the fifth highest rate of increase in the nation.
Since the divorce rate continually outdistanced population growth, more and more
Texans either witnessed or experienced the dissolution of marriage. ¹¹

Historians have been slow to take up the challenge offered by the Wright Report
to investigate what Glenda Riley has called “an American tradition.” Few full-length
monographs have been dedicated to the causes and frequency of divorce, and relatively
few other works have included the topic as part of their discussions. In 1962 Nelson
Manfred Blake published Road To Reno: A History of Divorce in the United States as the
first historical analysis. William O’Neill’s Divorce in the Progressive Era, published in
1967, examined the political, social, and religious arguments about divorce in the late

¹⁰ Wright Report, 130, 144. The states where the population increase exceeded the divorce rate were
Connecticut, New York, Utah, Vermont, Wyoming. Dakota [Territory] and South Carolina are excluded
from comparisons due to specific circumstances within those areas. These statistics hold true at the county
level in Texas as well. Washington County’s population grew 20 percent during this decade; its divorce rate
increased 396 percent. Harrison County’s population nearly doubled with a 90 percent increase in
population. With a 376 percent increase in divorce, the rate of marital dissolution far outdistanced
population growth there as well. Pruitt, “‘But a Mournful Remedy,’” 33.
¹¹ Wright Report, 142. The states with a greater increase in their divorce rates than Texas are as follows:
Colorado (11,175 percent), Dakota (17,800 percent), Nebraska (4,260 percent), New Mexico (3,900
percent). The report discounts the Dakota statistics (although, accurate) as reliable for comparison purposes
because of the extremely high rate of population increase, the unavailability of records prior to 1870, and
because divorce statutes were in place for only the last few years of the study. This would place Texas
behind only three others.

In the early 1980s Elizabeth May and Robert Griswold broached the subject with their respective studies of late-nineteenth-century California. May’s *Great Expectations: Marriage and Divorce in Post-Victorian America* was the first to incorporate a demographic profile of divorce petitioners in an effort to understand the heightened American propensity for divorce as the nation entered the twentieth century. In *Family and Divorce in California, 1850–1890*, Robert Griswold presented a critical and comprehensive analysis of 401 divorce cases between 1850 and 1890, relying on local records from two California counties. Glenda Riley followed with a broad, comprehensive overview of the divorce phenomenon in American history published in 1991. Norma Basch’s 1999 publication, *Framing American Divorce: From the Revolutionary Generation to the Victorians*, examined divorce in the national context and
in light of the changing legal and social contexts. While other historians have addressed divorce in limited ways as a part of larger studies, the list of monographs remains small.\textsuperscript{13}

Divorce historiography is not only sparse but as such it also suffers from an imbalance. Contributions either assume a northeastern primacy of influence in American history and concentrate on middle- or upper-class marriages; attempt broad or encyclopedic overviews of the national context, usually from a legal perspective; or operate under the assumption that divorce was largely a western phenomenon, the product of volatile frontier circumstances. With very few exceptions, southern divorce has failed to ignite interest among historians, and this despite the ever-widening interest in southern women’s history. Until recently, research has been limited to article-length studies or to components of larger works. In 1995 Peter W. Bardaglio’s sophisticated

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analysis of southern patriarchy within the South’s legal culture included an examination of divorce and related topics. Thomas E. Buckley’s *The Great Catastrophe of My Life: Divorce in the Old Dominion*, published in 2002, came as a welcome contribution to our understanding of divorce in a single southern state. To date no other such studies have examined divorce for any other southern states, Texas included.¹⁴

The literature on Texas women is almost completely void of any references to divorce. In 1993 Sally L. Kitch published *This Strange Society of Women: Reading the Letters and Lives of the Woman’s Commonwealth*. Kitch’s work focused on a group of Texas women—mostly divorced—who formed a small, religiously oriented commune, based on celibacy and pooled economic resources. While the narrative is about divorced women, divorce itself is not the main subject. Angela Boswell’s study of women in Colorado County is a broader study that incorporates divorce and brings us a step closer to understanding this component of Texas community life. My own M.A. thesis,

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completed in 1999, was at the time the only academic work specifically addressing the topic of divorce in Texas, covering the period 1840 through 1880 in two counties.\textsuperscript{15}

Thus the topic was wide open for exploration when I began the current study. The untapped records on divorce are abundant and rich; they present many avenues for historical inquiry and offer new ways to evaluate our current understanding of numerous issues. This study focuses primarily on the social components of divorce rather than the legal aspects, although relevant laws and legal precedents are not neglected. It is largely a social history, with emphasis on the intersection of kinship, community, and marriage. Ultimately, this is a study of rural southern families and community as viewed through the lens of failure—from the perspective of crumbled relationships. From this upside-down viewpoint comes greater nuance and complexity in our understanding of the family in the nineteenth-century South.

At the core of this study is a database consisting of 1,578 divorce petitions filed with the district clerk offices of Washington and Harrison Counties, from the Republic period (1836–1845) to 1900. I have mined the local and state records to develop a database in which each entry ideally includes information from: district court civil case papers and civil case minute entries (the actual divorce records); tax roll data and federal census records for one or both of the spouses; marriage records for the divorcing couples or subsequent marriages by one or both spouses; newspapers notices and citations

\textsuperscript{15} Sally L. Kitch, \textit{This Strange Society of Women: Reading the Letters and Lives of the Woman's Commonwealth} (Columbus: Ohio State University Press, 1993); Angela Boswell, \textit{Her Act and Deed: Women's Lives in a Rural Southern County, 1837–1873} (College Station: Texas A&M University Press, 2001); Pruitt, “But a Mournful Remedy.”
(usually found among the divorce records); and any other relevant information found among local records or state records.

This database represents over three thousand individuals whose marriages ended in divorce court. Their marriages and family situations were subject to social and legal restrictions rooted in social ideals and community realities, and their experiences took place within kinship and community networks. In addition to plaintiffs and defendants, case witnesses—neighbors, family members, religious affiliates, economic associates, and even children—embellished the narratives with their unique observations and opinions, revealing different aspects of the family and community contexts. By combining their stories with quantitative data about the race, class, and post-divorce circumstance of petitioners, this study offers a demographic profile of Texas divorce seekers that allows us to use divorce as a lens into larger social questions.

The research also encompasses the legal proscriptions regarding marriage and divorce, property laws when relevant, and pertinent Texas Supreme Court cases from the period. When available, diary entries or letters left by those affected by marital dissolution and any newspaper articles or other printed materials are incorporated into the analysis to shed light on the public perception of divorce.

Drawing upon the historical literature of the American South and Texas, this study addresses issues dealing with southern family life, marital dissolution, kinship and community, and economic factors associated with the divorce phenomenon. With the rich material found in Texas divorce records, the possibilities for thematic examination are seemingly endless. This project, however, concentrates on a set of questions primarily
associated with components of the social context within which southern communities and families experienced divorce. Nineteenth-century Texas was indeed very southern, and the communities selected for this study are strongly representative of the characteristics that marked Texas as a southern state.\footnote{On the southern characteristics of Texas, see Randolph B. Campbell, *Gone to Texas: A History of the Lone Star State* (New York and other cities: Oxford University Press, 2003), chapter 9.}

Both Harrison and Washington County are old counties—that is, they were originally formed in the early phase of Texas independence, with settlement predating the Republic—and have rich histories around which to develop the divorce narrative. Both counties were populated largely by Caucasian immigrants from the southern United States and their slaves. Before the Civil War, each community was rooted in a cotton-plantation economy and boasted slave-majority populations. As these counties, and Texas in general, transitioned through various social, economic, and political stages throughout the nineteenth century, families and communities continued to reflect a southern heritage. A more detailed analysis of these counties and the data collected from the divorce records will unfold in latter chapters. For now let it suffice to acknowledge that Washington and Harrison Counties are excellent locales for examining divorce in Texas and in the South, suitable as microcosmic representations of southern communities in transition—from frontier settlement to the dawn of a new century.

In reading the thousands of pages of divorce petitions, I am repeatedly drawn by the voice of petitioners to the numerous issues that most compelled them to appear in court. Their stories are often heart wrenching, sometimes humorous, and always
fascinating. The voices of women called for justice and protection from domestic violence and imposed poverty. They called upon courts, family, and community to free them from abusive or neglectful husbands, and they demanded a restoration of their legal autonomy. Men and women alike begged sympathy from courts because of abandoning or adulterous spouses whose actions negated the very basis for marriage. Through their words and the depositions of their witnesses we can reconstruct the paradigm of marriage, kinship, and community in which these individuals operated.

With attention to transition over time, subsequent chapters will address domestic violence and mental abuse, child custody and property divisions, gender roles within marriage, the importance and nature of kinship and community, and the economic factors affecting divorce. Divorce seekers did not live in a vacuum, and these topics clearly show the broader social context within which individuals both married and ended their marriages. In general, my research reveals kinship, neighborhood, and family to be broadly defined and highly flexible concepts. Particular situations and individual preferences more readily defined functional kinship and neighborhood for nineteenth-century Texans than any idealized notions of southern patriarchy or gender roles. Likewise, the process leading to divorce followed a general pattern in which individuals moved from the very private to the less private to the semi-public to the very public, a pattern that reflects a hierarchy of practical affiliations with and an affinity for kinship, community, and law. Deconstruction of this process reveals a highly complicated social structure in which women were far more actively involved in social and family activities and legal matters than some historical depictions of southern women would lead us to
suspect. The lives of divorcing couples significantly blurred the lines between private and public and highlighted the complexities of kinship and community.

These social situations, however, took place within a legal structure that not only reflected contemporary social values and ideals but also reinforced those ideals and upheld them up as the standards for appropriate marital behavior. The nature of divorce as a legal concept, played out in local and high courts, requires a basic understanding of the statutory context in which these marriages and divorces took place.

For most of the nineteenth century, Texas marriage customs were no different from those practiced throughout the southern United States and largely similar to the rest of the country as a whole. A general pattern toward what is usually referred to as "companionate marriage" permeated American society. Carl Degler defined the family that emerged in the nineteenth century as follows: "The marriage . . . was based upon affection and mutual respect between the partners, both at the time of family formation and in the course of its life. The woman in the marriage enjoyed an increasing degree of influence or autonomy within the family." Marriage for the sake of personal happiness—for love—became the ideal and, as Degler pointed out, was the "purest form of individualism."

As a belief in democracy and personal freedom solidified in the political and social mindset of Americans, it affected even the most personal relationships. Respect and mutual commitment between spouses was a marked improvement for women, who

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gained esteem and influence within the home—that is, within the feminine sphere of domesticity. Marriage based on affection and emotional support naturally brought with it expectations of mutual benefit, and spouses set demands for one another that were concurrent with those expectations.

Marriage came to be seen as a right due to citizens in a democratic society and an expression of one’s personal freedom—for women as well as men. A belief in the political theory of equality began to rival the long-held ecclesiastical view of marriage as a religious mystery, indissoluble by secular devise. Marriage—although never losing its religious component—came to be seen as a secular right, a civil contract between two free citizens. Writing in the early twentieth century, Ocie Speer reflected on the legal tradition of Texas marriage and defined it as “not a mere contract, nor yet a mere sacrament. It is a relation or status proceeding from a civil contract between a man and woman . . .” While marriage was a natural relationship with “its origin in the breast of Divinity,” in the eyes of the law marital issues fell under the ideal or principle of civil contract.\(^\text{18}\)

The contractual notion of marriage has strong roots in the practice of bond marriage, sometimes called a constitutional marriage, commonly practiced among American immigrants to Mexican Texas.\(^\text{19}\) The bond marriage system developed as a way for colonial Texians to comply with Mexican law while dealing with the practicalities of the frontier. Mexico required all immigrants seeking land and citizenship


to adopt the Catholic faith, if they were not already Catholic. If a marriage was to be given legal standing, it had to be solemnized by a Roman Catholic priest. Between 1821, when colonists first arrived, and the onset of the Texas Revolution, the Anglo population grew to roughly 20,000, and Mexican land policies encouraged family life by offering larger land grants to married men and women. Yet Mexico failed to provide resident priests for the region, and visiting priests to the remote area were few and far between. Under these circumstances, couples might have to wait years before they were afforded the opportunity to take their vows.20

In order to deal with this problem, colonists developed the quasi-legal system of bond marriage, which combined the contractual tradition of English common law marriage with the religious dictates of the Spanish Las Partidas. Couples took traditional marriage vows and signed written contracts, promising to have the marriage solemnized by a Catholic priest at the next opportunity. This innovative practice defined marriage for frontier men and women as a civil contract in the purest term; it set men and women on equal terms in that each party acted as a free agent and accepted an equivalent penalty for breach of contract. Although bond marriages were considered binding as contracts between two parties, in the absence of religious sanction the Mexican state did not recognize the unions as full, legal nuptial arrangements.21

21 Smith, Marriage by Bond, 5–6.
This frontier-era practice ended when Texas gained its independence from Mexico and established new laws governing marriage. However, the legal ambiguities of the bond-marriage system brought about unique problems and legal considerations that will be discussed in the following chapter. And the nature of bond marriage—as a local solution to a social problem and as a manifestation of the contractual, secular concept of marriage—had a lasting impact on marriage and divorce practices.

The legality of marriage was also a major concern for the many enslaved men and women whose relationships had no legal standing under antebellum Texas law. After the Civil War, the state of Texas tenaciously resisted legal recognition of African American marriages until forced to do so in formulating the new state constitution for readmission to the United States in 1869. Just as many white immigrants engaged in full and rich family lives despite the absence of legal recognition from the Mexican government, black couples also established marriages and families under the bonds of slavery. Both groups later faced difficulties arising from these situations when they chose to seek legal divorces or make claims to community property.

Laws governing divorce were called into question across the United States by the end of the nineteenth century. Activists on the national scene hoped that legal reforms would help to solve the growing problem of failed marriages. However, according to statistical data, the situation in Texas and elsewhere negated the argument that lax divorce laws were the cause of the upward trend in the dissolution of marriages. In 1897 Columbia University published The Divorce Problem in which Walter F. Wilcox interpreted the data collected in the Wright Report. “The conclusion of the whole matter,”
he summarized, "is that law can do little [to discourage divorce]." Wilcox recognized that agitation for changes in divorce laws might educate the populace to the possibility of ending troubled marriages, but the "measurable influence of legislation [was] subsidiary, unimportant, almost imperceptible." Wilcox’s conclusion applied to the rising divorce rate in the United States as a whole but mirrored what Carroll Wright believed was the case within several individual states, including Texas. Certainly, no major legislative changes occurred in Texas that can account for any significant shifts in divorce trends during the nineteenth century. Rather, Texas divorce regulations remained remarkably constant, particularly considering the numerous fluctuations in the political and social settings. The increase in the divorce rate was not the result of any changes in the law.\(^{22}\)

The first divorce after Texas gained its independence from Mexico involved no less than Sam Houston, sitting president of the Republic of Texas. Early in 1837 Houston petitioned Judge Shelby Corzine of San Augustine County for divorce from his estranged wife, Eliza Allen Houston. In a private meeting, with representatives of Mrs. Houston present, Corzine granted the divorce. Its legality, however, quickly came into question. The new republic, still in a period of transition, had yet to formulate a procedure for acquiring a divorce. Spanish and Mexican law had not recognized divorce; English common law tradition, used throughout the United States and familiar to most citizens, recognized full divorces only if granted through an act of the legislature. Although

\(^{22}\) Walter F. Wilcox, The Divorce Problem: A Study in Statistics, 2nd ed., Studies In History, Economics and Public Law (New York: Columbia University, 1897), 61; Wilcox conceded that making divorce expensive might radically alter the actual number of divorces, but argued that such a step would only serve to discriminate against lower economic groups. This was the only legal alteration short of outlawing divorce all together that might have any effect; Wright Report, 156.
legislative divorce in the United States was gradually being replaced by court jurisdiction, this trend was still young and legislative divorce remained far more familiar to southerners. Appealing to the legislature would have required Houston to reveal intimate secrets about his first marriage and the reason for its demise. Houston refused to expose his intimate affairs, presumably out of honor for his wife, and indeed it seems he took his secret to the grave. The closed judicial proceeding protected his and Mrs. Houston's privacy and retained for them a degree of respectability. Houston’s lawyers argued that a marriage contract, like any civil matter, lay well within the jurisdiction of the courts, and the irregular procedure was therefore both legal and appropriate.\(^{23}\)

Whether Houston used his political influence for personal advantage is arguable. The importance of the case lies in the precedent set for judicial authority in divorce suits. Regardless of initial doubts and gossip, the Houston divorce quickly earned general approbation. The legality of his future marriage to Margaret Lea and the legitimacy of their children never came into question. Nevertheless, several months after the divorce, on December 18, 1837, the legislature deemed it necessary to enact a law granting—or perhaps confirming—jurisdiction to the district courts in matters of divorce and separate maintenance.\(^{24}\)


Court jurisdiction, however, did not immediately supersede legislative power to grant divorces, which remained the more common procedure in the Republic era, and the issue of the locus of authority continued to be a concern over the next couple of years, as seen in the jurisdictional arguments over the divorce petitions of Mary Upton and S. G. Haynie. In November 1839 the congressional judiciary committee recommended a denial of Mary Upton’s plea for divorce on the grounds that as a resident in a county that was still unorganized judicially, she should file a petition with the closest judicial district to her home—not the legislature. In Haynie’s case, the committee recommended that a bill be passed granting his divorce. Chairman S. H. Everitt dissented from the majority, stating that he believed Congress should never grant a divorce and that only the judiciary should deal with matters of divorce. The majority, however, believed that the “extraordinary” circumstances (unspecified) of the Haynie case warranted their passing the bill.\(^25\)

Perhaps with the subjective nature of legislative divorce in mind, and with an awareness of the expense and impracticality of the process, on January 1, 1841, Texas lawmakers passed “An Act concerning Divorce and Alimony,” which gave district courts jurisdiction in divorce cases. Soon after this new law went into effect, citizens began to file for divorce at the local level. However, because the law did not specifically negate legislative prerogative, a few divorce seekers still looked to the legislature for “relief,” or legal remedy, until the state constitution of 1845 specifically forbade legislative divorces.

\(^{25}\) Journals of the Congress of the Republic of Texas, Fourth Congress-Sixth Congress (s.l.: Texas Library and Historical Commission, State Library, [1929–1940]), 63, 228, and 230; For more examples of legislative divorce see Gammel, comp., Laws of Texas, II, 72, 820.
The 1841 law remained the procedure for divorce throughout the nineteenth century, with only a few minor alterations. Texans had chosen a simple law, which proved time worthy in that it was readily adaptable to changing social attitudes.26

The act granted district courts full jurisdiction in divorce and annulment suits, with, of course, the potential of appeal to the Texas Supreme Court. Impotency at the time of marriage, if of natural occurrence or incurable, entitled the parties to an annulment. The statute allowed a husband to divorce his wife if she (1) “shall have voluntarily left his bed and board, for the space of three years with intention of abandonment” or (2) “shall have been taken in adultery.” It entitled a woman to a divorce if her husband (1) “left her for three years with intention of abandonment” or (2) “he shall have abandoned her and lived in adultery with another woman” [emphasis added].27

Although the abandonment provision was basically the same for both sexes, the provisions for adultery charges carried a gender-biased difference, apparently intended to allow men greater moral latitude. Technically, a husband’s sexual misconduct was significant for divorce only if he had actually left his wife to cohabitate with another woman in an adulterous relationship; a wife had only to engage in a single act of unfaithfulness to justify a husband in initiating a divorce. Inherent in the double standard is also the assumption that women naturally possessed a higher moral constitution. Later chapters will show that the application of this provision in specific cases overrode and

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negated this official double standard. The fact remains, however, that this gender
difference was legally codified—a significant indicator of contemporary attitudes.

Only the offense of adultery prompted the legislature to elaborate and provide
details on how the charges might be used. To gain a divorce with adultery charges, the
plaintiff had to prove that both parties resided in Texas at the time of the offense and at
the time of filing the petition, a stipulation designed to protect Texas from becoming a
“divorce mill” to which unscrupulous persons might flee, seeking easy divorces. If a
plaintiff who brought adultery charges against his or her spouse was also found to be
guilty of adultery, or if he or she attempted reconciliation after learning of the spouse’s
offense, then these mitigating circumstances would “be a good defense and a perpetual
bar against said suit.” The same applied to a husband who forced his wife into
prostitution or “exposed her to lewd company, whereby she became ensnared to the
crime.” If evidence showed that both parties committed adultery or that they had
conspired together—concocting the charges in order to end their relationship—no divorce
would be granted.28

In addition to adultery and abandonment, a spouse could bring charges of
“excesses, cruel treatment, or outrages towards the other, if such ill treatment is of such a
nature, as to rend their being together insupportable.” No elaboration clarified or limited
specific actions that might fall under this provision. Rather, courts were free to exercise
freedom of interpretation, subject only to Texas Supreme Court precedents.29

Not until 1873 did the state legislature see fit to amend the original divorce law—thirty-five turbulent years and five constitutions after its original passage. The amendment simply added a six-month county-residency requirement. Three years later a second amendment added one more reason for which a divorce might be granted: the spouse of a convicted felon who was imprisoned in the state penitentiary, could receive a divorce twelve months after the conviction. No divorce could be sustained if the convict received a governor’s pardon or if the spouse’s testimony contributed to the conviction. Oddly, this law is stated in the negative as though such a provision already existed and this amendment was merely to put restrictions on it. There appears to have been no such previous law, however, and it was not until after 1876 that courts granted divorces on such grounds. The addition of the six-month residency requirement and imprisonment provision made little difference in divorce trends.30

In January 1840 Texas had replaced the general system of Mexican law (Spanish civil law) with English common law except in the case of marriage and property laws, which combined aspects of both legal systems. The significant difference between Texas and the property laws of other American states lay in the fact that Texas retained the community property provisions of Spanish civil law. Upon marriage, Texas women retained ownership of their separate property and assumed 50 percent ownership in property acquired during marriage, with specific provisions for separate property acquired after marriage. While still married, husbands technically controlled all property

as long as they managed it appropriately. Texas women could and did assume full
managerial powers under certain circumstances such as when a husband remained absent
from the home for extended periods or mismanaged the wife’s separate estate. When
Texas entered the Union in 1845, it retained its status as a community-property
jurisdiction and became the first state to provide constitutional protection for married
women’s property rights.31

The divorce statute and court interpretations supported and reinforced this
important component of Texas law. Since a husband’s managerial authority gave an
unscrupulous or incompetent man the power to destroy his wife’s estate, a wife choosing
to dissolve her marriage might risk financial devastation. Her husband could easily
dispose of her assets before a final divorce decree could be issued. In an attempt to
prevent such an occurrence, the divorce statute permitted a wife to demand an inventory
and appraisal of all real and personal property in her husband’s possession. “For the
preservation of her rights,” she could also have an injunction issued against him,
forbidding the sale or disposition of any property during pendency of the suit. The district

law and divorce see Elizabeth Bowles Warbasse, The Changing Legal Rights of Married Women, 1800–
Concealed Under Petticoats: Married Women’s Property and the Law of Texas, 1840–1913 (New York
and London: Garland Publishing, Inc, 1986), chapters 2 and 3; Jean A. Stuntz, Hers, His, and Theirs:
Community Property Law in Spain and Early Texas (Lubbock, Texas: Texas Tech University Press, 2005)
and Stuntz “Spanish Laws for Texas Women: The Development of Marital Property Law to 1850,” 104
Southwest Historical Quarterly (April 2001), 543–59; Boswell, Her Act and Deed, 17–22; and James W.
Paulsen, “Community Property and the Early American Women’ Rights Movement: The Texas
Connection,” 32 Idaho Law Review (Spring 1996): 641–90. Paulsen argues that the Texas constitution
provided the original model for married women’s property-law proposals in Wisconsin and New York. For
constitutional debates about protections for women’s property rights and the form that those rights should
take see Wm. F. Wecks, reporter, Debates of the Texas Convention (Houston: J. W. Cruger, 1846), 270–75,
court might also nullify any transfer of property that the husband made with intent to injure his wife. Judges could grant female plaintiffs and defendants temporary alimony until a final divorce decree was issued. However, a final divorce terminated a man’s obligation to provide for and support his now former spouse. Examples of all of these procedures appear with significant regularity among county divorce records, suggesting an active exercise of property rights among divorcing women.\footnote{32}

With the exception of the annulment clause—based on impotency at the time of marriage—all dissolution of marriage in Texas fell under the rubric of \textit{a vinculo matrimonii}, which \textit{Black’s Law Dictionary} defines as “(divorce) from the chains of marriage.” \textit{Blackstone’s Commentaries}, a source often consulted during the early nineteenth century as the authority on English law, states that such a divorce is total, with ties completely severed \textit{ab initio}, that is, from the beginning. It could only be granted for “canonical causes of impediment existing \textit{before} the marriage.” Therefore, according to Blackstone, a total divorce amounted to an annulment and rendered all children of the union bastards.\footnote{33}

Divorce \textit{a mesa et thoro}, a legal separation or “bed and board divorce,” provided an alternative to those living under the common law. Divorce \textit{a mesa et thoro} entitled the

\footnote{32}{\textit{An Act To adopt the Common Law of England,—to repeal certain Mexican Laws, and to regulate the Marital Rights of parties,” Gammel, \textit{Laws of Texas} II, 177. Texas adopted the English common law in most instances, but in regard to the property rights of married women, it retained a version of community property.}

wife to financial support from her husband for the "necessaries" of life, provided that she remained free of adulterous behavior. The wife still lived under the official lordship of her husband in legal matters, such as suing and being sued. Blackstone reasoned that such stern restrictions on dissolving marriage resulted from the truth that if the decision depended on the "power of either of the parties, [divorces] would probably be extremely frequent,"—a telling commentary on the state of English domestic relationships.34

Americans from the earliest days of colonization had shown greater leniency in resolving marriage disputes than did Europeans. By the time George Tucker edited *Blackstone's Commentaries* and published them in 1803 for consultation by American lawyers and justices, American statutes already varied widely and stood on the brink of an evolution toward more liberal laws. Divorce *a vinculo matrimonii* no longer equaled annulment but instead acknowledged the existence of the past relationship and the legitimacy of children. Pennsylvania serves as an example of the liberal trend. After 1785 both types of divorce could be granted for bigamy, desertion for four years, adultery, or prior knowledge of sexual incapacity. A wife could win a "bed and board" divorce for cruelty or if her husband forced her out of their home; after 1815 she could get a total divorce for cruel treatment. By the 1830s several states began to loosen their laws considerably. Florida in 1835 and Arkansas in 1837 extended their statutes to include total divorce, using all the same grounds as those used for divorce *a mesa et thoro*.35

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34 *Blackstone's Commentaries*, ibid.
Total divorce had several advantages for recipients over a “bed and board” arrangement. Full divorce allowed a woman to regain her legal status of *feme sole*. When she married she forfeited this more independent status and entered into coverture, wherein her husband became the *covert baron* or lord over her person. As a *feme covert* she possessed very few legal rights. Since coverture was based on the theory that marriage united the individuals into one person, a wife’s legal identity became enmeshed with and overshadowed by that of her husband. If she received only a “bed and board” divorce, she remained legally married and therefore the legal and financial dependent of her husband.

With a total divorce a woman regained her right to sue and be sued, which allowed her greater freedom in the marketplace. Provided she was the innocent party, she also won the potential for improving her situation through remarriage. In receiving a divorce *a vinculo matrimonii*, a woman earned the freedom to make life choices, but she also risked financial peril. She received no alimony and became responsible for her own debts. Women lucky enough to live where both types of divorces were available faced a difficult choice between regular financial support and legal autonomy.\(^{36}\)

When in 1840 Texas replaced Mexican law with English common law, marriage and property laws were exceptions and included aspects of both legal systems. Civil law had provided no model for divorce legislation, leaving only the English system as an example. Texas legislators chose certain elements of common law divorce, mingled them

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with civil law notions about women’s legal status and property, and in the end formulated a system unique to the state. Texas legislators opted to allow only total divorces. A Texas divorce completely severed the bond of matrimony and gave both parties—regardless of guilt—the right to remarry. All children remained legitimate, with judges taking the final responsibility for deciding custody arrangements. Divorced women regained their legal status of \textit{feme sole} and took full control of their property. Divorcing women might receive alimony while going through the legal process, but spousal support ended when the divorce was finalized.\footnote{37 “An Act To Adopt the Common Law of England,” Gammel, comp., \textit{Laws of Texas}, II, 177.}

The fact that property division holds great potential for influencing divorce decisions and affecting the lives of former spouses necessitates a brief discussion of Texas marital-property law. Divorce and property laws incorporated some aspects of English common law but relied heavily on civil law to give women a relatively high level of autonomy. Texas women never suffered the full extent of restrictions inherent in the common-law theory of coverture.\footnote{38 J. E. Ericson and Mary P. Winston, “Civil Law and Common Law in Early Texas,” \textit{East Texas Historical Journal} 2 (1964): 26–31; “An Act to Adopt the English Common Law,” Gammel, comp., \textit{Laws of Texas}, II, 177.} In 1848 the Texas Supreme Court upheld a wife’s right to sue on her own behalf, stating that \textit{“[w]here the wife deems it necessary to demand the protection of the courts adversely to her husband, or for the preservation of her property, she has always been regarded as having the right under our laws to appear in person and prosecute or defend, as if she were an unmarried woman and laboring under no disability from her coverture.”}\footnote{39 \textit{Wright v. Wright} 3 Texas 168–89 (quotation on 188).} Again in 1855 the court clarified the status of
married women in matters of property, ruling that “in this State the wife, with respect to
property, is not one with the husband. She has like capacity with him to acquire, receive,
and hold property. . . . The wife can hold fully and perfectly in her own right, without the
intervention of any one.”\textsuperscript{40}

Under the Texas system, based in civil law community-property concepts, a
spouse’s separate property consisted of lands, slaves, or any “paraphernalia as defined at
Common Law,” including the increase of slaves, land, inheritances, or gifts received
during the marriage. All other property brought into the marriage or acquired thereafter
became community property. In formulating the Constitution of 1845, convention
delegates voted by a three-to-one margin to include a full community-property law. That
is, a wife’s separate property included all real and personal property that she brought into
the marriage and acquired afterwards by gift or descent—not just land and slaves. Upon
the death of one spouse, the remaining spouse as a sole survivor inherited all property
after debts. In the event of children, the spouse inherited one half. The other half was
divided among the children. This practice contrasts to common law under which widows
received only one third as a life estate, which could not be sold or passed on as an
inheritance. Texas law recognized women as full partners in marriage, entitled to equal
profits from the partnership.\textsuperscript{41}

During the marriage, the husband retained full managerial control of all the
property, which in effect stripped the wife of any fiscal autonomy during the marriage.

\textsuperscript{40} Fitts v. Fitts 14 Texas 222–27 (quotation on p. 227).
\textsuperscript{41} Warbasse, The Changing Legal Rights of Married Women, 160–62; Paulsen, “Community Property and
the Early American Women’ Rights Movement,” 649.
However, a couple might enter into a premarital agreement restricting the use or disposition of the property. Also, if a wife believed that her husband mismanaged her separate estate or deprived her or her children of the benefits thereof, she could, although still married, sue for redress.42

An 1846 statute further insured that husbands properly administered their wives’ estates. Provided that a woman registered her property, her estate could not be used to pay her husband’s debts. Some have argued that such safeguards for married women’s property rights were solely for the purpose of protecting husbands from creditors by allowing them to hide assets in their wives’ estates “without elevating womens’ power within the home.” While there is some validity to this argument, it denies any genuine concern for the protection of women and requires one to dismiss the explicit words of the framers of Texas law.43

A Washington County delegate to the 1845 constitutional convention, John Hemphill, served as chairman of the judiciary committee that formulated the section on women’s property in 1846. Hemphill championed community property as a means to protect women. Calling for limits on a husband’s managerial powers, he declared, “The husband should not have such absolute control as to enable him to seriously injure or destroy the estate of the wife by wasteful expenditure or mismanagement.” He argued that the community-property system of inheritance benefited women far more than

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43 “To Provide for the registration of separate Property of Married Women,” Gammel, comp., Laws of Texas, II, 153. See also “An Act supplementary to an act to provide for the registry of deeds and other instruments of writing.” See Section 2, for an 1860 clarification on property registration. Gammel, comp., Laws of Texas, IV, 1437. Boswell, Her Act and Her Deed, 23; Lazarou, “Concealed Under Petticoats,” 8–9; Bardaglio, Reconstructing the Household, 134–35;
common law, which also allowed “tyrannical husbands in their last will—[to extend] their capricious despotism beyond the grave—limiting portions to their widows.”

The whole issue of awarding constitutional safeguards for women’s property stimulated considerable debate. Hemphill’s forward-thinking attitude could be found in some of his fellow delegates as well. James Davis said he was “extremely anxious to see a provision inserted in our Constitution” that would secure a woman’s separate property. Davis believed that he expressed the opinion of an enlightened age. “The days have passed away,” he exclaimed, “when women were beasts of burden and as intelligence increases they will be placed upon the high and elevated ground which rightfully belongs to them.” N. H. Darnell, Speaker for the Texas House of Representatives, lacked faith in his fellow legislators to exercise justice toward women. Why put such an important issue in the hands of future legislators who might “disregard the rights and privileges of the weaker sex . . . looking Shylock like, with an eye single to the little means they could put in their own pockets?” And Abner Lipscomb championed the cause of the unfortunate wife whose fortune had been squandered by the “drunkard husband rolling in the gutter, or reeling through the streets.”

The arguments of Darnell, Davis, and Hemphill won favor over the conservative arguments of James Love, who feared the woman who “lord[ed] it over the man” and in a “spirit of perverseness” refused to obey her husband; and of George Wright, who supported a copartnership theory of marriage in which each partner’s assets were subject

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44 William F. Weeks, reporter, Debates of the Texas Convention (Houston: J. W. Cruger, 1846), 596.
45 Weeks, reporter, Debates of the Texas Convention, 600, 601.
to debt payment. Convention president Thomas J. Rusk recognized that some property protections for women should be included, but he disliked what he perceived as extremism on both sides of the argument. Rusk hoped to strike a compromise between the ineffective common law and the radical civil law.46

In the end, those concerned about the welfare of women prevailed, and Texas secured constitutional protection for married women’s property. Incorporating community property and separate protections into the constitution worked to the advantage of Texas women seeking autonomy either through divorce or within marriage. The ability to sue for proper management of separate property gave some women the potential of achieving a limited measure of autonomy while still married. With this power, a woman could safeguard herself from poverty or reserve an inheritance for her children despite her husband’s fraudulent or irresponsible fiscal behavior. Additionally, her claim to community property gave her bargaining power against her husband. Should a woman sue for divorce, her husband stood to lose half the community property as well as control of his wife’s personal wealth. An informed woman might use this knowledge to effect behavioral changes in her husband, thereby using her public rights to exercise control within the privacy of her home. In this way, public rights bolstered and elevated a wife’s status within the domestic sphere. Further, by actually securing a divorce with a sufficient property settlement, a woman stood a better chance of prospering on her own—

46 Weeks, reporter, Debates of the Texas Convention, 599, 423, 424, 600. The term “Shylock like” used by Darnell refers to “the ruthless usurer in Shakespeare’s play The Merchant of Venice.” Webster’s II New Riverside University Dictionary (1994), s. v. “shylock.”
a consideration that may have strengthened the resolve of some women to end unhappy marriages.

Politicians during the Republic era set standards for women’s rights or protections that have largely carried through to the present time. Inherent in constitutional property protections and in the 1841 divorce law lay the potential for Texas women to achieve a considerably higher degree of autonomy. During the Republic period and antebellum statehood, the Texas Supreme Court reinforced, interpreted, expanded, and refined these legal precepts. Legal standards corresponded to basic, contemporary attitudes and beliefs about family life, gender roles, and the nature of marriage held by contemporary Texans. It is within these legal boundaries that Texas families operated, in which they navigated through social and economic realities, and in which they severed marital ties. And it is within these limits that we must evaluate their experiences with divorce.
Chapter Two
Conflict and Pragmatism: Marriage and Divorce on the Texas Frontier

Anglo-Americans began to settle in the Mexican territory of Texas beginning in the 1820s, and their immigration continued with increased vigor after Texas gained its independence from Mexico in 1836. The majority of settlers came from the southern United States, bringing with them the cultural, religious, and political practices of that region. As Randolph B. Campbell has argued, they “began making Texas southern” by “creat[ing] a predominantly agricultural, slaveholding economy and society.” Most migrants went to Texas in search of new land and new opportunities, some sought to escape debts, and a few ran from the consequences of legal or moral infractions. But for the most part they came to make new homes, with hopes of transplanting a familiar way of life onto new soil. Aside from slavery and cotton production, immigrants transported their particular brand of social and family structures rooted in strong kinship connections, a clear sense of racial superiority, democratic ideals, and deeply internalized notions of gender and family roles. At the core of their social paradigm lay the belief in marriage as the most basic and fundamental relationship in American society, the very cornerstone of legal and social identity.

Yet the ways in which marriage played out on the Texas frontier would take on different dynamics from what most immigrants experienced in their previous homes. Their long-held concepts of marriage, deeply entrenched in cultural traditions and religious beliefs, were soon challenged by the unique situations inherent in taming a new
frontier and living under foreign laws and religious dictates. Immigration to Texas entailed not only the arduous tasks of building new homes in a wilderness. It also required Americans to establish themselves as citizens of a foreign government with a very different set of legal codes governing property and family relationships, which, unlike those in the United States, clearly linked church and state. American immigrants found themselves in an emotional and legal tug-of-war between their long-existing identities as Protestant Americans and the Mexican government’s requirement of a conversion to Catholicism for participation in the full rights of citizenship, including legally recognized marriage and property inheritance. With the commonly accepted notion that stable marriage and clearly defined family inheritance and property issues were key to civilized society, early Texians struggled to bring their political and religious traditions into alignment with the rules for Mexican citizenship. In a territory that was geographically very distant from the seat of Mexican governance and religious oversight, Anglo immigrants improvised and clung to the cultural inheritance of their homeland and Protestant faiths. Similar to the later experiences of African American families in the immediate post–Civil War years—a topic explored in chapter 5 of this study—the complications of establishing new citizenship in new territory, of shaping legal restrictions to meet real-life needs, and of struggling to provide economic stability for one’s household took its toll on frontier family life and influenced both legal and popular thought about marriage and divorce.

The ideal of the companionate marriage between two compatible individuals was prevalent among southerners. Within this framework for family life, husbands and wives
were to form a team, joining efforts for the benefit of the family unit. They were to exhibit affection and kindness toward one another sufficient to affect a mutually satisfying relationship and harmonious family life. Husbands exercised legal and social authority as heads of households, with wives, children, and slaves as dependants under their charge. Ideally, this authority was tempered by a paternalistic and loving disposition that inclined men to provide for and protect dependants. As this study will show, the absence of that benevolent attitude and specific violations of these expectations led wives to resist male authority and repudiate their own status as dependants.¹

The stricter separation of gender spheres that emerged in the northern and urban areas of the United States was less distinct in the South, however. The rural, agricultural nature of the antebellum South sustained an economic system of family productivity, wherein the efforts of all family members was necessary to a household’s economic stability. Spouses were to share in the rearing of children and the economic productivity of the household. Gender-specific chores or responsibilities generally divided the daily routines of husbands and wives, but these boundaries were soft and highly flexible. Whereas men generally were expected to bear the bulk of fieldwork or wage-earning labor, wives were in charge of meal preparation, clothing production and maintenance, dairy processing, tending kitchen gardens, and so forth. But circumstances often required spouses to take on tasks outside their special purviews, and practical considerations governed the daily interaction between family members. For instance, in regard to caring

for young children, daily tasks fell primarily to women, but interest in the well-being of
children often brought fathers into the nursery as well.²

In frontier situations, reciprocity within the marriage and willingness to contribute
wholeheartedly to farm and household tasks were all the more crucial, and the
expectation of mutual endeavor became a central component of the working definition of
marriage. Couples migrating to Texas had to procure land, build cabins, clear fields, and
plant crops. They had to quickly set about establishing some degree of subsistence in
regard to the production of food and clothing. Pioneering families not only faced the
various ordeal brought on by harsh weather conditions, the presence of dangerous
wildlife, and threats from hostile Indians; they also found themselves emotionally tried
by isolation from friends, relatives, and the familiar amenities of home communities.³

John Washington Lockhart, a physician from Washington County, recalled the
undeveloped state of Texas settlements in the 1830s and 1840s. The city of Houston was
the only “trade mart” besides Galveston when Lockhart’s family arrived in 1837 and was
very much a rough and tumble place. “[V]ery few houses had been erected, and those
mostly on a small scale. Some were doing business under tents. Barrooms were in
ascendancy [sic] . . . . It was very common to see men passing on the streets with from

² Peter W. Bardaglio, Reconstructing the Household: Families, Sex, and the Law in the Nineteenth-Century
South (Chapel Hill and London: University of North Carolina Press, 1995), 26–27; Elizabeth Fox-
Genovese, Within the Plantation Household: Black and White Women of the Old South (Chapel Hill and
Small Worlds: Yeoman Households, Gender Relations, and the Political Culture of the Antebellum South
Carolina Low Country (New York and Oxford: Oxford University Press, 1995), 72–85; Sally G. McMillen,
“Antebellum Southern Fathers and the Health Care of Children,” Journal of Southern History, 60 (August
1994), 513–32.
³ Boswell, Her Act and Her Deed, 15–16; Mark M. Carroll, Homesteads Ungovernable: Families, Sex,
two to four pistols belted around them, with the addition of a large [B]owie knife." Trade goods and supplies were precariously transported down crude avenues. "The streets were very muddy," Lockhart recalled, "and it was not an unusual thing then and long afterward to see ox wagons bogged down on the principal streets."

Rain and flooding often rendered the primitive roads that connected Houston to outlying settlements impassable. When Lockhart's father decided to settle in Old Washington, the trip from Houston—roughly eighty miles—was long and arduous. "If we traveled five miles a day we did well. Frequently we would camp in sight of our previous camp fire," he wrote. "After passing though much mud, water and other trials and trouble, we finally reached the town." Lockhart described the living conditions for Washington County pioneers as very meager, even for the wealthiest settlers. Most families lived in log cabins with puncheon or dirt floors. Furniture was made at home and cooking utensils were limited. Most had a frying pan or skillet, but "[a] pot for boiling a dinner was rarely to been seen." Despite the fact that there was much roaming cattle, "famil[ies] rarely ever enjoyed the delicacy of milk or butter." Few families could afford the twenty dollars in gold or silver required to purchase flour, which meant "there were a good many children in Texas who for several years never saw a biscuit." 

The frontier was to a large degree both a gender and class equalizer, as men and women, rich and poor, all faced similar challenges. If they were to survive, families had

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5 Wallis and Hill, ed. Sixty Years on the Brazos, 80 (first quotation), 81 (second quotation), and 91–92 (last quotation).
to develop a high degree of self-reliance. Self-sufficiency was a time- and energy-
consuming endeavor that demanded familial cooperation and individual tenacity.
Husbands tended livestock, hunted wild game, cleared fields, and planted and harvested
crops. They built houses, dug wells, constructed furniture, and defended families from
attacks from hostile Indians. The housewife’s duties were equally difficult and strenuous.
Preparing a meal over an open fire with few cooking utensils and a sparse pantry was a
major undertaking that had to be done at least once a day; laundry could be an all day
task; and children required constant attention. These were but the more mundane and
routine chores. Wives also helped process fresh meat, tended gardens, and when
necessary assisted in fieldwork or the care of livestock. To them fell the tasks of
spinning, weaving, sewing, and knitting, as well as soap and candle making. Shortages of
supplies and the absence of ordinary conveniences often required settlers to exercise
creativity in finding new methods and techniques to complete their various tasks. To a
rigorous daily routine were the added stresses of life-threatening situations—severe
illnesses and injury, childbirth, floods and drought, Indian raids, and war against Mexico.
Particularly when couples migrated without extended families or lived on remote farms
and ranches, the mutual endeavors of husbands and wives became all the more crucial.6

6 Boswell, *Her Act and Her Deed*, 15–16; Ann Patton Malone, *Women on the Texas Frontier: A Cross-
Cultural Perspective*. Southwestern Studies. (El Paso: Texas Western Press, 1983), chapter 2, especially
17–20; Carroll, *Homesteads Ungovernable*, 82–84; On the work of women in producing textiles, see Paula
Mitchell Marks, *Hands to the Spindle: Texas Women and Home Textile Production, 1822–1880* (College
Station, Texas: Texas A&M University Press, 1996); Julie Roy Jeffrey, *Frontier Women: “Civilizing” the
To be sure, the Texas frontier was initially a rugged place for families to establish new lives, and the demands were certain to tax family harmony and take their toll on even the strongest relationships. Under the conditions of new settlement, pioneering husbands and wives necessarily developed a pragmatic concept of marriage that stressed the value of joint labor and mutual endeavors. While emotional satisfaction and happiness were ideal, the frontier definition of a well-functioning marriage necessarily centered on the performance gender-specific labor as well as the willingness of each spouse to step beyond gender dictates to contribute in whatever ways were necessary. Such a concept of marriage—common among the yeoman class of southerners—set the limits of acceptable behavior within marriage and delineated the violations that would justify ending the relationship.\footnote{On the gender relations and labor divisions within southern yeoman households, see Stephanie McCurry, \textit{Masters of Small Worlds}, especially 72–91.} Divorce petitions from this period reflected the need that men and women had for one another’s active involvement in family productivity and recall the hardships caused when spouses failed in their respective obligations. Frontier divorce seekers largely limited their official complaints to matters of gross violations of the marriage contract—of refusals to meet assumed obligations—that were significant enough to interfere with the basic needs or welfare of the family. Divorce was an extreme solution reserved for extreme situations, and emotional fulfillment found little space in official complaints. Texas courts supported the common precepts of marriage by upholding the right of a man and a woman to end their
marriage when they deemed it no longer viable, thereby promoting social stability through the recognition of an individual’s right of choice in his or her private life.

For emigrants with pre-existing marital tensions, the circumstances of migration and the rigors of the settlement process only exacerbated family problems. In 1841 Mary Tuttle’s divorce petition reported that when she “lived with [her husband] in the United States and afterwards while they lived together in Texas [he] was guilty of excesses and cruel treatment towards” her. Daniel Tuttle brought his family to Texas in 1835, and by 1839 he had abandoned his wife of nineteen years and their children. Mary was reduced to supporting her children by her own labor during his absence. She further asserted that a pattern of both physical and verbal abuse had accompanied Daniel’s long-time habit of neglect. Over the years he had frequently stayed away from the family farm for extended periods under the false pretense of doing business elsewhere. His real motive, she claimed, was to avoid work and leave all of the manual labor to her. He had never “acted the part of a husband,” and in 1839 he sold all of their valuable property (except the land) and thereby “destroyed all means that she had to support” the family. He then abandoned her permanently, and Mary claimed to have had not so much as a letter from him in three years.⁸

Likewise Mary Mayes followed her husband to Texas in 1837. Mayes left no commentary on whether she eagerly embraced the prospect of pioneer life. But, clearly, she would have resisted the migration had she known that within two years her husband would desert her and leave her to fend for herself in a foreign land. The plight of

⁸ Mary Tuttle v Daniel Tuttle, HCCCP, Case no. 18 (1841).
Mary Tuttle and Mary Mayes as abandoned wives is the common story of divorcing women on the Texas frontier. Prior to 1850, fifteen women and seven men filed for divorce in Harrison and Washington Counties—twice as many women as men. Records for twelve of the fifteen female petitioners give clear reasons for their suits; of those, eleven—or 92 percent—cited abandonment as the principal cause.⁹

Abandonment was the most basic violation of the marriage contract. At the heart of marriage vows was the assumption of cohabitation—that a couple would live with one another and band together as a mutually supportive, productive unit. Husband and wife were expected to join forces for the betterment of the family and to sustain one another through difficult times—for better or worse. This component of mutual cooperation was all the more significant for pioneering couples whose lives were challenged by basic struggles for survival, living on widely dispersed farms, with roads either nonexistent or barely useable, and having only themselves and the immediate household on which to rely. Ideally, husbands and wives offered one another emotional comfort and security that bolstered one another’s resolve against the psychological enemies of relative isolation and deprivation. Together husbands and wives could confront the many dangers and obstacles inherent in settling a new land, but abandoned wives left on their own often found themselves in dire circumstances. Their plight was even more depressed when they were left with young children. A husband who removed himself from the role of provider and protector left his family in a severely weakened and vulnerable position and violated

⁹ Mary Mayes v. Anderson Mayes, HCCC P, Case no. 193 (1843); Boswell, Her Act and Her Deed, 12–13.
the fundamental precepts of humanity. In some cases desertion was tantamount to manslaughter.\textsuperscript{10}

Harriet Page’s story provides a vivid picture of just such a scenario and illustrates how desperate the situation might be for a wife deserted on the colonial frontier. Before migrating to Texas, Page had set up a successful sewing shop in New Orleans. She had done so out of necessity, her gambler husband contributing little to the family finances. “I had learned the sad lesson,” she recalled, “that I could neither look to him for support nor consider him in my plans to make a living.” When Solomon Page suddenly announced his plans to take the family to Texas, she complied. Harriet reasoned that removal from city life might cure Solomon’s gambling addiction, and she was eager to be reunited with her father and brother, who had earlier migrated to Texas. With assurances that she could reestablish her business in the town of Brazoria and could even secure land of her own, and with ardent promises from Solomon that he would go to work, Harriet consented to the move. She packed up her children, the nice furniture and clothes that she had proudly acquired with her earnings, and ample provisions for the relocation and “with a hopeful heart set out for Texas.”\textsuperscript{11}

Once in Brazoria, Solomon’s continuing habits of neglect became evident to Harriet’s family. Within a couple of days, he had lost most of her supplies in a card game.

\textsuperscript{10} Boswell, \textit{Her Act and Her Deed}, 15–17; Wallis and Hill, ed., \textit{Sixty Years on the Brazos}.
Harriet’s father and brother were outraged. They encouraged her to separate from her husband and remain under her father’s care. “I have often regretted that I did not do it then,” she wrote. Harriet’s father went so far as to offer her 320 acres of land and twenty head of cattle, if she would leave her husband. But the adamant objections of her stepmother to the land offer prompted Harriet to turn down her father’s invitation. Instead Harriet rationalized Solomon’s behavior, accepted his excuses, and reasoned that in their new, more remote location he would have no more opportunities to gamble.¹²

The family located to a one-room cabin on Austin Bayou, twenty miles from the nearest neighbor. True to his character, Solomon failed to secure the proper necessities for a prolonged stay. Soon after settling in, Solomon left the family alone, ostensibly for the purpose of setting up a work-rent arrangement with the landowner and to purchase supplies. Solomon promised to be back in three days, and left his wife and children with no transportation and only a quart of black-eyed peas to sustain them. Days passed, and he did not returned. “At last the peas were all gone. I searched the Prairie with anxious eye, but I strained them in vain.”¹³

Fear of the ever-present wolves and panthers made Harriet keep the children near the house and prevented her from letting them gather wild berries from nearby parsley-haw bushes. “Oh, the terrible inaction when my little ones fretted with hunger . . . .” Eventually, Harriet overcame her fears and gathered some berries to feed the children.

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¹² Ames Memoir, 5–8 (quotations on p. 5).
¹³ Ames Memoir, 5–8 (quotations on p. 7).
Each night she listened anxiously as the “wolves howled hungrily about our home,” and by day she watched the horizon for a sign of her husband.\textsuperscript{14}

At the end of the sixth day—the whole time having had nothing but a quart of peas and a handful of berries to share between three people—Harriet saw Solomon riding toward the house. “He had brought not one thing to eat.” Solomon returned with no food, no money, and no work arrangement. He explained that he had gotten caught up in the revolutionary zeal and was off to fight the Mexicans. Not wanting to be called a coward, he chose to spend the money Harriet had given him for food to buy “some clothes to go to war in.” With no concern for his family, he permanently deserted them without a supply of food, weapons for self-protection, or tools for hunting or fishing. “You’ll have to do the best you can,” he told her before he rode away. Stranded with no horse or other conveyance, Harriet was unable even to move her children to a safer place. She kept them alive on the wild berries.\textsuperscript{15}

Harriet Page and her children survived the ordeal with the help of the landowner, who had been prompted by bad dreams to ride the twenty miles to check on his tenants. After two weeks alone and near starvation, Harriet rejoiced to see her savior. “I felt that my little ones and I had a protector.” Harriet then returned to the city of Brazoria, where she reunited with family and learned some basic farming skills from a sister-in-law. But it was not long—in the spring of 1836—before she found herself caught up in the turmoil of the Texas Revolution and joined the frenzied eastward flight of settlers to escape the

\textsuperscript{14} Ames Memoir, 5–8 (quotations on p. 8).
\textsuperscript{15} Ames Memoir, 5–8 (quotations on p. 8).
approaching Mexican army. In that chaos she was befriended and courted by Robert Potter, the Texas Secretary of the Navy. Unable to find lodging on Galveston Island for Harriet and several other women, Potter secured accommodations for them aboard a ship, where they stayed until after the Battle of San Jacinto. While on board, Harriet’s young daughter died, further embittering her against Solomon for having put her in such horrific circumstances. Solomon discovered her whereabouts and boarded the ship to convince her to take him back. “No, never, never would I trust myself or [my children] to his mercy again.”

Later that year Page married Potter without first securing an official divorce—a decision that would haunt her in years to come. Potter convinced Page that she was legally eligible to marry because her first marriage was illegal in Texas—it having not been solemnized by a Roman Catholic priest as required by Mexican law. While Potter’s reasoning had legal merit while Texas remained a state of Mexico, the Republic of Texas instituted no such requirement. Potter’s argument came just as Texas won its independence and established laws reflecting the cultural and legal traditions of the United States. Moreover, the Anglo-American community certainly would have recognized the social and religious sanctity of the Page marriage. Nonetheless, Page’s need for a husband transcended all other concerns, and she accepted Potter’s faulty reasoning and consented to marry him.

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16 Ames Memoir, 10 (first quotation), 13–17 (second quotation on p. 17).
The Page-Potter marriage ceremony was a small informal affair, but, according to Harriet it was “binding [because both] judge and clergy were present.” Its legality was highly questionable, however, relying as it did on reasoning that was only applicable to an outgoing Mexican law. Legality was an issue for many in early Texas. Under Mexican rule, the socially accepted practice of marriage by bond was the only form of marriage available for many couples. Out of necessity, the Old Three Hundred settlement under Stephen F. Austin's authority began this quasi-legal system in an attempt to secure a convenient means of marriage for settlers whose geographic isolation inhibited their compliance with the Mexican dictate that all marriages be officially sanctioned by the Catholic Church. With only infrequent visits from priests, settlers in Texas had but rare access to religious ceremony. American colonists turned to their knowledge of English common law (used throughout the United States) wherein marriage by contract was recognized as a so-called common law marriage to develop a pragmatic system of contractual marriage that they hoped would satisfy the Mexican legal requirements. The resultant practice of marriage by bond represented a compromise between the strict legal and religious requirements of Mexican law and the real needs of the isolated frontier community to establish stable households, a negotiation between Anglo culture and Mexican law, between state-sanctioned religious proscriptions of the Catholic Church and the internalized moral precepts of the Protestant colonists.\footnote{Ames Memoir, 20.} \footnote{Bennett Smith, \textit{Marriage by Bond in Colonial Texas} (Fort Worth, Texas: Printed by Branch-Smith, Inc., for the author, 1972), 5; On the practice of informal marriages in the South, see Nancy F. Cott, \textit{Public Vows: A History of Marriage and the Nation} (Cambridge, Massachusetts, and London: Harvard University Press, 2000), 38–40.}
The logistics of obtaining a bond marriage were simple and practical. In the absence of a priest, a couple signed a written contract avowing their intention to live as husband and wife and to have their marriage legally sanctioned by a religious official upon the next opportunity. Contracts were usually signed in the presence of a government official—the alcalde or comissario—and carried high monetary penalties should one of the parties refuse to later have the marriage solemnized by the church. Fines were sometimes set as high as $20,000. With each person risking a large monetary penalty should he or she fail to follow through with the agreement, couples entered into these arrangements with due solemnity and commitment. Even though bond marriages were technically outside the legal purview of the Mexican government, individual spouses and their communities considered their marriage contracts morally and legally binding. Most couples honored their vows and remained together for life.

Anglo settlers, most of whom were Protestants, considered their contractual marriages sufficient in the eyes of society and of God, and they took umbrage at the Mexican government’s refusal to do likewise. Moreover, by the time a priest made his way to a community, many bonded couples had been married for years and had children together, making the need for Catholic nuptials seem absurd. Henry Smith, who served as comissario of the precinct of Victoria, observed that the act wherein couples long-married went once again before the “marriage alter . . . seemed to carry with it an acknowledgment of both, error and crime.” Smith recounted the arrival of an Irish priest in Texas who had been sent from Mexico City to offer the rites of the Catholic Church. Smith stated that settlers received the priest “as a kind of necessary evil” who made a
nice little profit by charging two dollars per baptism and twenty-five dollars for each marriage ceremony.\textsuperscript{20}

Upon his arrival, the priest immediately gave notice that all persons bonded in marriage were to come before him to have their marriages solemnized, and if necessary to be baptized first. It was agreed that instead of so many individual marriage ceremonies, all would assemble for “one grand wedding,” allowing the priest “an opportunity to conduct a whole sale business.” A general holiday was planned around the event, complete with a barbeque reception and the “necessary exhilarating libations.” Smith complained that he had great difficulty in organizing the crowd into the processional parade and pairing husbands with their wives. Caught up in the “rural felicity” of the day, spouses separated from one another in favor of socialization with neighbors. And, as Smith pointed out, older brides and grooms who were well used to marriage lacked any keen interest in rushing to the altar for this perfunctory ceremony. Eventually Smith managed to pair the brides and grooms appropriately for the parade—that is, all except one woman whose husband had apparently passed out from an over indulgence in the libations and was nowhere to be found. The wife joined the procession alone, hoping that her husband would arrive in time to legalize their marriage. Smith comforted her with the tongue-in-cheek admonition that if her delinquent husband did not show up, “she should certainly have another.” The husband did finally arrived—rushing in just as the ceremony concluded, disheveled, wild eyed, and frantically confused, having been roused from his

\textsuperscript{20} “Reminiscences of Henry Smith,” \textit{Texas Historical Association Quarterly} 14 (July 1910), 34–37 (quotations on p. 34).
stupor with the warning that if he did not hurry “the Priest would take his wife from him.” 21

The parade “marched in a single column and formed a hollow square around the Priests table.” Upon conducting whatever baptisms were necessary among the couples, he then offered a brief liturgical pronouncement to the group in general. Smith recalled that most of the couples were usually accompanied by their children (sometime as many as six), and some of the brides were nursing infants or were pregnant. He recalled that the “scene [was] . . . ludicrous in the extreme,” and it seemed to him “more like a burlesque on marriage rather a marriage in fact.” 22

As silly as this ceremony might have seemed, the couples benefited from an official government sanctioning of their relationships. Not all Texas couples were as fortunate, and many bond marriages never received any formal recognition. As a whole, early Texans were eager for stable communities, complete with all the accoutrements of civilized society. Secure marriage, as the most fundamental component of family and community structure, was central to that goal. Settlers were highly cognizant of the problems that existed when the stability of legal marriage was denied because of the combination of an inflexible Mexican legal code and distance from and neglect by church and state authorities. Concern over unofficial marital status caused anxiety for Texans concerned with securing the legitimacy of offspring, insuring protections for the inheritance and property laws, and validating the morality of their personal relationships.


22 Ibid.
Bond marriage provided a temporary solution in response to the special circumstances of the frontier, but it was never intended as a permanent institutional component. The extralegal nature of contractual marriages put individuals at significant legal risk and opened the door for abuse by immoral or unscrupulous individuals. John Linn recalled a humorous tale about the all-too-serious seduction of a young woman by a pretended gospel minister. The couple, "hymeneally inclined," went to the community of San Felipe to be married. They rented rooms in a boarding house where James Bowie, the flamboyant Texas frontiersman and soon-to-be a hero of the Alamo, was also staying. Bowie recognized the groom as a "bogus preacher" and "scamp" who had abandoned his wife and children and been forced to flee his home in Arkansas after "making too free with his neighbor's stables." Most likely, the scheming bridegroom in this instance was familiar with the ease with which contracted marriages sometimes ended. Rather than allow the horse thief and wife deserter to go through with the fraudulent marriage, Bowie devised a rather convoluted scheme to induce a confession from the man within the hearing of the bride-to-be.\(^{23}\)

Bowie told the groom that a visiting priest had unexpectedly arrived in town, a great blessing, of course, because then the marriage would be completely legal from the onset. Unfortunately, he reported, the priest could speak no English, and Bowie would have to act as interpreter. A man by the name of Jim Powell posed as a priest and conducted an interview with the groom in Spanish while the women of the house listened from behind a wall partition. Bowie’s supposed translations of the priest’s questions were

\(^{23}\) Linn, Reminiscences, 302–04, (quotations on 303).
filled with enough specific, personal information about the scoundrel’s past to lead him to believe that the priest was a true “searcher of the hearts of men” and in possession of knowledge directly from the Divine. “His wife and children were inquired of by name, as was his equine ‘crookedness.’ The poor fellow groaned in agony of spirit.” and spewed forth a confession. Upon hearing his admitted sins, the landlady ordered him to leave the house immediately, and the young woman was saved from the ruination of a fraudulent marriage. A tar-and-feathering committee soon formed, and the “lecherous old villain” fled the community, never to be heard from again.24

Linn’s recollection is more than an entertaining anecdote about Bowie’s mischievous methods; and, it is more than a “damsel in distress” folktale lauding southern chivalry. It illustrates the importance that contemporary Texans placed on honoring marriage, even in the absence of an efficiently functioning legal system. Not only did the unnamed culprit in this story attempt to lure an unsuspecting woman into a bigamous marriage; he had already wronged one wife and several young children. By deserting his first family and by seeking to ruin yet another woman’s life, the would-be bigamist demonstrated a lack of moral fortitude and human compassion. Moreover, his actions undermined the most basic institution of society. The attempted bigamy and fraud in the tale highlighted the fragility of the bond-marriage system as perceived by early settlers and undermined the respectability of those who engaged in that process. By trying to subvert Mexican law and abusing the practice of marriage by bond, the villain embodied the lawlessness and social chaos that immigrants tried to avoid and denigrated

24 Linn, Reminiscences, 303.
the morality and solemnity that Texans wished to associate with the process of contractual marriage.

Fears that bond marriages invited such abuse were not uncommon or unfounded. Henry Smith believed that the system of bond marriage was a sensible and practical solution to problems facing colonists but recognized that bond marriages were not legally sanctioned by Mexican law. Without legal standing, it was very simple for couples to engage in de facto divorce. According to Smith, “[m]any couples . . . not finding the marriage state to possess all the alluring charms which they had figured in their fond imagination have taken advantage of this slip-[k]not plan—sought the bond, and by mutual consent committed it to the flames—returned to the world as young as ever and free as the air.” Unfortunately, there is no way to determine the number of couples who dissolved their marriage contracts in this way, but certainly there were enough instances to cause concern.25

Most couples demonstrated a strong inclination to uphold bond marriages as legal and binding. Sarah Grogan, for example, attempted to comply with the terms of her contract, opting to annul her first marriage through a second written agreement.26 Grogan and Frederick Roe had signed a marriage bond in September 1832, with the penal sum of

25 Smith, Marriage by Bond, quoted on p. 38; Nichols v. Stewart 15 Texas Reports (1855), 226–34.
26 Smith, Marriage by Bond. Sarah Grogan’s marriage and annulment contracts are transcribed on pp. 33–35.
$10,000 included in the contract. A year and a half later, they annulled the first contract in an agreement that reads:

    We the undersigned being the persons interested in the within Bond do for certain reasons which prevent our being able to live agreeable together we mutually agree and desire the said Bond to be for ever null and void and of no effect in Testamony whereof we subscribe our names in the Town of Gonzalez 14th May 1834.”

Sarah signed another bond two weeks later, committing herself to a new marriage with William Sowell—again with a penal sum of $10,000 for refusal to have the union solemnized. Although Sarah had moved into the home of William’s father before the second marriage bond was signed and had already given birth to William’s child, a daughter named Rachel, by the time of the wedding ceremony, the release from her marriage to Roe involved no suit for adultery, no appeal to the church, and no intervention on the part of the state; it was simply a private matter conducted between interested parties.27

Bond marriages were literally—in the strictest terms—contracts of mutual consent, entered equally by both husband and wife. These unions existed in a sort of legal limbo—hovering somewhere between legal marriage and fornication. Since they were not sanctioned by Mexican law, no legal dictates demanded judicial or legislative approval for dissolving the contract. The entire process of marriage and divorce for Grogan and Roe took place outside the purview of marital law and only within the artificially legal context of the bond-marriage system. Nevertheless, both partners honored the contract by signing the agreement of dissolution. And Sarah, via her new

husband, paid Grogan the penalty fee, further demonstrating the perceived binding power of the contract by all parties. By taking these steps, Grogan, Roe, and William Sowell each endorsed the Grogan-Roe bond marriage as legitimate and deserving of an official end and gave recognition to the contractual nature of marriage and the expectation for reciprocity between the parties.

Thus, it was not legal standing that upheld bond marriages but rather respect for contract and for the institution of consensual marriage itself on the part of Texas colonists that empowered the process and gave meaning to the relationships between spouses. Widespread adherence to and acceptance of the frontier practice of contractual marriage were crucial to its successful implementation and also allowed for subsequent legal consideration by both the republic and state governments of Texas. As Anglo settlers improvised this system, they negotiated a middle-ground between Mexican citizenship and American culture and lay foundations for future legal and popular adherence to contractual, consensual marital choice and dissolution.

As the Grogan/Roe case illustrates, the popular understanding of marriage strongly linked mutual consent to both the taking of marriage vows and the right of individuals to dissolve the relationship. The legal concept of mutual consent as a ground for divorce was rendered defunct by the Republic of Texas in the divorce law of 1841, which established an adversarial process. Mutual consent—the generic plea of irreconcilable differences—was not officially introduced into Texas law until 1920. However, the practices established during the colonial stage of Texas settlement may account for the many uncontested divorces in the later decades as well as for the high rate
of success among divorce seekers, with juries and judges freely granting divorces to those who requested them, as this and subsequent chapters will show.

But such coming and going of marriage partners was the exception rather than the rule, and it would be a gross exaggeration to assert, as has historian Mark M. Carroll, that “capricious mating habits among immigrants” were widespread or that “legislators and jurists . . . could hardly afford to insist on strict adherence to traditional marriage and divorce procedure or conventional sexual decorum.” Rather, the vast majority of immigrants made their way to Texas to take advantage of cheap land so that they might establish new lives for themselves within traditional family and community contexts. Carroll argues that the land policies of the colonial and post-independence eras—by offering larger amounts of land to families than to single men—inadvertently “encouraged men poorly equipped for responsible home life to immigrate impulsively with their families or to immigrate and then marry with equal rashness.” He further argues that in the absence of a strong presence of organized religion, “male unruliness and the capricious mating habits of men and women endured.”

While there is perhaps some validity to the argument that frontier life was more permissive of irregular behavior, given the ineffectiveness of the Mexican legal system in Texas and given that physical distance from religious and government authority might require unusual or exceptional measures, there is no evidence to suggest that migrants simply left all social and cultural mores behind in their home states. It is unreasonable to assume that all morality and sense

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28 Carroll, *Homesteads Ungovernable*, 109, 112 (second quotation), 94 (third quotation), and 95 (last quotation).
of propriety was simply cast aside when individuals—men in particular, Carroll argues—stepped beyond the radar of policing institutions.  

While acknowledging that there were a number of young, single men who migrated “for the adventure of wild frontier life,” Gregg Cantrell, in his biography of Stephen F. Austin, shows that “most immigrants were family people, and their motivations were rarely frivolous or criminal.” As Cantrell points out, the Mexican government required proof of good character for all immigrants. As empresario, Austin enforced that dictate by “demanding written testimonials from local authorities from the immigrant’s place of origin” and “summarily expelling newcomers” whose behavior showed them to be of low moral character. Marital fidelity and family stability certainly fell within the contemporary consideration of morality and good citizenship.

29 Carroll, Homesteads Ungovernable, 65 See Joan E. Cashin, A Family Adventure: Men and Women on the Southern Frontier (Baltimore and London: Johns Hopkins University Press, 1991). In conjunction with Joan Cashin’s thesis, Carroll argues that men migrating to Texas were “seekers of the new masculinity.” In Carroll’s assessment, “the majority of men migrating to the southwestern frontier beginning in the 1830s brought with them a new set of social values that was unlikely to improve family cohesion. . . . What ‘real’ southern men wanted . . . was to live a defiantly unconstrained life free from the interference of traditional extended families . . . [and] fulfillment of personal goals at the expense of his obligations to his family.” (p. 8). The loose use of majority is questionable, but moreover, this argument assumes that men mostly migrated alone and that family connections were minimal. This is simply not the case. Families were the linchpin of southern society as attested to by the vast amount of southern literature on the southern family and its patriarchal/paternalistic component. Carolyn Earle Billingsley recently has shown that kinship was the undergirding factor influencing migration and settlement patterns for southerners, including those who made their way to Texas. Billingsley uses an expansive data collection to prove that families often migrated in groups or followed kinfolk to new locations, reestablished neighborhood and church communities in their new locales, and even based political affiliation on such relationships. Carolyn Earle Billingsley, Communities of Kinship: Antebellum Families on the Cotton Frontier (Athens, Ga., and London: University of Georgia Press, 2004). And, as this study shows, it was not just men who violated marriage vows, and women also engaged in questionable activity.

30 Gregg Cantrell, Stephen F. Austin: Empresario of Texas (New Haven and London: Yale University Press, 1999), 176, 177; Campbell, Gone To Texas, 110. There are few studies of kinship and family dealing specifically with early Texas. Billingsley, Communities of Kinship and Boswell, Her Act and Her Deed both successfully tie Texas immigrants to the larger context of southern gender and family studies.
Studies of southern community repeatedly reinforce the importance of kinship and neighborhood and a strong sense of responsibility among men as heads of households. To be sure, early settlers sometimes migrated as individuals or in nuclear family units, but, as revealed in Carolyn Earle Billingsley’s research, extended families often later followed early settlers, and neighborhood acquaintances or church affiliates sometimes relocated together as well. Kinship and community influenced every aspect of one’s life to some degree, even for individuals geographically removed from families and institutions.\textsuperscript{31} And it would be inaccurate to deny the existence of an internalized sense of personal accountability instilled by custom and religion. For the most part, settlers were in the business of transplanting old ways onto new land, not subverting the norms of their upbringing. The concern that Texans showed—through swift enactment of protective marriage laws and community policing of fraudulent or immoral conduct—for the problems of irregular marriage, bigamy, and adultery negates the assertion that immorality and recklessness were the norm and that such antisocial behavior was long tolerated.

In fact, Anglo settlers resented the Mexican law that forced them into irregular marriages and possibly improper relationships. It not only placed their property and inheritance rights at risk but also insulted their own moral convictions regarding their marriage contracts and insinuated adultery or fornication. Most Anglo immigrants were of Protestant background and believed that God sanctioned their marriage vows, regardless of the Catholic Church’s opinion on the matter. In fact, some had taken their

\textsuperscript{31} Boswell, \textit{Her Act and Her Deed}, 33; Billingsley, \textit{Communities of Kinship}.
vows before a Protestant minister in keeping with their own personal religious and moral beliefs, albeit without approval from the Mexican government. As Henry Smith pointed out, the act of remarrying to comply with canon law implied “error and crime.” Texans eagerly supported the sanctity of marriage and worked to preserve its dignity and the legal rights that accompanied it by complying with Mexican law when possible. But the practical conduct within marital relationships and personal regard for the sanctity of the union itself undoubtedly derived from long-standing beliefs and internalized values, which at once undergirded legal codes and transcended technical regulations.

For individuals who longed for the permanent stability and order that they associated with legal marriage, the precarious status of bond marriages was of increasing concern. The process was at best loosely defined, difficult to regulate, and subject to numerous irregularities. The issue took priority among revolutionary Texans, who attempted to clarify marital status by issuing an ordinance on the matter in January 1836—two months before Texans signed its Declaration of Independence on March 2. The ordinance declared that new marriages could be legally conducted by “all judges, alcaldes, commissaries, and regular accredited ministers, of whatever denomination,” negating the requirement for Catholic rites. It also stated that bond marriages already in existence were valid, provided that couples file their bonds or other evidence of such with the appropriate archives and records repository of the local courts.32

The presumptive act had no legal standing, of course, having been drawn up while Texas was still a province of Mexico. However, the fledgling Republic of Texas was quick to act on the matter, and the First Congress passed a similar law on June 5, 1837. The act specifically legalized bond marriages retroactively and declared all children of such marriages legitimate, with the provision that within six months couples publicly solemnize their vows before an authorized person. It also gave retroactive sanction to marriages in which one of the spouses had died before the law went into effect, if the couple had been living together at the time of the death. By implication, if the couple had separated before the death, the choice to separate was thus a practical act of annulment. In the eyes of the law, the marriage had never existed, and children of such unions were illegitimate. The legislature also saw fit to include a proscription against bigamy. Couples who had entered into second marriages, although one of them was still legally married to another living person, had sixty days to rectify the situation before they were subject to prosecution as bigamists.33

Despite these timely attempts to remedy the problems associated with irregular marriage and inheritance, troublesome situations continued to arise. In 1841 the Texas congress passed another act, this time giving blanket validation to all such marriages entered into before the passage of the June 5, 1837, statute. When in 1845 Texas drew up a state constitution for admission to the United States, the judiciary committee considered a section that would validate pre-independence marriages in general. Although the committee ultimately deemed its inclusion unnecessary, the topic of bond marriages did

not go away, and Texas were forced to deal with issues emanating from them for years to come.\textsuperscript{34}

For those who engaged in divorce and remarriage under the colonial system, complications arose most often in the form of property disputes among heirs. Sarah Grogan's contractual dissolution and remarriage to William Sowell was called into question in an 1855 state supreme court case. Rachael Sowell Turner, the adult daughter of William and Sarah—the infant who attended her parents' wedding—became involved in a dispute over the inheritance of her grandfather's estate. The case hinged on Turner's legitimacy as an heir, which in turn was contingent on the validity of her parents' marriage. Her father, William, had died before the June 5, 1837, act went into effect, a circumstance covered by the law but not of paramount importance to the final decision. In an interesting twist, the court upheld Turner's legitimacy because Sarah Grogan's bond marriage to Frederick Roe had not been legally sanctioned; therefore, the retroactively sanctioned marriage by bond between Sarah and William Sowell was legal, and their child was legitimate. The careful effort of William and Sarah to ensure her eligibility for marriage by obtaining a written agreement dissolving Sarah's first marriage was irrelevant to the antebellum court. At issue was not whether the contractual dissolution of the first marriage had been proper but whether the original bond for Sarah's first marriage had been legal. In the court's opinion, "there was no law to sanction such contract, there was none to enforce it, and it could be violated without any

penalty . . .” Sarah’s second contractual union was legalized only by the subsequent provision of 1837.\textsuperscript{35}

Similarly, in 1864 Penelope R. Newman sued to recover property in a case that turned on the validity of her parent’s bond marriage. Her parents, Robert Conn and Delilah Allen, entered into a marriage contract in 1830 but later orchestrated a private separation. They were not living together when Robert died in 1835, a situation that under the 1837 statute stripped the marriage of any legal standing. However, the court held that the union was validated by the 1841 statute and upheld the marriage as a civil contract.\textsuperscript{36} In an even later incident, in 1868, the question of the legitimacy of a bond marriage came before the state supreme court as the result of a divorce suit. In 1855, after twenty-three years of marriage and three children, Clinton A. Rice deserted his wife, Jane, and entered a bigamous marriage with another woman. When Jane sued him for divorce and equal division of the community property, he argued that the marriage had never been legal. Clinton claimed to have married a woman before Jane. The marriage ceremony had been witnessed by an alcalde in 1831, and he had lived with this first wife for two years. He then separated from the first wife and entered into bond marriage to Jane. Thus, he reasoned, the marriage to Jane was bigamous, and he, being widowed in regard to the first marriage by that point, was free to marry yet a third woman. The court sided with Jane, granted her a divorce, declared the children to be legitimate heirs, and

\textsuperscript{35} Nichols v. Stewart 15 Texas Reports, 234; Smith, Marriage by Bond, 53–54; Baade, “Form of Marriage,” 15.

\textsuperscript{36} Sapp v. Newsom, 27 Texas Reports 537 (1864); Smith, Marriage by Bond, 55.
ordered an equal division of all property as community property since “all, or nearly all, . . . was the acquisition of their joint labor.”

Harriet Potter had surely thought herself safe from any such dispute. Although she had not secured a divorce from Solomon Page before marrying Robert Potter, she had good reason to trust her new husband’s advice on the matter. Potter was an experienced lawyer and politician before coming to Texas and had himself been divorced from a previous wife. As such, he certainly understood the importance of a legally sound marriage and clearly defined martial dissolutions. Potter was elected to represent Harrison County in the Texas legislature beginning in 1840, where, he reassured Harriet, he had done his part as a legislator to ensure the enactment of a law validating marriages such as their own. The couple lived together for about six years, until 1842, when Robert, who had become involved in the Regulator-Moderator War, was murdered in Harrison County by the opposing faction.

After Potter’s death, Harriet discovered that he had made a recent will, which he clearly worded in such as way as negate her claim to a legal marriage. The will divided his estate between another woman and Harriet, referring to Harriet by her former married name (Mrs. Harriet Page) as an indication that he did not consider her his wife. As a result, Harriet became embroiled in a legal battle over the legitimacy of her marriage (and

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37 *Rice v. Rice*, 31 Texas Reports 174 (1868); See also Baade on the legal significance of the Rice decision. Baade, “Form of Marriage,” 17–19.
by implication, that of their two children) and her right to the inheritance—a prolonged battle that she eventually lost in 1875. Despite the 1841 validation of bond marriages, Robert’s written denial of her marriage and her failure to obtain an official divorce from Solomon Page before she wed Potter worked against her. Losing her inheritance case not only deprived her of financial advantages, but she also took the decision as a public statement denouncing her moral character.  

Harriet Potter’s dilemma might have been averted had she first obtained a formal divorce and then a clearly documented, legitimate second marriage. As it was, even if the Potters had sought a retroactive public sanctioning of their vows, the marriage would have been called into question as a bigamous relationship. By failing to secure a legal end to her first marriage, instead acting on Robert’s self-serving rationalizations, Harriet entered into an extralegal and adulterous relationship that placed her beyond the protective powers of the court and denied her the legal advantages of marriage. In her old age, Harriet was left landless and embittered, focusing her resentment on the unjust court rulings as much as on the deception of her husband.

The extent to which Harriet Page understood the legalities of her own relationship and personal identity are up for speculation. It seems that Harriet, navigating her way through the precarious and fluid legal world of early Texas, chose to ignore the matter and too-eagerly accepted the second marriage as legally sound. Ultimately, she trusted her second husband and deferred to his expertise and authority instead of seeking out the

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40 Ames Memoir, 52–54.
most protective legal measures for herself. To be sure, Page's options at the time were limited for getting a divorce. She had no convenient legitimate method of securing a divorce, particularly in the chaos of revolution and its immediate aftermath. For some time, the young republic suffered confusion over the proper method for divorce. After the passage of the 1841 law, district courts began to assume jurisdiction, but it was not until the 1845 state constitution specifically forbade legislative divorce that courts assumed the full case load. Seeking a legislative divorce carried the risk of being caught up in personal or political battles and placed the supplicant at the mercy of elected officials.  

Sophia Aughinhaughs's disunion was the first legislative divorce granted by the Republic of Texas. Her story illustrates the difficulties of securing a divorce through the legislature that might have discouraged some men and women from pursuing divorce. The Aughinhaughs married in Fort Wayne, Indiana. Sophia was in her late teens, and Jesse was a German Catholic schoolmaster. Two years after their wedding, the couple arrived in Nacogdoches, Texas, where they received a grant for a league of land (4,428 acres) in eastern Texas. Like Solomon Page, Jesse Aughinhaugh seems to have disappeared during the Texas Revolution, leaving his wife on her own.  

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42 Gammel, Laws of Texas, II, 45.
Sometime during 1836 or 1837 Sophia stayed as a houseguest of Sam and America Lusk in Old-Washington-on-the-Brazos. There she met America’s younger brother, Holland Coffee. Sophia married Holland in 1837 and followed her new husband from Washington to Nacogdoches, where he owned a trading house. The couple immediately set up housekeeping, presenting themselves as man and wife in both social and business circles. Yet in July 1838 Sophia filed for divorce from Jesse Aughinbaugh in Harris County. Although it is unclear what prompted this move, it may be that Sophia thought herself a widow when she married Coffee only later to discover that her first husband was still alive and then sought to rectify her legal status. Whatever the motivation, she had come to realize that a marriage to Coffee would be valid only if she first divorced Aughinbaugh.

At that point, Sophia relocated to Houston and filed for divorce. There she ran a boarding house for army recruits as she waited in vain for a judicial divorce decree. Meanwhile, Coffee tended to business and state matters elsewhere. The couple maintained a separate living arrangements while the divorce was pending, most likely to establish Sophia’s intention to act as a faithful wife to her first husband. Nonetheless, the relationship between Aughinbaugh and Coffee is undoubtedly the reason that the judicial divorce was continually delayed.

In November, Coffee took his seat as a newly elected legislator. Sophia then gave up on her court petition and submitted a request for a legislative divorce. Her petition was submitted to the House of Representatives by Ezekial Cullen on November 27 and then referred to a select committee of three. It was again presented two days later, and
narrowly passed. Holland Coffee himself was certainly among those voting yes. But on
November 30, it was postponed. The petition was then presented to the Senate on
December 3. As historian Sherrie S. McLeRoy phrased it, "the Senate . . . shilly-shallied more
than the House had." The bill was then submitted to a special committee, who
recommended in favor of passage; then a second committee tabled it three times. Coffee
was undoubtedly hard at work lobbying for passage. On December 27, when Isaac
Burton again presented the bill, the Senate voted against passage. Stephen Everitt forced
a second reading and vote, which resulted this time in a tie. Two days later it was read a
third time but then tabled. Finally on January 4, 1839, the Senate passed the bill with a
mere six-to-five margin. According to folk legend, the Aughsbaugh divorce was pushed
through because of political pressure from Sam Houston, who was an old friend of
Sophia. On January 29, 1839, Sophia received her decree of divorcement declaring that
Jesse and Sophia were "forever divorced, and each party . . . [was] free to act in every
thing as though they had never been married."45

In the larger scheme, the Aughsbaugh divorce was secured with relative
swiftness, but its repeated setbacks and the very real prospect of denial surely gave
Aughsbaugh and Coffee a fair share of anxiety. Having fought such a difficult battle to

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44 McLeRoy, Red River Women, 8-10 (quote on 10); Jack Maquire, "Sophia Porter: Texas's Own Scarlet
78; Journal of the Senate of the Republic of Texas; First Session of the Third Congress, 1838 (Houston,
1839) 45; Journal of the House of Representatives of the Republic of Texas; Regular Session of the Third
Congress, November 5, 1838 and Called Session of September 25, 1835 (Houston, 1839).
45 McLeRoy, Red River Women, 10; Maquire, "Sophia Porter: Texas's Own Scarlet O'Hara"; Journal of the
Senate . . . First Session of the Third Congress, 45; Journal of the House of Representatives . . . Regular
Session of the Third; Gammel, Laws of Texas, II, 45.
have the divorce granted, the couple—unlike Harriet Page and Robert Potter—soon secured a legal marriage in a ceremony officiated by Sam Lusk, Holland Coffee’s brother-in-law through whose mutual acquaintance the couple had met.

Even with significant political pull and family support, obtaining a legislative divorce could be an arduous task. Having one’s morality debated on the floor of the legislature and future decided by elected politicians by no means easy to endure. Just such an ordeal was what Sam Houston had hoped to avoid when acquiring his judicial divorce from Eliza Allen. Indeed, the topic of Sophia Coffee’s questionable morality resurfaced throughout the years, complete with rumors that she had been a consort of Sam Houston and that while awaiting her divorce she engaged in prostitution among the soldiers who boarded with her. In fact, gossip regarding the matter was believed to have contributed to the fight that ended Holland Coffee’s life in 1846 and left Sophia a widow. Harriet Potter, also, complained that her marital situation subjected her to a lifetime of malicious gossip. But the acquisition of an official divorce and a legal second marriage protected Sophia Coffee from the kinds of financial trouble that plagued Potter, and hateful gossip did not interfere with her ability to find subsequent marriage partners. When her husband died, Coffee inherited a substantial amount of land, nineteen slaves, and a good amount of livestock. Even though she also inherited her husband’s debt and faced mortgaging some of the land, she used her real property to secure a lucrative and mutually beneficial marriage to a third husband.46

46 McLeRoy, Red River Women 14–20. Sophia Coffee married George Butt in December 1847. Coffee gave her new husband 1,438 acres of land and three slaves. In return he paid $1,708 in debts and assumed $2,228 in notes. He gave her $2,000 in cash and agreed to educate two of her first husband’s nieces, who lived with her, Ames Memoir, 48, 19, 54.
Although financial security seems to have motivated Sophia to enter her next marriage, she selected a man with whom she could enjoy both material and emotional benefits. The couple remained together amicably for seventeen years, until her husband was murdered by one of William Quantrill’s raiders in 1864. Shortly thereafter, in 1865, Sophia married her fourth husband, James Porter, a Confederate army officer and former judge with whom she lived happily until his death twenty-one years later.47

Like Sophia Aughinbaugh, Mary Tuttle of Harrison County also found it necessary to submit a request for divorce to both the district court and the legislature. The court granted the divorce, as did the legislature. The reason for the double submission and overlap is unclear, but the redundancy was symptomatic of the confusion regarding jurisdictional authority under the Republic. The transition to judicial authority was in keeping with a pattern emerging across the southern United States, and it fit the strong southern preference for local authority. For Texans, moving away from legislative control over marital dissolution reflected the democratic ideal of personal autonomy and local governance that they had so recently fought a revolution to preserve and of which the bond-marriage system was a part.48

Whether legislative or judicial divorce, the most consistent theme for abandoned wives during the years of the republic and early statehood is the direct connection between accusations of abandonment and the need for financial security and physical protection, not only for themselves but for their children. At least 60 percent of the

47 Ibid.
48 Mary Tuttle v. Daniel Tuttle, HCCCP, Case no. 18 (1841); Gammel, Laws of Texas, II, 820; Glenda Riley, Divorce: An American Tradition Lincoln and London: University of Nebraska Press, 1991), 35–36; On localism in the southern legal system, see Bardaglio, Reconstructing the Household, 5–23.
women seeking divorce in Harrison and Washington Counties were the mothers of at least one child, making their need for financial relief all the more pressing. Mary Tuttle’s complaint emphasized that her husband had “not acted the part of a husband.” His neglect had required Mary to do the “manual labor . . . which he ought to have performed.” Going beyond neglect, he had in fact “done all in his power to destroy all means that she had to support herself and [her] family.”

Elizabeth Fields tried to divorce her husband on the charge of desertion in 1846, but the case was initially dismissed because John Fields had been gone for less time than the three-year duration required by law. Elizabeth waited until 1848 and filed again, this time winning her case. She argued that “she always observed and respected” her vows and obligations. “Yet . . . John H. Fields, not at all recognizing the manifest obligations growing out of the marriage relation—but setting at naught the duties of a husband and father . . . left her without the means of support for herself or children.”

Ann Eliza Pierce’s divorce petition emphasized the expectations for reciprocity and mutual labor as the practical goals of marriage. Pierce stated that she had married while still of “tender years and united herself in the bonds of matrimony with the said Stephen with a firm conviction of his capacity and willingness to support and protect her, that [she] brought no estate into the marriage and was apprized that her husband was also without property,

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49 Children were mentioned in nine of fifteen cases in which women were the plaintiffs. Of the male plaintiff, two of seven mentioned children—28 percent. The remaining cases give no indication of whether the children had children.


51 Elizabeth Fields v. John H. Fields, HCCCP, Case no. 933 (1848).
and that they would be compelled to rely upon their joint labor and economy for the 
necessaries and comforts suitable to their conditions.” She claimed that whereas she had 
always “fulfilled the duties imposed by her conjugal vows . . . , Stephen disregarding his 
marital obligations, has always failed and refused to provide for her most necessary 
wants . . . .”\textsuperscript{52}

Pierce’s petition further elaborated on her husband’s drunkenness, which kept him 
from taking care of his family and left them in continual want of adequate food and 
clothing. She was able to earn only a “scanty pittance,” but even that was lost to her 
husband’s drinking habit. Pierce believed that on at least one occasion “she and the 
children would have starved . . . but for the timely relief administered by sympathizing 
neighbors.” Pierce reported that her children were “wholly dependant upon her labor and 
industry for food, clothing, and education, the last hope of aid and protection from their 
father being now extinguished.” Having never been able to count on him for support, she 
expected none in the future and wanted only to be freed from the marriage so that 
“without fear of her husband’s insupportable excesses, [she might] apply the small 
earning of her industry to raise and educate her children.”\textsuperscript{53}

Eight of the eleven desertion cases filed by women also included the additional 
charge of “excesses, cruelty, or ill treatment.” The phrase, however, was either left 
undefined or the specific offenses listed fell under the rubric of neglect. Ann Eliza Pierce, 
for instance, believed that her husband’s financial neglect had brought physical harm to

\textsuperscript{52} Ann Eliza Pierce v. Stephen Pierce, HCCCP, Case no 935 (1848).
\textsuperscript{53} Ann Eliza Pierce v. Stephen Pierce, HCCCP, Case no 935 (1848).
her and interfered with the well-being of her children. By refusing to care for her during a severe postpartum illness, he had put her life and health in danger, failing to provide health care or to protect her from harm. She did not claim ill treatment because of actual assaults on her body or forms. Rather, her main concern was that she had been deprived of the necessary funds for and access to medical attention, as well as the most basic humanitarian care that one would expect from a spouse. Two divorcing women broached the topic of physical abuse, but they gave little elaboration. Mary Tuttle used the term “abuse of body” but gave no specific examples. For Tuttle, also, failure to provide and protect were of paramount importance. Nancy Jones’s petition stated that “She Cannot Safely Remain the wife of the defendant” and believed herself to be in “danger of personal chastisement and gross outrage having frequently been threatened by [the] defendant.”\(^\text{54}\)

In some cases, allegations of cruelty served as a facilitator in speeding up the divorce process for abandoned wives. By adding allegations of ill treatment, women did not have to wait the three-year duration of absence that was a prerequisite for divorce with abandonment allegations alone. Mary Starnes filed for divorce soon after her husband, Arthur, deserted her and left the state. Having been married only two years and not being able to legitimately claim abandonment, Starnes, or her legal advisor, opted to use cruelty allegations. Her definition of cruel treatment was that her husband had put her clothes on the porch and ordered her out of the house, leaving her no alternative but to go home of her father for “shelter and protection.” Starnes, thus, claimed the act of

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\(^{54}\) Nancy Jones v. Thomas Jones, HCCCP, Case no. 1087 (1848).
abandonment was ill treatment. To further promote her claims of cruelty, Starnes interjected slander as a form of cruelty, by telling the court that Arthur had spread false rumors about her before he left Texas. Thus Mary Starnes secured a speedy divorce and avoided the long wait involved in abandonment charges.\(^{55}\)

From the court’s perspective, the marriage had ended for all practical purposes, and Arthur Starnes had no intention of returning to his wife or accepting his marital obligations. He had clearly deserted his wife, and to ask Mary to wait three years to have her single status restored would have been impractical and harsh. The court understood that deserted wives faced significant financial difficulties, particularly while operating under the encumbrances of coverture or being confronted by a husband’s debts. Although some women, like Mary Starnes, were fortunate enough to have family on whom they might rely, others faced serious hardships. Although remarriage offered some women relief, that option eluded abandoned wives until divorce freed them to accept suitors and remarry. Practical consideration for real-life circumstances thereby often took precedence over the letter of the law and encouraged a broad interpretation of allegations.

When abandoned women worded their complaints, they relied on gender expectations and the concept of duty to emphasize the misdeeds of husbands. Wives told

\(^{55}\) *Mary J. Starnes v. Arthur G. Starnes*, WCCCP, Case no. 8, (1847); Angela Boswell found that in Colorado County using abandonment allegations was not a good option for divorcing wives during the frontier period because of the three-year separation requirement. Of the six cases she found in which abandonment was the initial charge, only one divorce was granted, and that after the plaintiff let enough time elapse to qualify. Two had their cases dismissed because of they had filed too soon. The remaining three—50 percent—incorporated other charges and were successful: one petitioner received an annulment on grounds of bigamy, and the two remaining cases used cruelty to release them from their marriages. Although Boswell’s time frame for the frontier period does not coincide exactly with the delineation of this study, the general time frame is comparable. Boswell, *Her Act and Her Deed*, 46.
of deliberate refusals on the part of husbands to meet basic obligations—specifically to provide and protect. Ultimately, personal survival underscored all of their complaints. Romantic notions were secondary to practical needs, and complaints of emotional dissatisfaction were absent from the legal record; none of these women dwelt on the loss of love or affection. Only one of the pre-1850 petitions even mentioned the topic of adultery, and the charge in that case was ultimately stricken from the petition. Instead, women appealed to local juries and judges on practical matters and issues of basic human needs.  

The men who served on juries were well aware of what it took for a family to survive and prosper and that it was all the more difficult for a woman alone or with dependant children. They understood the importance of spouses joining together to make a family farm or ranch viable, and they knew that three years caught in legal limbo put women in impossible situations. While married, women were responsible for the debts of their husbands and subject to whatever abuses he might inflict. Once divorced, they were free to act as feme sole, conducting business in their own right without restrictions. Accessing Texas community-property law, divorcing women asserted their rights to land and other property when possible. In property matters, the law was clear: wives were entitled to half of all property acquired after marriage. They also had claim to any personal property or separate estate that they had brought into the marriage. Although judges officiating over divorce trials had significant leeway in determining property

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56 Ann Mary Spivy v. Joshua Spivy, HCCCP, Case no. 773 (1847). Only the court minutes are extant for this case. The minute book entry states that Joshua Spivy requested to have the charge adultery against him dropped from the record. His request was granted, and Mary Ann Spivy was granted the divorce.
settlements, they regularly followed the fifty-fifty principle set forth in Texas community property law. They did, however, occasionally deviate somewhat to award abandoned wives more than half. Mary Tuttle requested and received exactly half of the league and labor, or 2,302.5 acres. But Mary Mays received half of the couple’s 1,280 acres as well as all of the personal property possessed by the couple. While married and as divorcing women, Texas wives asserted claims to property out of a sense of necessity and a strong sense of their legal rights. Harriet Page clung to her private cash reservoir and supplies that she retained from her sewing store in New Orleans to prevent them from being misused or lost by her gambler husband; and for years she tenaciously battled for her second husband’s estate, convinced that she was entitled to full inheritance as Robert Potter’s wife and because of her own contributions.57

For some women, community-property provisions helped them cast aside the restrictions of bad marriages and gave them better options for life after divorce. Women who could walk away from marriages with some land or other property had better chances for making it on their own. And, as Sophia Aughinbaugh Coffee’s story reminds us, possession of property or capital render a woman all the more attractive to potential husbands. Even during the unofficial stage of her marriage to Holland Coffee, Sophia independently operated a boarding house in Houston, having apparently brought some assets into the marriage. When Coffee died, she used the land acquired while married to him to strike a financial bargain with a third husband.

57 Mary Tuttle v Daniel Tuttle, HCCCP, Case no. 18 (1841); Ames Memoir, 52–55.
However, for most deserted wives, there was either little or no property to claim for which any record can be found. To be free of the restrictions of a defunct relationship and to regain one’s status as a legally autonomous person was their goal. With a divorce, a woman no longer faced the potential of losing her earnings to a husband’s debt or wasteful spending; she no longer feared his return and any potential abuse he might heap on her; and she was free to select a new husband, a very real possibility for women in frontier situations where men often outnumbered women. The multiple marriages of Sophia Auginbaugh Coffee and Harriet Page Potter, and the speed with which they remarried, attests to the need that frontier women felt for a husband. Moreover, the stigma of divorce seems to have been no deterrent to prospective husbands. These women may have complained about rumors, but divorce did not make them social pariahs or unmarriageable. Rather, they continued to live respectable lives and enjoyed the social circles to which they were accustomed.58

Male divorce seekers prior to 1850 offered a more diverse set of complaints than female plaintiffs. Of seven male petitioners from Harrison and Washington Counties, records of the charges are extant for six. Abandonment was the primary issue in two, those of James Stephens and Eli Buzbee, and was incorporated into a third petition. Stephens married in 1843, and his wife left him two years later. His simple petition, submitted three years later, gives little indication of her motivation for leaving him. Buzbee lived with his wife, Amanda, for only two months. He stated that despite the fact

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58 Widows also remarried within a short period after their husbands died. In Colorado County 73 percent of widows remarried within two years; and 89 percent remarried within four years. Boswell argues that economic necessities motivated women to seek new husbands. Boswell, *Her Act and Her Deed*, 33.
that he had been a “kind and affectionate” husband and had “made ample provisions” for her necessities and comfort, Amanda had left without any “reasonable or just cause.” Buzbee waited eight years before deciding to terminate the marriage, but his reasons for finally opting for divorce are unrecorded. He might have intended to remarry; or perhaps he wanted to acquire new property to which Amanda would have no community-property claims. Only one husband accused his wife of adultery. James Darress combined adultery and abandonment charges. He stated that his wife had engaged in adulterous liaisons with “divers persons” and then deserted him. Since he expanded but little on the hardship that his wife’s leaving had caused, it appears that his main focus was on her purported adultery, although he left both accusations ill defined. 59

Laird Butler’s case is more difficult to categorize. Butler’s petition to end his twenty-five-year marriage gave equal weight to complaints of abandonment and cruelty and addressed events that had taken place long before he migrated to Texas. Butler claimed that he had always been a loving husband, but Sarah, his wife, was an unforgiving and ill-tempered woman, “obstinate and fretful.” She had continually caused discord among the children and turned them against their father. For years she had been dissatisfied with their finances and demanded to have control of all the property. After her grandfather died, for reasons not explained, she became violent toward her husband. When he decided to migrate from New York to Texas, she refused to join him, choosing to remain in the home of her daughter in New York. 60

60 L. M. H. Butler v. Sarah M. Butler, WCCC, Case no. 445 (1849).
Butler’s case concentrated on emotional dissatisfaction and familial disharmony, but his cruelty charges also emphasized physical violence. The act of abandonment had taken place years before Butler moved to Texas, and it apparently had no effect on his ability to forge ahead with his life goals. Distance ensured that the threat of physical assault was no longer an immediate concern. So why did Butler decide to file for divorce? Considering that he had to solicit written interrogatories from witnesses in New York, the procedure was cumbersome and time consuming at best. Perhaps, he learned that in Texas his chances of securing a divorce were better than in his home state; perhaps, he feared that his wife would lay claim to property he had or planned to acquire in Texas (his records mention no property); or maybe he wished to marry another woman.

Whatever his motivations or strategies, a local jury and judge recognized that Butler’s marriage was defunct for all practical purposes and honored his request. From the court’s perspective, the couple’s relationship had been hostile for many years, there was no hope of reconciliation, and Sarah’s seemingly irrational behavior gave Laird justification for divorce. Through witness depositions, Butler successfully defended himself against possible accusations of having selfishly abandoned his wife when he migrated to Texas. He presented a situation in which the only reasonable solution was to legally dissolve the marriage and let both parties get on with their separate lives.

Just as women used the concept of cruelty to demand redress for neglect, men used it against wives who failed to shoulder their appropriate share of the financial and family burdens. Establishing a home and raising a family entailed a great deal of work,
and both spouses were needed to ensure the family’s well-being. Johnathan Martin set out
the expectations for shared responsibility and the need that men felt for female
contributions in his 1849 divorce suit. Martin decided to file for divorce after seven years
of marriage because Polly Martin’s mental instability hindered her duties as a wife and
mother to the point that her actions had become obviously harmful and impeded his
ability to provide for and protect the family.\textsuperscript{61}

Polly steadily fell into a pattern of neglecting her children and household duties.
Regularly Johnathan came home after a day of fieldwork to find the children hungry and
neglected, while Polly ignored them altogether. She often sat on the bed, staring at the
wall “in sullen silence,” seemingly unaware of their presence of her crying children.
Johnathan complained that after long days of physical labor on the farm, he was obliged
to prepare meals and tend to the needs of the children as well as other domestic chores.
He explained that Polly’s behavior in this regard was not from a lack of motherly
tenderness but that motherhood itself had “rendered [her] unhappy.” In her more
interactive phases, Polly suffered from severe mood swings that interfered also with her
family relationships and distracted her from performing her daily responsibilities.

Polly’s mental health deteriorated over several months until she began to exhibit
odd and irrational behavior that was not only unpredictable but dangerous as well. One
day Polly went to see several of her neighbors to tell them that her husband was going to
die that day, giving the impression that she was pleased with the prospect. Later that
month, she actually plotted to have Johnathan killed. When he was away from home for a

\textsuperscript{61} Johnathan Martin v. Polly Martin, HCCP, Case no. 1189 (1849).
few days, Polly visited the house of J. P. Davis, a neighbor, and told him that Johnathan was planning to kill him on sight. When Johnathan returned home, she immediately ran to Davis's home and warned him that Johnathan was looking for him. Polly encouraged Davis to arm himself against her husband and take preemptive measures to save his own life, which he did. Fortunately, Davis himself did not shoot on sight but confronted Martin in such a way that allowed for a mitigating dialogue and prevented a deadly outcome. The two men determined that the entire misunderstanding had come from Polly's lies and her deliberate attempt to have her husband killed.

On another occasion Polly deliberately left open the door to the meat-storage house and let the dogs drag out and destroy the entire supply of meat—a year's worth of provisions that Johnathan had dutifully provided for the family. The incident set back his efforts considerably and caused a hardship on the entire family. Moreover, Johnathan reported that Polly's poor mothering skills and neglectful disinterest had festered into actual hostility when she suddenly "took up a hatred and dislike toward her oldest child."

After about seven months of strife, the couple separated. The exact details of the separation are unknown, but Johnathan told the court that Polly had made the decision to leave. He filed for divorce at his next earliest convenience when the fall court session began. Polly's mental illness might garner compassion from the modern reader, and even perhaps from her husband. But from a frontier perspective, Polly's inability and refusal to meet her marital obligations were serious threats to family survival. Her actions went beyond withholding contributions and failing to address the needs of her children to the point of actually inflicting harm on the family. Polly shirked her own domestic
responsibilities, and she also intentionally sabotaged Johnathan’s efforts to provide for
and protect his family. As a practical union the marriage had become unviable.

Just as husbands through gambling, drinking, or other drains on the family
resources, deprived wives of the ability to be good mothers and wives, so, too, did
women like Polly Martin hinder their husbands from achieving their gender-specific
goals of providing for their families and rearing their children in secure environments. As
the Martin case makes evident, both male and female contributions were vital to the
welfare of the family. The absence of Polly as a productive member of the family put a
heavy burden on Johnathan, but her destructive and unpredictable behavior rendered her
presence in the household an actual liability and threat.

Bryant Thompson, of Harrison County, also accused his wife of cruelty but failed
to include any specific examples. Thompson dropped the charges, presumably to
reconcile with his wife.62 Having withdrawn his suit voluntarily, Bryant Thompson was
the only male petitioner from either Harrison or Washington County who did not receive
a decree of divorcement. There was, therefore, a 100 percent success rate for male
divorce seekers who pursued their cases to the end. This finding is comparable to those
from Colorado County where the court granted divorces to eight of nine male
petitioners.63

Of the fifteen female plaintiffs, all but one outcome is known. Of the fourteen
recorded decisions, ten were granted divorces. Thus, of those ten who pursued their cases

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63 Boswell, Her Act and Her Deed, Appendix B.
to the end, 100 percent received their divorces. The other four women can also be counted among those receiving satisfaction, having voluntarily dropped their cases—an indication that grievances had been addressed in some fashion or that at least a degree of compromise had been met. Wives, such as Phoebe Kenley, for instance, sometimes used divorce actions to force husbands into meeting their financial obligations, relying on the high rate of plaintiff success to strengthen their manipulations. Kenley claimed that her husband, Thomas, owned 480 acres in Harrison County and 320 acres elsewhere, as well as eight head of cattle. Since Thomas refused to support his wife and two young children, Phoebe asked that the property be sold and the money be given to her for the maintenance of the children. At the very least, under Texas law, Phoebe was entitled to half the community property upon divorce, after which she would be free to act as an independent agent in regard to her portion of the property and could wrench her own personal estate from his control. Thomas, apparently unwilling to take the loss, met his wife’s demands, and she withdrew her suit.64

Historian Angela Boswell found similar motivations in her study of Colorado County and gives compelling evidence from the case of Margaret Zimmerschitte. Zimmerschitte claimed that her husband had assaulted her with an ax and threatened to shoot her, permanently injuring her and leaving her in perpetual fear of being murdered. Yet she dedicated over half of her petition to property issues and concerns about her husband’s misuse of the property; and when he agreed to have the property transferred

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64 Phoebe E. Kenley v. Thomas H. Kenley, HCCC, Case no. 739 (1848); See also Nancy A. Nutt v. Joseph E. Nutt, HCCC, Case no. 354 (1847). Joseph Nutt came to a mutual agreement with his wife Nancy whereby she withdrew her suit.
into the hands of “more reliable relatives,” she dropped her suit. In subsequent years she defended her instigation of the divorce proceedings in a letter to her daughter, saying that had she not done so, she and her daughter “would not have had a foot of land.”

As the high rate of success among divorce seekers shows, judicial divorce was a far more reliable and efficient process for petitioners than legislative divorce. District courts held a spring and fall session each year, during which petitioners or their legal representatives presented their arguments before a jury of local men. After hearing depositions or testimony from witnesses and considering the facts, juries almost without exception delivered verdicts in favor of plaintiffs and sometimes made recommendations that went along with the petitioners’ requests regarding property and custody. Judges then granted the divorce in accordance with the jury verdict and made appropriate declarations regarding property settlements and child custody arrangements.

In keeping with southern legal traditions, Texans held local authority in high esteem. Peter Bardaglio has argued that most white southerners shared “an agrarian concept of Republicanism that underscored the necessity of maintaining freedom” and viewed centralized authority as a threat to personal autonomy.” His study shows that local courts throughout the antebellum South were more apt to grant divorces than appellate judges. Texas was no exception, and, in fact, stands as a prime example of adherence to local authority in regard to divorce. District courts almost always offered favorable decisions for plaintiffs—a tradition that subsequent chapters will show

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65 Boswell, *Her Act and Her Deed*, 51.
continued throughout the nineteenth century. With the state supreme court as the only appellate court, local authority was all the more significant.

The use of a jury system for Texas divorce represents localism at the most fundamental level. Juries by their very nature impose local social norms and cultural mores on the cases before them. Their decisions were a reflection of community values and expectations. Early Texas jurors stood as representatives of the frontier community in which the divorce seeker’s plight was acted out, and some jurors may even have been personally acquainted with the litigants in the cases they heard. Some had participated in bond marriages, and all had seen the realities of pioneer life. They understood the circumstances that demanded abandoned women seek freedom to remarry or to remove themselves from the legal inhibitions of marriage. They recognized the need that men had for wives who would assist them in establishing homesteads and rearing children. Because juries knew the dangers and difficulties that frontier families faced, they were likely to have been sympathetic to the petitioners. Moreover, they were steeped in the ideals of individualism and freedom of choice that characterized the western frontier and the Texas Revolution. It should therefore come as no surprise to find consistent support for litigants who chose to seek legal dissolution of defunct and unworkable relationships and to free themselves from the consequences of bad marital choices.

District judges were also frontiersmen. They, too, were members of a couple’s community and adhered to the same set of social customs and values as divorce seekers and jurymen. Judges were highly unlikely to go directly against jury verdicts. There is no indication that local judges tried to impose personal religious or philosophical beliefs on
litigants or unduly influence jury decisions. Instead, judges regularly followed jury recommendations, granting divorces and ordering settlements accordingly. Unless technicalities required a case to be dismissed—such as residency requirements, failure to show proof of marriage, or jurisdictional issues—petitioners could expect to receive a divorce degree with relative ease. By granting all of the divorces that made it to trial during this period, the district courts in this study—juries as well as judges—demonstrated an aversion toward state intervention in domestic affairs and a support for personal autonomy and choice in private matters.

In their reluctance to use state interference in private choices and personal matters, Texas courts were in keeping with the traditions in other southern states. As Peter Bardaglio argues, southern courts intervened only when men had grossly violated their duties toward dependants, thereby undermining the system of hierarchal social system. The concept of household transitioned during the early nineteenth century from one of patriarchal control to one of paternalistic oversight that looked to the interests of wives, children, and even slaves. The growing trend toward benevolent paternalism within the home carried over into the judicial system and included attention to the rights and well-being of dependents. State intervention in domestic affairs was conducted with caution and in such a way as to uphold male authority within households as the basis of social order—by protecting the interests of dependants when husbands failed in their paternalistic obligations. Early Texas courts exhibited a strong propensity to refrain

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from any impositions in family matters outside the strict delineation of the written law—even though judges had considerable leeway in property settlements and other matters. Later courts, including the Texas Supreme Court, were more inclined to champion wives with favorable settlements, but the foundations of noninterference remained strong in later decades as well.

Likewise, the remarkably even proportion of divorces granted to men and to women also reveals an adherence to the concept of marriage as a civil contract in which both sexes were equal agents. Just as each party freely chose to enter the marriage, each had the right to end the legal relationship should his or her spouse fail to live up to the unwritten contractual obligations of marriage. On the heels of the Texas Revolution and steeped in issues regarding the bond-marriage system, Texans clung to a practical notion of contractual and consensual marriage that supported individual autonomy and that overrode theoretical concerns such as upholding patriarchy. Although the law demanded an adversarial procedure in which guilt of one of the parties had to be established, local courts showed no inclination to force couples to remain married against the will of either party and repeatedly complied with petitioner requests. Whereas certain gender inequalities existed within the marriage, the entering and exiting of marriage were legal privileges available equally to men and women.

The idea of consent in courtship and marriage lay at the heart of the marriage contract and was strongly emphasized by early Texans. Texas legal tradition held that there must be “mutual consent, mutual wills, and capacity to contract” for a marriage contract to be binding and reflected a general trend throughout the South and the United
States as a whole. No person—male or female—could be legally forced into a marriage. Because the courtship process allowed women to pick and choose from among male suitors, the decision to commit oneself to a particular mate allowed women a very real and practical means for determining their future happiness. As Elizabeth Fox-Genovese has argued, the privilege was highly appreciated among antebellum southern women as one of the two major life decisions—church and husband—that they could claim for themselves. Given societal limitations in political and economic arenas, women undoubtedly clung tenaciously to this right to self-determination through mate selection. Texas women guarded this right carefully and were well aware of the repercussions for making poor choices.

Ann Raney, a young migrant from England who came of age in colonial Texas, spoke adamantly about the need for women to judiciously weigh the attributes of suitors before accepting any marriage proposal. Raney bypassed one suitor because he was a “Butterfly who goes from flower, to flower,” and she believed he could never commit his love to just one woman. When her sister considered a hasty second marriage, Ann warned her to “reflect seriously on the subject,” for “she had already seen trouble on account, of an intemperent [sic] husband.” Her sister disregarded the advice and eloped. In 1847 Ann’s husband died, leaving her with a mortgage that she could not pay. The financial difficulties forced her to marry against her own better judgment. Only reluctantly did she

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69 Fox-Genovese, Within The Plantation Household, 273.
enter a second marriage to man who promised to pay her debts. She did so not “from the right motive Love,” she lamented, but was “obliged to marrey to save my home. “I did not want to,” she wrote, “for I had maney reasons for not marring . . .” [sic] She regretted this decision for the rest of her life and continued to admonish others to act cautiously in selecting mates. In 1855 Ann divorced and afterwards determined to remain unmarried. As an old woman, she reflected on her past marital troubles and advised her young niece: “[Y]ou will do well[,] my dear child[,] if you Keep single[.] [I]t is a wise woman that keeps single.”70

Most couples entered into marriage as a life-long commitment and took their vows seriously— until death do us part. Therefore the decision was a weighty one that should be made with great discretion. And Texas moved into the more settled antebellum years, freedom of choice remained the keystone of marriage and, by extension, of divorce. But caution was increasingly encouraged lest bad choices ruin one’s life and too-easy dissolution undermine society as a whole. An 1856 article in the Washington American described the gravity of thought that Texans hoped young people would bring to the mate-selection process. The writer pled with young women to “pause at the threshold of thought” before agreeing to marry. A woman should carefully consider the partner with whom she would enter into this “service for life” because with him she

would “both drive through the flowery pastures of joy and also . . . paddle a canoe upon the troubled waters of grief.”  

Feeling the need to nudge society toward greater stability and order, the Texas Supreme Court was careful to distance itself from any promotion of easy divorce. In an 1848 opinion, John Hemphill, Chief Justice of the Texas Supreme Court, elaborated on the nature of marriage, defending the marriage contract as “the most solemn and important of human transactions.” He asserted that “the parties have pledged themselves, not only for their own happiness, but for purposes important to society, to live together during the term of their natural lives . . . . [T]he prospect of easy separation foments the most frivolous quarrels and disgusts into deadly animosities.” In the Court’s opinion, divorce should be obtained only after serious infractions. Ten years later Chief Justice Royall T. Wheeler further confirmed the court’s commitment to the preservation of marriage. The law, he declared, adhered to the perpetuity of the marriage contract and discouraged its dissolution. “The remedy of divorce is, at best, but a mournful remedy; and it is one which the law will dispense with an unwilling hand.” Therefore solid proof of allegations was paramount to the divorce process. By implication, however, with the appropriate evidence, divorce seekers were entitled to their requests. While the high court was eager to encourage marital stability, it was equally interested in continuing to preserve individual rights and local authority.

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72 Bardaglio, Reconstruction the Household, p. 17. Bardaglio describes both local and appellate judges as “official agents of the community, helping to establish boundaries between what was acceptable and was unacceptable, a set of limits that confirmed social norms.”
73 Sheffield v. Sheffield, 3 Texas 79 (1848) (first quotation); Moore v. Moore, 22 Texas 237 (1858) (second quotation); See also Lucas v. Lucas 2 Texas 113 (1848).
Rugged individualism did in many ways characterize the dynamics of the Texas frontier. Yet it was American political and legal traditions and southern cultural practices that most clearly influenced the evolution of Texas marriage and divorce. Striving to work within the restrictions of Mexican law and yet at the same time looking back to the American traditions regarding marriage, early immigrants developed the practice of bond marriage, which fostered a strong adherence to the contractual, consensual nature of marriage and pragmatically addressed contemporary needs. Craving social order and legal stability, subsequent legislatures and courts worked to establish basic laws that supported family or household stability without infringing on the rights of individual men and women and allowing for a significant amount of personal choice in regard marriage and its dissolution.

The self-reliant aspect of frontier life for both individuals and families also promoted clear and fundamental definitions of spousal obligation and loyalty for intact families while simultaneously fostering a strong sense of individual rights, including the right to be free of such obligations should circumstances necessitate that outcome. For frontier families, gender roles often overlapped as spouses worked together to promote the well-being of the family. When a spouse failed to commit his or her efforts to the family, and when that lack of support evolved to the point of endangering the survival of his or her mate or children, then men and women turned to the courts for assistance—assistance in giving legal validation to their private decisions and in ordering equitable property settlements.
Early divorce seekers repeatedly focused their requests for divorce on the most blatant and fundamental violations of marriage. For women, the complaint was abandonment; for men, legal complaints varied. For all, basic survival and economic progress was central to their cases. Negotiating the terms of Mexican citizenship and then formulating newly independent governance, Texas altered cultural and legal traditions to meet the needs of their society; individuals both conformed to the law and found ways to shape it to their needs. As Texas settled into a more established society, more solid legal precedents would be set, and increased complexity of petitioner complains gradually came to reflect growing expectations for emotional and romantic satisfaction. Over the next few decades, family and community interaction in matters of divorce would become more evident, and individual divorce seekers would find new economic and social options. But for husbands and wives in the frontier era, practical needs and the harsher circumstances of surviving without a supportive spouse were of paramount importance.
Chapter Three
Class, Gender, and Divorce in Antebellum Texas

After a protracted struggle for an advantageous union with the United States, the Republic of Texas surrendered its sovereignty in 1845 in favor of statehood, and the citizens of Texas became Americans. Many were relative newcomers from the United States and scarcely noticed the transition in nationality; earlier immigrants had already undergone several citizenship changes—from that of the United States to Mexico to the Republic of Texas and, coming full circle, once again to U.S. citizenship. The vast majority of Anglo-Texans had always identified themselves as Americans, with social, cultural, and political ties to the United States and to the diverse American locales they had once called home. As the political identity of Texas and Texans shifted, the social setting evolved, and marriage and family life reflected these transitions.

On the Texas frontier, personal identity, practical needs, and individual belief systems had at times conflicted with existing laws or had been strained by inadequate legal mechanisms, especially during the phase of Mexican statehood. While the transition from Mexican rule to Texas independence alleviated some of the difficulties associated with marriage and its dissolution, the antebellum process was not without glitches. The nascent legal code and infrastructure continued to allow for a certain amount of fluidity, sometimes leading to confused and complicated marital and inheritance disputes. But the basic code and procedure for Texas divorce was in place by 1841 and underwent little change until the twentieth century. Hence, antebellum divorce took place within a
progressively stabilizing legal system and benefited from increasingly easier access to courts.

Likewise, individual communities themselves evolved into more complex social settings and family networks. Divorce seekers and their experiences reflected this trend, with local records presenting increasing evidence of class and gender distinctions. Class distinctions most particularly—which had heretofore been almost, if not completely, imperceptible in divorce records—became more evident in the years leading up to the Civil War and speak to the various ways in which economic and social standing informed the divorce experiences. While all divorce seekers shared the commonalities of unhappy marriages, broken promises, and severed family ties, poor whites acted out their marital dissolutions differently from their yeoman neighbors, who in turn manifested different ideals and dealt with realities unlike those of the elite planter class. Financial concerns, tolerance of domestic violence, and choices and methods of how to end relationships all played out within a class-specific arena. With an eye toward class, this study seeks to ferret out the various concerns and behaviors of divorcing white men and women in antebellum Texas, a frontier society speedily congealing into a new Old South state.

Immigration to Texas increased steadily after annexation to the United States in 1845 as families and individuals—the vast majority from the southern United States—took advantage of opportunities to acquire new and fertile land in a slavery friendly extension of their homeland.¹ Bringing with them their cultural ideals and practices, they

¹ For a breakdown of the rates of migration and origins of immigrants during this period, see Barnes F. Lathrop, Migration Into East Texas, 1833–1860 (Austin: Texas State Historical Association, 1949).
rapidly transformed the frontier wilderness into an agricultural economy and established a society that mirrored the southern communities they had left behind. Small farms and large plantations alike emerged, reconfiguring the landscape with family homes and barns, cotton fields and gardens, and an enslaved African American workforce to help ensure successful production. During the 1850s cotton production rose a remarkable 643 percent and became the mainstay of the Texas economy.² Along with the farmers and planters came local mercantile stores, churches and schools, and social and kinship networks. At least one town could be found in each county, usually the county seat, which operated as the center of local governance and a commercial hub. Both local and state governments had become fully functional and serviced the local residents far more efficiently than had been the case in the 1830s and 1840s.

By modern standards, antebellum Texas would appear sparsely populated, and short on daily comforts and community resources. Industrial development, transportation, and urbanization were weak, at best. But from the perspective of contemporaries, the changes that took place between the frontier period and the antebellum era were dramatic—civilization, as defined by white settlers, had quickly gained ground, and prosperity was rapidly becoming a reality for many. According to the U.S. census, the state’s population in 1850 included 154,431 white persons and a slave population of 58,161. By 1860, those respective numbers had risen to a free population of 412,649 and 182,566 slaves. In that ten-year span, the number of farms rose from 12,000 to 35,000.

Other indicators of agricultural growth show a doubling and tripling of certain aspects of farm production, which included sugar, corn, and wheat. In 1860 Texans produced seven times as many bales of cotton as they had in 1850 (from 58,000 to 400,000 bales) and thirty times the amount of wheat (42,000 to 1.4 million bushels).³

With ready access to river transportation and well suited to slave crops of cotton and sugar, the eastern region of Texas was by and large wealthier than the more northern and western areas. Harrison County and Washington County each participated in a growing agricultural economy that relied on slaves and concentrated the wealth largely in the hands of slaveholders. The 1850 population of Washington County stood at 5,983 whites and 2,817 slaves. Farmers there produced 4,000 bales of cotton and harvested 162,000 bushels of corn. Linked to national markets by steamboat traffic, and later by railroads, the local population grew and prospered. By 1860 Washington County was home to 15,215 people, with almost 8,000 slaves representing the majority. Cotton production had risen to 24,400 bales and corn production to over 541,000 bushels.⁴

Having been settled for less than two decades by 1850, Washington County already boasted a rich history and had assumed a degree of importance as a prosperous agricultural region. Settlers from the United States, known as the Old Three Hundred,

³ C. Allan Jones, *Texas Roots: Agriculture and Rural Life before the Civil War* (College Station: Texas A&M University, 2005), 137–38; Campbell, *Gone to Texas*, chapter 9.
began to occupy the area as early as 1821 under the land grant provision of Stephen F. Austin, known today as the Father of Texas. Andrew Robinson started a ferry operation on the Brazos River in 1822 and two years later secured a Mexican land grant around which developed the community known as Washington-on-the-Brazos or Old Washington. The site became a thriving commercial center by the mid-1830s and served as a supply point for the region. In 1836 Washington distinguished itself as the birthplace of the Republic of Texas, playing host to the drafters of both the Texas Declaration of Independence and the Constitution of the Republic of Texas and to the ad interim government. The county was officially organized in 1837, with Washington-on-the-Brazos as its capital. From 1842 to 1845, Washington-on-the-Brazos also served as the capital of Texas. In 1844 the county seat moved permanently to the city of Brenham.

Harrison County shared many similarities with Washington County. Most of its early immigrants came from southern states beginning in the early 1830s, lured to Texas by the prospect of generous Mexican land grants. The county was officially organized in 1839, just three years after Texas gained its independence from Mexico. Marshall became the county seat in 1842, and soon the county boasted a thriving cotton-based economy dependant on slave labor. In 1850, 11,822 people called Harrison County home, 53 percent of whom were slaves. By 1860 the population had grown to 15,001, with a slave population that made up 59 percent of the county population. Cotton production had escalated from under five thousand bales per year in 1860 to over twenty thousand.

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5 For an in-depth economic and social description of Harrison County see Randolph B. Campbell, A Southern Community in Crisis: Harrison County, Texas, 1850–1880 (Austin: Texas State Historical Association, 1983).
The social structure that emerged in Texas closely followed the standard southern pattern of three-tiered white society: A small number of wealthy planters and merchants occupied the vantage point at the top of the social strata and wielded a disproportionate level of economic and political influence. Yeoman families, by far the most populous class, represented mainstream society in terms of material culture and social norms. A level below them stood a small group of poor whites trying to eek out livings as propertyless wage earners or laborers. Below the free white population stood a vanguard of enslaved workers, whose involuntary labor underpinned the overwhelmingly agricultural economy and whose presence added nuance to the social environment and complicated the class structure.6

When wealthy planters from eastern states migrated to Texas, they quickly established large plantations and erected fine homes. Likewise, merchants, usually slaveholders and often located in the larger towns or cities such as Galveston, built fine town homes and enjoyed a substantial number of material comforts. The elite set high standards of living and enjoyed amenities that their less wealthy neighbors could not afford. The more affluent families took meals on fine china, reclined in upholstered chairs, slept in four-poster canopied beds, and wore luxurious ready-made garments, all of which had been brought with them from their previous homes or been imported

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6 A highly restricted and very small number of blacks were allowed to live in Texas as free persons, with strict laws prohibiting free persons of color to reside within the state without legislative approval. In 1860, fewer than four hundred free blacks called Texas home. For an in depth quantitative study of class and wealth, see Randolph B. Campbell and Richard G. Lowe's *Wealth and Power in Antebellum Texas* (College Station: Texas A&M University Press, 1977). This paper uses the definitions laid out by Campbell and Lowe for wealth holding categories. For Harrison County specifically, see Campbell, *Southern Community in Crisis*, 31–44.
through New Orleans or Galveston. Although the Texas plantation society never matched the opulence of some of the eastern states, the newly established Texas elite enjoyed considerable creature comforts and disproportionate economic and political power.\(^7\)

Washington and Harrison Counties had their share of wealthy citizens and the material culture reflected their presence. For example, in 1844 Harrison County planter John J. Webster built Mimosa Hall, a two-story, columned, Greek Revival mansion, and operated his plantation with the help of eighty slaves. Thomas Affleck established a plantation and nursery in Washington County in the 1840s that included his luxurious six-bedroom home, 120 slaves, and numerous outbuildings for various forms of production and use—a carriage house, grist mill, corn crib, fresh-water cistern, meat house, a church, stables, and twenty houses for slave quarters.\(^8\) Rebecca Hagerty of Harrison County, herself a divorce seeker, owned or controlled over 150 slaves and operated two plantations. In 1860 she reported to census takers over $30,000 in real estate and $82,000 in personal property, which allowed her to act as matriarch over an extended family and to enjoy a luxurious lifestyle and the material accoutrements of southern ladyhood.\(^9\)

Yeoman farmers likewise owned their own land and were sometimes slaveholders as well. As the most populous class—the common folk, as it were—they left a wide

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\(^7\) For a more thorough description of antebellum material culture in Texas, see Campbell, *Gone to Texas*, chapter 9, especially pp. 209–20; and Jones, *Texas Roots*, chapter 7.


cultural swath across Texas. These upwardly mobile families built modest but comfortable homes, constructed outbuildings for livestock, tended gardens for consumption, and cultivated cotton or other cash crops. Family members worked side-by-side one another and sometimes alongside slaves to accomplish various domestic and farm tasks. They lived in a far less isolated world than their predecessors had done a few years earlier. Town dwellers of the middle class ran businesses and earned their livings through various skilled crafts and trades. They, too, often relied on slave labor for assistance in business endeavors, household chores, garden production, and child rearing.

The least wealthy group made up one quarter of the population but owned less than 1 percent of the real property in Texas. Poor whites were often renters, overseers who lived and worked on large plantations, day laborers, or town clerks. Poor whites in Texas were generally younger adults than those of the wealthier classes, usually in their twenties or thirties, and were less geographically stable. Without property ownership to tie them to the land, they were less likely to remain in a given area permanently. No doubt, over time some were able to acquire more wealth and invest in land or houses of their own, making their way up the social ladder. Such might have been the case for some young married couples in this study or for single men whose early financial situation placed them among the least wealthy but who had middle-class family connections and aspirations. For the most part, however, these were individuals who remained at a subsistence level, with few options for significant economic advancement.

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11 Only 18 percent of poor whites in Harrison County remained in the county for ten years or longer. Campbell, *Southern Community in Crisis*, 42.
As settlers of all classes and ilk transformed frontier Texas into a southern society, the circumstances effecting family life undoubtedly changed to reflect a growing sense of place and community. Marriages and family life took place within more evident neighborhood and kinship networks and within the legal, cultural, and moral boundaries imposed by increasingly stable local and state governance. Less isolated than earlier settlers, families of the 1850s felt the comfort of living in closer proximity to neighbors, worshipped in local churches with extended kin, and conducted business with merchants in the small towns and county seats. While much of an individual’s or family’s life remained private, the presence of community gained influence over the practices of families, and culturally entrenched notions of class, social expectations, and gender rules gradually chipped away at some of the more individualistic and equalitarian functioning of the frontier. Tying together the classes was the common interest in agriculture.\(^\text{13}\)

Agriculture was perhaps the single most unifying interest across class lines. The vast majority of people made their living as small farmers or planters. Planters, yeomen, and poor farmers alike shared farm-related concerns and the habits of a rural lifestyle. The small towns that dotted the countryside catered to the farming community, and even town dwellers were highly dependent on the farm economy.\(^\text{14}\) Divorce seekers in Harrison and Washington Counties were fully in step with their neighbors in terms of class and livelihood, and their lifestyles and marriages likewise reflected the rural

\(^{13}\) Randolph B. Campbell, *A Southern Community in Crisis*, 21. In 1850 Harrison County’s population was about thirteen persons per square mile; in 1860 there were roughly seventeen per square mile. “Harrison County’s people lived under rural conditions during the 1850s, but this did not mean social isolation” (quotation in note on p. 21.)

\(^{14}\) In 1860 the largest towns were San Antonio (population 8,235), and Galveston (population 7,307). Even the capital of Austin had only 3,500. Campbell, *Gone to Texas*, 212–13.
environment from which they came. Out of the eighty-nine individuals who filed for
divorce in Harrison and Washington Counties between 1849 and 1865, only ten families
appear to have relied on something other than agriculture as their main source of income.
The vast majority of divorce seekers lived on farms or plantations and relied directly on
the land for their income, mirroring the community as a whole.\footnote{Of the eighty-nine divorce petitions filed in Harrison County and Washington County, a specific occupation is known for thirty-two, or 36 percent. The ten who appear to have not engaged in farming or other work directly related to agricultural production make up 31 percent of those thirty-two cases or 11 percent of the entire group. Thus, farming families made up at least 69 percent of divorce seekers, and possibly as much as 89 percent.}

Townsfolk also saw their share of familial discord, however, and are represented
proportionately in the divorce record. The presence of non-agriculturists in the divorce
records speaks not only to the emergence of towns and the degree of economic diversity,
albeit limited, that developed in antebellum Texas but also to the democratic dispersal of
marital dissolution among the various demographic groups. The farm communities of
Texas required the services of merchants, skilled craftsmen, lawyers, and physicians.
Among the four non-agriculturists seeking divorce in Washington County were a
druggist, a physician, and a shoemaker—all men. Sarah Stewart is also included in the
group as the only woman who mentioned an outside occupation separate from
participation in family productive endeavors. Stewart reported to the local court in 1863
that she earned an income as a seamstress and expected to use this means of support—
along with her property settlement—to provide for herself and her children after
divorce.\footnote{Walter A. Stewart v Sarah Stewart, 1 WCCC, Case no. 3192 (1863).} Stewart stands apart, however, in her expectation of generating an independent
source of income, and she is the sole example of independent labor (outside household
production) among antebellum women in this study—in both Washington and Harrison Counties. Stewart’s ability to establish herself as a seamstress and to expect to earn enough money to support her family is attributable to the increasing local population and customer demand, which undoubtedly would have been insufficient for supporting a family even a few years earlier.

As in Brenham, the Harrison County seat of Marshall sustained a significantly diversified commercial component, the ranks of which are well represented among those seeking divorce. By 1860 Marshall had become what one historian has called “the metropolis of East Texas” and boasted upwards of three thousand residents.\textsuperscript{17} To be sure, it remained a small town that owed its existence to the farm economy; but by the standards of the day, it was a substantial civic entity—a rural hub that offered a significant variety of services and amenities and was home to a number of skilled laborers, merchants, and professionals. Marshall served as a stagecoach hub for eight lines and benefited from the state’s only rail line beginning in 1858. In addition to general or dry goods merchants, professionals filled numerous specialty niches as tailors, shoemakers, mattress producers, nurserymen, bakers, druggists, ministers, and lawyers.\textsuperscript{18}

Merchants in Marshall made up about 4 percent of the general population, and skilled craftsmen represented between 5 and 10 percent.\textsuperscript{19} Divorcing men with non-agricultural occupations composed roughly 10 percent of the overall group—a figure on

\textsuperscript{17} Campbell, \textit{Gone To Texas}, 213.
\textsuperscript{18} Campbell, \textit{A Southern Community in Crisis}, especially, 79–81, 93–95, and 97–101.
\textsuperscript{19} Campbell, \textit{A Southern Community in Crisis}, 80–81.
par with their number in the population at large. Included among the divorce seekers were a blacksmith, a barber, a hotel owner, the local newspaper editor, and a wealthy railroad contractor and investor. As might be expected, although the majority of divorce seekers were drawn from the dominant occupational category of farming, a proportionate representation came from among other occupations as well. Thus, divorce in antebellum Texas could be classified as neither a town phenomenon nor the product of an isolated farm lifestyle; rather, it paralleled the occupational diversity and lifestyle differences within the community as a whole.

Whereas wealth holding among divorce seekers likewise reflects the socioeconomic structure of the broader population, determining property holding also reveals certain class difference in the divorce experience. Establishing the amount of wealth that individuals held, however, is at times problematic: Divorce records sometime include property information, other times, they only allude to it or fail to mention it at all. County tax rolls give an indication of wealth for some of the petitioners, as do census records, but not all divorce seekers can be found in these records. Moreover, some individuals owned land in multiple counties or had hidden assets that do not show up in extant records as taxable property. And, no doubt, others found ways to avoid tax collectors and census takers all together. However, piecing together data from county tax rolls and federal census records with information from the court files gives a good

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20 Of fifty-seven cases in Harrison County, six were engaged primarily in non-agricultural jobs; two combined farming with an unspecific business.
indication of the financial standing of a significant sample of the divorce seekers and helps locate them within the larger community.\textsuperscript{21}

Accessing the property holding for persons involved in divorce cases between 1841 and 1854 and taking a mean value for those cases reveals that divorcing couples in Washington County during that period owned an average of $2,236; couples in Harrison County averaged $3,382.\textsuperscript{22} The average tax appraisal value for Washington County in 1850 was $3,070, and $3,920 for Harrison County. Pre-1855 cases tended to come from those with slightly lower wealth holding than the county in general, with Washington County divorcing couples owning about 27 percent less than the county average, and Harrison County divorce seekers, almost 14 percent less than the county average.

By 1860 the tax values for Washington County had increased to $7,838 and to $4,969 for Harrison County. The sample of Washington County divorce seekers showed

\textsuperscript{21} Francelle L. Pruitt, ""But a Mournful Remedy": Divorce in Two Texas Counties, 1841–1880,"" M.A. thesis, University of North Texas (May 1999), 40–42. The following figures are drawn from Washington County Tax Rolls, 1850–1880. Records of the Comptroller of Public Accounts Division, County Real and Personal Property. Archives Division, Texas State Library, Austin, Texas. Microfilm; Harrison County Tax Rolls, 1850–1880. Records of the Comptroller of Public Accounts Division, County Real and Personal Property. Archives Division, Texas State Library, Austin, Texas. Microfilm. Although property owning is not the only consideration in locating persons on the social spectrum, it is the best tangible evidence that we have for most of the cases. This study recognizes that social standing also hinged on other elements that defined respectability, such as moral character and family connections. It also recognizes that a couple’s financial situation may have changed drastically in the years prior to filing for divorce. This is often particularly significant in cases of abandonment on the part of husbands. Likewise a post-divorce tax roll will reflect the official property settlement, as opposed to a pre-divorce tax roll, which usually indicates the family’s combined wealth. With these issues in mind, tax rolls and information found in the divorce files were compared to determine the more accurate figure for wealth holding at the time of the divorce suit. For a few specific cases, other sources such as newspapers, biographies, or other court records provided additional relevant information.

\textsuperscript{22} The Harrison County average for divorcing couples originally figured at $7,217, twice the holding of the county taxable average. That figure, however, included one divorce seeker whose extreme wealth distorts the overall picture. Rebecca Hagerty owned over $80,000 in Harrison County alone, with significant holdings elsewhere. In 1860, she was reportedly the wealthiest woman in Texas. Removing the Hagerty figure from the average provides a more accurate generalization. Rebecca Hagerty v. Spire M. Hagerty, HCCCP, Case no. 1175 (1850).
them to own an average of $5,247, roughly 33 percent lower than the county average. Eighty percent of the divorce seekers for whom wealth could be determined owned less than the county average. Harrison County divorce seekers for the same ten-year period, however, were wealthier than the county average, with 60 percent owning more than the average taxpayer. The average divorce seeker owned $6,569, roughly 24 percent higher than the general population.  

While these averages give some indication of how divorce seekers compared to their neighbors financially, they can be misleading by giving the impression of divorce seekers as unusual or outside the mainstream. At first glance, these figures seem to portray divorce seekers as poorer than average citizens. But the later figure for Harrison County presents a contrast by indicating just the opposite—that antebellum divorces were most common among the wealthy. Therefore, it is beneficial to go beyond these averages in an attempt to rightly place divorce seekers within a proper social/economic category.

Using criteria set forth in earlier studies that have established class or social status based on property provides a good sense of where individual couples fit into their social environment. Taking up the definitions established by Randolph B. Campbell and Richard Lowe in their analysis of wealth holding in Texas, this study considers as members of the upper class those large planters and merchants whose property can be assessed at over $10,000. Property ownership of $500 to $10,000 ranks families or individuals among the middle class—the so-called yeoman class or plain folk. Those with

less than $500 in assets compose the lowest economic group. To be sure, Texas society was fluid and individuals moved in and out of these seemingly rigid groupings at various life stages, as family situations changed, and as their personal circumstances responded to larger economic fluctuations. Nevertheless these categories will serve to demarcate class differences in a useful way, helping to locate divorce seekers within acknowledged social categories of ante-bellum society.\(^{24}\)

Wealth holding can be determined for fifty-eight of the eighty-nine couples in this study who filed for divorce between 1850 and 1865—a sample of 65 percent. This sample includes only those families for whom a specific dollar value can be placed on their wealth, either based on information contained in the court records themselves or found in tax roles, census data, or other extraneous sources.\(^{25}\) When placed in the appropriate groups of wealth holders, divorcing couples followed a simple curve, with the middle class far outdistancing both the poor and rich in sheer numbers. The middle class made up half of the cases (twenty-nine), with the other categories each composing roughly a quarter (fifteen poor and fourteen wealthy).\(^{26}\) When comparing each class to its proportion in the general population, however, the story becomes more complicated. The overall picture then is that of an under-represented and reluctant middle class, flanked on

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\(^{24}\) Campbell, *Gone to Texas*, 214, 217.

\(^{25}\) Although with a careful reading of the documents, almost every cases could conceivable be assigned to a class or economic group, not every case allows for a particular amount of wealth to be assigned the individuals. Hence, thirty-one cases were excluded because an exact numerical value could not be determined. When the excluded cases are taken into account, however, they support the quantitative finding of the sample cases.

\(^{26}\) Of the fifty-eight cases, twenty-nine were from the middle class, fourteen from the wealthy, and fifteen from the poor. Harrison County divorce seekers were divide as follows: fifteen in the middle class, ten in the upper class, and eight poor. Washington County cases break down into: fourteen middle-class couples, four rich, and seven poor, both in terms of the numerical representation of the samples and the behaviors of the groups.
one side by poorer divorce seekers who hold their own proportionately and on the other side by an upper class over-represented by its women (in fact, all plaintiffs in this category are women). These distinctions bear closer scrutiny and call for a more careful consideration of the social and economic dynamics in play for each group.

The poor in Texas made up one-quarter of the state’s population. In this study, the fifteen couples who owned less than $500 or reported that they had no property make up 26 percent of all divorce seekers—a near equivalent to their proportion of the general population. While the number of poor couples who might have avoided legal divorce because of cost and perhaps engaged in de facto divorces is unknowable, their proportionate participation in divorce actions reveals that the courts were open and accessible to persons of all classes and suggests a democratization within the legal process.

Most often, the voice of the lower class remains relatively quiet in the historical record, and divorce petitions are no exception. Extant records are usually brief and include only the most basic details. Absent are drawn-out suits with full elaboration of disputes, which might have shed more light on the lives of these couples. Nonetheless, certain patterns readily emerge. That petitioners devoted little space to the establishment of property rights. That disputes over custody are almost nonexistent is not a commentary on the social or legal neglect of an underclass; rather, it corresponds most logically to the fact that poor divorce litigants came from among the newer marriages in the community. Turbulent from the onset, these couples averaged only four years of official matrimony, with separations occurring soon after marriage. These short-lived unions failed to
produce children or to accumulate significant amounts of community property.\textsuperscript{27} Couples simply had very little to fight over or lay claim to.

Extant records for roughly half of this group reveal that most poor couples were to some degree geographically stable. They married and lived in the same county until their divorce, or they had local family connections or other ties to the community. Rather than itinerant residents, shiftless and unstable, these couples appear to have been at least semi-permanent residents or to have had long-term local ties. After separation, plaintiffs (and some defendants) remained in the community at least long enough to secure their divorces—a minimum of three years in the cases of abandonment. This degree of geographic stability may correspond to the youthfulness of the marriages. That is, rather than ranking among the permanently poor who tended to exhibit the highest degree of geographic mobility, at least some of these individuals were young men and women linked to the community by family connections to the more geographically persistent yeoman class.

Poor plaintiffs—both men and women—were usually successful in their bids for divorce, either winning their cases or choosing to withdraw suits. Over half of the plaintiffs won their suits outright (55 percent of the eleven known verdicts); the rest withdrew their cases voluntarily with no explanation or, in one case only, the defendant won by default when the plaintiff failed to appear. By and large, those who chose to follow through with their suits won their cases. It was, in fact, women who most often

\textsuperscript{27} Eliza Jane Jackson v. Thos. J. Jackson, WCCCP, Case no. 2644 (1860). The Jacksons are the only couple in this category with children. Eliza Jackson was granted custody of her infant child, having filed an amended petition to include a request for custody.
sought divorce, filing almost twice as many suits as men. Seven women filed for divorce out of the eleven cases with known verdicts. Of those, five achieved a pro-plaintiff victory and thereby secured a divorce; the remaining two wives withdrew their suits for unstated reasons. Poor men initiated four cases for which a verdict can be determined; of those, only one won his case, two withdrew their suits, and one lost his case to his wife because he failed to appear in court. If we surmise that withdrawing a suit of one’s own volition is an indicator that the plaintiff effected a positive or sought-after change within his or her life, then the “success” of those filing for divorce is extremely high. Only the husband who defaulted by not appearing in court can be said to have actually “lost” his suit. Even in that case, the goal of divorce was achieved, albeit in favor of the defendant, with each party freed to go his and her separate way in pursuit of new options and new relationships unencumbered by the restriction of marriage.

The causes given by these least affluent petitioners reveal no distinct pattern or preponderance of a particular marital infraction that drove plaintiffs to court: one husband and one wife cited abandonment as the primary cause for divorce; two women and one man used cruelty allegations; and one woman claimed her husband was a bigamist. The remaining cases have only limited surviving records and do not include the charges brought against spouses. Fortunately, the few extant petitions provide intriguing glimpses into the lives of some of these individuals and offer indications of their expectations for and experiences in marriage.²⁸

²⁸ Often only court minutes are available, which provide only brief commentary. Some of the case papers, which contain the bulk of a case file, are obviously incomplete or poorly preserved.
Thomas Russum’s petition, for instance, reveals expectations that are directly linked to his economic standing. Russum reported to the court that his wife, Leanara, was cruel in that she called him a “fool, liar, and negro” and was prone to violent attacks wherein she “inflict[ed] upon him blows and scratches . . . in the flesh of his face.” Moreover, Leanara withheld conjugal privilege from Thomas and remained away from home for days at a time. Equally disturbing to him was the fact that she refused to perform any domestic chores, even so much as to cook a meal for him; she did nothing “toward contributing to the mutual support of himself and her.” Leanara’s failure to fulfill her domestic obligations was particularly egregious, Thomas argued, because he was a poor man and as such could afford no servant to take up the slack.  

On one hand, Thomas Russum used his economic situation to garner sympathy from the court by emphasizing the need for his wife’s contributions; on the other, he defended his manhood and status as a free man by asserting his indignation at his wife’s verbal abuse and physical attacks and her abandonment of the marriage itself. Clearly, Leanara had challenged her husband’s notions of domestic authority, refusing to play the role of submissive dependent or to honor her husband with the prestige of patriarchal authority. For Russum, it was a given that his wife should contribute domestically in ways that eased the family’s financial burden and made life more comfortable. The economic and work components of marriage were necessary to the productive unit and were realistic expectations for marriage, most especially for those with minimal financial

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39 Thomas Russum v. Learnara Russum, HCCCP, Case no. 3137 (1856).
resources. By refusing sexual relations and keeping herself away from home, Learnara asserted personal autonomy, defied dependency, and challenged her husband’s presumed right to control her body and movement, driving the point home all the more with her violent outbursts.

Learnara’s behavior indeed dampened any presumption of husbandly authority or delusions of patriarchal power that marriage might have offered to Thomas. Any notion he had of playing the patriarch over an obedient and dependent household was squelched by his wife’s overtly independent actions and defiance of her prescribed duties. Then, to add insult to injury, Learnara verbally emasculated Thomas by calling him “a negro,” thereby rhetorically challenging his status as free white man and placing him in the same category as slaves. By seeking vindication for the insult in the public forum of the courtroom, all the while purporting indignation at its absurdity, Russum revealed that the epithet had indeed stung and spoke to his own desire to distance himself from the insult. By his own admittance, Russum was a poor man, but he was a free man and a white man,

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30 On yeoman households and the family as productive unit, see Stephanie McCurry, Masters of Small Worlds: Yeoman Households, Gender Relations, and the Political Culture of the Antebellum South Carolina Low Country (New York and Oxford: Oxford University Press).

31 Female domestic violence, although more rare than male-instigated abuse, was not uncommon among Texas divorce seekers. Angela Boswell’s investigation of domestic violence in Colorado County supports the finding of this study as does Laura Edwards’s study of North Carolina. In concurrence with Edwards’s conclusion, this study finds that women of all classes resorted violence out of varying motives. Poor and middle class women were more apt to use violence against other free adults, whereas plantation mistresses sometimes used brutality against slaves and their own children. Laura Edwards, “Law, Domestic Violence, and the Limits of Patriarchal Authority in the Antebellum South,” in Nancy Bercaw, ed., Gender and the Southern Body Politic (Jackson: University of Mississippi Press, 2000), 63–93, esp. 77. Boswell, “The Social Acceptability of Nineteenth-Century Domestic Violence,” in Philip D. Dillard and Randal L. Hall, eds., The Southern Albatross: Race and Ethnicity in the American South. (Macon, Georgia: Mercer University Press, 1999), 143–46.
a status that he held dear and was disinclined to have called into question, even if only in a burst of anger by an angry wife. The Russum marriage seems to have been beyond repair, making it unlikely that Leanara and Thomas would have restored their relationship. In the end, however, Thomas Russum decided to withdraw his case for unstated reason, and the couple disappeared from the historical record.

As the narrative presented by Thomas Russum suggests, gender assumptions were a mixed bag for women. Expectations of work and “mutual support” ranked high on the list of qualifications for a good wife. Need for female participation in the family economy remained particularly acute for the less affluent families, and for some it may have fostered a degree of egalitarianism within the household. Yet the assumption of equal endeavors within the marriage did not translate into complete equality of privilege or negate the authority of the husband, and blatant independence on the part of wives—whether in the kitchen or bedroom—was seen as a serious affront to masculine prerogative.

The plight of Eliza Jane Jackson, who resorted to divorce in 1860, was not an unfamiliar one to divorcing women. Beginning only two months into her marriage, Jackson suffered extreme physical abuse and neglect at the hand of her domineering husband. The honeymoon was cut short by the onset of continual beatings and “various indignities and insults too revolting to mention.” Jackson appealed to the jury’s sense of justice and compassion by claiming to have endured the unwarranted abuse with a martyr’s fortitude, demeaning herself with admirable wifely submission. A. J. Hackworth, a relative of Jackson’s, provided testimony on her behalf that verified the
horrific circumstances of her marriage. Hackworth reported that on one occasion when the couple was at his home, he saw Thomas Jackson beat his wife “most cruelly with his hand & fist by inflicting blows upon her & punching her.” Later that evening—apparently undeterred by the presence of family members—Thomas again severely beat and kicked his wife. Hackworth championed his kinswoman as a good wife, saying that Eliza “bore all that cruel treatment patiently, beyond the endurance of an ordinary woman, without one effort at resistance or word of complaint except begging him to desist” (emphasis added).  

Sadly, the underlying implication of the deposition was that indeed some room existed for accepting physical abuse, that some level of tolerance should be expected. One is left wondering what exactly was the nature or amount of abuse an “ordinary” woman was supposed to endure. That Hackworth left any room for tolerating personal assault (even as he gave witness against the abuser), that his portrayal of Eliza’s submission was to be understood as virtuous behavior befitting a wife, and that he makes no mention of trying to intervene during the violent episodes, stand as haunting reminders of the nature of husbandly authority to which some women were subjected. Even more haunting is that Eliza’s own story necessarily emphasized the same expectation of subservient endurance and tolerance on the part of women. Her petition stated that she behaved “as a faithful and affectionate Wife should demean herself towards her husband.” Despite the fact that she “constantly struggled to discharge faithfully all her duties,” her husband assaulted her, kicked her, and “whipped her mercilessly with

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switches so as to leave the impressions of black and blue marks upon her body." Yet her
tolerance went only so far. After having been left wounded and sick with no assistance or
food and having suffered the humiliation of requesting help from neighbors, Eliza turned
to the state for redress. Through her choice to seek divorce—and in winning her case—
Eliza Jackson not only regained control over her own life, but she also reminded her
family and community that remaining in such a severe situation was not the necessary
reality for an abused woman and that divorce provided a logical remedy. In short, yes,
she had been good, patient, and tolerant; and, no, she would not take the abuse any
longer. 33

The Jackson and Russum cases remind us that women had choices regarding their
level of tolerance but only within the accepted parameters of societal and familial
expectations. Eliza Jackson portrayed herself as the virtuous woman who, having borne
her plight nobly and gone the proverbial extra mile, deserved sympathy and redress. Thus
she gained the jury’s favor. Thomas Russum depicted a very different image of his wife
as a woman who went far beyond the prescribed range of female activity. Both women
operated within a social setting that placed value on wifely submission, yet each found
her own way to take control of her own situation and subvert a domestic paradigm that
would keep her dependent and submissive. Each pushed back the boundaries of
patriarchal prerogative—one through open defiance and refusal to accept the dictated
rules of gender-appropriate obligation and behavior, even to the point of violence; the
other, by appealing to the paternalistic sympathy of the court and asserting that she had

33 Eliza Jane Jackson v. Thos. J. Jackson, WCCCP, Case no. 2644 (1860).
indeed conformed to the standards of appropriate womanly behavior and been victimized
for it.\(^\text{34}\)

Moving up the economic scale, subtle differences between those in the poorest
economic sector and the yeoman class become evident. It appears that plain folk either
enjoyed greater marital stability than their poor neighbors or that they were more
reluctant to go through with legal divorces when marriages went bad. Whereas poor
divorce seekers accounted for a proportion comparable to their numbers in society at
large, middle-class divorce seekers were somewhat underrepresented. The yeoman class
composed 60 percent of the state’s antebellum population but made up only 50 percent of
divorcing couples for whom wealth has been determined.\(^\text{35}\) Middle-class divorce seekers
tended to remain married longer before turning to divorce. The average middle-class
divorce involved a marriage that had been intact for twice as long as that of the lower
economic group—an average of 9.68 years. Sixty-nine percent had been married over
five years, and over half stayed married for ten years or longer. By comparison, only one
poor couple had remained married for ten years. And, unlike poor divorce seekers,

\(^{34}\) Laura F. Edward, “Law, Domestic Violence, and the Limits of Patriarchal,” in Bercaw, ed., \emph{Gender and
the Southern Body Politic}, 63–86, especially 76–77. Edwards argues that southern law buttressed the
authority of white males within the household “precisely because that power was neither complete nor
stable in practice,” with dependants continually challenging that authority (p. 66). Edwards shows that
women regularly challenged masculine authority, either in the form of legal redress for abuse against them
or by themselves committing acts of violence, especially so among poor families; On the role of southern
courts in family issues, as they assumed the role of patriarch when husbands failed to meet those
obligations, see Peter W. Bardaglio, \emph{Reconstructing the Household: Families, Sex, and The Law in the
Carl Degler on female challenges to male authority from a national perspective, in \emph{At Odds: Women And
The Family In America From The Revolution To The Present} (New York and Oxford: Oxford University

\(^{35}\) Twenty-nine cases out of the fifty-eight fit into this middle-range category.
children were usually involved in middle-class divorces—84 percent had at least one child.\textsuperscript{36}

Economic mobility blurs the lines between class distinctions to some degree in that the yeoman couples may well have fallen into the lower economic group had they divorced earlier in their marriages. Had the poorer couples remained married longer, they, too, might have acquired more property, become parents, and emerged as members of the middle class. The longer marriages of the yeoman class are associated with slightly older individuals whose time together had allowed them to accumulate wealth and to have children. While a connection exists between marital stability and upward mobility, it is also true that expectations for marriage, the implementation of patriarchal authority, and the execution of gender roles took on slightly different meanings for divorce seekers of the yeoman class than for the less affluent.

Heavily vested in the accoutrements of long-term relationships—emotional connections, family ties, financial investments, and children—the decision to divorce for these couples was a weighty one that involved significant risks. Husbands and wives were bonded together by years of cohabitation, shared labor, and parenthood. They had shared commitments to extended family, in-laws, mutual friends, and other acquaintances, as well as to the land and homes they owned jointly. They had put down roots in the community for themselves and for their children and had become enmeshed

\footnote{Marriage length: average 9.68 years. Sixteen out of nineteen show one or more children. Couples may have fallen in the poorest category because they were young newlyweds whose short marriages yet to produce financially stable or offspring. Over time these same couple may have fallen into the middle-class category.}
in their personal identities as husbands, wives, fathers, and mothers. The longer a
marriage lasted, the higher the perceived risks in ending the marriage, and the greater the
reluctance to permanently dissolve the core relationship of one’s life.

Albert Johnson, for instance, endured at least five years of his wife’s egregious
behavior before finally resorting to divorce. Johnson repeatedly tried to curtail his wife’s
inappropriate and cruel actions in order to preserve the unity of the household, which
included the couple’s five children and at least one slave. Johnson had been married for
fourteen years when, in 1854, he complained to the Harrison County court that his wife,
Nancy, had failed in her domestic responsibilities. She had done so by abusing the
domestic slaves that he—as a good husband—had provided for her convenience.

Nancy’s violent and abusive behavior had been so extreme that it resulted in the
death of thirty-year-old slave woman named Coly. Nancy had repeatedly and viciously
beaten Coly with wooden sticks, causing severe injuries, after which she would make
Coly work through the night. As part of the ongoing torture, Nancy deprived Coly of
food, medical attention, and rest—all of which was at its most extreme. Albert claimed,
when he was away from home. After Coly died from the effects of the abuse, Albert saw
fit to bring a young boy home to serve in her place. Perhaps he reasoned that Nancy
would be kinder to a child or that she had learned a lesson from Coly’s death. But Nancy
continued her violent behavior, and Albert was soon forced to rescue the boy by
removing him from the home.

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37 Albert Johnson v. Nancy A. Johnson, HCCCP, Case no. 2670 (1854).
After much contemplation and upon Nancy’s ardent promise to reform, Albert agreed to purchase yet another domestic slave. This time, he chose a ten-year-old girl named Polly. Within a month, Nancy began her routine of beatings, unreasonable work demands, and harsh deprivations. Albert attempted to assert his authority in the hope of controlling Nancy’s behavior, but she refused to listen to his “positive commands that she desist.” Hoping that peer pressure might influence Nancy for the better, Albert solicited assistance of various friends and neighbors, who admonished her to take a more humane and gentle approach to her household governance. But Nancy was only emboldened by the interference and defiantly stated that she would continue in her habits and do as she pleased.

The relationship between Albert and Nancy had deteriorated so significantly that Albert had taken a separate room in the house and Nancy had denied conjugal interaction for two years. Not only did she refuse to behave amicably toward him in private or to make an effort to keep peace within the home, she also humiliated her husband by refusing to acknowledge his presence in front of others—at times pretending he was not in the room and refusing to speak to him. Yet, claiming that he hoped to “preserve unbroken the marriage,” Albert continued to live in the home and support his wife as a good husband ought, showing her respect and kindness and providing “all necessaries suitable to her condition and to his situation in life.” But the final blow came when Nancy attempted to kill the slave girl. She first beat Polly—who was already weak from undernourishment—then tied her to a post, exposed Polly’s upper body, and enticed bees to attack the helpless child. Afterwards, Nancy refused medical attention and compelled
Polly to perform physical labor. The girl narrowly recovered, and upon finding out about the incident, Albert made his decision to file for divorce.

Like her less affluent counterparts, Learnara Russum and Eliza Jackson, Nancy Johnson refused to be kept in check by the supposed authority of her husband, and she ignored the well-meaning advice and admonitions of friends. Unlike Russum, whose responsibilities as the wife of a poor man were clearly linked to the physical tasks of cooking and cleaning, Johnson was called upon to act as mistress of the household—to execute the responsibilities of a domestic manager, offering kind and tempered oversight to the slaves that her husband provided for her. Rather than demand that she rely on her own skills, Albert repeatedly—at high risk—supplied his wife with new servants, as befitting her “station is life.” His motivation for taking the moral and financial risk of bringing yet another slave under Nancy’s supervision is best understood in light of yeoman notions of respectability. In the words of historian Stephanie McCurry,

“Assumptions about gender, race, and power were reproduced within yeoman households in inevitable conjunction with the material bases of independence.” Slave ownership and the ability to relieve wives and daughters from arduous fieldwork or household drudgery located the yeoman within the realm of respectability and spoke to his status as master of his household. Whether Nancy Johnson actually needed—or deserved—the help was secondary to the appearance of independence and Albert Johnson’s concept of himself as a good provider and patriarch.38

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38Stephanie McCurry, Masters of Small Worlds, 78–80 (quotation on 80).
In these last years of his marriage to Nancy, Albert saw his power as head of the household undermined. His best efforts to ensure that his wife and children had a comfortable life were countered by Nancy’s brutal abuse of the slaves that he had secured for the betterment of the family. No benevolence on his part toward the slaves or his wife went unpunished. Albert’s sense of paternalistic duty to those within his household—children and slave included—pervades his arguments against his wife’s inhumanity and lack of compassion. As a father, Albert worried that Nancy’s behavior was psychologically harmful to their five children. Upon seeking divorce, he requested full custody. Nancy, he asserted, had failed in her motherly obligation as the moral exemplar, and her continued influence would be “exceedingly injurious to the minds and destructive to the happiness of his children.”

Albert’s charge of cruelty was nuanced and to some degree considered in terms of respectability and patriarchal authority. Nancy’s refusal of conjugal connections and her openly hostile demeanor toward Albert were infractions committed directly against her husband, as was her refusal to obey his demands for reform. Her open refusal to execute benevolent authority and guidance toward her underlings were indirect acts of ill treatment toward Albert. Nancy’s rage and violence against the slaves embarrassed and shamed her husband and children and jeopardized the family’s reputation as respectable people of the community. Her violence had cost the family monetarily as well in terms of lost investments in slave labor, as she misused, abused, and—in the case of Coly—actually destroyed valuable human property. In so doing, Nancy undermined her
husband’s ability to support his family in a proper fashion. Simply put, she was a bad mother, a cruel slave owner, and a disobedient wife.\textsuperscript{39}

To be certain, Nancy’s Johnson’s offenses were not minor; only continual and egregious infractions drove Albert to file for divorce. The ways in which her actions were perceived and discussed, however, were very specific to contemporary ideals for the deportment of middle- to upper-class wives and mothers and, at least to some extent, reflect the concept of separation of spheres and nineteenth-century ideals of female behavior. Unfortunately, the verdict from the Johnson case is missing from the records, and we can only speculate that Albert won his case, in keeping with the pattern normally followed by local courts, particularly given the very thorough presentation of his case depicting a defunct and “insupportable” relationship. However, he may well have withdrawn his suit, having once again come to believe that his endeavors had brought about a positive change in his wife, as he clung to the hope of keeping his family intact.

Just as middle-class couples were more hesitant as a group to seek divorce than their less wealthy counterparts and more apt to elaborate on their marital difficulties in order to justify their decisions, they were considerably more interested in property and custody issues. As rule, property settlements and child custody arrangements were usually somewhat cut-and-dry, with the person who won the divorce (normally the plaintiff) receiving custody of the children and community property divided in half. However, property settlements could also become rather complicated. The divorce

\textsuperscript{39} Texas Supreme Court opinions held that charges of cruelty must be acts committed directly to the spouse, and specific instances had to be cited and proved. \textit{Lucas v. Lucas} 2 Texas 112 (1848) and \textit{Wright v. Wright} 3 Texas 168 (1848).
settlement of Albert and Lucinda Arnot reveals the nuances involved and the level of active participation that both men and women might engage in to protect their interests.40

Albert Arnot’s estate valued at nearly $4,000 put him solidly within the middle range of the yeomen divorce seekers. He and his wife, Lucinda, had married in 1842 in Mississippi. Twenty-three years old at the time, Albert brought $650 into the marriage as his separate property. In 1845 the young couple moved to Texas and invested Albert’s money in a new home and business in Marshall. Within a few years they had established a comfortable life for themselves, and the marriage was blessed with three young daughters. By the early 1850s they owned several town lots, including the locations of the family home and a blacksmith shop. The real estate holdings and other property—"household and kitchen furniture," a female slave, a wagon, a horse, five mules, and $702 in “money on hand”—were carefully laid out in the divorce papers.

In October 1851 Albert filed for divorce, accusing Lucinda of adultery with a man named David Morgan. Albert’s petition provides little detail about this offense except to imply that it was an ongoing affair that had resulted in separation and in Lucinda’s absence from the family home and the children. A jury readily found Lucinda guilty, which normally would have resulted in a simple divorce decree in Albert’s favor. However, Albert had attempted to hide the community property by deeding the homestead, the slave woman, and other property to his minor daughters under his guardianship. The scheme backfired when Lucinda accused him of fraud. The jury declared that both parties were equally entitled to divorce—him, because of his wife’s

40 A. M. Arnot v Lucinda Arnot, HCCC, Case no. 2286 (1852).
adultery; she, because her husband’s attempt to defraud her amounted to cruelty. Since, under Texas law, no divorce could be granted when both parties were equally guilty, the case was deadlocked. Thus, what might have been an open-and-shut case turned into a complicated property dispute with child custody as an influencing factor.

Lucinda, having gained leverage, struck an agreement with Albert, which the couple then submitted to the court. Their settlement was based on the jury’s declaration of all property as community except that amounting to $650, the equivalent of Albert’s separate property, and $50 that he had previously conveyed to her. With the court having declared null and void the deed by which Albert had conveyed the property to the children, Lucinda withdrew her charge of fraud (cruelty) against Albert. In this manner, Albert technically won the divorce on grounds of adultery. Lucinda agreed that he might have custody of the children, as the jury had recommended, but—in exchange for her concession—she demanded full and free visitation whenever she desired. She received the homestead—the family home in Marshall—and Albert received $700 in cash as stated above. Lucinda and Albert each took one-third of the remaining community, and the final third was set aside for the children under Albert’s supervision.

As the Arnot case illustrates, middle-class status went hand-in-hand with an awareness of financial interests and a willingness to assert legal rights on the part of both men and women. The level of interest in financial settlements can be seen in property inventories, injunctions against husbands to prevent the sale of property, the use of

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custody to influence property settlement, claims to separate estates, and establishment of
one's participation in the enhancing of family assets. No doubt, middling-class divorce
seekers—of both genders—sought legal advice and tapped into other resources that could
help them obtain advantageous settlements. Albert Arnot made a concerted effort to hide
the family assets and protect his own interests—albeit illegally and unethically. And
Lucinda Arnot was unwilling to be cast aside as an adulteress with no return for her years
of investment in the marriage and for her part in the development of the community
estate. Instead, she claimed her property rights, used Albert's attempt to defraud her as
leverage, and demanded equity. In doing so she not only protected her financial interests
but also ensured continued interaction with her children. Even after having been dubbed
an adulterous, she was able to retain her role as a mother.

The emphasis on financial elements is less a reflection of substantial wealth—for
these were indeed the common folk, not planter elite—than of the upward mobility of
individuals over time. Yeoman men and women were clearly cognizant of their
accumulated assets and the labor they had expended to acquire them; they were equally
aware of the difficulties to be faced were they to lose those assets. Dividing marital
property in half would for some couples quickly relegate both spouses to the lower
economic rung and force them to start over in the quest for financial security. This
situation could be particularly acute for women, whose options were always severely
limited or for spouses, such as Albert Arnot, who—with severely depleted resources—
had to continue supporting several children.
For many, de facto divorce or unofficial separation might have been a viable option. An amicable out-of-court separation agreement had the potential both for working out a suitable financial arrangement and for avoiding public scrutiny and the stigma of divorce. Herman and Mary Lammers attempted to do just that. They peacefully signed a property agreement on July 21, 1860, hoping to keep their marital differences and financial business as private as possible. Herman, a shoemaker by trade, took his cobbler’s tools; Mary got the balance of the property, which included one house and lot plus a half interest in a second lot, all household belongings, and the slaves. In exchange, she agreed to pay the family debts. The document was “to hold good & to be binding forever in any case whatsoever[,] especially in any suit brought by [the] parties for a divorce.”

All hope of avoiding an acrimonious divorce and public scandal was shattered, however, when one week later Herman filed a divorce petition charging Mary with adultery and challenging the validity of the document. He claimed that shortly after signing the agreement he had learned that Mary was involved in an adulterous affair. Because she had deceived him regarding her virtue and the true situation, he argued, she was guilty of fraud. Lammers’s divorce petition accused his wife of adultery with “diverse persons” but especially emphasized her current relationship with Herman Lherman—whose name significantly appears as a witness on the separation agreement.

Lammers owed this newfound knowledge in part to his key witness, James Granford. Granford stated that he “saw with [his] own eyes” Mary Lammers engaged in

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42 Herman Lammers v. Mary Lammers, WCCCP, Case no. 2811 (1860).
adulterous behavior. He claimed that she had been several times in the company of “one Mr. Merlon, a wagon maker by trade, who had a stiff leg (a German) in broad open daylight on the road.” The couple had been “alone, or they imagined themselves to be” on a road about two miles outside of the Washington County seat of Brenham. They knew of his presence on only one occasion, he claimed, when he actually caught them “in the act of violating the Marriage Bed.”

More important to Lammers in contesting the separation agreement was his accusation that on July 22—one day after the couple signed the property agreement—Mary began living with Lherman. No doubt, Lammers felt that he had been maliciously deceived by his wife and her lover. In his initial anger, he barged into her house, breaking the locks and hinges and pushing in the doors. He forcefully threw Mary out of the house and took possession of the household, including the slaves. Armed with her separation agreement, Mary sued him to have the property restored to her and asked for $1,000 in damages. At that point, Herman filed for divorce, laying out all of his wife’s purported immoral acts and deceptive practices and contesting the validity of the property arrangement. Thus, what began as a private and civil approach to marital dissolution quickly turned into an unpleasant court battle.

Although at first eager to exact retribution and pursue the issue in court, Mary ultimately abandoned the public dispute and left the county, presumably with her new lover. According to Herman, she ran away to avoid paying the debts that she had agreed to assume in the original separation agreement—another reason, he claimed, that he
deserved to have the property legally endowed in him.\textsuperscript{43} Herman failed to follow through with the case, however, and we can only speculate on what happened to Mary, she having joined the rank of numerous other wives who chose to relocate and leave behind their troubles—and humiliation—rather than follow through with the public ordeal of divorce.

Desertion was in fact the most common complaint against women in middle-class divorces, with seven out of eleven husbands using abandonment as the basis for acquiring divorce—64 percent. Because abandoning wives left the scene with no written explanation, the true and particular motives that individual middle-class women had for leaving their husbands cannot be determined with certainty; as absentee defendants, their side of the story goes largely untold. But the actions that they took—no more or less bold than their sisters who stayed and filed for divorce—reveal a thoughtful determination to seek new situations not dissimilar to that from which they had come. Women of the yeoman class were not apt to simply strike out on their own or to leave without economic resources, nor did they fully reject their roles as wives and dependents. Instead, abandoning women sought out the protection and security of new permanent relationships, or they returned to the solace of previous homes and kinfolk. Rather than acting impulsively or spontaneously, abandoning women carefully plotted courses of action and often had specific destinations in mind before they made their moves—places where they might establish new lives with their lovers or, more often, where family members would welcome them home.

\textsuperscript{43} In October 1860 Herman failed to put up security and the case was dismissed.
Louisa Bryan stealthily waited until her husband was away on business before making her move. When the coast was clear, she loaded up all of her material belongings as well as her children and slaves. She found refuge in the home of a benefactor for over three weeks — according to her husband, a highly improper thing to do because the man was a bachelor who had no white family on his premises. There Louisa contemplated her ten-year marriage and entertained advice from friends. Ultimately, she decided that her interests were best served outside of the marriage and boarded a boat for Alabama to live with family. Nancy Dickins moved to Alabama and set up housekeeping with another man for five years before her husband filed for divorce. Areabella Foster and Sarah Oneal sought out destinations in Tennessee and Arkansas, respectively, that held a degree of comfort and familiarity and prospects for establishing new lives unencumbered by the recent past.\footnote{\textit{J. R. Dickins v. N. K. Dickins}, HCCCP, Case no. 1488 (1850); \textit{Josiah A. Foster v. Arabella Foster}, HCCCP, Case 4172 (1859); \textit{Francis Oneal v. Sarah Oneal}, HCCCP, Case no. 3527 (1857).}

No stories of prostitution or of entrepreneurial endeavors are found that might indicate anything other than an adherence to the popular notions of gender and family roles and to the basic institution of marriage itself. Abandoning women simply cultivated new situations and environments that would give them hope of fulfilling their desires for happiness within a traditional and mainstream lifestyle — that is, in the role of wife or other appropriate family roles. Returning to the bosom of family afforded some divorcing women a respectable and beneficial alternative to bad marriages and made the divorce option more viable. Deserting wives rejected particular marriages and particular
husbands—not marriage in general or the traditional role of women within the household. Yet, in the words of historian Robert Griswold, desertion was the “boldest display of independence from a wife,” and, no doubt, it required a great deal of motivation and initiative.\footnote{Robert L. Griswold, \textit{Family and Divorce in California, 1850–1890} (Albany: State University of New York Press, 1982), 79. As in this study, Griswold found that 64 percent of male-initiated suits were based on charges of desertion.}

Yeoman women who stayed behind, taking the legal route and filing for divorce themselves, were equally deliberate, displaying an even greater reluctance to set aside their marriages. They did so only when dire circumstances left them no alternative, as illustrated in their petitions, which are dominated by accusations of ill treatment.\footnote{Reluctance among women plaintiffs of the yeoman class to leave the marriage is seen in the average marriage length ten years. Abandoning wives left husbands after an average of seven and one half years of marriage; women who filed for divorce themselves remained in the marriage ten years on average.\footnote{Mary E. Smith \textit{v.} Edward M. Smith, HCCCP, Case no. 2797 (1856). Although Mary Smith’s abandonment case was successful, other women who relied on abandonment charges also included adultery and cruelty allegations. In this case, the wife (Smith) lived on her own for longer than the three-year designation for legal abandonment, filing for divorce only when it became financially sensible to do so. Upon the death of her mother-in-law, Smith hoped to get control of at least a portion of her husband’s newly inherited estate: Elizabeth Hull \textit{v.} Johnathan Hull, WCCCP, Case no. 3191 (1863). Elizabeth Hull’s allegations of adultery were not successful. Hull filed her petition in response to rumors that her husband was living a sexually promiscuous lifestyle as a Confederate soldier in Mississippi. Her case rested on flimsy ground at best and was withdrawn. Under Texas law, women technically could not sue on simple adultery charges, but also had to prove that a husband had “shall have abandoned her and lived in adultery with another woman.” In addition, rumor did not constitute proof of allegations. “An Act concerning Divorce and Alimony,” Gammel, comp., \textit{Laws of Texas}, II, 483.}} Only one yeoman woman in this study cited simple abandonment, and one other attempted divorce on adultery alone—all others contain charges of cruelty.\footnote{Mary E. Smith \textit{v.} Edward M. Smith, HCCCP, Case no. 2797 (1856). Although Mary Smith’s abandonment case was successful, other women who relied on abandonment charges also included adultery and cruelty allegations. In this case, the wife (Smith) lived on her own for longer than the three-year designation for legal abandonment, filing for divorce only when it became financially sensible to do so. Upon the death of her mother-in-law, Smith hoped to get control of at least a portion of her husband’s newly inherited estate: Elizabeth Hull \textit{v.} Johnathan Hull, WCCCP, Case no. 3191 (1863). Elizabeth Hull’s allegations of adultery were not successful. Hull filed her petition in response to rumors that her husband was living a sexually promiscuous lifestyle as a Confederate soldier in Mississippi. Her case rested on flimsy ground at best and was withdrawn. Under Texas law, women technically could not sue on simple adultery charges, but also had to prove that a husband had “shall have abandoned her and lived in adultery with another woman.” In addition, rumor did not constitute proof of allegations. “An Act concerning Divorce and Alimony,” Gammel, comp., \textit{Laws of Texas}, II, 483.} With these two cases as the only exceptions, middle-class women appealed to the court’s sympathy by recounting some degree of ill treatment. That is, 84 percent of the known allegations made against middle-class men carried a charge of cruelty; of those, 64 percent of the
wives specifically described physical abuse.\textsuperscript{48} For the overwhelming majority of women plaintiffs, daily life had become unbearable and interpersonal squabbles had evolved into intolerable home situations fraught with domestic violence. Hence these women stepped into the public realm in search of the legal redress.

To be sure, even in the twenty-first century, with an expanded level of social and state intervention in family matters, investigation of domestic violence remains problematic, with victims often concealing their family ills from public scrutiny.\textsuperscript{49} However, the nature of familial discord associated with mental and physical abuse rarely allows for complete concealment, and some degree of public attention was inevitable for battered wives of the antebellum era, who often sought assistance from neighbors and relatives. For women in such marriages, who had been repeatedly humbled before domineering husbands and at times humiliated in the presence of others, filing for divorce was the key to a new life and a necessity for preserving what remained of the family unit. Forced to weigh the stigma of divorce against the daily horrors of an abusive marriage,

\textsuperscript{48} Thirteen allegations are known; eleven of those used cruelty charges, and seven cited physical abuse.\textsuperscript{49} The Texas Council on Family Violence reports that in 2005, over 187,000 incidents of family violence occurred in Texas. In a 2002 survey, 75 percent of Texans said that they would call the police if they were to experience some form of domestic violence, but only 20 percent claimed that they actually did so when it had occurred to them or another family member. Texas Council on Domestic Violence. http://www.tcfv.org/about_tcfv/facts.html [accessed June 29, 2007]; and “Prevalence, Perceptions and Awareness of Domestic Violence in Texas. Executive Summary” February 11, 2003. Sponsored by the Texas Attorney General. http://www.tcfv.org/pdf/PAC_Exec_Summary.pdf [Accessed June 29, 2007].
these women opted for a life free of violence and distress—to regain their legal status as
defem sole and wrest control of their lives from cruel husbands.

While domestic violence was to be found among all classes in this study, it seems
to have been the defining issue by which middle-class women felt justified in seeking
divorce. Whether this is a reflection of their personal values and beliefs—of what the
wives themselves perceived as necessary justification for divorce—or of the perceived
requirements for public validation, is unclear. In either case, few yeoman women
voluntarily stepped into the divorce arena without having suffered some form of abuse,
usually having endured bodily assaults. Some expressed fear for their very lives and for
the safety and well-being of their children.\footnote{Historian Linda Gordon has shown that domestic violence in late-nineteenth century Boston was most often a lower-class phenomenon associated with poverty. Her study concluded that “[f]amily violence usually arises out of struggles in which individuals are contesting real resources and benefits” and that “[t]hese contests arise not only from personal aspirations but also from changing social norms and conditions.” Linda Gordon, \textit{Heroes of Their Own Lives: The Politics and History of Family Violence, Boston 1880–1960} (New York and other cities: Viking Penguin, 1988), 3. While it is impossible to determine how women might have continued in lives fraught with domestic violence, having never taken their plight before a court of law or left or otherwise left a written record of their difficulties, it is clear that for antebellum Texas, domestic violence was not specific to the lower class. Abusive marriages were to be found among all economic and social sectors and overwhelmingly dominated the divorce cases of middle-class female plaintiffs.}

Since it is impossible to know how many women in any socioeconomic group
suffered abuse as a matter of course without seeking legal redress or otherwise leaving a
historical trail, it is impossible to make definitive conclusions about the prevalence of
domestic violence among families of any class. It is fair to conclude, however, that
middle-class women were more apt than poor women to bring the issue to the court’s
attention and to claim redress. And, when shifting the analysis to upper-class divorce
seekers, it becomes clear that elite women were equally diligent in accusing husbands of
ill treatment, having also suffered the torments of verbal, physical, and psychological abuse before resorting to divorce. For yeoman wives and plantation mistresses alike, the range of cruelty charges was comprehensive, and individuals offered a variety of possible definitions for what they believed constituted “outrages” that would render a marriage “insupportable.”

Before turning to a more robust analysis of the legal and practical issues related to the prolific use of cruelty charges by antebellum women, this discussion continues in its examination of the connection between social status and divorce seeking by looking at the dynamics involved in upper-class divorce. As a whole, the wealthy demonstrated a greater propensity to utilize civil litigation to remedy difficult marital situations than other groups.\(^{51}\) Whereas the wealthy composed only 15 percent of the general population, they represented 27 percent of the divorces cases among those for whom a wealth category can be determined. Because they wielded a highly disproportionate share of economic and political influence—controlling 75 percent of the state’s property and slaves—the public activities of this small group were highly visible.\(^ {52}\) Although by twenty-first century standards, the fourteen cases in this study might appear insignificant, the frequency of these divorces in the rural setting of antebellum Texas—and the complicated and scandalous narratives they conveyed—were sufficient to draw attention to the high-profile families involved and undoubtedly had a significant impact on the local perception of divorce.

\(^{51}\) See for instance, Rebecca Hagerty’s lawsuit against her second husband regarding her first husband’s estate and her children’s inheritance, which went on appeal to the supreme court in 1853. *Hagerty’s Ex’ors v. Scott and Wife* 10 Texas 526 (1853).

\(^{52}\) Campbell, *Gone to Texas*, 214, 217.
Some of the East Texans who chose to divorce numbered among the wealthiest individuals in the state, and their divorce petitions reflect their interest in retaining their elite status. Charles and Thetis Power, for instance, battled over a $100,000 estate in 1864. Rebecca Hagerty, who sued for divorce but was widowed before the suit was completed, held the position of wealthiest woman in Texas by 1860, with an estate valued at over $100,000, which included two plantations and a large number of slaves. Wiley W. Pridgen was taxed on $25,348 in Harrison County alone and owned substantial property outside the county as well. At the time of their divorce in 1851, Wiley and his wife of thirty years, Mary Baker Pridgen, owned two plantations and forty-nine slaves. One of their sons, Bolivar Jackson Pridgen, went on to become a respected state legislator.\footnote{Mary Pridgen v. Wiley Pridgen, HCCCP, Case no. 1135 (1850); Rebecca Hagerty v. Spire M. Hagarty, HCCCP, Case no. 1175 (1850); See also Hagerty, Rebecca McIntosh Hawkins. Papers. Center For American History. University of Texas, Austin; and Handbook of Texas Online, s.v. “Pridgen, Bolivar Jackson,” http://www.tshaonline.org/handbook/online/articles/PP/lpr10.html (accessed February 11, 2008).} From among this group come some of the more notorious cases, characterized by intense property battles and detailed accusations.

The instigation of divorce suits among the elite was a highly gender-specific endeavor—a characteristic not seen in the lower classes. Upper-class divorces in this study were only initiated by women; no elite men filed divorce suits against their wives. This weighting toward female initiation stands in stark relief to the overall trend in which the proportion of male plaintiffs rose steadily until reaching roughly half of all suits in the postbellum era.\footnote{Of 1,467 postbellum cases in the database used for this project were 720 male plaintiffs—49 percent.} During the frontier period, women filed 68 percent of the suits, and
men, 32 percent; but after 1850 men began to seek divorce at a rate of 42 percent. During the frontier phase women had found divorce more imperative than men and had been willing to put forth more effort to seek redress in a nascent legal system. Moving out of the survival mode and into more settled society altered the nature of divorce from a cut-and-dry necessity most often felt by women to a means by which both men and women began to address a wider variety of infractions. Undoubtedly, as expectations for a stable and prosperous home life grew, so too did the number of failed promises and dashed hopes. And as courts became more accessible, divorces increased accordingly. Men and women alike misbehaved according to contemporary marital standards, and spouses of both genders increasingly sought redress in the district courts. Yet, as men steadily began to assert their right to end bad marriages, the increase in male plaintiffs did not take place among the elite. Among the poor, men filed 36 percent, and middle-class men filed 40 percent of the suits. Elite men, however, entered the divorce arena only as defendants.55

A number of explanations present themselves as to why only women ventured from the plantation to the courthouse in search of a life change—and why they did so more readily then women in lower economic circumstances. To be sure, women in Texas had considerable property rights, but in effect, a married woman’s estate remained under her husband’s control while married. Married men had no reason to seek out a new legal status to unburden themselves of financial difficulties. Staying married only insured their control of the family wealth. They were not at the mercy of wives for financial security,

55 Brenda E. Stevenson, *Life in Black and White: Family and Community in the Slave South* (New York and Oxford: Oxford University Press, 1996), 154. Stevenson found that upper-class men in Virginia were also less apt to seek divorce than women or less wealthy men, having fewer economic incentives to do so.
for safety, or for respect. Men had much greater freedom of movement and superior opportunities for self-sufficiency. Married women, on the other hand, were far more vulnerable in many ways—financially, physically, and socially. As numerous examples from their divorce petitions show, women in bad marriages often endured physical and mental abuse, neglect, humiliation, and even saw their financial security pilfered away by husbands who were at best incompetent money managers and at worst swindlers and gamblers. Thus, the practical motivations for ending an unhappy marriage were far less acute for men, who stood to lose considerable wealth in a community property state that not only recognized women’s separate estates but also one in which courts often ruled favorably on behalf of wives.

Women of the elite class, like yeoman wives, demonstrated a strong awareness of their legal rights. Gaining a divorce meant the restoration of a woman’s full legal standing as a feme sole and the practical control over her own wealth. Elite women were most likely to be educated, and they had resources and personal connections to help them take the bold actions necessary for ending their marriages. Moreover, substantial wealth meant that an elite woman could maintain a comfortable lifestyle even when the family estate was divided in divorce. Women married to financially incompetent or disreputable men had much to lose by staying married and reasonable expectations for gain when they divorced.

That is not to say that divorce came easy for elite women but rather that their prospects for a better post-divorce life were more acceptable than for less fortunate women. Certainly, elite women were reluctant to step into a public venue and put all the
unsavory details of their private lives before the community. Overall, their marriages averaged over eleven years in duration before they filed for divorce. For those attempting to end first marriages, the length was more than fourteen years—ten years longer than for poor divorce seekers and four and a half years longer than for those from the middle class. Four out of ten of these more affluent women hoped to end second marriages that in duration ranged from two to fourteen years. Moreover, most, if not all, of the elite plaintiffs were mothers who had the welfare of children to consider. At least two of the second marriages were between widows and the unscrupulous trustees in charge of their deceased husband’s estates. Far from rushing into divorce, individual elite women were patient and cautious in coming to their decisions; yet as a class, they were certainly over represented and demonstrated a clarity of purpose in demanding a high standard of conduct in terms of respect, property control, and living standards.

Upper-class women seeking divorce could expect a pro-plaintiff verdict should their cases reach fruition. Thirty-six percent withdrew their cases, however. Two of the fourteen women later filed again for divorce but once more withdrew their suits before they reached court. Twenty-nine percent of the women won their cases, and 21 percent of the suits were halted by the rather timely deaths of husbands. In such cases, wives not only were relieved of the public ordeal of litigation, they were also released from

56 Length of marriage length can be determined for ten cases. Of those, four were second marriages.
57 All of the fourteen cases specifically mention children except two. The documentation for those two cases are poorly preserved and the presence of children cannot be ruled out.
unhappy marriages, achieving the desired goal in widowhood rather than through divorce. Thus half of the suits ended in the singlehood of plaintiffs, and over one third chose to end litigation and remain married. None of the plaintiffs actually lost their cases to a pro-defendant decision by the jury or court ruling or had their cases dismissed by the court, although there remains no record of a final settlement in two—14 percent—of the cases. By way of comparison, female plaintiffs of the middle class withdrew their suits 27 percent of the time and won 47 percent of their cases. Nineteen percent were either abated by the death of the defendant (one case) or dismissed by the court for unspecified reasons.59

In both instances where there remains no extant record of final settlement, the cases played out over several years spanning the Civil War, during which proceedings were often put on hold because of court closings or other war-related circumstances. In both cases wives were granted relief through years of temporary alimony and, in at least one of the cases, in the form of injunctions against the husband to prevent him from inappropriately disposing of property while the suit was pending. Clearly, the courts acted with a protectionist impulse by insuring that these women were not without financial resources, and they may have been inclined to ultimately decide in favor of the

59 Fifteen (known) middle-class suits were initiated by women. One plaintiff lost her suit at the local level but appeal to the Supreme Court. Felana Pinkard v. Slaughter D. Pinkard, HCCCC, Case no. 2522 (1853). In Pinkard v. Pinkard 14 Texas Reports 356, the high court ruled against Felana Pinkard in her request for a new trial because she had made no attempt to prove the adultery charges against her husband and her charge of abandonment was unsubstantiated.
wives. Yet there is also the possibility that these women—and others—may have intentionally prolonged the suits. Rather than assuming the undesirable mantle of divorce—with a depleted and finite amount of property—some women may well have preferred to enjoy the benefits of steady alimony or the court-monitored control of property. Given that the state of Texas allowed alimony only during the pendency of a divorce suit and not after a divorce was granted, this may have been a well-advised use of the legal system that allowed women to live outside the bonds of marriage without fully abandoning their status as wives. In this way, families might remain officially intact, at least for a few years; and wives could adopt independent lives while simultaneously avoiding the stigma of divorce.

As was the case with yeoman wives, an overwhelming majority of elite women claimed ill treatment as their primary motive for seeking divorce or in conjunction with other charges—71 percent. To be sure, upper-class women also used allegations of adultery and desertion but only in tandem with at least one other allegation—usually some form of ill treatment. Of those who put forth cruelty allegations, 60 percent

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61 See also Cynthia Brown v. J. Brown, HCCCCP, Case no. 4685 (1861); Sarah Sterling v. L. D. Sterling, WCCCCP, Case no. 3172 (1862).
specifically listed instances of physical abuse. Among the others, physical abuse was sometimes implied or insinuated.\textsuperscript{63}

With cruelty as the overwhelming commonality between middle-class and elite women who sought divorce, the legal and social ramifications of domestic violence bears consideration. And with fewer references appearing among the lower class, it seems likely that the class element is perhaps not a matter of whether domestic violence occurred within any particular group but of the decreasing levels of tolerance by women in graduating social positions and the definitions and perceptions of what constituted sufficient grounds for claiming ill treatment.

The degree to which physical abuse of women was allowed to continue prior to seeking divorce speaks to the harsh reality of the homelife of many divorcing women and to a continued adherence to the idea that patriarchal authority allowed for some level of physical correction for wives.\textsuperscript{64} The Texas penal code, in fact, upheld a husband’s right to use physical restraint or coercion without fear of criminal prosecution. Nevertheless, marital abuse was increasingly frowned on and condemned in divorce proceedings and by the community at large.\textsuperscript{65} As exhibited in the decisions of local juries and judicial rulings, Texas communities neither condoned nor approved of violence within the home. Women

\textsuperscript{63} Of the fourteen elite women who filed for divorce, ten filed on grounds of cruelty. Four cases specified adultery but always with other charges—all of which could be interpreted as ill treatment; five used included abandonment charges but, again, only in conjunction with other charges. Cruelty allegations stand out as the overriding common element among the cases.

\textsuperscript{64} On the popular attitudes of Texans toward wife abuse see Angela Boswell, “The Social Acceptability of Nineteenth-Century Domestic Violence,” in Dillard and Hall, eds., The Southern Albatross.

\textsuperscript{65} Laura Edwards argues that southern “antebellum law had to continually assert the power of white male household heads in the antebellum period precisely because that power was neither complete nor stable in practice,” with wives challenging that authority in court actions against abusive husbands. Edwards, “Law, Domestic Violence, and the Limits of Patriarchal,” 66.
of all classes who made their stand in court against abusive husbands enjoyed a high success rate. Female plaintiffs were consistently rewarded with decisions that validated their claims of victimization and freed them from the tyrannical authority of abusive husbands.

The public and legal attitudes toward domestic violence followed the general trajectory of divorce law in the United States and limited the exercise of patriarchal authority. The Texas Supreme Court began to address the issue of domestic violence in the late 1840s. As the leading judicial authority in a nascent legal system, Texas justices borrowed from precedents and legal traditions of older states and from England, all the while cognizant that they acted as founders of the state’s legal traditions and that their decisions affected the future lives of Texans. The divorce statute of 1841 had used very broad and general language in wording the cruelty clause, which gave the court and local judges considerable leeway in interpretation. Section 3 of the divorce statute stated that a divorce could be granted when “the husband or wife [was] guilty of excesses, cruel treatment, or outrages towards the other, if such ill treatment [was] of such a nature, as to render their being together insupportable.” Such phraseology allowed for a wide range of possible narratives with which applicants might frame their cases and laid groundwork for the application of the mental cruelty theory.

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By 1850 district courts were able to rely on several rulings from the state supreme court to assist them in determining the legal viability of the various allegations brought by divorcing spouses. In 1848 the court was challenged by several attempts to take advantage of the broad phraseology of the cruelty clause. Repeatedly, the court emphasized the gravity of the divorce process and its own reluctance to promote the easy absolution of marriages. It adamantly required that divorce petitioners give very specific instances of offense, be it for allegations of adultery, cruelty, or abandonment, and that charges be proven by the evidence presented. Local juries were to decide on the truth of allegations, and local judges were to determine whether those truthful allegations were egregious enough to render the marriage insupportable.

In 1848 Mary Lucas of Shelby County was denied a divorce by the Texas Supreme Court, which ruled that her husband's alleged misconduct was not directly against her. Harvey Lucas was a thief, according to Mary, who had thus far avoided prosecution for his crimes. He was “an idle, dissolute and profligate character,” and in his effort to avoid the consequences of his illegal deeds, he had abandoned her and her child in 1845. The trial focused not on Harvey’s failure to provide for his family but on whether his crimes were an “outrage” against his wife, as she had originally charged. In its written opinion, the court promoted wifely loyalty. Hypothetically, it argued, even a felon, despite his crimes against society, might treat his wife well and commit no legal “outrage” against her directly. “[T]enderness for her may be one redeeming trait in his vicious character—one virtue linked with a thousand crimes.” In such a case, the wife “should endeavor to win him back to virtue, and be the very last person on earth to
proclaim his vices to the world.” Emphasizing the sanctity of marriage and the need for “the clearest legal grounds” to dissolve the relationship, the court ruled against Mary Lucas for having failed to convince them that her husband’s misdeeds constituted deliberate acts of cruelty.68

In another case that same year the court ruled similarly against Margaret Wright for having offered accusations too vague and general to be given due consideration. The court ruled that her allegations were “vicious from want of specification.” Bringing testimony to represent his character in a bad light generally and providing no specific offenses against which her husband might defend himself, left Margaret with no solid grounds for divorce. The court’s opinion, however, did not stop there but rather went on to elaborate on the hypothetical cruelty allegations that might have warranted a divorce and to demonstrate the ways in which her case had been poorly handled.69

The Wright opinion, written by Chief Justice John Hemphill, suggested possibilities for the use of cruelty in future cases. Hemphill conceded that Wright’s character was “deeply stained” and “blackened,” but Margaret’s suit had simply not effectively addressed the wrongs her husband had done to her, nor did it provide sufficient evidence to allow the court leeway in deciding on her behalf. Chief Justice Hemphill suggested that had Margaret specified neglect during illness—a situation evidenced by the testimony of her physician—“evince[d] barbarity of feelings on the part of the appellant [John Wright] towards the partner of his bosom, and her dread that the

68 Lucas v. Lucas 2 Texas Reports 112. Mary Lucas had apparently filed her original case short of the three years that would have allowed her to gain a divorce on abandonment charges.
69 Wright v. Wright 3 Texas 168 (1848).
use of the necessary remedies for her recovery would irritate her husband, impresses the mind very strongly that he had been seriously guilty of the like inhuman conduct.” He continued to say that “[t]he language used in conversation with his wife, at the house of one of the witnesses, denotes not only a total absence of all that tenderness and affection which should characterize the marriage relation, but a brutality of feeling, from the effect of which the wife may well be in dread of bodily harm or injury.” According to the court, had the charges included “the invariable use of harsh and menacing language, neglect in sickness, or refusing comforts and necessaries of life, etc., etc.,” then Margaret Wright might have been entitled to a decree of divorcement.70

Thus, while the Texas Supreme Court saw the need to take a stand against easy divorce, it was also eager to define and expand the grounds by which individuals—wives in particular—might seek relief from dysfunctional and difficult marriages. Here and in other cases, the court emphasized the apprehension of danger as a qualifier. The concept of apprehension had been introduced to American courts as early as 1790. The concept was narrowly defined by the threat of physical harm. However, by the mid-nineteenth century, Americans had begun to explore the connection between harsh behavior—physical or otherwise—and the gradual decline of physical health. Accordingly, any behavior that eroded the good health of a person might be construed as cruelty by an increasing number of American courts. The door to the later theories of mental cruelty was open and courts gradually moved toward more expansive definitions of cruelty. The

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70 Wright v. Wright 3 Texas 168 (1848).
Texas Supreme Court began to conceive of cruelty in more comprehensive terms very early.\footnote{Griswold, “The Evolution of the Doctrine of Mental Cruelty,” 128–29, 126.}

In *Sheffield v. Sheffield* (1848), the court asserted that the Texas cruelty provision was not limited by the traditional requirement of “reasonable apprehension of bodily hurt” but rather “covered more ground than is embraced under [that] legal definition.”\footnote{*Sheffield v. Sheffield* 3 Texas Reports 79 (1848) (first and second quotation on p. 85) (third quotation on p. 86) (last quotation on p. 88).}. Elaborating on the nature of marriage, Justice Hemphill spoke of marriage not only as “the basis of civilized society” and “important to the peace and welfare of society” but also as an institution designed for “[t]he mutual comfort and happiness” of husbands and wives. Courts were to consider whether the proven allegations were “such as to destroy the happiness of married life, and render its further continuance insupportable.” In order for a complete destruction of harmony to have occurred, however, the court insisted that a complaint had to be of a grave nature and not simply that a couple “did not live very agreeable together.” Having established the serious nature of marriage as both a private and public institution, the court went on to officially broaden the definition of cruelty beyond the traditional standard of bodily harm or the threat thereof. In taking this measure, the court simultaneously increased options for women and curtailed the use of cruelty allegations by husbands.

The chief justice came down hard and sarcastically on James Sheffield for his having brought frivolous cruelty charges against his wife and sullying her reputation. Sheffield claimed that his wife, Lydia, had committed outrages against him for several
months by "addressing him . . . in an angry, insulting, and aggravating manner." He presented witnesses to testify that she was at times sulky and occasionally used "short words"; that she once refused to join her husband on a visit to a neighbor, instead going alone the next day; that she frequently went to visit neighbors and stayed all night; that James had on one occasion been reduced to mending his own coat; and, that she secretly confessed to one witness that she had made arrangements to meet a man in the river bottom for the purpose of committing adultery. The adultery accusations took precedence with the justices, who found them "exceedingly improbable," as Lydia Sheffield was by all accounts (including that of the witness who claimed to have heard her adulterous confession) a woman of high moral character and sound reputation. Angered at the attempt to ruin her good name, Hemphill turned the table on James: "I cannot forbear the observation that there is more cruelty in this blighted charge, unsustained as it was by proof, than in all the sulkiness and short words proved against the appellant [Lydia]. Angry words, according to the homely adage, break no bones; but the wounds inflicted by calumny on the delicate texture of female reputation may be closed, but are scarcely healed, by the lapse of time."73

Thus, in concurrence with the post-1850 trend throughout the United States, a Texas precedent was set for the use of cruelty charges against men who unjustifiably slandered their wives. Historian Robert Griswold has argued that "false allegation of adultery inverted the Victorian world view by debasing its moral exemplar," and along

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73 Sheffield v. Sheffield (first quotation on p. 81) (second quotation on p. 82) (third quotation on p. 83) (last quotation on pp. 83–84).
with a growing concern over “nervous disorders,” American courts began to associate the suffering from slander with a demise of physical health. Thus, a false accusation of sexual immorality was a threat to bodily harm and therefore justified its being categorized as an act of cruelty. Yet in Sheffield v. Sheffield, Texas legal interpretation specifically denied the need for “bodily hurt” as a necessary or defining component. Hemphill instead emphasized the damage to the reputation itself and the long-lasting effects of a bad name. And in an 1852 decision the Court went further in concluding that even an unjustified accusation of theft against a wife was a form of cruelty, designed to “inflict upon her lasting disgrace, and thus poison the sources of her happiness.” Not as severe as charges of sexual immorality, an allegation of theft was not of itself enough to warrant a divorce; but if combined with other circumstances, it might be.

The court indeed exhibited a strong paternalistic impulse toward women when husbands failed to act as protectors, having instead become their wives’ adversaries. And without doubt, the justices’ felt compassion for Lydia Sheffiled’s emotional and psychological strain. The justices’ sense of paternalism, most certainly, led them to consider practicalities, not the least of which were the importance of a good name and the consequences of a tarnished reputation. False allegations when made public had the

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74 Griswold, “The Evolution of the Doctrine of Mental Cruelty,” 136. Griswold argues that “false allegation of adultery inverted the Victorian world view by debasing its moral exemplar” and that after 1850 courts increasingly awarded divorce on that basis alone. With the growing concern with “nervous disorders,” came the belief that suffering from an assault to her reputation could diminish a woman’s health, and was therefore was an act of cruelty that caused or threatened bodily harm.
75 Nogeers v. Nogeers 7 Texas 540 (1852); Not until 1871 did the issue arise in regard to a man’s reputation. The court found against the husband because he failed to prove that his wife’s accusations of adultery had been false, implying that had he done so the wife would have been accountable for her slander. Nonetheless, the court did not seem as offended by sexual lies against the husband as previous courts had been by the same crime perpetrated against women. See T. S. Huckabay v. Eliza C. Huckabay 35 Texas 619 (1871).
potential for interfering with one’s financial security, parental rights, and even future happiness. For instance, when a man like William Tharke of Washington County spread the word that his wife had given him a venereal disease, he not only shamed and humiliated her, but he curtailed her social life and prospects for a future husband, should she eventually desire to remarry. When in 1859 John B. Hall—a particularly brutal and unstable individual—shot a man in Harrison County, he shifted blame to his wife by saying that his actions were justified because the victim was his wife’s lover. That same year, in the presence of at least three witnesses, Michael Radtka claimed that his wife was so licentious that he was not the father of either of their two children—inferring that he was not fiscally or otherwise responsible for their welfare. In an ironic twist, when Anna Radtka asked the court for additional funds for child support to come out of his half of the community property, Michael put in a bid for custody, albeit unsuccessfully. And in 1862 Elizabeth Cameron complained to the Washington County court that her husband had publicly defamed her character and published a notice in the local newspaper warning other people not to repay debts to her, thus limiting her ability to collect funds for her own support during their initial separation. The practical effects of slander could be devastating.

76 See also Pinkard v. Pinkard 14 Texas 356 (1855); Simmons v. Simmons 13 Texas (1855) 234.
77 Elizabeth Tharke v. William Tharke, WCCC, Case no. 1673 (1856); Similar accusations by Spire Hagerty against his wife—himself admittedly guilty of miscegenation and siring a child out of wedlock—were used in a subsequent attempt to disinherit his son. Rebecca Hagerty was forced to sue the estate of her deceased husband on behalf of her son, a battle that went to the Texas Supreme Court. Hagerty v. Hagerty’s Ex’rs. 12 Texas Reports 456 (1854).
78 Mary L. Hall v. John B. Hall, HCCC, Case no. 4028 (1859); Anna Radtka v. M. Radtka, WCCC, Case no. 2594 (1859); Elizabeth Cameron v. Peter Cameron, WCCC, Case no. 3172 (1862).
Despite the Texas Supreme Court’s 1848 precedence that false accusations of slander were in and of themselves acts of cruelty, no antebellum woman in this study rested her bid for divorce solely on the grounds of slander. Rather, slandering husbands were usually also abusive, drunken, and neglectful. Wives did, however, give slander allegations equal weight to other charges and claimed great indignation at the offense, thus supporting their own claims to a high moral character that rendered them deserving of the paternalistic protection and legal redress.79

Having established a clear precedent for the use of false accusations regarding female sexual morality, the Sheffield opinion turned to the allegation that Lydia Sheffield had been cruel to her husband. The justices concluded that the various instances of ill treatment were both unproven and of an inconsequential nature. The chief justice was particularly scathing in his condemnation of James Sheffield, appalled that the local jury had found in his favor. Hemphill declared that, at best, James Sheffield had proven “petulance, occasional sulkiness and something of a gadding disposition” on the part of his wife, but to think that such minor offenses warranted divorce was a “preposterous” notion. “Half the marriages in the country,” he continued, “might be dissolved if occasional freaks of temper, or even the direful necessity of a husband’s mending his own coat for once in his life . . . . Upon what train of reasoning the jury considered these facts a just cause for divorce . . . I am at a loss to determine.” In one fell swoop, Lydia

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79 In the adversarial system of Texas divorce, both men and women defended their moral virtue and asserted their own good behavior. Each gender insisted to have taken he higher moral ground. Nonetheless, nineteenth-century women in Texas, as elsewhere in the United States, were assumed to be virtuous and moral by their very nature. See Lucas v. Lucas 2 Texas 112. In his argument, the Attorney for the appellant, Mary A. Lucas, stated that the actions of her husband warranted a divorce decree, “if the woman be at all a person of virtuous and honorable character, which is always to be presumed.”
Sheffield was granted a new trial, women falsely accused of sexual impropriety were
given a legal champion, and Texas husbands were warned against trivializing the divorce
code to free themselves from the responsibilities of marriage.80

By 1857 Texas had come to embrace the forward-looking idea that mental cruelty
alone might constitute grounds for divorce. In Sharman v. Sharman the state supreme
court added to the accumulation of possible interpretations of cruelty and broadened the
concept of direct outrage. The justices still upheld the legal requirement that any act that
might render a marriage unviable had to be done directly to one’s spouse but extended
the criteria to include “direct outrage upon her feelings” (emphasis added). Chief Justice
Hemphill drew examples from earlier Texas cases and precedents set outside of the state,
which included a husband’s attempt to seduce women servants, “murder[ing] or cruelly
ill-treat[ing] the child or near relative of the wife,” or causing other men to induce his
wife into a compromising position for the sake of securing grounds for divorce. The court
declared that these and other things were “cruelties of the most base and aggravated
character . . . not because they [violated] the laws of the country, but because they are
outrages to the feelings of the wife.”81

80 Sheffield v. Sheffield (quotations on p. 87).
81 Sharman v. Sharman 28 Texas Reports 522 (1857) (quotations on p. 571). In the Sharman case, the court
was forced to rule against the female appellant because she had based her divorce request on the fact that
her husband had been sentenced to prison. Justice Hemphill used the case to expand the possibilities for
cruelty and also to suggest that the Texas legislature was out of line with other states that had declared
imprisonment of a husband sufficient cause for divorce. The divorce code did not incorporate this legal
ground until 1876. “An Act to Amend Section Second of an Act Concerning Divorce and Alimony, passed
January 6th, 1841,” Gammel, Laws of Texas, VIII, 852. In an earlier case (Wright v. Wright) the court had
been unable to address whether a wife’s “strong and well founded impressions” that her husband had
murdered her son was a just cause for divorce. The evidence had been inadmissible, and the justices lack
sufficient information regarding the time of her knowledge of the purported crime and her separation from
her husband; Mental cruelty doctrine continued to evolve into the late-nineteenth century, until in 1870 the
Texas Supreme Court ruled that mental cruelty was actually worse than physical abuse. “Torture of the
Local courts were now free to openly consider the complaints of abuse to children, assaults on relatives, or general acts of terror, such as were often the concern of middle-class and upper-class wives, particularly those with husbands given to drunken rages. In 1859 Mary Hall submitted a petition stating that her husband "practice[ed] the treatments of a brutal tyrant," terrorizing his wife, their two children, and her children from a previous marriage. John Hall often came home drunk and discharged his guns in the house and the yard. When his stepdaughter married, he attempted to prevent her from taking the slaves that were her inheritance from her deceased father. In his rages, Hall was apt to break glassware, cut up bedding, or destroy furniture. On at least one occasion, John seized his children and, with knife in hand, threatened to "bleed" them slowly until they fainted. To reinforce their fears, Hall sadistically mutilated a cat in front of the children and their mother. Other women also complained that they feared for their children or for relatives who lived with them or nearby, as tyrannical husbands extended their maleficent patriarchal authority to a broader household. Concerns ranged from the shooting of a sister who lived in the family home to threats against the lives of children to fears that a husband's violent influence was detrimental to the moral upbringing and future happiness of the children.  

A class element was in play in several ways, often in references to a woman's "delicate and tender upbringing" or the "station in life" to which she was accustomed.

mind, constant wounding of the feelings, trampling upon the affection, are far more insupportable than any mere apprehension of wound to the person." Shreck v. Shreck 18 Texas 578 (1870) (quotation in note on p. 585).

82 Mary L. Hall v. John B. Hall, HCCCPC, Case no. 4028 (1859); Also, Cynthia Brown v. J. Brown, HCCCPC, Case no. 4685 (1861) and HCCCPC. Case no. 4720 (1863); M.M. Watson v. O.D. Watson, WCCCP, Case no. 1111 (1854); Harriet Brooks v. Charles Brooks, HCCCPC, Case no. 2292 (1852).
Establishing the class superiority of a wife served to intensify the level of offense by the husband—acknowledging a higher standard expected for spousal kindness and fiscal responsibility. In 1852 the Texas Supreme Court hinted at different expectations associated with class. In asserting that the circumstances of individual relationships should be considered before acts of cruelty could be determined to have constituted genuine fear or apprehension, the opinion argued that even blows might be of minor incident among people of “coarse habits.” 83 The court more directly addressed class sensibilities in 1857 in Taylor v. Taylor. The court’s opinion concentrated on the personal relationship between the spouses and the need for harmonious and affectionate interactions between husband and wives. Because Mary Taylor “had been delicately raised, and accustomed to kind and tender treatment,” her “peace and happiness” were at stake when her husband “became cool and unkind towards her.” His lack “of love and affection” and unkind habits had caused her months of “constant distress and wretchedness of mind.” In the end, he had “assault[ed]” her—by throwing a hat in her face as he walked out the door—and declared that he had no affection for her. Throwing his hat in her direction was, according the court, “a most unmanly and cruel act.” 84 Here, and elsewhere, the antebellum justices struggled to define cruelty—and by extension, to determine the limits of patriarchy. On other matters, particularly property issues, the Texas Supreme Court, led by John Hemphill, used several opportunities to advance legal

83 Nogees v. Nogees 7 Texas Reports 540.
84 Taylor v. Taylor 18 Texas Reports 575 (quotation on p. 578).
protections for unfortunate wives and ensure that the rights of women were upheld even within the socially accepted state of dependency within marriage.\textsuperscript{85}

Class consideration in the local cases was most often revealed in complaints dealing with property and living standard or issues regarding slaves. Setena Griner’s comforts were greatly reduced, she claimed, by her husbands’ lack of fiscal acumen, a problem that had plagued the marriage for many years. After nineteen years of marriage, Setena filed a petition for divorce in 1856 that clearly expressed the expectations of upper- and middle-class women. At the time of her divorce, the estate was worth about $15,000. It should have been much more, she claimed, but for husband’s lack of stability. His quarrelsome attitude toward neighbors had forced them to flee their home more than once, leaving behind crops in the field and relinquishing property to settle civil suits. Over the years, he had left her alone for extended periods during which she took care of the home and her young daughters with only the help of “several small negroes,” who were of little assistance to her. Times became so difficult that she was reduced not only to making her own bread but to relying on “meal ground with [her] own hands on a steel mill, a hardship to which in the earlier part of her life she had from the manner of her raising been wholly unfitted.”\textsuperscript{86}

The family never reached utter destitution, but Setena considered the decline from her previous status acute and humiliating. She lamented “that in return for all these

\textsuperscript{85} For John Hemphill’s role in formulating the constitution and championing women’s property rights as a member of the Judiciary Committee, see chapter 1 of this study. See also: \textit{Yates v. Houston} 3 Texas Reports 168; \textit{Wright v. Hays} 10 Texas Reports 65; \textit{Cheek v. Bellows} 17 Texas Reports 545 \textit{Wood v. Wheeler} 7 Texas 7; and Kathleen Elizabeth Lazarou, \textit{Concealed Under Petticoats: Married Women’s Property and the Law of Texas, 1840–1913} (New York and London: Garland Publishing, Inc, 1986.)

\textsuperscript{86} \textit{Setena A. Griner v. William Griner}, HCCCQ, Case no. 3099 (1856).
sacrifices of comfort and womanly pride and feelings,” she had received only
“innumerable” but undefined acts of ill treatment. William Griner’s attitude and behavior
had converted her home from “a place consecrated to peace and domestic felicity . . . into
an abode of discord and a perfect torment.”

The proverbial last straw for Setena came when William had a falling out with his
son-in-law—with whom he had gone into a financial partnership to make the farm
productive—and admitted to spreading a lie that Setena had engaged in an adulterous
affair with her daughter’s husband. Setena viewed the slanderous rumor as an affront to
the entire family, including the young daughters still living at home, and as another
incident in which William’s irresponsible behavior would once again cost the family
dearly in terms of honor and respect. There could be no reason for his actions “but to
blast the hopes and prospects, and curse with infamy and disgrace for life their two
younger daughters, now approaching their womanhood.” In his anger upon being forced
to confess to spreading the rumor, William attempted to strike his wife but was prevented
from doing so by his son-in-law. Soon after, Setena filed for divorce. She was clearly
concerned with respectability and maintaining what she deemed appropriate material
comforts for her social position. Setena Griner voiced the concerns of other women of her
class, and, also like other divorcing wives, she set out to recover some financial losses
and to prevent additional detriment as William continued to make unwise decisions
regarding family funds and property.

Most elite women expressed humiliation and indignation by listing a number of
offenses, fully covering all the legal bases—in part a reflection of their ability to afford
good legal council, who would advise such a breadth of charges, and in part
demonstrative of the extreme situations necessary to bring antebellum women to the point
of divorce. Their petitions are thus rich with detail, and they demonstrate peculiar
difficulties that elite women might encounter.

Mary Pridgen’s story touches on matters unique to plantation mistresses and other
elite women. Wiley and Mary Pridgen’s thirty-year marriage produced four sons,
including a future state senator, as well as a considerable amount of wealth. The couple
arrived in Harrison County from North Carolina in 1839. By 1850, when the marriage
ended, the couple had acquired large plantations in Harrison and Dewitt Counties, which
benefited from the labor of at least forty-nine slaves. As one of the wealthiest and most
prestigious families in the community, their divorce and Wiley’s scandalous behavior
drew much attention.87

According to Mary Pridgen’s account, her husband’s continual drunkenness and
repeated sexual exploits became a constant torment for over five years. Having finally
grown weary of his behavior, she sued for divorce, requesting half of the property and
sole custody of the minor children—which she received. Mary charged that Wiley had
used “violent and abusive language” toward her and questioned her integrity and virtue,
both privately and publicly. On more than one occasion, he roughly awakened her in the
middle of the night, ranting against her for hours over a wild story that he had concocted.
Wiley accused Mary of plotting against him with a lover, saying that she had enticed the

87 Mary Pridgen v. Wiley W. Pridgen, HCCCPC, Case no. 1135 (1850); The property owned by the Pridgens
in Harrison County alone was valued at over $25,000. This does not include taxable property outside the
county. Ron Tyler, ed., The New Handbook of Texas, 6 vols. (Austin: Texas State Historical Association,
1996), vol. 5, 337.
man to kill him. He believed that she had bribed the would-be assailant by offering him half of the slaves. To her great mortification, Wiley took to the “habit” of pointing to his children in public and telling listeners that only three of the four were his offspring—the youngest being the product of her infidelity. By all accounts, Wiley’s accusations were in no way based in reality but seemed to be rooted in own guilt and propensity for sexual deviance.

Mary’s petition detailed how her husband often maneuvered to place himself away from his wife for illicit purposes. Wiley went between his two distant plantations— or sent Mary back and forth—under the pretext of conducting business. His real reason, she discovered, was to “abandoned [her] to live in adultery” with various women for days or weeks at time, and he scheduled travel arrangements accordingly. Wiley’s affairs included two white women, Mary [Laura] Teal of Harrison County and Harriett Tumlinson of Dewitt County, as well as Fillis, Harriett, Martha, Ellen, Mary, Becca, and Margaret, all female slaves from the Pridgen plantations. Wealth and mobility provided Wiley Pridgen with ample excuses and opportunity to violate his marriage vows and disregard his obligations as a husband and responsible head of household. 88

Unique to the elite and upper middle-class cases was the humiliation of husbands exacting sexual favors from female slaves. Rebecca Hagerty, Mary Pridgen, and Mary

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88 Charles Power is another example. Power was a very wealthy cotton broker, whose business required significant travel. His wife’s petition accused him of committing adultery with multiple women in various counties, and ultimately of committing bigamy. He went so far as to marry one of his lovers in 1863. She asked for half of the $100,000 estate, child custody, and additional funds for the proper upbringing of their two daughters. The district judge, however, denied her the extra allowance, and the dispute over money (attached to the children) went to the Supreme Court in 1872, which upheld the lower court decision. (The appellate court information in found is found in the local case papers.) Thetis Power v. Chas. J. Power, WCCCP, Case no. 3203 (1864).
Byars each claimed indignation when their husbands sexually coerced women slaves, and worse, when they flaunted their escapades. These marital violations were as much acts of cruelty as they were adultery. Perhaps the most egregious citation of master-slave coercion was that of William Byars, who forced his wife to watch him engage in sexual activity with his slaves—torture inflicted both upon his wife and upon the enslaved women he abused in this way. Although presuming themselves to have unlimited patriarchal power, these men were brought into check when wives filed for divorce. By the very act of filing the suit, a wife revealed a sense of power and determination to control her own life—she set limits and found ways to enforce them. At the very least, the suits embarrassed and shamed these men accustomed to wielding power and acting independent of the dictates of others. At worst, they lost significant wealth and important social esteem, as well as any personal satisfaction an intact family might have given them.

Also unique to the elite class were the very long and complicated disputes over money and property, but women of all classes were careful to present the court with detailed inventories of the family’s property and were hopeful that they would receive at least half. Courts were very diligent in following the dictates of the community property law, and rarely did a wife receive less than her equal share. No court decision specifically or intentionally deprived a woman of her half of the community property or her separate

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89 Rebecca Hagarty v. Spire M. Hagarty, HCCCP, Case no. 1175 (1850); Mary Pridgen v Wiley Pridgen, HCCCP, Case no. 1135 (1850); Mary A. Byars v. William M. Byars, WCCCP, Case no. 1848 (1857). Only one case mentions the possibility of miscegenation between a white woman and a slave man. In that instance the wife brought suit against her husband, in part, for his slanderous accusation that she had sexual relations with one the slaves. See Mildred Bently v. Thomas C. Bently, HCCCP, Case no. 2865 (1855).
estate. Women in Texas courts could reasonably expect an equitable settlement, or even one that favored them to the detriment of the husband’s personal estate. For instance, when Mary Beazley’s abusive husband left her for another woman, the court awarded her the customary 50 percent of the community property as well as all of her separate property. The court then awarded the remaining half of the community property to the children and gave Mary full managerial rights. The paternalistic inclinations of the Texas Supreme Court worked to expand and broaden property rights to assist women, who were presumed to be severely handicapped in their ability to produce an income. In 1855, in another opinion worded by John Hemphill, the court ruled that in general community property should be divided equally and separate property returned to its original owner, but alterations to that rule were permissible in consideration of the needs of children and “especially in favor of the wife.”

Wealth complicated divorce and sometimes even triggered it. Wealthy widows who married the trustees of their husbands’ estates could easily find themselves embroiled in nasty disputes over children’s estates and the dishonest use of funds. Husbands fond of gambling, drinking, or other vices were apt to squander family fortunes. And immoral and abusive husbands used their wealth, and the power and mobility that came with it, to conduct adulterous affairs and assert maleficent power over

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90 Mary A. Beazley v. Edward E. Beazley, HCCCP, Case no. 4458 (1860); Fitts v. Fitts 14 Texas 444 (1855) (quotation).  
91 Rebecca Hagarty v. Spire M. Hagarty, HCCCP, Case no. 1175 (1850); Mildred Bently v. Thomas C. Bently, HCCCP, Case no. 2865 (1855). See also Ann Raney Thomas Coleman, Papers, Center For American History, University of Texas, Austin, 113, 136, 200, 318; and King, ed. Victorian Lady on the Texas Frontier.
their families and slaves. With all these family ills came both personal heartache and public shame.

But emotional anxiety was prevalent among all classes of divorce seekers. As this study has shown, family discord was no respecter of persons—adultery, desertion, neglect, foul tempers and angry words, and even domestic violence were to be found within marriages of all classes. Men and women alike violated their sacred vows, and both genders stepped out of their comfort zones to rid themselves not only of uncaring and unsatisfying relationships but, more often, of completely intolerable living conditions. People in antebellum society, regardless of their social or economic situations, held similar assumptions regarding gender roles and appropriate behaviors, and most agreed on the ground rules of marriage. Husbands were to play the part of benevolent paternalists, acting as heads of the household with tempered authority over all dependents, including his wives, children, and slaves; wives offered deference and obedience and acted a moral exemplars. Men provided material necessities and protected their wives from harm; women contributed to family harmony and well-being through domestic endeavors. Each partner was expected to accept and implement the concept of reciprocity, the give-and-take of a working relationship between two committed adults. Harmony within the home was contingent on each person following this unwritten but generally accepted code.

Beyond the basic ideal lay the realities that influenced day-to-day interactions and the personalities that shaped spousal relationships. Daily life tested the elasticity of reciprocity, often straining the boundaries of acceptable behavior. Strict rules of gender
obligations readily gave way to life contingencies, rendering the work divisions within the home fluid and overlapping. Men helped prepare meals when necessary, and women rolled up their sleeves to do manual labor when demands arose. Nothing was ever completely cut-and-dry in regard to specific roles. The actual functioning of families and the extent to which gender ideals could be achieved depended to some degree on a family’s material condition and social setting, and expectations for married life varied accordingly. Likewise the circumstance and nature of divorce reflected class differences.

As one moves up the economic scale, subtle distinctions emerge in the profiles of divorce seekers—increasing reluctance to end marriages, more complicated property issues and social investments, and a higher public profile with which to endure the stigma of divorce. Just as wealth was believed to bring with it gentler living conditions and more delicate sensibilities, it also altered the specific execution of gender responsibilities and brought its own brand of difficulties. Likewise the available options for correcting bad situations changed with increased resources and obligations, especially for women.

Women of the lower economic classes could more easily abandon a husband and quietly disappear from the hostile arena of marriage and the critical eye of the community than might their wealthier neighbors. Often young and childless, these women more freely negotiated the avenues of their own lives than wives with greater ties or at greater risk of financial loss. Because families operating at the lowest economic levels depended heavily on both spouses to maintain the family economy, wives demonstrated a strong sense of equality in the ways they operated within their marriages. Poorer women were the most apt to abandon unhappy marriages and to chose new lovers and husbands, thus
prompting husbands to file for divorce. In filing for divorce as readily as women, men spoke to their need for a helpmeet and life partner who upheld her responsibilities and contributed to the family maintenance. Thus, the closer one lived to poverty, the more antebellum family practices resembled those of their frontier years, wherein economic survival and a high level of reciprocity between spouses were of paramount importance, and in which women’s contributions fostered not only high esteem within the home but also promoted more autonomous actions on their part.

Women with children, land, and family ties were less able to simply walk away from bad marriages and had to find other ways to solve their problems. Yet, these women might have certain advantages such as more resourceful personal connections to assist them and more money with which to secure sound legal advice and to maintain a level of financial security. They might also be more educated about their legal status and property rights. But the middle class as a whole proportionately was far more reluctant to initiate divorce than either the poor or the very wealthy. Yeoman and moderately wealthy families straddled the fence between poverty and wealth and therefore had much to lose should the family’s resources be divided. From a purely financial standpoint, division of a moderate amount of wealth could be devastating; from a social perspective, the prospect of divorce was could be seen as a solution of last resort at best.

Petitions of middle-class divorce seekers remind us that yeoman-level families negotiated between a world of domestic patriarchy, complete with highly distinctive gender roles, and one of significantly egalitarian practices within the home wherein the wife’s labor was still strongly connected to family prosperity. The luxuries afforded by
moderate wealth and slave ownership allowed wives to act primarily within the domestic realm, with deference to husbands as the breadwinners. However, paternalistic power within the home was easily challenge as wives asserted their independence through defiant behavior and bold, but carefully planned, abandonment or divorce suits.

Women of the upper echelon lived within households where the patriarchal family pattern was most securely ensconced, with clearly defined gender roles and with husbands wielding considerable power through their control of property and authority over an extended household. Dependency was to a large degree more acute for elite women. Whereas wealthy women enjoyed comforts and privileges of acting as mistresses over the domestic realm, their movements and public activities were also more circumscribed than yeoman and poor women. The diminished level of equality of elite wives comes clear in the fact that only women filed for divorce—only women needed to free themselves the tyranny of marriage. Husbands possessed the power, and wives were forced to turn to courts for assistance in negotiating a peaceful existence for themselves. The complaints of elite wives were very much those of abused power—repeated adultery and miscegenation, mental and physical cruelty, slander, and squandered wealth. Yet wealth—and protective Texas property laws—also afforded women tools with which to regain autonomy and assert their own interests. With significant wealth, even estates that were divided by divorce might still be sufficient to afford a woman a comfortable living and permit her retention of upper-class status—particularly as the virtuous victim of a failed patriarch. To be sure, elite wives had more to consider in terms of family and community, but the prolonged and extreme threats of financial ruin by fiscally
irresponsible husbands or the public humiliation of being married to an open adulterer or otherwise scandalous person compelled them to seek legal redress in disproportionately high numbers.

On the flipside, wealthy men stood to lose much more in terms of material wealth, and their reputations were apt to be powerfully damaged by adverse effects on family and business associations. Whereas less affluent husbands who abused their wives or squandered family funds might escape fairly unscathed by property disputes or child custody battles, well-to-do heads of household had much to risk. Thus, while divorces among the planter class may have resulted from the wayward behavior of husbands and their misuse of domestic power, wealthy men themselves had few reasons to seek divorce and curtail their own authority.

Certainly, practical considerations influenced all divorce seekers and constituted the bulk of their complaints. Nevertheless, the emotional aspect of marriage gained increasing importance in the divorce suits, as discussions on mental cruelty and slanderous accusations make clear. In 1855 an article in the Washington [Texas] American gave a particularly colorful description of the perfect marriage. An ideal marriage was one entered into by thoughtful adults who carefully selected one another as mates. Proper marriage, the writer claimed, was “holy, beautiful, and beneficent.” The benefits of a good marriage could be seen in the “glorious sight . . . of two old people, who have weathered the storm and basked in the sunshine of life together, go[ing] hand in hand lovingly down the gentle declivity of time, with no anger, no jealousy, nor
hatred . . . looking with hope and joy to that everlasting youth of heaven, where the two shall be one forever. That is true marriage—for it is the marriage of spirit with spirit." 92 Divorce seekers in antebellum Texas most surely prescribed to this ideal and lamented that their own marriages were better described as “yoke[s] of unmitigated misery and wretchedness.” 93 And while they might have agreed with Supreme Court Justice Royall T. Wheeler that divorce was “a mournful remedy,” they nonetheless would have been glad for the option that allowed them the freedom to seek out a different happiness or peace. 94

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93 Isaac Croom v. Elizabeth Croom, HCCCP, Case no. 2948 (1855).
94 Moore v. Moore 22 Texas 237 (1858).
Chapter Four
Divorce in Post–Civil War Texas

In 1861 southerners from Virginia to Texas answered the call to battle and entered a devastating civil war to meet the enemy of perceived northern aggression. At stake, they believed, was no less than the preservation of the social fabric and economic mainstay of southern society. Reaching far beyond the horrors of the battlefield, the tentacles of war brushed against almost every aspect of southern society from economics and politics to slavery and religion. Marriage and family life especially faced unprecedented challenges. During the war, women and children throughout the South struggled to maintain farms and plantations in the absence of soldiering fathers, sons, and husbands. By spring of 1865 the Confederate cause had been lost, slavery was dismantled as a primary social organizer and labor source, and southern white families, as well as former slaves, faced a new world order that required them to readjust their lives accordingly.

Divorce in Texas, steadily on the rise throughout the nineteenth century, experienced a slight lull during the war years, only to resume with vigor as a postbellum phenomenon. Evolutions and shifts within society influenced the nature of divorce for individual couples both during and after the war. After 1865, divorce reflected social and political changes brought about by the demise of slavery and other matters directly resulting from Confederate defeat; at the same time, Texas divorce seekers can be seen as participants in national trends in martial dissolution. The increase in divorce and the
voluminous records that resulted supply this study with 1,476 local cases, drawn from Washington and Harrison Counties between 1865 and 1900. The record base is both extensive and rich with detail, and numerous societal considerations become evident with a careful reading of the sources.

Divorce petitions hint at the dynamics of a rapidly growing population, with a small but wider range of economic opportunities and greater geographic mobility as a result of improved transportation. They also bear witness to matters of kinship and neighborhood relationships and reflect a growing interest in parental guardianship of children. In addition to the narratives left by petitioners, divorce records for the postwar years provide ample commentary by and about third parties, which helps to expose the complex and multi-layered lives of divorce seekers. As the records bear out, family and community were highly nuanced concepts for nineteenth-century Texans, complicated not only by race and gender but also by degrees and interpretation of kinship. Martial discord took place in homes and neighborhoods long before legal action was taken and courts entered the fray. With an eye toward these considerations, this study addresses external (societal and legal) and internal (family) influences on marital dissolution, with particular emphasis on kinship and neighborhood networks as resources, especially for women, and on the functioning of blended families.¹

¹ In order to provide a broad picture of the divorce phenomenon in Texas’s New South, this study relies on all extant local divorce records, which include actions filed by African Americans as well as whites. For former slaves, life took a dramatic turn with emancipation. Their stories greatly influence the narrative of postwar divorce and deserve separate treatment. The following chapter examines the experiences of African American divorce seekers as a separate topic, but as a major component of post-1865 divorce trends and patterns, African American cases are necessarily included in the statistical analysis of this chapter as well.
Divorce petitions filed during the Civil War years fall at the very transition of societal change and warrant consideration here before shifting focus to divorces that played out in the aftermath of war. Antebellum notions of household persisted, with slaves incorporated in the paradigm as dependants. But wartime issues eventually overrode the norms as husbands and wives struggled with the aberrations of separations, economic instability, and the threat of defeat. Historians have often viewed the Civil War as a pivotal point in the history of the southern family and in that of southern women in particular. Some have argued that because women were required to assume new, more public, and traditionally masculine responsibilities during the war, they acquired a new sense of self and greater personal confidence that led them to rebel against the antebellum status quo and to take on new and more dynamic public roles after the war. Dissatisfied with emasculated men and emboldened by their own successes, these women ushered in a new phase of feminine autonomy. Others contend that women eagerly awaited the return of their menfolk in hopes that the comfort and dignity of their prewar lives might be restored, relieving them of the onerous burdens imposed on them by the necessities of the war. For these women, a retrenchment of antebellum gender ideals was paramount to restoring the old world order and social stability. All agree that the war and its aftermath had a significant impact on southern households in ways ranging from the material and
financial deprivations to reassessments of religious theologies and social and political philosophies.²

Experiences for married couples were as varied and numerous as the individuals themselves. For Theophilus and Harriet Perry of Harrison County, the pain of separation was acute. Through detailed letters, the couple maintained a strong relationship and shared with one another concerns from sickness within the family, to camp life and battle reports, to the need for birth control, to financial decisions. Their letters balanced pragmatic concerns with expressions of love and longing. Their greatest anxieties were for one another and the health and welfare of their children. “I love you more than tongue can tell,” wrote Harriet on September 24, 1862, “Oh that I could see you—Oh God! Save my husband.” To further gladden him, in postscript she sent “a thousand kisses” from her and their daughter, saying that she was angry with herself “because I did not kiss you a hundred times more when I saw you than I did—well I’ll make it up if I ever see you again—.” The Perrys’ love seems to only have been strengthened by the long absences and prayerful concern for one another.³

Other Texas marriages were stressed terribly by the war, however. Elizabeth Scott Neblett’s letters to her husband were fraught with dissatisfaction and resentment for his


having left her to fill his shoes as head of household while he remained in a safe military position in Galveston. Being forced to assume responsibility for running the plantation in addition to her traditionally female duties taxed Lizzie’s resolve and intensified her natural tendency toward depression and self-loathing. Unlike Harriet Perry, who shared with her husband delightful commentary on their adored children, Lizzie Neblett expressed her ever-mounting unhappiness with motherhood and with her own lot as a woman. Despite reassuring her husband that she loved him, Lizzie continually impressed upon him the misery of her life and reminded him of his unfulfilled obligation to her at home. Lizzie seemed to have little regard for the negative effect that her accounts might have on her husband’s morale. Instead she focused on her own troubles and on relieving her own anxiety. In March 1864 she complained that she had “lost all pride in the children, and view[ed] them more as curse than a blessing.” She went on to lament “the bitterness of having given birth to one of my sex,” who was “only a poor wretch of a female, doomed to bear children[,] suffer, and if like me in her disposition, doomed to go to hell at last.” Unlike Theophilus Perry, whose loving marriage ended with his death on the battlefield, Will Neblett returned to his despairing wife at war’s end and lived with her until his death in 1871.  

Despite the strains of war, divorce suits slowed during the 1860s. The number of suits filed in Washington County grew but did so at much slower pace than during the previous decade. In Harrison County divorce actually decreased by more than half—from

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forty-six divorce suits to twenty-one. Local courts sometimes closed during wartime and legal processes slowed down, making divorce litigation problematic at best. Of the twenty-five cases filed during the war in Washington and Harrison Counties, 16 percent were delayed for five years or longer—abnormally long when divorces were usually settled within a few weeks or even days. In part, the waning in litigation might be the byproduct of military service on the part of husbands. Some marriages that might otherwise have ended in divorce were spared the ordeal simply because husbands were away from home. Seriously unhappy wives would no longer have perceived an immediate need for legal distance in the wake of physical distance, and soldiering husbands had no means of filing for divorce should they have contemplated such action. Marital issues were simply put on hold, and many husbands never returned at all, leaving “widows by the thousand,” in the words of Harriet Perry, not divorcées.

It is also plausible that more restricted access to the courts during wartime was the reason for the lower divorce rate, since most cases do not mention the war itself or involve husbands who went off to war. Only three of the twenty-five cases filed during the war concerned men who served in the military, and very few veterans filed for divorce after the war. Using Harrison County divorces as a sample reveals that roughly

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5 In the 1850s, sixty-four divorce suits were filed. Fifty-four were filed in the 1860s.
6 Harriet Perry to Mary Temperance Person, October 22, 1862, Johansson, *Widows by the Thousand*, 45.
12 percent of men involved in divorce suits prior to 1880 served in the military. The experiences of these few, however, provide glimpses into some of the ways the Civil War altered spousal relationships.

Adultery was a concern for wartime husbands and wives alike. Wives left behind on the home front imagined their husbands succumbing to temptations in distance camps and cities. Certainly rumors circulated about the vices of camp life and prostitutes who catered to the military, fostering fears of infidelity on the part of husbands long absent from home. Because men often enlisted and served with other men from their home communities, gossip about sexual improprieties could easily reach home through letters sent to neighbors and family members. In 1863 Lizzie Neblett wrote to her husband that her friend Margaret Oliver was concerned about the possibility of Mr. Oliver’s infidelity. William Oliver had written to his wife hoping to squelch rumors that insinuated he was “guilty of something wrong,” saying that he only made “social calls on the ladies when he goes in the city & has almost quit that.” Since her own husband was in the same company with Oliver, Lizzie wrote to him for information. Will Neblett responded, “I do not think he is much of a rake—probably as much so as the majority of men. At any rate

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7 Historian Randolph B. Campbell has compiled a list of veterans from Harrison County, to which a comparison was made against the database used in this study. Unfortunately, no such listing is available for Washington County. Given the extensive research involved in compiling such a list, expediency required that only Harrison County be used in assessing veteran status. To establish a reasonably accurate record of veteran status among Harrison County divorce cases, this study combined the veteran list generously provided by Dr. Campbell with data from U.S. censuses regarding age and residency, Compiled Service Records for the state of Texas, Confederate pension records, and divorce documents. See Francelle LeNae Pruitt, “‘But a Mournful Remedy’: Divorce in Two Texas Counties, 1841–1880,” (M.A. Thesis, University of North Texas, 1999), 68–69.

he seldom goes to Galveston, and very seldom stays all night."\textsuperscript{9} Lizzie's letters make no further reference to the matter, leaving to speculation whether Margaret Oliver received any consolation from the exchange. It is safe to say, however, that gossip and uncertainty had tainted the Olivers' marriage with distrust and made tenuous a relationship already strained by prolong separation.

Men also feared infidelity on the part of lonely wives. In the letter above, Will inquired about the chastity of women in the local community. "You have excited my curiosity very much by your allusion to Mrs Magee and Mrs McCune. Are the women at home get to acting as badly as the men. I heard a few days ago of a young lady . . . who has had a Negro child."\textsuperscript{10} Such rumors and doubts were disconcerting, creating tension between spouses and fomenting unhealthy relationships. Not all rumors were unfounded, however.

When John Anderson of Harrison County returned from the war, he found that his wife, Meoney, had been living with another man on the family homestead. Witnesses testified that Anderson had been gone for only a short while before his wife began the adulterous affair and cohabitation. Anderson asserted that he had left his family well provided with ample food stuffs for at least a year and two slaves to assist his wife, negating the notion that his absence had caused financial hardships or deprivations that would have prompted his wife to turn to another man for support. Meoney Anderson and her new lover fled the county, taking the children and all the moveable property. It took

\textsuperscript{9} Murr, Rebel Wife in Texas, 90n30, 207, 211.
\textsuperscript{10} Murr, Rebel Wife in Texas, 210.
John Anderson three years to track down his wife so that he might complete the divorce process and secure custody of his two children.\textsuperscript{11}

Changes in courtship and marriage patterns were seen in communities throughout the South, as the war created shortages of marriageable men, left single young women with few prospects, and interjected a large cohort of widows into the courting arena. In an era when a woman’s personal and legal identity and financial viability were inextricably tied to her marital status, short courtships, hasty unions, and untraditional mate selections became commonplace. The rush to marry could result in unhappy pairings, and southerners expressed their concerns over this worrisome consequence of war.\textsuperscript{12} Fearful that one sister was about to hurry into an ill-fated marriage, Harriet Perry wrote to a second sister on the subject, “I would not marry as Aunt Sally would say, a preacher[,] the President, or any one else these war times were I a young girl—It is no time for marrying I tell you.”\textsuperscript{13} Perry’s sentiments reflect the difficulties that war had brought to her life as well as those she observed around her.

Perry may well have been acquainted with John and Nancy Putman, who married in Harrison County in 1861. The couple lived together less than a year before John went off to war. Nancy was either pregnant or caring for a newborn when he left. John served throughout the remainder of the war and spent the better part of his marriage separated from his wife and child. Nancy’s loyalty waned in his absence, and she began an adulterous relationship. Before John returned, Nancy left the county with her new mate

\textsuperscript{11} John C. Anderson \textit{v.} Meoney Anderson, HCCC, Case no. 4829 (1866).
\textsuperscript{12} Faust, \textit{Mothers of Invention}, 139–52.
\textsuperscript{13} Harriet Perry to Sallie M. Person, February 18, 1863, Johansson, ed., \textit{Widows by the Thousands}, 101.
and her child, roaming to various places of residence. Like John Anderson, John Putman delayed finalization of the divorce until he could locate Nancy and assume custody of his child, thereby postponing the divorce until 1872.\textsuperscript{14}

The war itself, with its tribulations and deprivations, brought about changes in attitude and personalities that interfered with harmonious reunions. For some, the war intensified existing problems; for others, it created new difficulties. Veteran James Morphis had developed a preference for liquor and begun “keeping company” with other women before the war. His marriage was shaky, at best, and he had taken to sleeping in a separate bed from his wife, Ann. When James left to serve in Confederate army, Ann’s problems were temporarily solved. Ann, in fact, thrived during the separation. On her own, she astutely managed the family property and the labor of five slaves. With her earnings she purchased a house in the city of Marshall and paid for her daughter’s education. James had brought no wealth to the marriage and, she claimed, offered no support during the war years. Shortly “after the surrender in 1865,” James returned, and Ann’s troubles began anew. Not only was James still prone to intemperance, but he also had developed violent tendencies. He began hitting his wife. He threw objects at her, cursed her, and even drew a weapon against her. While it is clear that James Morphis was no saint before the war, years of distance from his family and community peer-control appear to have aggravated his vices and disinclined him to a settled lifestyle appropriate to marriage. Moreover, the masculine world of camp life and the horrors of the battlefield seem to have conditioned him to violent solutions at home.

\textsuperscript{14} John Putman v. Nancy A. Putman, WCCCP, Case no. 3219 (1865).
Another veteran, John Nelson, married quickly after his return home in 1865. His new bride was shocked when shortly after the marriage Nelson underwent a sudden change in attitude and demeanor. He began to exhibit dysfunctional patterns of behavior that in the twentieth century came to be associated with Post-Traumatic Stress Disorder. He had difficulty adjusting to domestic life and the mundane responsibilities of marriage. He failed to work sufficiently to support his new bride, exhibited irrational jealousy, and developed a preference for whiling away his time in the masculine pursuits of gambling and heavy drinking. The occasion when “in a fit of passion” Nelson struck his wife to the ground was but the start of a quick and steady downward cycle of violent reactions and emotional distancing.\(^\text{15}\) Nelson may well have suffered from temporary or long-term psychological or emotional problems that inhibited his ability to carry out his marital obligations or live congenially with his wife.

Historian Eric T. Dean has found that some Civil War veterans were prone to the same mental disorders and behavioral problems associated with Vietnam veterans, such as flashbacks, alcoholism, violent episodes, and the resultant family problems. Men like John Nelson may well have suffered from the effects of war-related stress disorders and antisocial behavior that prevented them from easily assimilating into civilian life and from conducting themselves appropriately as husbands and fathers.\(^\text{16}\) For at least some


\(^\text{16}\) Eric T. Dean Jr. *Shook Over Hell: Post-Traumatic Stress, Vietnam, and the Civil War* (Cambridge, Mass. and London: Harvard University Press, 1997), 86–87; 110–11, 163–70. Dean argues that stress disorders were evident in the lives of Civil War veterans, who exhibited many of the same symptoms that were seen in Vietnam veterans. He finds evidence of domestic violence against wives and children by Civil War veterans. Alcoholism and other socially problematic behavior were also manifested, contributing to family breakup. Of his sample of veterans committed to the Indiana Hospital for the Insane, 18.5 percent experience divorce at some point.
men the fears and traumas of battle, of defeat, of hunger and disease, as well as the masculine habits of camp life were difficult to put behind. No doubt, personalities were transformed by war experience, and habits were formed that were incongruous with family life.

Yet the war itself was not a direct cause of most divorces, or at least it was not seen as such by the participants. No evidence suggests that petitioners thought of the war as a decisive factor or that they made the connection between war experiences and marital disharmony. Most divorcing men did not serve in the war, and problems discussed in the petitions dealt directly with the relationship between spouses and the failure of one or the other to meet his or her obligations within the marriage. There is no shift in rhetoric or experiences of Civil War divorce seekers to suggest that women or men had drastically altered their definitions of marital failure or that they blamed outside causes related to the war for marriages gone bad. Men continued to complain of adulterous, abandoning, or quarrelsome wives; women still demanded protection, provision, and fidelity.

Nonetheless, things were different for Texans at war’s end, and the larger arena of societal change did indeed inform subsequent divorce actions. The end of slavery turned the antebellum world upside-down as whites and blacks alike readjusted their lives to the new terms of social freedom and personal interactions as well as to those of a changed labor system, economic patterns, and political realities. As southern families grappled with the racial democratization of society, they also struggled with economic difficulties and political upheaval. Because Texas had been spared many of the war-related ills to
which other states had been subjected and because it offered easy access to land and a promising economy, many families from the Old South packed up their belongings, painted “Gone to Texas” on their doors, and headed westward. The Texas population skyrocketed in the decade following the Civil War with a 95 percent increase, bringing it from 818,579 in 1870 to 1.6 million in 1880. By 1890 the population had reached 2.2 million.\textsuperscript{17} The vast majority of immigrants were southerners fleeing the devastation of war, making their way to Texas in search of better economic opportunities and a fresh start. They not only contributed to a rapid postwar economic recovery for the state; they also further impressed a southern heritage on the state. With the growing population came new economic opportunities for some women as well as men; better access to transportation and increased geographic mobility thanks mainly to new rail lines; and ever-increasing opportunities for interactions within the more densely populated communities—all of which resonated in the lives of divorce seekers.\textsuperscript{18}

As the population rose, so, too, did the divorce rate, with married couples increasingly turning to the state for intervention in their domestic disputes. Freed slaves had eagerly embraced state intervention upon emancipation, often turning first to the Freedman’s Bureau for assistance. But whites also exhibited a greater propensity for turning to the courts in marital disputes, as more and more dissatisfied spouses opted for

\textsuperscript{17} Handbook of Texas Online, s.v. “Census and Census Records,” http://www.tsha.utexas.edu/handbook/online/articles/CC/ulc.htm (accessed September 15, 2007); Randolph B. Campbell, Gone to Texas: A History of the Lone Star State (New York and Oxford: Oxford University Press, 2003), 290. For comparison, the population increased 36 percent during the previous decade of the 1860s.

legal divorces as a means of freeing themselves from emotionally, physically, or financially torturous marriages. In fact, the rate of divorce continually far surpassed population growth. In the 1870s the number of divorces statewide rose 382 percent—significantly greater than the 95 percent expansion of the population—and the 1880 census shows that over 3,500 divorced individuals resided within the state.\(^9\) Harrison and Washington Counties followed a similar trend. For the same decade, Harrison County experienced a 90 percent population growth, with an additional 12,000 persons bringing the general population to just over 25,000. Eighty-one divorce suits filed during the 1870s represented a 285 percent increase. Washington County, already at 23,104 in 1870, grew by 20 percent to 27,656 by 1880. Citizens of that county filed 165 divorce suits, a 400 percent increase over the previous ten years.

The disparity between population growth and the divorce rate can be resolved to some extent by considering the large number of former slaves in these counties—individuals who had been counted in the general population but not previously allowed to engage in legally recognized marriage and divorce. Because of emancipation the number of individuals eligible for divorce more than doubled within the existing populations of these majority-black counties. Divorce rose additionally in accordance with natural population growth and the immigration of both black and white southerners, as well as a

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\(^9\) For comparisons to national statistics, see Department of Labor, *A Report on Marriage and Divorce in the United States, 1867–1886*, Report prepared by Carroll D. Wright, Commissioner of Labor, February 1889 (Washington: Government Printing Office, 1889), hereafter referred to as Wright Report; and, chapter 1 of this dissertation. The United States experienced an 80 percent growth in divorce and 30 percent population growth between 1867 and 1886. For the same period, the Texas population increased 94 percent, with a divorce increase of 382 percent; U.S. Bureau of the Census. Tenth Census, 1880, Schedule 1 (Inhabitants).
smaller number of European immigrants. The emancipation of slaves thus accounts for a substantial portion of the divorce rate, thereby narrowing the gap between population and divorce increases. Indeed, African American families made up a large number of the divorcing couples in both counties, if not the majority.\textsuperscript{20} Yet, even this consideration does not completely explain the proliferation of divorce suits.

A rapidly rising divorce rate was common throughout the United States during the late nineteenth-century, and Texas participated in the national trend. The seemingly explosive rate of divorce in the United States led to significant concern over the breakup of the American family. Miniscule by today's standards, the apparent ease with which marriages were being dissolved frightened social and religious conservatives, who began to work for uniform divorce laws in hopes of stabilizing marriage and forestalling moral decay.\textsuperscript{21} The so-called crisis was given greatest attention by northeastern reformers. Southern and western states saw little public outcry or concern over divorce, however, and Texans seem to have paid little heed to the fears generated on the national level. Neither citizens nor public officials conducted any major or concerted effort to alter the

\textsuperscript{20} Of the 1,467 cases filed in Harrison and Washington Counties after 1865, the ethnicity of the litigants has been determined for 484—33 percent of the whole. Of those, 324—or 67 percent—were African American couples.

basic provisions of the divorce law in order to curtail divorce rates, and only two
relatively minor legal changes occurred.

First came the additional requirement of a six-months residency within the
county, enacted in 1873 and designed to limit intrastate migratory divorce. The effort
may have deterred abandoning spouses from filing for—and winning—divorces against
the ones left behind. It also may have helped to limit the volume of divorces sought in
urban areas such as Galveston or Houston, to which rural husbands or wives might have
fled in search of jobs or anonymity. But the divorce seekers in this study were rarely part
of the dreaded “migratory divorce” phenomenon that national reformers feared and
believed to be caused by liberal divorce laws, particularly in western states. Most Texas
divorces—over 90 percent—were between individuals who had married within the state
and more often than not within the county where they applied for divorce.\(^{22}\) The second
legal change went into effect in 1876 and allowed divorce to a wife under certain
circumstances should her husband be convicted of a crime and sentenced to the state
penitentiary.\(^{23}\) Divorce seekers did not flock to courts because of new or more liberal
laws; rather they tapped into the existing legal code and process with escalating deference
to state authority.

\(^{22}\) The study is aware of the marriage places for 1,213 cases of the 1,467 divorces for this period. Of those,
83 percent divorced in the same county in which they married; 10 percent married in other Texas counties.
Roughly 5 percent had been married in states other than Texas, and only a handful were wed outside the
United States. Texas was never considered a divorce mill, and these numbers confirm that rural divorce was
in no way connected to the “divorce mill” attraction of states with liberal divorce law, although the Texas
law was indeed quite liberal and flexible. Glenda Riley, Divorce, chapter 4; and Blake, Road to Reno,
chapters 9 and 10.

\(^{23}\) “An Act to amend section eleven of an act entitled ‘An Act concerning Divorce and Alimony,’ approved
6\(^{\text{th}}\) January, 1841,” Gammel, Laws of Texas, VII, 569. Texas ratified new constitutions in 1845, 1861, 1866,
1869, and 1875; “An Act to Amend Section Second of an Act Concerning Divorce and Alimony, passed
January 6\(^{\text{th}}\), 1841,” Gammel, Laws of Texas, VIII, 852.
Historian Michael Grossberg has argued that in American courts of the nineteenth century the domestic authority divested in male heads of household was gradually transferred to the courts in efforts to protect dependant women and children. Domestic patriarchy thus gave way to judicial patriarchy, and women and children benefited from state intervention. Building on this argument, Peter Bardaglio contends that state intervention by southern courts of the 1850s began to rely on the concept of contractual families as a means of linking individual family members to the state, thus bypassing heads of household in what he calls judicial paternalism. Courts tempered patriarchal authority within the home and simultaneously improved the legal status of women and children. The abolition of slavery in 1865 revived fears of racial mixing and caused southerners to redefine marriage as a combination of legal status and contract, allowing courts more discretion in handling domestic issues. Changes in the legal system thus worked to preserve the old social order in the New South, demanding that husbands fulfill their traditional patriarchal duties as head of households. Women began to rely more heavily on the state to step in when husbands failed to act as protectors or to provide adequately for their families, thereby ushering in a new phase of interaction between the state and the private citizen.

Looking exclusively at divorce cases in Texas reveals a complex weaving of equity with paternalism. The quest for justice and fairness often went hand-in-hand with benevolent compassion for dependant women and children, and the two motives cannot

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always be easily distinguished. The legal situation in Texas saw almost no changes after the war, and judges made no significant alterations in their approach to handling divorce cases. Yet the growing number of divorce seekers indeed indicates an increased reliance on the government in domestic disputes. While the basic ideals and realities of husband and wife relationships remained much the same as it had in the antebellum years, the growing propensity to seek legal redress in bad marriages suggests an attitudinal change among litigants regarding family-state relations—one that is best described as a bottom-up narrative of state intervention by invitation, and invitation only. Invitation-only because divorce was by its very nature a self-initiated act that required the legal agency of one spouse and contractual violations or offense on the part of the other. How then did the state respond to its growing involvement in marital dissolution?

With no significant expansion of court powers or alterations to the Texas divorce code, we must look to the local courts to see whether the legal system began to act differently than it had in the antebellum era. At first glance judicial or court intervention seems minimal or even nonexistent. Local divorce courts in Texas rarely exhibited or expressed overtly paternalistic inclinations. They normally acted in highly equitable fashion—regardless of gender—when it came to granting divorces and even when it came to ordering settlement terms. Men and women filed for divorce in nearly equal numbers, and they experienced comparable success rates, with women winning their cases outright only slightly more often.\(^{26}\) Court rulings overwhelmingly favored

\(^{26}\) Men filed 720 suits, and women filed 747. Men earned a pro-plaintiff decision 73 percent of the time and voluntarily withdrew 19 percent of their suits (a total of 92 percent). Women won 80 percent of their cases and withdrew 18 percent (a total of 98 percent). Neither experiences a high number of court dismissals or pro-defendant decisions.
plaintiffs, as they had always done, and continued to follow the basic standard for community- and separate-property division.

The reluctance of courts to impose state dictates in divorce decisions is evident in the fact that courts rarely handed down decisions that ran counter to the wishes of plaintiffs or dismissed suits. Fewer than 5 percent of the petitions were dismissed before reaching court. Pro-defendant decisions composed only 2 percent of the cases for which an outcome is known. In those cases, usually the divorce was granted to the defendant rather than denied all together—thereby fulfilling the plaintiff’s goal of having the marriage dissolved. In the even more rare situations wherein courts denied a divorce after a suit came to trial, the reasons for denial tended toward legal technicalities such as a lack of jurisdiction, collusion between the parties, or because of vague petitions with unsubstantiated accusations.

In practical terms, a decision in favor of a defendant could mean little more than a moral validation of one party over the other. Under Texas law, both parties, regardless of guilt, were free to remarry or resume their premarital status; and the lack of a provision for alimony after divorce negated any risk of a permanent financial burden on the part of husbands. In other cases, pro-defendant verdicts meant a favorable property settlement or custody arrangement. Generally, defendants who won their cases gave strong countering evidence to undermine the plaintiff’s story or to prove that the plaintiff’s conduct had been the true cause of the breakup. Overall, juries sided with the individual who had the

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27 Seven female defendants were awarded divorces, and two cases filed by male plaintiffs were denied all together. Nine male defendants also won their cases.
best evidence and presented the strongest case; judges then acted in accordance with jury findings when ordering settlements. No gender bias appears to have affected these decisions.\(^{28}\)

Nor is there evidence to suggest that judges tried to impose their personal attitudes about the sanctity of marriage in such as manner as to influence jury decisions. Judicial contradiction of jury decisions was almost unheard of, and no charges to juries indicate undue influence on verdicts. At least in writing, judges were taciturn when it came to influencing juries or litigants regarding the right to have a divorce granted. Proplaintiff decisions remained the norm throughout the nineteenth century, as courts readily accepted the individual’s right to demand an official severing of the marital contract. Seventy-five percent of all post-1865 verdicts were in favor of plaintiffs. As a subset, women won 80 percent of their cases; men won 73 percent of their suits. The second largest verdict category was composed of cases voluntarily withdrawn by plaintiffs—18 percent of women plaintiffs and 19 percent of men. Thus, the fate of divorce seekers was to a large extent in their own hands. Spouses had voluntarily chosen their mates, and one or both parties in each case actively sought to end those marriages.

When it came to ruling on settlements once divorces were granted, however, judges had significant discretionary power to make what they deemed fair and just division of property and child custody arrangements.\(^{29}\) And increasingly individuals whose marriages were bereft turned to the courts, welcoming their discernment and

\(^{28}\) Courts ruled against male plaintiff in nine cases (2.5 percent of the known verdicts for men). They also ruled against female plaintiffs in nine cases (2 percent of the known verdicts for women.)

\(^{29}\) Simons v. Simons 23 Texas 343 (1859).
powers of enforcement. In their petitions, divorce seekers put forth matters of emotional
dissatisfaction, sexual aggression, mental abuse, property disputes, and child custody
before the courts in unprecedented ways. Many petitioners presented complicated issues
and demanded justice on property issues, a matter over which the courts had considerable
leeway. For their part, however, juries and judges continued in a conservative vein.
Generally, judges were highly reluctant to step beyond the guidelines set out in property
laws, most often dividing property strictly according to the basic community property
standard—ordering a fifty-fifty division of property acquired after marriage and the
return of separate estates to the original owners. In cases of abandonment, when absentee
spouses failed to appear in court, the property defaulted to the plaintiff.

Other exceptions came into play when particularly egregious behavior on the part
of husbands left women to fend for themselves and their children. Here judges most
readily stepped into the role of judicial patriarch. Magdalene Newmann, for example,
being unable to rely on her drunken and negligent husband for support, established a
small business of her own “selling Cakes, Candies, and other confectionaries [sic] and
nick nacks.”30 She supported and educated her children from her earnings and even
managed to put away a modest savings. Magdalene’s petition emphasized that she had
built up the business by herself and had run it entirely on her own. Her husband made no
contributions to the business or family maintenance. Instead, he lied about having a
business arrangement in Shreveport, Louisiana, where he took $300 of her “hard
earnings” and squandered it on gambling and drinking. Magdalene feared that Frank

30 Magdalene Newmann v. Frank Newmann, HCCCP, Case no. 6706 (1877).
Newman would “sell or dispose of said property so as to defraud her of just rights.” Magdalene considered the business her own separate property—although it had been established after the marriage and was technically community property. She alone had taken on the responsibility of supporting the family and believed her husband had no right to the fruits of her labor or to deprive her and the children of the future income that it would generate. The court defended Madalene’s property rights and awarded her all of the community property, her separate property, and custody of her two children. Frank Newmann was thereby stripped of his control over the family property and, by extension, his ability to adversely affect the fate of a dependant wife and children. Without an explanation of judicial motives, it is impossible to know which consideration held the most sway on the judge as he overrode basic property division standards to secure an advantageous situation for an obviously wronged wife and her children—judicial paternalism, evenhanded justice, or a combination of both.

The case of Milton and Mary Maxwell offers a clear-cut example of a decision overtly favoring the wife, but one that was reached by the court’s strict adherence to existing standards. Mary Maxwell claimed that her husband had deserted her in 1859. They had been married only six months when he left, giving them little time to acquire mutual property or to lay claim to a solid relationship. Mary argued that Milton’s departure had forced her to support herself on “a very modest” income. Ten years after living separately and supporting herself in his absence, she learned that Milton recently had purchased some land. Mary decided that she deserved a share of it and sued for divorce. She requested $25 per month alimony during pendency and a final settlement of
half of the newly acquired land. The court granted Mary’s request in full, and Milton lost half of his wealth to the woman he had abandoned a decade earlier.

Given the short duration of cohabitation, Mary could not honestly claim that she had labored jointly for the property or that she supported her husband emotionally or otherwise in his acquisition of the land. Clearly, her primary objective in seeking divorce was to lay claim to newly acquired property. Other personal motives on Mary’s part are more elusive, be they revenge, justice, greed, or serious financial concerns. In any event, Mary was on solid legal ground, and she could claim to have suffered from the lack of support from a present and productive husband and from the legal incapacity to seek a more suitable marriage. The court upheld Mary’s legitimate legal claim to half of property acquired after marriage, regardless of consideration about the nature of the marital relationship or the lack of emotional ties between husband and wife. The court entertained no extenuating circumstances and made no concessions to the husband, who had acted on the practical reality that the marriage relationship had been nonexistent for many years. The court in the Maxwell case took a different approach than the one used in the Newmann case, but it was to the same end. One relied on the letter of the law, the other on its discretionary powers; each championed a victimized wife and sanctioned a miscreant husband.\textsuperscript{31}

Certainly Texas Supreme Court opinions had repeatedly supported the rights of wives to be supported financially by husbands and to have their contributions to the marriage recognized monetarily. Chief Justice John Hemphill’s 1855 opinion in \textit{Fitts v.}
Fitts that under certain circumstances even separate property might be subject to division “especially in favor of the wife” carried a strong protectionist tone and clearly recognized a need for special considerations for some women. It also spoke of women as equal under the law when it came to property ownership. In Texas, women were accustomed to receiving equitable property settlements, and they had long benefited from the lack of full legal coverture and significant legal limitations on male authority. In 1848 the court had boldly defended a woman’s right to sue her husband “when the wife deems it necessary” for her own protection or that of her property. In Texas these legal rights were available to her “as if she were an unmarried woman and laboring under no disability from her coverture.” In Fitts v. Fitts the court opinion stated that “[I]n this State the wife, with respect to property, is not one with the husband. She has like capacity with him to acquire, receive, and hold property.” Under Texas law she needed no trustee to do so and could “hold fully and perfectly in her own right, without intervention of any one.” Additionally, some women could expect that vulnerable economic positions also entitled them to special compassion and concessions. At the very least, women could be assured of fair hearings if they chose to seek a divorce, and they might also expect to benefit from the protectionist impulse of the court.

The need for individual acts of judicial patriarchy in property matters was, thus, required rarely because of strong property rights established in Texas for married women,

31 Mary Maxwell v. Milton Maxwell, WCCCP, Case no. 3991 (1870); Court costs were not automatically conferred on losing spouses.
32 Fitts v. Fitts 14 Texas Reports 444 (1855) (quotation at 450). See also Simons v. Simons 23 Texas Reports 343 (1859).
33 Wright v. Wright 3 Texas Reports 168 (1848) (quotation on p. 188); Fitts v. Fitts, ibid.
and because of the strong precedents for upholding those rights and delivering
evenhanded consideration to female divorce seekers. Courts faced few decisions that
would require them to use their discretionary powers to champion women in this way.
Simple fifty-fifty division was generally seen as fair, and in cases of abandonment,
women plaintiffs usually received everything by default. Thus the paternalistic impulses
of judges were unnecessary in most cases regarding property.

Judges were equally recalcitrant when it came to interjecting their personal views
on custody arrangements, and they showed little gender bias. Most divorce seekers—71
percent—were childless, many having been married only for a short time before the
divorce proceedings. Forty-three percent of couples had separated after having been
married for three years or less, and 17 percent had done so before their first wedding
anniversary. 34 Thus children were rarely an issue. But for those who did have children in
their households, divorce involved high personal stakes. Mothers and fathers brought
witnesses and documentation to attest to their own good characters and their financial
ability to educate and rear their children properly. They fought hard to hold on to
property and other means of generating income necessary for retaining guardianship.
Concerned parents ardently sought judicial favor in this matter and welcomed state
sanctioning of custodial privilege.

During the antebellum era, custody arrangements in the United States remained a
judicial prerogative, and women had no legal guarantees to their children. After the

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34 Dates at which couples separated were provide in 1,025 cases. Thirty-six percent of those (371) separated
by the end of the second year. The peak time for separation fell before the first anniversary, with 117
couples parting ways within months or weeks of marriage.
American Revolution, the exclusive paternal rights to children were gradually eroded by a growing concern for the welfare of children, the evolving belief in the moral superiority of women as virtuous caretakers of the young, and the doctrine of \textit{prens patriae} (the power of the state to usurp parental rights). By the 1840s challenges to male prerogative still met a strongly entrenched belief in patriarchal rights, however. Women’s rights activists called for greater legal consideration for women in the 1840s and made custody issues a plank of their Seneca Falls “Declaration of Sentiments” in 1848. By the 1860s “parental fitness not paternal rights would be the focus of custody disputes and . . . judges would assume the mantle of patriarch.”\textsuperscript{35} As a newly emerging political entity, Texas had stood at the forefront of these reforming trends and in 1841 nullified any legal gender bias regarding parental rights, setting the standard of the “prudence and ability” as the primary consideration for the guardianship of children. The Texas divorce statute empowered courts “to give the custody and education of the children to either father or mother, as to them shall seem right and proper, having regard to the prudence and ability of the parents, and the age and sex of the child or children . . . .”\textsuperscript{36} With the welfare of children taking precedence over parental rights, judges gave priority to moral behavior


\textsuperscript{36} “An Act concerning Divorce and Alimony,” January 1, 1841, Gammel, comp., \textit{Laws of Texas}, II, 483, Sec. 13.
and awarded custody according to guilt or innocence of divorcing parents, which usually meant that plaintiffs received guardianship.

Husbands and wives who violated their marriage vows so egregiously as to warrant a divorce demonstrated a lack of ability to “educate” children appropriately. The welfare of children was best served by placing a child victim of divorce with the presumably innocent and morally superior parent—and denying custodial influence to the spouse whose misdeeds had been responsible for the divorce. Of the 422 divorces that involved at least one child (or stepchild), custody arrangements can be determined for ninety-eight. Of those, eighty-four of the winning parties received guardianship (86 percent). Since mothers initiated almost twice many divorce suits as did fathers, the tendency to award custody to winning parties benefited more women than men. (Two hundred and seventy-six women with children filed for divorce, as opposed to 146 men with children). Eight percent of the cases gave custody to defendants. In two of those instances, custody went to mothers who won their cases as defending parties, and one was a mother who lost the case but showed good reason that she should continue custody. Five went to defending fathers. In those situations, the mothers had willingly offered to let the child or children live with the father.

Not all couples who had children addressed custody in their petitions, presumably acting on the assumption that the winning parties would automatically become the custodial parents—an easy assumption to make in cases of abandonment and absentee spouses. In other cases, petitioners put heavy emphases on their desire for and ability to raise their children, leaving no room for doubt as to their desire for keeping their
children. With the growing societal and legal emphasis on the welfare of children, such parents were very careful to articulate their own capacity for child rearing, stressing the lack of ability on the part of the opposing party and any abuse that had occurred to the children. Money and morality served as the two guiding principles for determining parental fitness for properly “educating” children: was a parent financially able to care for a child, and was he or she a suitable moral exemplar? With this in mind, women who asked for custody stressed that in the absence of supporting husbands they had managed to provide for the children and could continue to do so. They also expressed fears that husbands given to violence and vice might do bodily harm or have a detrimental effect on the character of the children. Men, too, stressed their financial ability. They also pointed to the lack of maternal instincts in wives who walked away from motherhood or who had given in to adulterous inclinations. And, in a few cases, men emphasized violence and harsh behavior to children by mothers as well as their concerns that children be sheltered from immoral influences. Both parents proclaimed their own love and affection for their children.

Stepchildren were also taken into consideration in divorce narratives, although not normally as subjects of custody disputes. Abuse of a child was represented as an act of mental cruelty against the biological parent and as a failure to fulfill one’s patriarchal or maternal role in marriage. Men who remarried expected new wives to be as nurturing to their children as biological mothers would have been, caring for the daily needs of children in a loving and virtuous manner. Women needed new husbands to provide and protect their families and to cultivate a reasonably peaceful home setting. When a spouse
failed to live up to these parental standards, friction inevitably occurred within the marriage. Divorce seekers spoke of the heartaches involved in discovering that stepparents had been mentally or physically cruel to their children—a topic more appropriately discussed in light of the reasons for divorce and the family tensions associated with blended families. In only one case did an individual request custody of stepchild, that after having alone raised his stepson for over four years prior to filing for divorce.37

The gender and age of children played a major part in the decision making process, at least in large families. Mary and Albert Stuckert of Washington County went through a particularly bitter divorce in 1868 in which both sought custody of their six children—three daughters and three sons.38 Rhetoric used by the lawyers and in the final arrangement reflects a familiarity with the “tender years” theory, a legal doctrine that had grown increasingly popular in the United States during the nineteenth century. Initially, the theory held that all prepubescent children required a mother’s care and inclined American courts to begin favoring women as custodians of young children—that is, women who lived up to the ideal of virtuous womanhood. The doctrine eventually evolved to claim that older female children also needed a mother’s daily influence.39 Mary Stuckert specifically requested custody of “at least the girl children . . . of tender years.” Mary could claim the support of her parents to help her raise the children and

37 No court decision was rendered in the Haggarty case, however, because the husband dropped the suit. Jerry Haggarty v. Mollie Haggarty, HCCCP, Case no. 6691 (1877).
38 Mary Stuckert v. A. Stuckert, WCCCP, Case no. 3874 (1868).
provide financial support; Albert, a prosperous farmer, was financially viable and could well support the children also. Each parent called on witnesses to testify as to his or her ability to properly raise and educate the children. The court responded by placing the boys with their father, the girls and an infant son with their mother. Upon reaching the age of fourteen, each child could decide with whom he or she would live. Both parents received unlimited visitation rights. Five other couples were also awarded some sort of shared custody, most often with an equal number of children going to each parent, or girls being awarded to mothers and sons to fathers. In two of those situations, couples had come to a mutual agreement regarding custody before presenting their cases to the court, indicating that individual families as well as social theorists supported the belief in the necessity of gender-specific upbringing for children.40

By basing custody decisions on moral superiority and using broad leeway in property distribution, Texas courts awarded custody to some women who otherwise might have had to choose between staying in bad marriages and losing their children. In the absence of permanent alimony or child support payments, property distribution was sometimes the only avenue for securing a woman’s ability to raise her children without a husband. In 1871 a Washington County Court awarded Augusta Sommerfeld a divorce from her abusive and “hard drinking” husband and gave her custody of her young son. It also provided her with all of the family land—221 acres, as well as livestock and equipment—as her separate property. Twenty-five acres of community property, which

40 The one exception was a complicated dispute over custody that ultimately resulted in a time-sharing arrangement. The only child was to live with his mother for nine months, then with his father for three months until he turn fourteen and could decide for himself. Tabbie Hill v. J. G. Hill, HCCC, Case no. 7569 (1888).
might normally have been divided evenly between the spouses, were given to the couple’s young son under his mother’s guardianship and supervision. In addition, Wilhelm Sommerfeld was forced to pay his wife over $3,400 in restitution for the previous use of her separate property.\(^{41}\) In this way, the court empowered Augusta Sommerfeld to adequately support her child in reasonable comfort.

Divorce seekers with property issues or custodial concerns obviously had an interest in securing a government-sanctioned end to their marriage, complete with clearly defined divisions of property and arrangements for the care of children. But even the most perfunctory cases participated in the quest for state influence in their domestic affairs. The very act of filing a divorce suit constituted an active request for state assistance and served as a check on inappropriate spousal behavior. Though the law required no record be taken of the reasons that individuals withdrew their suits, it is likely that filing for divorce was a means of coercion by which some plaintiffs manipulated their spouses into compliance. When conflicts were mitigated or feelings assuaged, suits were dropped. This may have been the case for close to 20 percent of the plaintiffs.\(^{42}\) Given the pro-plaintiff propensity of jurors and judges and the ease with which divorces were granted, it is unlikely that dropped suits were the result of legal considerations. Rather, alterations in personal situations and attitudes offer a more satisfying explanation of the number of withdrawals.

\(^{41}\) Augusta Sommerfeld v. Wilhelm, WCCCP, Case no. 3981 (1871).
\(^{42}\) Men withdrew 19 percent of their cases, and women withdrew 18 percent of the cases they filed.
With nearly 95 percent of all cases either granted or voluntarily withdrawn by the suing party, it is clear that the decision to end one’s marriage was first and foremost a personal choice.\textsuperscript{43} Divorcing Texans and their courts acted on a contractual view of marriage in which personal choice ultimately trumped religious sanctity or public good. When wronged spouses complained that their mates’ behavior had rendered their living together as man and wife “insupportable,” who were juries or judges to disagree? Who were they to insist that a couple remain disharmoniously yoked to one another? To be sure, the state theoretically and verbally discouraged divorce, as in the 1858 supreme court opinion offered by Chief Justice Royall T. Wheeler on the sanctity and uniqueness of the marriage contract. Marriage, Wheeler wrote, is by nature a contract that is ideally “inviolable,” and divorce was at best a regrettable solution of last resort. Accordingly, local judges were duty-bound to ensure that marriages were not dissolved without clear proof of sufficient violations.\textsuperscript{44} Yet marriage was primarily a contract, and Texas had provided its citizens with divorce as a legal option. The numbers bear out the reality that divorces were readily granted—in some cases with detailed proofs, other times with scanty evidence and absentee defendants. On the practical level, courts were in place to ensure fairness and equity—to mediate in situations where one party had severed the contract through violations of the unwritten but avowed terms of the union. Their’s was not to make the moral determinations about ending a marriage but to affirm decisions already made by the parties and to ensure equity in settlement terms.

\textsuperscript{43} Of the 725 cases for which an outcome is known, 146 plaintiffs withdrew their cases and 539 won their suits.

\textsuperscript{44} Moore v. Moore 22 Texas 237 (1858).
Once a plaintiff opened the door to state intervention by filing for divorce and—as in many cases—laid out the most intimate concerns of their private lives, judges were called upon to consider the moral component—the guilt or innocence question. In a state with only full divorce, freedom of both parties to remarry, no alimony, and equal gender consideration of parental custody, guilt or innocence had the most bearing on property distribution and custodial rights. Unless litigants waived their right to a jury trial, which was uncommon, juries made the basic decision as to whether the accusations had been proven and were adequate to justify divorce. With due consideration of the circumstances laid before them, judges then relied on the leeway afforded them by law to either issue standard orders or to override customary practices in order to bring about a “just and fair” settlement. To be sure, divorce represents at least one arena in which Texans exhibited increased—albeit nascent—comfort with and expectations for state involvement in family matters. At the very least, litigants called upon the state to listen to their stories of abuse, neglect, and hardship with compassion and to free them from “perpetual discord and misery.” At best, they hoped a favorable verdict and settlement would help to

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45 The Texas divorce statute gave district courts the power to override the community property regulations “... and order division of the estate of the parties in such way as to them shall seem just and right, having due regard to the rights of each party and their children, if any; provided however that nothing herein contained shall be construed to compel either party to divest him or herself of the title to real estate or to slaves.” The law also allowed judges to make temporary orders “respecting the property or parties as they deemed necessary and equitable.” This specifically included separate maintenance for wives during pendency. “An Act concerning Divorce and Alimony,” Gammel, comp., Laws of Texas, II, 483, Sec. 4 (first quotation in note); Sec. 6 (second quotation in note) and Sec. 8; Broad discretionary power allowed judges considerable leeway. Within the constitutional limitations of community property rights, Texas district courts, thus functioned as equity courts during the settlement phase of divorce. Chancery or equity courts used fairness or justice as the basis for rulings as opposed to strict legal guidelines. Southern states began to redirect divorce proceedings from the legislator to Chancery Courts in the early nineteenth century. Jane Turner Censer, “Smiling Through Her Tears,” 26 n 8.

46 A. B. Longinotti v. Mary Longinotti, HCCCP, Case no. 6243 (1875).
preserve their dignity and reputations and provide them with the best possible monetary advantages to move forward with their lives.

But divorce seekers called on the courts only as a last resort, after having come to their own private decisions to end their marriages. Most came to their decisions after consultation with trusted friends or family and after negotiating their marriages through a network of family and neighborhood resources. Only then did litigants turn to the courts and submit their personal stories for public adjudication. As historian Nancy Cott argues, “[t]he informal public exercised forces of approval or condemnation that shaped the . . . married couple’s behavior” in the early United States. In penning their narratives, petitioners revealed much about how their marriages and personal lives played out within the larger social setting.

Before contemplating court intervention, Texas couples went through intermediary stages that, in a rippling affect, gradually moved their disputes from the privacy of their domestic lives to the public legal forum. Turning first to immediate family or close neighbors, men and women sought emotional, financial, or other assistance to help them deal with marital problems. Often those living in the same residence—either family, step-relations, fellow boarders, or even landlords—were on hand to render aid to abused women or to mitigate ongoing arguments. As situations escalated, the larger community (more distant neighbors or relatives, church members, creditors, and physicians) sometimes became privy to the domestic conflicts and offered

various forms of intervention. Family and neighbors served as the first lines of defense for most women living under the thumb of an abusive or negligent husband. In some cases, family situations and individual vices and bad behavior became common knowledge in the community—with the rumors themselves sometimes cited as evidence of poor character or immoral conduct. In these interactions with relatives and neighbors, the patriarchal powers of individual husbands were directly challenged, particularly so in cases of neglect or abuse, and husbands held to the higher standards of domestic paternalism. Courts came into play only after other nonofficial avenues had been exhausted, and they served primarily to give legal sanction to traditional remedies already in progress.

The Botts and Turner cases demonstrate the importance of home and community in dealing with unsuccessful marriages. In February 1876 Sallie Gale and Preston Botts married in Washington County, Texas, the second marriage for Preston. Little is known about his first wife, Hannah, except that the couple divorced only days before Preston and Sallie took their vows. Sallie most likely knew the circumstances of the first marriage and may well have been the reason for its demise. Nonetheless, she married with full expectation that Preston Botts would be a caring and constant husband, faithful until death. In 1878 Sallie packed up her belongings and dutifully followed Preston to Kansas in pursuit of business ventures. Within two years Preston had totally abandoned Sallie, leaving her on her sickbed “at the mercy of strangers.” Far from her home, Sallie felt an acute sense of isolation and fear. Her only option was to appeal to her family in Texas. Upon hearing of her situation, Sallie’s father immediately sent money for her return to
Texas, where she might find comfort and support among her family while she waited out the three-year duration necessary for divorce on the grounds of desertion.\textsuperscript{48} 

Kate Turner, a Harrison County wife, faced a similar experience but met with even harsher circumstances. From the beginning of the marriage, Thomas Turner’s gambling and drinking habits interfered with his responsibilities as a husband. Kate faced childbirth and near death while Thomas gambled the night away in a Marshall saloon. Were it not for the “kindness of some of her lady friends,” as she phrased it, and the financial assistance of her brother and father, Kate’s fate would have been dire indeed. Like Sallie Botts, she believed it was her marital obligation to accompany her husband when he deemed it imperative for them to move to Missouri. Although Thomas was fiscally incompetent and short on principles, Kate left her family and friends, only to find herself and infant son abandoned in a St. Louis hotel. Turner absconded with all of the money and left Kate alone to answer for the hotel fees. Because she could not pay the bill, hotel management confiscated her baggage, rendering her situation all the more desperate. Her only recourse was to appeal to family. Kate’s brother arrived a few weeks later, paid her bills, recovered her personal property, and brought her home to Texas.\textsuperscript{49}

Complaints of being left to the mercy of strangers were common among divorcing wives. County records echo with lamentations of women who had been forced to seek shelter “under the roof of Strangers,” or to rely on the “charity” of others for food, health care, and even physical protection from violent husbands.\textsuperscript{50} Physically removed from the

\textsuperscript{48} Sallie Botts \textit{v.} Preston Botts, WCCC, Case no. 6195 (1885); Preston Botts \textit{v.} Hannah Botts, WCCC, Case no. 5173 (1876).

\textsuperscript{49} Kate D. W. Turner \textit{v.} Thomas W. Turner, HCCC, Case no. 7166 (1883).

\textsuperscript{50} Elizabeth Cameron \textit{v.} Peter Cameron, WCCC, Case no. 3172 (1863);
restraints of family and friends, Thomas Turner and Preston Botts had been free to indulge in their vices, and their wives had few options with which to counter the ill affects of their husbands’ behavior. Distance from home left both women with strong feelings of isolation and helplessness and an increased awareness of their own dependency.

The miles that stood between them and their homes did not diminish the knowledge that emotional and financial support was to be found through family. Each woman sent word home, calling on family members—specifically, on close male relatives—to come to their aide. Sallie Botts accepted money from her father for a return trip to Texas, then moved in with her parents. Before leaving Texas, Kate Turner had repeatedly accepted financial assistance from her father, brother, and “friends.” After the abandonment, her brother traveled to Missouri, disposed of her debts, and escorted her and her infant son home. Like Botts, she moved in with her family and remained there indefinitely. Information is difficult to attain regarding the post-divorce lives of women, but at least 124 women returned to live with relatives. Most of these women turned to parents; others found homes with brothers or married sisters. There they functioned as contributing adult members of an extended family, benefiting from the protection of fathers or other male kinsmen—at least, until remarriage. ⁵¹

Reliance on male family members as depicted in the divorce record demonstrates the level of dependency that characterized the lives of nineteenth-century women.

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⁵¹ Fifty-five percent of the 124 cases for which a post-divorce residency is known returned to live with one or both parent, 24 percent moved in with one or more siblings, and 15 percent made their homes with other unspecified relatives. Six percent turned to adult sons or daughters for refuge.
Expectations for husbands to fulfill their patriarchal duties remained high. Throughout the divorce petitions, women consistently complained of husbands who failed to “protect and provide,” the two core responsibilities of a married man. Certainly, women complained of the loss of affection and emotional neglect or abuse—increasingly so as they approached the end of the century. But a man’s obligation to provide for his wife and children and to protect them from harm remained essential to the definition of marriage and of southern masculinity throughout the century. When husbands failed to live up to either of these responsibilities, women turned to fathers, stepfathers, brothers, stepbrothers, and even in-laws. Male kinsmen repeatedly made a variety of monetary and physical sacrifices for the benefit of wronged female kinfolk, filling the void of masculine protection created by degenerate husbands.

Charles Kantz, for instance, testified about his role in protecting his sister from assault by her husband. Kantz “restrained” (his words) his brother-in-law in such manner that the husband promised to “leave the home and stay away forever,” if Kantz would just “let [him] alone.” Nannie Felder’s brother gave up his life trying to protect his sister from assault and to prevent his brother-in-law from carrying out a death threat against Nannie. In the ensuing argument, the enraged husband shot and killed Nannie’s brother.52 In addition to numerous physical or immediate interventions such as these, male family members often counseled women on leaving their husbands or offered them alternative living arrangements and financial support when they did leave. Henrietta Moore’s

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52 *Nannie Felder v. Richard Felder*, HCCCP, Case no. 7859 (1897).
stepbrother readily and repeatedly offered her food and shelter. But he ultimately grew weary of the destructive cycle and took the “tough love” step of refusing further assistance until Henrietta took the necessary actions to permanently free herself from her husband.53 While brother-sister relationships were different from father-daughter or husband-wife relationships, brothers, brothers-in-laws, and stepbrothers often played key roles by acting as provider and protector for intragenerational female relatives.54

Strong kinship ties between women and men—which extended even to step-relationships and in-laws—provided a safety net for women whose marital choices proved intolerable. Returning to the bosom of family afforded some divorcing women a respectable and beneficial alternative to bad marriages and made the divorce option more viable. By moving home, a woman assumed a proper social place within a family unit in addition to acquiring assistance with child-rearing and fiscal concerns. To be sure, nineteenth-century Texas women were largely under male social and economic dominance, but the affection and obligations of male family members ensured that many abused and neglected women were not completely at the mercy of their wayward husbands. Husbandly obligations defaulted to fathers, brothers, and other kinsmen, and women readily claimed that option.

53 Synthia L. Spencer v. Stephen B. Spencer, HCCCP, Case no. 9216 (1895); Nannie Felder v. Richard Felder, HCCCP, Case no. 7859 (1897); Henrietta Moore v. Levi Moore, HCCCP, Case no. 7523 (1888).
54 For case studies on nineteenth-century brother-sister relationships, including sibling reactions to divorce and the nature of sibling support, see Annette Atkins, We Grew Up Together: Brothers and Sisters in Nineteenth-Century America (Urbana and Chicago: University of Illinois Press, c. 2001), chapters 4 and 5. See also Lori Glover, All Our Relations: Blood Ties and Emotional Bonds Among the Early South Carolina Gentry (Baltimore: Johns Hopkins University Press, c. 2000).
Empowerment for many women came through these associations with caring men. It can be argued that women asserted a degree of personal autonomy by choosing to reassign husbandly obligations to reliable male kinsmen. That is, rather than merely shifting dependency between fathers/brothers and husbands through marriage and divorce, women empowered themselves by choosing new benefactors. To be sure, women took self-determinative actions in many instances—not the least of which was signing their names to divorce petitions. Nonetheless, dependency within a properly functioning male-dominated household remained the most beneficial and safe circumstance for most women. And it was to that safety net that women most regularly turned for long-term solutions.

Female relatives and friends constituted another significant support for many women. Very often women’s testimonies or depositions helped wives win divorces. Their immediate intervention in violent situations or assistance with medical or household needs kept desperate wives afloat in the turbulent waters of abuse and neglect. Divorce records reveal dramatic steps taken by mothers, sisters, neighbors, and friends to ease the difficult lives of women in bad marriages. As traditional caretakers and healers, women risked personal safety to render help in times of need. They provided medical assistance, offered food or other necessities, delivered babies, and even threatened away dangerous husbands.

Josephine Reeves owed her life to the intervention of two female friends. When Major Reeves fell upon his wife in a vicious assault, neighbors Sallie Lands and Martha Fletcher ran to Josephine’s aid and physically pulled him away. Major then grabbed an ax
and threatened to kill his wife, but the presence of these women made him think better of it. He fled the scene, and Josephine went to the home of her sister. In another case, Mattie Fisher twice rescued her neighbor, once when the husband tried to stab his wife and once when he beat her with a baseball bat. And Jennie Cook provided a lengthy deposition on behalf of Lois Johnson, her neighbor of fifteen years, which shows repeated concern and interaction.

“I first heard Mrs. Johnson scream, and her little boy Howard came out and called me and asked me to come over and do something for his mother; [he said] that his father had struck his mother in the forehead and almost killed her. I went over and took a bottle of Wizzard [sic] Oil and bathed her head.”

Shortly thereafter, Johnson’s husband returned to the scene and ordered his neighbor to leave. Although Cook temporarily left the premises, she was not easily deterred and continued to champion her friend’s cause. In the end, Cook had the last word by using her knowledge of numerous offenses to provide detrimental legal testimony against Kimball Johnson regarding his physical and emotional abuse—“she was in constant dread of his treatment of her,” “she was just afraid of him as could be,” and “nothing she did seemed to please him.”

To be sure, troubled wives often found their strongest allies in southern sisterhood, which in some cases extended beyond racial barriers. Susan Edwards, a former slave, testified as to the good character and work ethic of her white neighbor,

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55 Josephine Reeves v. Major Reeves, WCCCP, Case no. 6123 (1884); Adaline Dixon v. John Dixon, HCCCP, Case no. 9395 (1897).
56 L. C. Johnson v. Kimball Johnson, WCCCP, Case no. 7906 (1897).
Mahala Bradford. Her deposition revealed her intimate association and knowledge of the Bradford affairs. William Bradford left Susan alone for extended periods of time, leaving her to take in washing and ironing to support young son. Occasionally, William would return home and reclaim the house for himself. During those times, Edwards allowed Mahala to stay at her home, providing both shelter and distance from a harsh and abusive husband. When Mahala filed for divorce, Edwards gave a detailed and scathing report of the situation created by William Bradford in which she had compensated for unfulfilled husbandly responsibilities. That legal testimony by a black woman against a white man was not only tolerated but was also given credence demonstrates the high level of societal condemnation for men who refused to meet their husbandly and parental duties.  

Divorce narratives often demonstrate the intricate connection between family and community, which is readily evident in the many cases where divorce seekers or their witnesses spoke of the marital situation as "common knowledge in the neighborhood." Over and again, neighbors and acquaintances offered opinions on spousal behavior and character, freely commented on socially accepted proscriptions for marriage, and passed judgment on offenders and the viability of specific marriages.

"I know Deft to be a very violent and abusive & dangerous man. It was the talk of the neighborhood of the shameful and cruel manner in which Deft treated Plff."—witness Henry Armstrong, (1884).

"The outrageous manner in which Deft treated Plff was notorious through out [sic] the neighborhood—he was known as a man who misused and

57 Mahala Bradford v. Wm. Bradford, WCCCP, Case no. 5478 (1878).
58 Josephine Reeves v. Major Reeves, WCCCP, Case no. 6123 (1884).
cruelly maltreated his wife. . . [He] is a roving restless character . . . Plff is much better off without such a husband.”—witness John Smith (1888).\textsuperscript{59}

“Summerfildt [sic] sometimes drinks a good Deal [sic] & when drunk he is very noisy & turbulent . . . He is not fit to have charge of a family from his habits of intoxication.”—witness C. Wittenborg (1871).\textsuperscript{60}

Community gossip diminished the social esteem of offending parties and secured compassion for the victims of broken vows. Some witnesses or participants were persons acting in a sort of official capacity or had some type of public connection to the couples. Physicians, for example, testified that particular husbands had beaten their wives or had left them on their sickbeds or facing childbirth with no means of securing medicine or food. Occasionally, merchants or business associates offered information about financial matters, and law officers gave testimony regarding domestic violence situations. While families may have tried to keep certain matters private, it seems that aberrant behavior was openly discussed within the community without guilt or reservation about having pried into the affairs of one’s neighbors. Witnesses who knew of a woman’s hardships gladly spoke their minds in hopes of helping to free her from an intolerable marital circumstance.

More common than interference or testimony by professional or business acquaintances was that of non-family members who were more directly involved in a

\textsuperscript{59} \textit{Georgiana Toms v. John Toms}, WCCCP, Case no. 6620 (1888).
\textsuperscript{60} \textit{Augusta Summerfeld v. Wilhelm Sommerfeld}, WCCCP, Case no. 3981 (1871).
couple’s daily life. Testimony about arguments, abuse, slanderous rumors, and the like came from landlords, fellow boarders, next-door neighbors, and employers and employees—people who had daily dealing with the divorce seekers. Interactions between these individuals and dysfunctional couples closely resembled those that took place within extended families. When neighbor women rushed to mend wounds or soothe heartaches, they behaved much the same as mothers or sisters would have done. When men of the community ran interference in violent situations or extended financial assistance to vulnerable wives, they acted in very similar ways to fathers and brothers—protecting and providing when there was no one else to do so. Friends and neighbors freely expressed their opinions about the private lives of others, sometimes even encouraging separation or divorce as a final remedy.

Individuals who helped women in these situations were in no way challenged or condemned for having meddled in their neighbor’s affairs. Rather, the depositions of witnesses often convey a sense of contribution and an eagerness to voice opinions. By supporting women and sanctioning individual men, the community bolstered contemporary gender ideals and the patriarchal household structure. In putting social pressure on men to conform to their roles as benevolent patriarchs, witnesses and rescuers perpetuated the continuance of male-domination while simultaneously bolstering the rights of women to a peaceful and secure life as well as to basic respect and honor.

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61 Elizabeth Pleck, Domestic Tyranny: The Making of Social Policy Against Family Violence from Colonial Times to the Present (New York and Oxford: Oxford University Press, 1987), 12. In her study, based on Pennsylvania and Illinois between 1880 and 1940, Pleck finds that victims of domestic violence welcomed outside intervention, and that neighbors and relatives felt that they had a right to intervene.
At what point outside interference in other people’s marriages not only became acceptable but also became a social responsibility is difficult to determine. The key may be the word *extreme*. To be sure, the cases in this study are the extreme and rare situations—the ones that ended in divorce. Clearly, severe situations wherein men intentionally rejected their responsibilities as husbands, causing severe hardship to their wives and children, warranted involvement by kinfolk and neighbors. As a rule, family members and—probably to a greater extent—non-related people stepped into the affairs of others with great caution. Normally they only did so in response to an invitation of some sort—a cry for help of one type or another. While the degree of privacy in rural communities and the importance of reputation and gossip remain somewhat elusive, it is obvious that abhorrent behavioral patterns rendered the boundaries of privacy soft and flexible; and rural Texans repeatedly acted out of tradition and compassion to remedy social ills.

Given the fact that marital troubles often were common knowledge within the local communities, it should come as no surprise that women were willing to engage in the public event of formal divorce proceedings. Embarrassment at the public spectacle that their marriages had become, no doubt, encouraged some women to rid themselves of the source of humiliation—to free themselves from the shame of the continual drama being played out before their communities. More substantially, these rescues—whether physical or financial—let women know that they were not alone, that society disapproved of wife abuse and neglect, and that resources were available. This is not to say that society or individuals supported divorce in general but rather that divorce was an
acceptable last resort for remedying grossly unsatisfactory marriages, a solution that
could be conscientiously supported by the community.

Certainly, women were not the only victims of failed marriages, but they were the
ones who most often needed to be rescued from the cruelty of spouses and whose limited
financial options rendered them destitute when abandoned or neglected. Women sought
divorce on the basis of ill treatment far more often than men, with cruelty charges
appearing in 51 percent of all cases filed by women. Clear-cut cases of physical abuse
was involved in 40 percent of all female-initiated cases. Abandonment charges, which
normally emphasized financial hardship and often prior acts of ill treatment, also made
their way into 51 percent of the suits filed by women.\textsuperscript{62} By comparison, men complained
of cruelty charges in only 12 percent of their cases and claimed physical abuse in fewer
than 2 percent of their cases. Thus, family and community intervention was often crucial
to the well-being—and even the survival—of women and only to a lesser extent for men,
whose economic options and physical strength prevented them from suffering the most
extreme effects of violent or neglectful spouses.

When men asserted that wives had treated them badly or had committed acts of
cruelty, they usually provided descriptions that were very different from those given by

\textsuperscript{62} Cruelty charges were present in 381 cases, and 295 cases gave specific examples of physical abuse
against the wives. Abandonment was present in 381 cases, also. Women used adultery charges in 148
cases. Of those, all but 16 combined adultery with other charges, avoiding the legal bias against women
regarding the right to divorce on grounds of adultery. Although some women did seek divorce solely on the
basis of adultery, the legal clause governing adultery carried a potential bias against wives by using the
additional phrase “and abandoned her.” This possible implication that adultery without abandonment was
no allowed for wives of unfaithful husbands may have deterred some women from pursuing divorce on that
ground alone. Some women did seek and gain divorce on adultery alone, however. “An Act concerning
Divorce and Alimony,” January 1, 1841, Gammel, comp., \textit{Laws of Texas}, II, 483.
wives. Instead of the accounts of repeated beatings, starvations, isolation, and mental bombardments, men often cited a wife’s refusal to do domestic chores or a “quarrelsome” demeanor. Threats to do bodily harm surface in narratives of male divorce seekers, but men were never as vulnerable as women and very rarely did they speak of needing assistance from others. Among the rare examples are the cases of Tony Roberts and Frank Williams, each of whom complained that his wife had abandoned him during a severe illness, forcing him to rely on neighbors for food and medical attention. Another was B. J. Mitchell, who asserted that when his wife attacked him with a hoe, his life was spared “only by the timely intervention of bystanders.” These cases stand out not by their severity, however, but for their novelty. Unlike women, men rarely faced circumstances so dire that they had to count on outside assistance to see them through the crisis.63

When men complained that wives refused to cook or clean, they spoke of inconvenience and difficulty, but out-and-out hardship was usually beyond the reality. To be sure, men of the postbellum era continued to rely on their wives to help keep the household economically and functionally viable, particularly for the less affluent families. But few men went so far as Jesse Allen, who explained that “as a poor laboring man” he urgently needed his wife to perform household chores and assist him on his rented farm. Allen contended that “it would be impossible for him to properly raise his crop & till his soil without her help & work and that her absence and failure to do such work would cause [him] great embarrassment and financial ruin and starvation for him &

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63 Tony Roberts v. Francis Roberts, WCCCP, Case no. 5879 (1882); Frank Williams v. Sallie Williams, WCCCP, Case no. 6043 (1884); B. J. Mitchell v. Sophie Mitchell, WCCCP, Case no. 6684 (1889).
his children.64 Unlike women whose husbands refused to work or who gambled away
the family income, men never actually went hungry—at least not for more than one meal.
Nor did they endure regular deprivation of their basic needs because of a wife’s lack of
contribution.

Even when men complained that wives had made threats of violence, or in the
rare instances when women actually attempted to do bodily harm, husbands were able to
stand their ground and required no outside intervention. William Jaster of Washington
County, for instance, claimed that his wife possessed a “violent and ungovernable
temper.” She threw a chair at him and tried to stab him with a butcher knife but was
apparently unsuccessful. William Finlay claimed to have made no effort at resistance
when his wife attacked him, other than to protect himself from receiving broken limbs.
He seems to have suffered no real injuries. Another husband reported that his wife had hit
him with her fists and choked him with all of her strength until he released himself from
her.65 Reinhold Richter claimed his wife was often enraged, citing one instance in which
she confronted him in the cow pen. There she “endeavored to strike” him with a stick,
“threatened” to do bodily harm, and finally threw rocks at him from a distance. Richter
reported that he was forced to flee lest he receive bodily injury. Again threats and
attempts failed to result in actual physical damage, and the husband walked away
apparently unscathed.66

64 Jesse Allen v. Fanny Allen, WCCCP, Case no. 5927 (1883); See also William Zich v. Wilhemmina Zich,
WCCCP, Case no. 6743 (1889).
65 Wm Jaster v. Amelia Jaster, WCCCP, Case no. 8150 (1898); William Finlay v. Kate Finlay, HCCCP,
Case no. 7139 (1882); John M. Wood v. Lucy Wood, HCCCP, Case no. 7289 (1884).
Descriptions of the somewhat anomalous instances in which men received physical injury or claimed to have genuinely feared for their lives suggest that wives may have been acting out of self-preservation, and some were clearly trying to force their husbands into leaving them. Caroline Eckert defended her personal territory and right to autonomy when her estranged husband tried to force reconciliation. She became physically aggressive when he appeared at her door, and she told him “not to show his face to her again.” Men who claimed that wives had acted out physically or made physical threats stated that they had done so for the express purpose of forcing their husbands to leave. One such wife was Frederika Schramm, who made her point with great clarity, stating that she would “run [her husband] off, no matter what she had to do.” After trying various verbal antagonism and withdrawing from the marriage bed, she finally resorted to threatening to “knock his nose off with a chunk of wood.” Thus, rather than immediately seeking legal divorce, some women in unhappy—and often abusive—homes apparently found ways to oust unsatisfactory or ne’er-do-well husbands and create safe distances from them.

In some instances, husbands clearly used allegations that wives had verbally or forcefully “compelled them leave” as way to justify the fact they themselves had been the ones to abandon the marriage, not their wives. Examples of threats by wives that appeared as evidence in abandonment cases, which necessitated three years of separation prior to filing, implied an absence of any immediate threat or ongoing fear of ill

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67 Martin Ickert v. Caroline Ickert, WCCCP, Case no. 6242 (1885); Sylvester Walker v. Hester Walker, WCCCP, Case no. 8815 (1898); Ernst Voss v. Margarethe Voss, WCCCP, Case 5919 (1883).
treatment. Defending wives, in turn, denied the cruelty allegations or justified their actions with claims of self-defense, casting themselves as desperate victims of ongoing abuse at their hands of husbands. Cases of cruelty presented by husbands were generally weaker than those presented by abused wives, citing only one instance of potential peril from which they could easily remove themselves. Husbands generally had the power to avoid any possible danger simply by staying away—as opposed to wives whose abusive husbands remained within the home and repeatedly inflicted grief.

Men often spoke of ill treatment in conjunction with the mistreatment of children. Although technically divorce could not be granted for mistreatment to anyone other than one’s spouse, jury sympathy was certainly garnered by narratives demonstrating a wife’s failure to be a good mother or to assist her husband in properly rearing their children. Parental behavior became an issue for petitioners of both genders when custody was at stake, but it was also used to demonstrate that an individual was generally of poor character and derelict in his or her proper gender role. Children factored into numerous cases, either as witnesses to events or as illustrative victims of the bad marriage. For petitioners with children at home, the divorce was much more than a one-on-one severing of a contract but also a way of protecting and caring for the nuclear family.

Fathers as well as mothers demanded that their new spouses treat the children and stepchildren fairly, and they complained to the courts that cruelty to one’s child was tantamount to ill treatment of the parent. In this way, mental cruelty theory came to encompass ill treatment of a spouse’s loved ones, particularly those under one’s immediate protection. The legal precedent had been set by the Texas Supreme Court in
1857, when the court listed numerous possibilities for interpreting the cruelty clause. It stated, among other things, that “to murder or cruelly ill-treat the child or near relative of the wife” was “cruelty of the most base and aggravated character . . . because they are outrages to the feelings of the wife.”

Although the court used gender-specific rhetoric, men as well as women appealed to the theory. They either sought divorce on the grounds of malicious parenting or, more often, used it as a component to enhance the severity of other allegations.

Wingate Woodley brought his wife to task for gross violations of her expected role as a mother. Woodley, a wealthy farmer from Harrison County, had ten children when he married his much-younger second wife Kate. Kate was hostile and arrogant in her demeanor toward all of the children, heaping insults on them and even refusing to take her meals with them. She was particularly cruel to Wingate’s two-year-old daughter. Kate refused to give the child any positive attention whatsoever, he argued. Whenever the toddler came near her, she drove the child from the room and relegated her to an unheated area of the house. On one occasion, Wingate discovered that Kate had beaten the little girl so viciously that blood flowed from several wounds. Kate answered that the girl was “one more child than she had bargained for.”

But soon the reluctant stepmother had a child of her own and another on the way. During her second pregnancy Kate absconded to Louisiana with over $1,000 in household finery, taking the couple’s newborn child with her. When Wingate filed for

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68 Mary E. Sharman v. James A. Sharman 18 Texas 522 (1857).
69 Wingate H. Woodley v Kate Woodley, HCCCP, Case no. 6707 (1878).
divorce, Kate herself requested custody of the two young children, asserting that she was entitled to ongoing monetary support on their behalf, particularly so since her husband was a wealthy man. But Wingate as father won guardianship on the argument that Kate was not only cruel to her stepchildren but also was abusive to her own two children.

Women like Kate Wingate failed as wives when they failed as mothers. Refusal to act as loving and virtuous role models for children and stepchildren put wives outside the realm of decency and gave weight to a husband’s argument that the marriage should be dissolved. In keeping with the Victorian idea of femininity, women were expected to be emotionally invested in the upbringing of their stepchildren as well as their biological children. Male litigants bolstered their cases by playing on contemporary gender ideals that claimed women were duty bound and naturally inclined to be good mothers. In doing so, men also played up their own attributes as caring fathers. William Young, for instance, accused his wife, Nancy, of being impatient and physically aggressive with her “weak minded” stepdaughter. William presented himself as a loving and engaged father, who “entreat[ed Nancy] not to taunt his dear child.” Nancy’s refusal to desist caused him “great grief,” he argued. S. J. Bostick used the tender-years theory to impress the significance of his wife’s failings to be a good mother to her five stepchildren. When S. J. and Sarah Bostick married in Alabama, she had agreed that they would live on his farm in Harrison County, Texas. Shortly after the marriage, Sarah changed her mind about relocating and refused to leave Alabama. S. J.’s divorce petition centered on Sarah’s “heartless and cruel” refusal to “be his companion and help him train up his children as
was befitting.” The children were, he stated, “of tender years and need[ed] the care and attention of a mother as [she] had promised to be to them.”

Southern fathers such as these were actively engaged in the lives of their children, and, like mothers, they exhibited an emotional commitment to their children’s well-being. Male plaintiffs who sought custody of their children used the language of sentimentality to convey their devotion to their children, and they portrayed themselves as affectionate and loving parents. Yet the demands on fathers and stepfathers as described by female litigants were weighted more toward the pragmatic concept of fatherhood and husbandly duty than toward emotional connections, falling back on the two basic criteria for responsible husbands and fathers—providing and protecting.

Women certainly hoped that husbands would exhibit loving emotional support to themselves and their children, and they bolstered their divorce suits with allegations that conveyed unloving actions. But they relied most heavily on the gross infractions that brought actual harm to the children, such as physical cruelty or failure to provide material necessities. With these infractions, men overstepped their authority as heads of household and assaulted the maternal inclinations of their wives. Mary Hart, for example, explained that her husband had been insulting to his thirteen-year-old stepdaughter, humiliating her in front of others and refusing to provide new clothes for her. He became physically abusive when her mother was not present, hitting her in the face with a broom and locking her in a closet “for no reason whatever except to prevent her from eating a

70 W. H. Young v. Nancy Young, HCCC, Case no. 6351 (1875); S. J. Bostick v. Sarah Bostick, HCCC, Case no. 7132 (1882).
tomato.” Mary stated that his actions were offensive to her as wife, in consideration of her natural maternal love for the child. “[In] view of her feelings as a woman and her affection for daughter,” the marriage was no longer sustainable, she argued.71

Men who failed to meet their parental duties not only offended the feelings of wives, they also violated societal expectations for responsible manhood. Their dereliction of duty posited a social dilemma regarding obligations to care for dependant children. The responsibility to provide food, shelter, clothing, and education for children fell not only to fathers but to stepfathers as well. Numerous cases refer to blended-family relationships and demonstrate the positive experiences between step relations and divorcing women. Blended family members in these situations acted in kind and supportive ways to help women out of bad marriages. Men honored their roles as male family members by championing stepdaughters and stepsisters in divorce court and by providing safe havens for them and their children. On the flipside were stepfamilies that became the subject of the divorce suits themselves—divorce cases that involved second marriages and showed the dysfunctional side of blended-family life.

When women remarried, they hoped that their new husbands would take their children under wing and rear them as their own. At the very least, they expected peaceful lives with their children’s basic needs attended. Divorce narratives presented by women in unhappy second marriages portrayed the plaintiffs as good mothers who sought what was best for their children in terms of health, prosperity, and moral training and who defended their children against the evil actions of despotic stepfathers. These narratives

71 Mary Hart v. Thomas T. Hart, HCCCP, Case no. 7553 (1888).
represented wayward husbands as cruel, tyrannical, and injurious to the nuclear family unit. By failing to provide for the needs of the entire family, bad stepfathers destroyed the potential for a strong nuclear family, and their actions tore at the hearts of their wives and affected the emotional harmony between the spouses.

Although women increasingly (and with greater frequency than men) drew upon sentimental rhetoric to express their own emotional disappointment and injured maternal feelings, they cited examples of marital infractions committed by husbands that were of a very practical nature. Just as men expressed the desire and practical need for new wives to function as caring overseers of their children, women also voiced concerns that the daily needs of their sons and daughters be met. Female litigants expressed frustrations at actual abuse by and lack of financial support from second husbands. Their disappointment at the failure of second spouses to meet husbandly and fatherly obligations suggest that for women, pragmatic considerations that included child rearing may have overridden romantic aspirations in decisions to remarry. Thus, violations of the parental role equated to transgressions against the spousal role. Tyrannical fathers were bad husbands; neglectful and harsh mothers were bad wives.

The treatment of children, however, played a role in only a small portion of divorces suits and most decisions to divorce did not involve children but came about for more direct attacks on the marriage relationship. To be sure, women stepped beyond the dictates of respectable womanhood when they violated gender norms by being bad mothers, made passionate displays of anger, or used vulgar and condemning language. But it was only when women had clearly walked away from the marriages and/or had
chosen new lovers, however, that most found themselves as defendants in divorce suits. Men used abandonment charges in 66 percent of their cases, and adultery in another 46 percent—with 183 cases using a combination of the two. As in earlier periods, women asserted their independence most obviously when they walked away from unhappy marriages or when they chose new spouses who they deemed preferable. Their reasons for leaving were rarely given, and it is difficult to know what prompted the departures of women whose husbands listed only abandonment as a cause for divorce. Adulterous affairs, however, clearly motivated many.

Sexual deviance on the part of women went to the heart of ideals surrounding respectable Victorian womanhood and was a topic of discussion in roughly half of the divorce suits against wives. Most sexual misbehavior—by men or women—was adultery with a single partner. As in earlier periods, adulterous wives often committed adultery with only one man, someone with whom they intended to establish a permanent relationship. In several cases men filed for divorce after wives had been living with other men for many years and had born children by those men. Such women had chosen new lives with new men, but they held on to the old gender roles and expectations for monogamy and motherhood. Their stories, told only from the perspective of estranged husbands, indicate a general acceptance of gender proscriptions combined with a sense of personal choice.

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72 Women filed far fewer adultery-based suits than men—only 20 percent of their cases addressed the issue of infidelity.
Yet in the postbellum years accusations of serial adultery and allegations of prostitution began to emerge. Such allegations were scarce but more pronounced than in earlier decades. About 9 percent of the adultery charge reported that wives had had multiple sexual partners or had become prostitutes. The first cases in which prostitution appear took place in Washington County in 1877. Jim Moore stated that his wife, Ella, had left him for another man six weeks into their marriage. She had then become known as a “common prostitute . . . a woman of violent and vulgar nature and habits.” Jim Wagner’s petition of that same year was similar, naming one known adulterous partner and labeling his wife a “common strumpet and prostitute.”73 Both couples had been married for only three years, and both husbands dropped their cases. Only one other such case was filed that decade. The number grew to eleven accusations of prostitution or serial adultery in the 1880s, and to eighteen in the 1890s.74

Actual numbers of alleged prostitutes among divorces seekers remained small, and allegations of extreme promiscuity outside of prostitution (three cases) were even more rare. Of 332 charges of adultery made by husbands against wives, only 8 percent made such accusations. By comparison, women who had given birth to illegitimate children composed 5 percent of the cases.75 Miscegenation cases were even more rare, with only 2 percent of the adultery cases (eight suits total) involving women who

73 Jim Moore v. Ella Moore, WCCC, Case no. 5444 (1877); William Wagner v. Hilda Wagner, WCCC, Case no. 5440 (1877).
74 The increase in charges of prostitution and serial adultery in divorce petitions had a strong racial component, with black women being accused more often of these offenses than white women. See chapter 5 of this study.
75 Twenty-eight case involving accusations of prostitution and three cases wherein men accused wives of adultery with divers person were found. Of the prostitution cases, exactly half of the verdicts are known. The remaining were for decisions in favor of the plaintiff or, in three cases, withdrawals by the plaintiff.
engaged in interracial sexual affairs. Six cases involved white women accused of adultery with black men, but two were filed by black men who accused their wives of sexual collusion with white men.

The sexual component of marriage was addressed in other ways also. Unhappy marriages often resulted in a lack of a conjugal relationship, most often at the instigation of the wives. Reasons ranged from a general lack of accord within the marriage to a woman’s refusal to subject herself to venereal disease. In some cases, men attempted to coerce wives into fulfilling the marital “obligation,” sometimes by using force. When Bettie Lea’s husband attempted to persuade her against her resolve, she fended him off and told him that if he “dared again to lay down on her bed she would bust his brains out with a billet of wood.” Defendant wives were among those women who chose to control their own sexuality, refusing to allow husbands to assert this so-called right to their bodies. In such cases, male plaintiff’s claimed ill treatment. When women withdrew sexual privilege from their husbands, men claimed ill treatment.\footnote{Neeham Lea v. Bettie Lea, WCCCP, Case no. 5847 (1882).}

Some male plaintiffs attempted to garner sympathy by demonstrating that they had treated their wives with great respect, hoping to negate potential accusations of tyrannical abuse of power. Jack Stone, a physician in Washington County who secured a divorce in 1899, eloquently articulated the societal expectations regarding the respectable marriage relationship and ideals for husbandly kindness and gentle treatment of their wives. “She was in good health,” he wrote, “sound in body, well and fully developed physically, yet she willfully denied to [him] privilege and pleasures of the conjugal
relations, that should naturally exist between husband and wife as so ordained and commanded by Holy Writ but on all occasions would repel his solicitations, with venom, and denied to him this sacred privilege, though modestly sought, and moderately requested, she deserted his bed, and betook herself to other apartments and there remained in seclusion from his embraces, utterly and persistently refusing to meet and discharge the sacred obligations of her marriage vow, though lovingly approached, and kindly besought in the spirit of the sacred obligations of the marriage state.\textsuperscript{77}

Mrs. Stone attempted to act as the “controlling force” in the marriage, as the petitioner’s case stated, usurping authority as well as wounding her husband’s feelings by regulating access to her own body and denying him physical affection. She then went beyond these private misdeeds, he claimed, and challenged his sexual integrity by making public accusations of infidelity against him. Laying out his case for mental cruelty, Stone told the court that he was an “honorable gentleman, priding himself on his noble, and honored ancestry, and being very jealous of, and sensitive of his good name, and reputation among honorable men and women[. He had] been crushed, in spirit, distressed in mind, outraged in feelings, and ashamed to go among his friends and society on account of the public circulation of said calumnious, and untruthful reports, and charges made by defendant.” Continuing in melodramatic prose, Stone’s petition concluded that because of his wife’s conduct, “the sweet of married life, and a once happy home, [had] become engulfed in the dark and dreary cesspools of despair.”

\textsuperscript{77} Jack Stone v. H. E. Stone, WCCCP, Case no. 8722 (1899).
Stone’s bid for sympathy failed against his wife’s long litany of witness depositions attesting to her high moral character and discerning demeanor, and in light of his long absence from the home and having taken up residency outside the county. Stones’s vociferous depiction of the expectations for marriage, however, is representative of the shift that had taken place by the end of the century. Petitions had increasingly come to embrace narratives of expectations for and denial of emotional satisfaction within marriage. Mental cruelty had long been an option for divorce seekers under the broad rubric of “excesses, cruel treatment, or outrages” allowed by the Texas divorce codes. Postbellum divorce seekers applied it with increased regularity—either as a component to bolster other charges or, less frequently, as the sole basis for their suits. Mental cruelty theory assumes an individual’s right to freedom from actions or words that inflicted harm, that is, a right to not be abused or tormented. But the ideal for marriage increasingly espoused by petitioners went beyond the absence of harm. Men and women expected that marriage would bring a degree of affection. At minimum, spouses desired basic respect and peaceful cohabitation, with genuine and even romantic love as the highest ideal and hope. Divorce seekers portrayed themselves as good spouses by stating that they had always exhibited loving kindness, consideration, and affection toward the wayward husband or wife. The defendants, they claimed, had withheld such affections and acted in unloving, harsh, and cruel ways, destroying the harmony of the home and diminishing any hope of a nurturing and satisfying union. Repeatedly, and with increased usage over time, terms such as affection, love, kindness, tenderness,

considerate, and comfort conveyed the expectations and disappointments of plaintiffs.

Having, at the very least, given lip service to the sentimental model of marriage, petitions quickly turned to more specific and pragmatic violations that justified and met the legal criteria for divorce. Collectively they demonstrate an ideal model for marriage in which love and affection coexisted symbiotically with duty and obligation.

Unfortunately for these couples, the realities within their marriages was far from the ideal and in most cases had never come close to the mark. Beset by problems from the beginning in many cases or in others weakened by circumstance over time, these marriages fell victim to failed obligations and gross violations of moral, ethical, and social codes. Absent a loving commitment and sense of duty, their relationships became dysfunctional and ultimately defunct. The process of marital dissolution was often layered, beginning with private discords between husbands and wives. As difficulties evolved, close relatives or friends gained awareness and became involved in various ways. For couples with children or others living in the household, marital strife could rarely be kept secret; and the entire family participated in the disharmony. As matters worsened or took on new dimensions, professional acquaintances, neighbors, and even the general public were apt to become privy to domestic disharmony. Eventually divorce seekers were compelled to step fully into the public world with their personal plight, filing a divorce petition. Appearance in court, publication of divorce notices, and the administrative acts of changing names, property ownership, and child guardianship guaranteed community knowledge with all the positive or negative ramifications that might bring.
This movement from the very personal to semi-private to public took place at
different rates and in different ways, but almost all divorce seekers were in some way
influenced by family and neighborhood before turning to the state for a final solution.
Assistance to women, whether the paternalistic efforts of caring male relatives, the
comfort and aide provided by female friends and kinswomen, or the more general
involvement of community acquaintances, was especially important given the economic,
legal, and social limitations that circumscribed female options. Only after exhausting
their informal resources did men and women turn to the state for redress.

By the end of the nineteenth century, Texans in troubled marriages had grown
increasingly to rely on the state to reestablish good order in their lives. Some used the
state mechanism to coerce spouses into making amends, withdrawing their petitions when
they had achieved a satisfactory degree of compliance. Most, however, only went so far
as to submit a petition for divorce when the relationship was beyond repair and they
genuinely wanted out of the marriage. Once a couple had made the decision to divorce,
they could expect state cooperation in ending the marriage. Though divorce was an
adversarial procedure and required gross misconduct by one of the spouses, judges and
juries were rarely inclined to deny couples the right to end their marriages.

Having been called upon by individual plaintiffs to grant divorces and mediate
settlements, Texas courts operated with a strong tradition of equitable gender treatment
and a healthy dose of paternalism and discretion when necessary. In their hands were the
powers to grant divorces and thus allow remarriage, to divide property, and to grant
custody of children. Texas courts were highly reluctant to impose undue dictates on
individuals and readily granted divorces upon request—most often in favor of the original petitioner. Women as well as men could expect a fair hearing and might even benefit from the protectionist inclinations of the jury and judge. Because Texas law gave women significant legal standing in terms of property holding and ownership, limits on coverture, and equal parental rights, the need for judges to use creative discretion in order to provide women with just settlements was often negated. However, when opportunity allowed and circumstances necessitated, paternalistic judges applied equity to override property division norms and promote the welfare of women and children.

By 1900, the turbulence of the frontier has subsided, the uncertainty and hardship of war was removed, and the political upheaval of Reconstruction was fading into memory. Texas communities were well established, as were patterns of family life and social expectations. Domestic patterns reflected a continuation of traditional gender-role divisions and expectations for marriage. Society called upon men to provide and protect their households and expected women to judiciously support their husbands, rear children, and tend to all things domestic. Men and women who found that their lives not only failed to fit the norm but also were so out of line as to render their marriages unbearable, increasingly turned to the state for legal redress, garnering hope that they might be freed from the unhappy unions to start new lives. Their’s were not quick or rash decisions but ones made of necessity and with regret. For most, divorce was a last resort after all family and social resources had been exhausted and wherein legal sanctioning
was deemed necessary for achieving personal goals—whether they be economic survival, the right to remarry, control of children’s welfare, freedom from abuse, or simply personal happiness.
Chapter Five
African American Divorce

On December 26, 1866, Wiley Hubert submitted a petition for divorce to the District Court of Washington County, Texas, requesting a legal divorce from his wife, Sallie Hubert, to whom he claimed to have been married for fifteen years. Wiley’s statement held that Sallie had begun to alienate herself from him two years earlier and had recently grown “loose” in her moral conduct and deportment. Her flirtations with other men had eventually culminated in “open and notorious adultery” when in June 1865, Sallie began to engage in adultery with “several persons.” Sallie ultimately chose to leave her marriage to live with a man named Robert House. Apparently content to remain with her new paramour, Sallie allowed the divorce to go unchallenged. The court granted Wiley his divorce and the couple went their separate ways.¹

The Hubert case stands out as the first legal divorce granted to a black couple in Washington County and for having occurred before the state of Texas recognized black marriages. The Hubert marriage was one of thousands that had been contracted under slavery, without legal recognition or protection, and it was one of many that ended either formally or informally during the turbulent years of early freedom. By 1880 at least forty-eight former slaves had followed Hubert’s example and petitioned for a legal end to their marriages in Washington County, and a minimum of sixteen black petitioners requested divorce in Harrison County. Between 1866 and 1880, 275 divorce suits were filed in

¹ *Wiley Hubert v. Sallie Hubert*, WCCCP, Case no. 3569 (1866).
Washington and Harrison Counties. African Americans represent 59 percent of the 116 cases for which the ethnicity of the litigants can be determined. By 1900 blacks in those counties had initiated a minimum of 324 suits, 69 percent of the 485 cases for which race or ethnic background can be determined. Whites, including European immigrants, thus made up remaining 31 percent.\(^2\) Considering the black-majority populations in each county, these numbers meet reasonable expectations. However, the social and political circumstances surrounding the newly emancipated black family were not in keeping with the white population.

Through the stories laid out in their court petitions, black divorce seekers contributed to the historical record by relating their experiences in the struggle for family stability in a new era of freedom, uncertain citizenship, and personal and fiscal responsibility. For many, the task of working out one’s freedom in an often hostile and unsupportive environment made the quest for a viable and satisfying marriage an arduous chore. New survival challenges combined with the uncertainties of a new legal and social status were certain to strain interpersonal relationships. Although the African America family was often the strongest hope of survival and the most treasured component of individual lives, striving for economic survival, political recognition, and social respectability put onerous psychological and emotional burdens on many individuals and

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\(^2\) Ethnicity or race can be determined as non-African American for 161 cases between 1866 and 1900. Of those, German immigrants or their descendants file eighty-four petitions, and persons of other European heritages filed remaining seven. The German divorces were primarily from Washington County, where a significant number of German immigrants settled. Only one Hispanic litigant was found among the case. The ethnic breakdown of the white population is on par with the general population of the counties. German immigrants and their American born counterparts are combined with Anglo Americans in this study, as they exhibited no marked in their tendency to file for divorce or in their behavioral patterns within the marriages.
undoubtedly strained family relationships. In some ways, the unique circumstances of newly freed slaves and their children were not unlike the stresses experienced by newcomers to the Texas frontier in the 1830s and 1840s, with both groups negotiating between conflicting political identities and striving for legal clarification as they confronted basic survival issues in often difficult circumstances.

The quest for legal divorce was no less than a pursuit of citizenship and the right to choose the circumstances of one’s own life. If legal marriage, as Laura Edwards argues, “symbolized the rejection of . . . slave status” and constituted the most basic unit of a free citizenry, then legal divorce was also a reaffirmation of personal liberty and citizenship.³ For African American men and women, divorce was one means of asserting desires for the protection of civil liberties, including the right to contract as represented in marriage. The various narratives in divorce petitions likewise declared the individual’s acceptance of mainstream gender conventions, including the masculine right and responsibility to protect and provide for one’s household and the hope and expectation for wives to be sheltered from the world of manual labor and economic responsibility. For black Texans, divorce was a step of great importance and symbolism, as divorce seekers refused to relegate their marital status to the ambiguities inherent in informal “quitting” and separation but rather demanded social and legal legitimacy.⁴

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When Wiley Hubert ventured to sue for a legal divorce, he was, to some extent and in the eyes of many, presumptuous in claiming his legal rights as a free man in Texas. And he was indeed testing the legal waters when he assumed that as a newly emancipated slave, his slave marriage was automatically legitimized and that he was entitled to a legal divorce. The exact implications of emancipation for the legal status of black families remained unclear in 1866, and it would be another three years before the state legislature gave legal recognition to black marriages. The reality of emancipation had come belatedly to Texas slaves when on June 19, 1865, General Gordon Granger initiated federal occupation of Texas. As the troops landed on Galveston Island, Granger issued his now famous Juneteenth proclamation, General Order No. 3, declaring that “all slaves are free.” From that point onward former slaves were to enjoy “absolute equality of personal rights and property rights” with whites. Granger also advised slaves to remain “at their present home and work for wages” and warned that they “would not be supported in idleness.” Occupation by federal troops would ensure ultimate compliance and protect the rights of freedpersons.5

Although most white Texans quickly acquiesced and released their slaves, others tenaciously resisted by illegally withholding freedom. As a child, Steve Robertson lived under this type of illegal bondage in the Washington County community of Chappell Hill with his mother and siblings. Although it may have seemed to the young boy that his mother benignly accepted continued enslavement without resistance, in truth, she was

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cleverly biding her time until she recognized a safe opportunity to escape. When the right occasion presented itself, the mother took her children and fled. The group had only a short distance to go before they encountered a neighboring planter who offered them housing, safety, and well-paying jobs.  

Others were less fortunate and were denied emancipation for much longer. An inadequate number of federal troops and the slow arrival and dispersal of the Bureau of Refugees, Freedmen, and Abandoned Lands in Texas contributed to the lack of compliance since a proclamation of emancipation was only good in so far as it could be enforced. Steve Robertson's older brother, for instance, resided on a nearby plantation where he continued in practical slavery, receiving no wages for his labor and living daily under the dictates of the planter. Robertson recalled that his intimidated and taciturn demeanor had conveyed to his family that for him emancipation had been substantially meaningless.  

Black families faced economic hardships, family dislocations, and violent oppression common to freedpeople throughout the South. According to Freedmen's Bureau officials, Texas posed the most difficult challenge among southern states both because of its particularly obstinate white population that had suffered relatively few

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consequences of defeat and because of the high level of violence directed at blacks. Yet, despite severe adversity, former slaves quickly found ways to reconstruct severed families and to assert their autonomy. Sallie Wroe, an enslaved child during the war, recalled how her parents orchestrated their transition to freedom. Initially Sallie’s mother stayed and worked on the plantation where the family had lived during slavery. Sallie remembered that the plantation owner bribed her mother into staying through harvest time by promising to serve the family eggnog at Christmas. Behind this simple childhood understanding lay a more complex reality in which Sallie’s mother patiently coordinated plans with her absent husband to reunite the family once they had secured adequate finances and a satisfactory place to live.\(^8\)

Sallie’s father, absent from his family for a considerable time, had gone to find work and save enough money to facilitate a comfortable transition for his family. When harvest season came to a close, Sallie’s father sent a male cousin to escort his wife and children to their new home where he later joined them. With hard work and careful planning, Sallie’s father and mother had acquired enough provisions and income to make the shift to economic independence as smooth and pleasant as possible for themselves and their children. In her old age Wroe joyfully recollected the reunion with her father. In celebration, he had thrilled the family by taking them on a shopping excursion in the Washington County seat of Brenham and purchased a new set of clothes for each child and their mother. Pooling their talents and resources, Wroe’s parents—and others like

them—worked to facilitate long-term family cohesion and economic security in a
turbulent setting.

Despite the many potential disruptions to family life inherent in slavery, family
relationships had long been the source of strength and personal satisfaction for African
Americans. Although without legal sanction and despite its precarious existence,
marrige stood as the central component of family life and community organization.
Slave marriages ensured unity within families and a sense of belonging and mutual
support, as well as a claim to moral respectability. The lack of legal protection, however,
left slave families at the mercy of white owners. Separation from loved ones, feelings of
helplessness in protecting family members, and a lack of control over the fate of children
were part and parcel of slave family-life.⁹ The benefits of legally recognized marriage
became very desirable to those who understood the consequences of life without it, and
newly emancipated men and women across the South flocked to agents of the
Freedman’s Bureau in hopes of legalizing their existing conjugal relationships or entering
new marriages.

Whites often encouraged blacks to obtain a legal sanction for their unions, and
most southern states validated existing slave marriages soon after emancipation.
Reasoning that marriage obligated black men to assume economic responsibility for their
families, whites generally believed that legally binding marital associations benefited
society. Because marriage encompassed matters of child rearing, economic production,

⁹ Anne Patton Malone, Women on the Texas Frontier: A Cross-Cultural Perspective, Southwester Studies,
property rights, and inheritance, legal recognition of black marriages gave the state at least some control over the domestic affairs of African Americans. Thus, in the eyes of whites, social order and white supremacy were best served when blacks participated in legal marriage and other white-imposed social conventions. As Laura Edwards argues, “To keep freedpeople from threatening civil society, they had to be brought into it [society]. To be brought into it, they had to be married.”

The state of Texas took the opposite approach, however. Until 1869 the legislature stubbornly refused to legalize black marriages, continually rebuffing federal efforts and ignoring the pleas of freedpeople. As of March 1865 the Freedmen’s Bureau considered any continuing slave cohabitation legal, but the bureau was limited in its ability to enforce this policy. Because marriage law was the purview of the states, the Freedman’s Bureau, being a federal institution, could not force Texas to give legal recognition or to provide any of the legal benefits normally associated with marriage. By extension, the unsettled situation regarding marital status influenced attempts at legal divorce, which was in effect an endorsement of an existing marriage as well as an affirmation of practical citizenship and the rights of blacks to participate in the same privileges afforded to whites.

With the Freedmen’s Bureau act having declared that only civil courts could dissolve marriages, bureau agents in Texas encouraged blacks to follow civil law procedure for divorce. The problem with this process, however, lay in the law’s

requirement that petitioners provide some type of evidence of a legal marriage. Because
the state did not recognize slave marriages as legitimate, courts technically had no power
to issue divorce decrees to African American couples. Given this situation, the
Freedmen’s Bureau remained the best—and only—institution to which freed men and
women could turn for help with marital dilemmas. Black Texans recognized that federal
authority gave the Bureau “a legitimacy that their former masters and state officials did
not possess,” and they readily took advantage of any help that agents could offer. But
even the Freedman’s bureau could not fully eliminate all certainty and confusion. Agents
in Texas, in fact, did not register marriages in Texas as they did in other states. Thus,
with the rare exception of Wiley Hubert, who submitted his divorce petition in December
1866, and perhaps a few others, African Americans had to wait until 1869 for a new state
constitution to legalize extant slave marriages and post-emancipation unions. 12

Considering the confused situation, it should come as no surprise to discover local
anomalies such as the Hubert case, which resulted in a court-granted divorce decree in
early 1867. A year passed before two more Washington County African Americans
attempted legal divorce. 13 Most blacks who sought assistance in domestic matters
continued to place their trust in the Freedman’s Bureau during the interim between
emancipation and legalized marriage. The Wiley divorce took place at the crux of the
transition between local bureau agents and in the heat of an ongoing political battle
between local whites and federal agents. The upheaval may well have influenced Wiley’s

12 Crouch, “The ‘Chords of Love,’” (quotation on 336); Constitution of the State of Texas, Adopted by the
Constitutional Convention [1869], Art. 12, Sec. 27.
decision to apply to the local court, as he found himself caught between competing jurisdictional powers. And Washington County officials may have seen the Hubert case as a useful tool in the quest for state and local control over the affairs of African Americans.

Beginning in the summer of 1866 Washington County residents engaged in some of the most intense conflicts in the state that occurred between locals and federal officers. To local whites the presence of a Freedman’s Bureau agent in Brenham and federal troops on the outskirts of town heightened the anxieties that stemmed from Confederate defeat and the imposition of social and economic changes inherent in the demise of slavery. Violence, particularly racially oriented crime, was especially common in Brenham and the surrounding area. Brevet Captain Samuel A. Craig was the subassistant agent assigned to the area, and his championing of former slaves soon led to extreme animosity on the part of whites. General opposition to the Freedman’s Bureau became acute when whites took offense at the Fourth of July celebrations of blacks. Craig lent his assistance to local blacks and their schoolteachers in holding a fundraiser for the purchase of a new schoolhouse. After the social event, those in attendance decided to conduct an impromptu parade through the streets of Brenham in celebration of their newly acquired independence. The sight of former slaves marching en masse down city streets and singing “We’ll Hang Jeff Davis to a Sour Apple Tree” incensed local whites. Although uncomfortable with the action, neither Craig nor the bureau-appointed schoolmaster had

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13 Three African American cases compare to five white couples between 1866 and 1868. Jeannette Mays v. Washington Mays, WCCCP, Case no. 3844 (1868); Isaac John Wright v. Harriet Wright WCCCP, Case no. 3797 (1868).
discouraged the public march. The event marked the beginning of a protracted and heated conflict between the bureau and federal troops and white citizens. Soon Craig became embroiled in an escalating contest of wills with local whites, which culminated in the arrest of a vociferous and hostile local newspaper editor. The situation ended in an uncomfortable stalemate only after the governor notified President Andrew Johnson of the situation and put political pressure on Craig's superiors.15

The intense animosity between Craig and local whites resulted in Craig being reassigned to another area. But the transfer did not come quickly enough to prevent his association with a local tragedy that brought citizen outrage to new heights. Two days before Craig's transfer, drunken federal soldiers ran afoul of local citizens because of the soldiers' rowdy behavior at a black dance hall. During the confrontation a fire was somehow ignited, and $131,000 of property was destroyed in the city's business district. Townspeople and a state investigative committee blamed the soldiers for deliberately starting the fire. Once again, Brenham drew negative attention from state and federal authorities. Although the soldiers escaped punishment, the incident led to a complete restructuring of the federal chain of command in Texas. Brevet Major General Charles Griffin took command of the Texas troops in December and placed the Freedmen's Bureau under his direct command. Griffin rigorously began to enforce the Reconstruction

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Act of 1867 and saw to it that bureau agents began to receive the armed assistance necessary for them to carry out their duties—a perpetual problem.\(^{16}\)

From the viewpoint of local blacks, the federal government had won a just victory over local whites. The Bureau thus solidified its position as the freedpeople’s champion against white oppression. Over the next two years, the military presence in Washington County continued to buttress the rights of freedpeople and allowed the newly formed Republican Party to gain control of local politics. Initially inspired by the Union League, the Republican Party united the large black population, the few local Unionists, and the quickly growing German population. Germans tended toward Unionist views, which had led federal officers to speculate in 1866 that the German vote would help place loyal men in political office. This assessment proved well founded for Washington County, where German and black voters maintained Republican ascendancy until 1884, more than a decade after Democratic rule had been restored on the state level.\(^{17}\)

In December 1866, just as the transition of power within federal ranks took place, Wiley Hubert chose to file his petition for divorce with the Washington County district court. During this political changing of the guard, the district court heard Hubert’s case and granted his request for divorce. The chaotic situation may account for a black divorce having slipped through the cracks of civil government at time when such cases were not technically permissible under Texas law. Perhaps local whites seized the moment and


\(^{17}\) Testimony of Major General David S. Stanley, Joint Committee Report, 39–41; Testimony of Benjamin C. Truman, ibid., 136–37.
attempted to use the Hubert case as a tool with which to wrest some power from the Freedman's Bureau in regard to the domestic and legal affairs of blacks. Or, perhaps, the local Freedman's Bureau office simply seemed inaccessible to Hubert, and he took his chances with the local court. While the exact circumstances of this unusual filing remain illusive, the Hubert divorce gave validity to at least one black marriage at a time when the state legal system chose to deny recognition. The case demonstrates the fluid nature of the legal processes as applied to former slaves and to the uncertainties that haunted Reconstruction-era blacks in their attempts to regulate their personal lives in the new context of civil freedom.

Moreover, the Hubert case laid a foundation for the next African American attempts at divorce in 1868. The court in Brenham recognized at least three marriages that were technically extralegal under Texas law, in practice accepting the federally imposed regulations for marriage and attempting to clarify ambiguities about marital status. Wiley Hubert's petition stated that he had "contracted" in marriage to his wife, Sallie, in 1851. Their union had been one of choice, but Sallie grew discontented with the relationship sometime in 1864. As soon as the news of freedom reached Texas shores, she blatantly rejected the marriage, although Wiley believed their vows were still binding. Divorce seeker Jeanette Mays claimed that she had been "united . . . in the bonds of lawful wedlock" in 1867, but her husband never took his commitment to husbandly duties seriously. And freedman Isaac Wright claimed that he had "legally married" on
December 23, 1867. His wife, however, assumed no permanency about their arrangement and began adulterous liaisons only five days after their wedding. Because confusion and conflicting opinions abounded even among those who went to the trouble of securing what they believed to be official marriages, a compelling need and desire for legal clarification of these situations existed.

For the plaintiffs in these cases, divorce reinforced the importance of their marriages as well as spoke to the binding nature of contracts in general—a particularly salient topic to former slaves seeking to establish new contractual work relationships. Each time a court entertained an African American divorce suit, it acknowledged the legality of the marriage in question, effectively giving it retroactive sanction. Implicit in such actions was the notion that all such marriages had validity and that African Americans in general had the right to legal marriage. Yet despite the potential significance of these early attempts at legal marriage, they were rare cases—perhaps no more than three in Washington County and none prior to 1869 in Harrison County.

As long as the Freedman’s Bureau continued to operate in Texas, former slaves throughout the state relied primarily on assistance from bureau agents rather than local government. By the end of 1869, however, the Freedman’s Bureau was no longer functioning in Texas, with the exception of the education division of the bureau. At that time blacks were forced to turn to government institutions. Over the next ten years,

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Washington County blacks filed at least fifty divorce suits, composing 57 percent of the cases for which the ethnicity of the divorcing couple is known. With the ascendency of the Republican Party, the county political situation appears to have grown more conducive to black participation in government and civic functions of all types.

Throughout this period, only Republicans presided as district court judges in Washington County, and all but one prosecutor was Republican. Elected officials, who included the sheriff and after 1876, district judges, heeded the importance of the large black constituency. Moreover, significant numbers of black men actively participated in civil government. Four blacks held the office of sheriff between 1870 and 1884, and many others served on grand and petit juries. Even after the Constitution of 1876 installed a literacy requirement, enough blacks qualified to give them “real influence” in the courts. Historian Donald Nieman has shown that blacks executed their civic duty conscientiously and fairly. Black jurors, he argues, “could be fiercely independent” against white influence and strove to render fair decisions in criminal cases.

The relatively high level of accessibility in Washington County courts provided blacks with an inroad to practical citizenship. Because divorce litigation involved private, intraracial affairs and did not directly pit whites against blacks, it functioned as an unthreatening way for African Americans to penetrate the system and advance their standing as citizens. Whites most likely viewed black divorcees as benign events or as

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19 A total of 176 divorce petitions were filed in the 1870s, with 87 suits for which the ethnic background can be determined.
evidence of state control over black domestic life. Yet the effect on the black citizenship was profound, although probably uncalculated. By filing for divorce and having their stories heard and their futures addressed in an official state forum, former slaves consummated their rights, resisted white oppression, and claimed the privileges of citizenship.

Like Washington County, Harrison County also hosted a Freedman’s Bureau subassistant’s office in its county seat of Marshall from 1865 to 1870. Also like Washington County and the rest of Texas, Harrison County blacks faced many perils and pitfalls in their newly found freedom. But the presence of effective federal troops kept white-on-black violence to a minimum in Harrison County, and local Freedman’s Bureau agents took steps to ensure justice for blacks. In 1868, mainly because of black voters, radicals won “overwhelmingly” in local elections, and the county sent two black delegates to the state constitutional convention. As in Washington County, Republicans in Harrison County had staying power, retaining political control until 1878.  

Nevertheless, Reconstruction was a hotly debated issue in Harrison County, with political and racial tensions running high. Harrison County did not suffer from having the county seat’s business district burned to the ground, as occurred in Brenham, but it did, in the words of historian Randolph B. Campbell, “experience Reconstruction in its most controversial form.” Particularly bitter political conflicts were accentuated by a stagnated

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economy that was more typical of other southern states than in many Texas counties; a population that failed to expand as rapidly as other areas of the state; and the lack of an infusion of tempering white minorities such as the Germans in Washington County. Although early indicators had given hope for significant radical changes in the county, the end of Reconstruction left postwar Harrison County very much resembling its antebellum self.\textsuperscript{22}

African Americans took advantage of social and political opportunities that federal protection afforded them during Reconstruction—attending schools, serving on juries, voting, and holding office.\textsuperscript{23} But, perhaps in response to the overall setting of political tension and being aware of the strong conservative leanings of many whites, they remained reluctant to take their private matters before civil courts, preferring to deal with marital problems privately or call on the Freedman’s Bureau for assistance. Harrison County courts entertained no path-breaking cases such as the Washington County case of Wiley Hubert prior to 1869, nor did they make divorce easy for African Americans afterward. Rhody Martin became the first freedperson to put forth a divorce petition in the county. With the state constitution having legalized black marriages and with Republicans in local office, she hoped that her request would at least be heard. But the district court dismissed the suit. As far as can be determined, no other blacks tried to secure a legal divorce until two years after Martin’s failed attempt, when in 1871 Moses Butler filed his petition. Butler’s case was also dismissed. Two more years passed before

\textsuperscript{22} Campbell, \textit{Grass-Roots Reconstruction}, chapter 4, especially 138–41 (quotation on p. 141).
\textsuperscript{23} Campbell, \textit{Grass-Roots Reconstruction}, 140.
Sallie Reed put her case before the court in 1873, only to have her appeal rejected. Later that year the court entertained the petition of Lizzie Johnson and awarded her the first divorce granted to an African American in Harrison County, after which the verdicts began to mirror the general tendency toward pro-plaintiff decisions traditionally seen in Texas divorce verdicts.24

Nonetheless, Harrison County blacks sustained a lower rate of successful divorce suits during Reconstruction than those in Washington County. Whereas blacks in Washington County received a pro-plaintiff decision in 66 percent of their suits, with another 20 percent withdrawing their suits, those in Harrison County only obtained a pro-plaintiff divorce 36 percent of the time and withdrew 43 percent of their suits before they reached court. Clearly Republican control of local governance did not translate to complete equality or civil participation for blacks in all arenas and evenly across localities.25

After Reconstruction, African Americans in both counties asserted their claims to legal divorce with more confidence and with greater success. Several factors may have combined to alter the pattern: a decreased risk in political stakes regarding the status of African Americans as citizens; a lack of concern for the stability of the black family; and

24 *Rhody Morton v. Henry Morton*, HCCCP, Case no. 5366 (1869); *Moses Butler v. Ara Butler*, HCCCP, Case no. 5512 (1871); *Sallie Reed v. George Reed*, HCCCP, Case no. 5900 (1873); and *Lizzie Johnson v. Ike Johnson*, HCCCP, Case no. 5937 (1873).
25 Ethnicity of divorce seekers cannot always be determined. In Washington County, for the years 1865 to 1880, ethnicity is known for ninety-two cases. Fifty-three of those were those filed by African Americans. Of that fifty-three, verdicts are known for fifty-one. The percentages represented here are based on those known verdicts. In Harrison County, for the same period, ethnicity had been obtained for twenty-four cases, sixteen of which are African American. Of those, verdicts are known for fourteen cases, and the percentages are based on the known verdicts.
a continued allegiance to the private and contractual nature of marriage and the inherent right to divorce as it had been traditionally applied within the state. Although black divorce in Harrison County continued to trail behind that of Washington County, the number of divorce seekers after 1880 began to reflect the county’s black-majority population, and blacks in both counties enjoyed a very high success rate once their petitions were heard. Of the known decisions for African American divorce suits, Harrison County blacks enjoyed pro-plaintiff decisions in 81 percent of the cases filed during the 1880s and in 67 percent of the cases filed in the 1890s. Withdrawals by plaintiffs comprised 19 percent of the verdicts in the 1880s and 29 percent during the 1890s. Washington County plaintiff success rates were even higher for those with final verdicts—98 percent pro-plaintiff decisions in the 1880s and 83 percent in the 1890s. The 1890s reflects a wider variety of circumstances than that of the 1880s, rather than a diminishing prospect for plaintiffs. It includes 11 percent that were either abated by the death of one of the parties or dismissed by the court and 5 percent that were withdrawn by plaintiffs. Only one case in either county during these two decades was awarded in favor of a defendant, and few resulted in court dismissals.²⁶

²⁶ For Harrison County in the 1880s, twenty-six African American cases have recorded decisions, and twenty-four in the 1890s. Washington County verdicts are known in forty-nine cases during the 1880s and for thirty-six in the 1890s. By comparison 65 percent of all cases filed after 1865 resulted in pro-plaintiff decisions. African Americans, therefore, actually had a higher success rate than the divorce seekers in general. (See chapter 4 of this study). Of those cases that are definitely known to be white, the verdicts are comparable to blacks, although the number of verifiable ethnic designations and verdicts is smaller. In Harrison County of the eighteen cases with known verdicts for Caucasians during the 1880s, 78 percent received a pro-plaintiff decision, and 80 percent did so in the 1890s. In Washington County 100 percent of the eleven known verdicts were in favor of plaintiffs.
The strong representation of African American divorce seekers, which is also on par with their numbers in the general population, suggests a desire for legal and social recognition on several levels. Blacks who set out to obtain a divorce actively demonstrated their adherence to the gender-role ideals of the day, their belief in the sanctity of marriage vows and the other moral precepts that governed southern society, and their presumption of citizenship and free choice.

Freedom of choice lay at the very heart of the divorce decision just as it was the expected basis for marriage—for blacks, for women, for anyone who willingly took vows and committed to live as a husband or wife. For former slaves and their children who had only recently been afforded such liberty, the voluntary act of filing a divorce petition not only embodied the freedom to contract in marriage but also resonated with a broader concept of liberty. Individuals and the state realized that marriage encompassed interpersonal relationships as well as the relationship between the state and individuals or family groups; and divorce seekers themselves understood the importance of these connections on at least some level. The state of Texas had long viewed marriage as both a contract and as a status—an agreement between parities as well as a cornerstone of personal identity and an indicator of one’s relationship to others and the state. In an 1848 opinion, Chief Justice of the Texas Supreme Court John Hemphill defended the marriage contract as “the most solemn and important of human transactions,” in which individuals “pledged themselves, not only for their own happiness, but for purposes important to
society . . .” 27 Writing in the early twentieth century, Ocic Speer explained that Texas law held that “marriage is not a mere contract, nor yet a mere sacrament. It is a relation or status proceeding from a civil contract between a man and woman . . . .” Although marriage was a special kind of contract, it nonetheless retained its basic character as a legal agreement, which could be broken by either party through legal means. Although few divorce seekers would have been cognizant of the legal theories behind marital tradition, plaintiffs were certainly aware of the benefits to be gained from placing one’s marital state under the proper legal codes—and the negative ramifications for failure to do so. 28

To be sure, freedpeople did not enjoy full exercise of the right to contract in Texas, as antimiscegenation laws, apprenticeship practices, and labor contract abuses clearly demonstrated. But entering and exiting marriage was of significant importance to individuals savoring their status as free men and women. In marriage and in divorce, individuals embraced the freedom to come and to go, to remain in a relationship or choose another life path—a legitimate freedom of choice complete with state protections. By the 1870s withholding legal marriage from blacks no longer concerned whites, who realized that intraracial marriage and divorce among African Americans posed no threats to white racial or economic superiority. When the new state constitution gave black


Texans the constitutional right to enter same-race marriage contracts in 1869, the right to
divorce followed as a logical extension. Blacks readily embraced legal divorce as an
assertion of citizenship as well as an act of personal liberation.\footnote{In her study of the Mississippi Delta region, Nancy Bercaw argues that freedpeople quickly began to use the courts to claim citizenship and pitted their definitions of black citizenship against those imposed by whites. African Americans filed a wide range of civil suits from the earliest days of freedom, many including divorce suits. Bercaw concludes, “Citizenship began at home and one the field of labor,” as individuals struggled assert their own gendered meaning of citizenship. Bercaw, Gendered Freedoms, chapter 6 (quotation in note on 157).}

For many, divorce served to clarify the numerous ambiguities regarding marital
status that plagued many unions and interfered with future marriages. Upon
emancipation, many former slaves simply continued to live as married couples, either
assuming that their relationships would be validated by law or preferring to keep their
domestic situations private and removed from white or government control. Some
attempted lawful marriage, but ignorance of the law or confusion within the legal system
itself led to extralegal relationships that had no standing in court. Still others ended
intimate relationships simply by taking their leave of one another and making no efforts
to claim marriage. The practice of “quitting” one’s mate and “taking up” with a new
partner remained a customary element of life among many former slaves across the
South, with individuals entering and exiting intimate relationships freely and feeling no
need for legal permission to do so. The practices governing slave marriage, as one
historian phrased it, “had been a relationship governed by custom and the community, not
by laws,” and these customary practices continued into freedom.\footnote{James M. Smillwood, Time of Hope and Despair: Black Texans during Reconstruction (Port Washington, New York: Kennikate Press, 1981), 111–14; Edwards, Gendered Strife & Confusion, 54–65; Frankel, Freedom’s Women, 90–92, 104–09; Bercaw, Gendered Freedoms, 102–10; Rawick, ed., The American Slave, Vol. 8, Pt. 7, p. 3,076 (Sarah Perkins).} Thus, while many
former slaves embraced legal marriage, others did not. Their choice of extralegal cohabitation was fraught with danger, offering no legal protections to encourage stability and often putting wives and children at greatest risk.

Blacks who chose legal divorce had been among those who recognized the benefits of legal marriage as a state-sanctioned and socially accepted contract of obligations between spouses. They embraced the freedom to choose one’s mate that carried the best safeguards against impermanence. They understood that one’s legal marital status had a direct impact on the state’s willingness and ability to enforce spousal obligations and governed societal interest in pressuring individuals to conform to expected roles within their marriages. Unclear marital status blurred obligations and diminished the potential for forcing a spouse into compliance with his or her responsibilities. But beyond the immediate issues, unclear status had the potential of haunting individuals for the rest of their lives and complicating the future for their children. As discussed in chapter two, early Texas settlers had developed a strong desire for marital clarification in a setting of alternating citizenship and conflicting religious customs, and in the wake of problems stemming from bond marriages. In much the same way, black divorce seekers also treaded new legal and social terrain. They, too, recognized that ambiguous marital status could have a negative impact on every aspect of one’s life, from inheritance issues to social respectability to political power, and they sought to avoid the pitfalls.

African Americans had only to observe the plight of Matt Gaines to see the necessity of attending to marital legalities. Gaines, a black state legislator from
Washington, took a nonchalant approach to marriage that caused serious personal problems and had widespread consequences for the black community as a whole. Gaines married Fanny Sutton in a religious ceremony performed by a lay preacher in 1867. They later separated informally. A visiting bishop informed the local minister that the lay-ceremony had had no legal standing and the marriage itself was not legal. The explanation satisfied Gaines, who conveniently concluded that he was no longer bound to his estranged wife. He reasoned that as a single man he was free to remarry. In 1870 he wed Elizabeth Harrison in Fayette County.\(^3\)

Political opponents discovered the circumstances of Gaines’ personal life and quickly seized upon the situation as an excuse for ousting him from the senate. A Fayette County grand jury indicted Gaines on bigamy charges in December 1871, and he received a conviction in 1873. Gaines spent four months in jail awaiting appeal. The Texas Supreme Court then overturned the conviction and set Gaines free. Apparently the politically motivated charges failed to induce criticisms from Gaines’ constituency, who reelected him to state office. His political enemies, however, were less willing to let go of the matter. Ignoring the high court’s decision in Gaines’ favor, a senate commission ruled that as a convicted felon he was no longer eligible for office. Not only did Gaines suffer personal trauma, including imprisonment, but his removal from politics cost African Americans an important advocate in the Texas legislature.

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This very public incident proclaimed the value of legal divorce and the inherent vulnerability of informal or extra legal cohabitation, and it did little to combat racial stereotypes regarding black promiscuity, moral respectability, and family instability. The Gaines affair may well have caused observant blacks to consider their own marital status and take appropriate steps to protect themselves from similar difficulties. Divorce seekers held themselves and their spouses to higher standards than individuals like Matt Gaines, who chose to accept his presumed singleness without seeking legal verification. They understood that marriage entailed a degree of social obligation on top of personal satisfaction, and that courts cared more about individuals living up to their marital duties—and, by inference, meeting broader social responsibilities—than they did about personal animosity between spouses. They were also highly cognizant of the need to portray themselves publicly as moral individuals whose fulfillment of marital obligations enhanced community stability and promoted social good. Petitioners for divorce therefore took care to emphasize dutiful behavior as much or more than whites. Petitioner Isaac Wright claimed that he had faithfully performed “his duties as a husband,” but his wife had “disregard[ed] her solemn obligation” (emphasis added). Mary Smith asserted that her husband had grown “unmindful of his sacred marriage vows and his duty as a husband.” And Nathan Ross asserted that he had “ever done his whole duty as a true and faithful husband and [had] labored hard to render [his wife] contented and happy.”

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32 Isaac John Wright v. Harriet Wright, WCCCP, Case no. 3797 (1868); Mary Smith v. Luke Smith, WCCCP, Case no. 5347 (1877); Nathan Ross v. Mary Ross, WCCCP, Case no. 5439 (1876).
The glowing portrayal of plaintiffs as dutiful and faithful spouses follows the standard pattern necessary for setting the stage for an adversarial divorce proceeding. It takes on additional significance, however, when applied to newly emancipated African Americans. Their private lives had taken on a public aspect not present under slavery. For the first time, former slaves found themselves accountable to public, institutional authority for their conduct within domestic relationships rather than to the individualistic dictates of masters or to peer pressure from within the slave community. The situation was both one of accountability and privilege, as black men and women were able publicly to assert themselves as participants in mainstream gender conventions—as husbands and wives on equal footing with whites. African American divorce seekers demonstrated that they embraced the same sense of responsibility and gender obligations that governed expectations for white southerners’ marriages. Men declared their honest efforts to care for and provide for wives in loving and kind ways; women asserted that they had been virtuous and supportive spouses who tended to domestic chores and contributed to the overall well-being of the family.

Certainly, African American divorce petitioners shaped their narratives to meet legal requirements and to garner the favor of juries and judges—as did whites. But as demonstrated in specific examples and witness accounts, most plaintiffs genuinely tried to live up to the ideals espoused in their petitions. Beyond seeking remedy for personally unsatisfactory marriages, African American divorce seekers hoped to promote a public perception of themselves that fit with public expectations for a free and respectable citizenry. In so far as plaintiffs articulated a personal history of appropriate and
acceptable behavior, they proclaimed their willingness to submit to community and legal standards. By contrasting their own adherence to conventional notions of marriage with the less restrained behavior of defendants, plaintiffs attempted to situate themselves within the mainstream of social conservatism and disassociate themselves from negative racial stereotypes. In this way divorce seekers hoped to salvage a degree of respectability even in the wake of a broken marriage.

As was necessitated by the adversarial divorce process, plaintiffs contrasted their own respectability with the wayward behavior of spouses, thereby imposing a measure of accountability on their mates and pulling them also into a public exercise of citizenship. This forced participation was exercised most clearly when defendants filed counter suits and put forth evidence of their own versions of events. Even when a defendant presented only a simple denial of the accusations, he or she took an active part in a public activity and claimed the right to public space and resources. Often cases rested on the testimony of witnesses drawn from among families or neighbors, most of whom were also African American. Although the purpose of divorce was not to expand political participation but to free individuals from bad marriages, the practical result was an expansion of African Americans into the arena of civic responsibility.

The use of the jury system in Texas divorce proceedings further extended the participation of blacks in refining the practical definition of marriage and lends support to the argument that blacks, to a large degree, concurred with the traditional definition of marriage that had been used to delineate the parameters of legal divorce and that was espoused by nineteenth-century Texans in general. Because blacks served as jurymen,
divorce seekers appealed to the judgment of both black and white peers. Petitioners had little reason to alter their narratives to meet a white-only standard. Jury validation of plaintiffs' complaints coupled with the testimony of witnesses attests to widespread acceptance of and adherence to a set of gender norms and expectations for family life that crossed racial lines. Filing for divorce was, therefore, to some extent a deferment to social censuring not only by white governance but the black community as well. As the initiators of divorce suits, plaintiffs themselves also became part of the regulatory body that brought public judgment on their wayward spouses.

The motivation for most divorces, however, was not overtly political but rather a highly personal matter. First and foremost, individuals sought to free themselves from unhappy relationships and the legal limitations that accompanied marriage. Men wanted to be rid of adulterous and unpleasant wives; women wanted safety and protection from abusive or neglectful husbands; both men and women wanted to remarry, to claim property, and to have control over the upbringing of children. Black divorce seekers had sufficient reason to believe that they would receive the desired divorce decree, and the prospects for a post-divorce improvement in their lives was good. Texas divorce completely severed ties between spouses, entailed no ongoing alimony or child support payments, and allowed both parties to resume life as single persons with the right to remarry. Once a final decree of divorce was given, both parties became autonomous agents, free to engage independently in economic and social pursuit. After divorce, creditors could no longer hold either party responsible for debts incurred by the other. With these advantages, many spouses caught in marriages that hindered financial
progress or that prohibited personal happiness may have viewed divorce as an act of self-emancipation. Through the self-initiated act of divorce, they found the freedom to pursue new lives with the full legal capabilities of single persons—to get a clean start unencumbered by another’s vices.

The decision to divorce had at its core a highly emotional component and centered on personal satisfaction. Divorce seekers had been greatly disappointed by the failures of their spouses to live up to their promises. Three bad marriages had taken their toll on freedwoman Lu Perkins, leading her to the bitter conclusion that there “ain’t no good in men.” Perkins lamented that she came to this realization only after she was too old to use the knowledge to her advantage. Nevertheless, she enjoyed more peace in old age because, as she avowed, “I took to raising hogs and did better.” Another freedwoman, Louise Matthews, recalled her marriage to Jim Byers, which ended in separation after only one year. “Dat man was lazy an’ no ‘count. Ise jus’ keeps fustin’ wid him . . . .” Remembering that Byers left her on Christmas morning, she said that his leaving was the “only Christmas present he ever made me.” Unlike Lu Perkins, Louise Matthews’s quest for a good marriage eventually met with better success. She enjoyed a long marriage to her second husband, who lived up to her expectations by being a diligent provider.34

Former slaves had clearly defined and long-held expectations for marriage emanating from generations of family experience and from the ideals for home life that

were forged under oppression. As historian Leon Litwack pointed out, the slave family "needed to demonstrate remarkable resiliency to withstand the often debilitating and debasing experience of white ownership." Enslavement prohibited the full exercise of traditional gender roles within marriage and pitted realities against ideals. Husbands, for instance, could not always protect wives or children from abuse nor could they assume the role of primary provider. As dependants of white masters, black men ultimately had to relinquish those roles to white owners, who possessed the final authority in decisions governing individual and family lives, from living arrangements and childcare to food and clothing provisions. Women, too, lacked the ability to fully exercise their familial roles, with labor demands impinging on their domestic responsibilities. Moreover, the possibility of separation through sales, migrations, or inheritance constantly threatened the integrity of family units. Despite these limitations and insecurities, slave families throughout the South enjoyed the emotional satisfaction of nuclear families under bondage, and they carried that familial structure and a strong sense of kinship into freedom.

As historian Jacqueline Jones phrases it, "out of the father-mother, husband-wife nexus sprang the slaves' beliefs about what men and women should be and do." Among Texas slaves, the nuclear family enjoyed widespread existence. Most slaves achieved a family structure that corresponded to the familial organization of contemporary whites.

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35 Litwack, *Been in the Storm So Long*, 238.
and they adhered to the same fundamental beliefs regarding appropriate gender divisions of labor and responsibility. Men did their best to provide additional provisions for wives and children, often by hunting or fishing. Wives tended to housekeeping chores and childcare as much as time allowed, and children benefited from the love and discipline of both parents. While the limitations of slavery inhibited the degree to which men and women were able to fulfill their desired gender roles, families still found ways to work out their relationships within the imposed parameters of white ownership.37

In freedom, African Americans assented to the ideal male-female labor roles of the nineteenth century, but they also recognized that rural life and the lack of economic security demanded fluidity in work divisions—just as it did for poor whites. Ideally, husbands assumed primary responsibility for providing family incomes, and wives left the fields to maintain their homes. Freed men and women worked together to establish nurturing home environments that fostered a desirable level of emotional and physical comfort for themselves and their children. Husbands took pride in their ability to keep their wives out of the public work place, and women desired more time for their increased domestic responsibilities.38 Living up to the ideals, however, proved difficult for those coming out of slavery and stepping into an often harsh struggle for survival. Meeting these goals depended on husbands and wives diligently fulfilling their appropriate labor roles and working in tandem to enhance the economic well-being of the

family unit. Marital partnerships did not include a "lily white hand" lifestyle for women, nor did they include the expectation that men would act as exclusive contributors to family income.39

Freedman Calvin Moye explained the gender-appropriate labor division that he believed had made for a contented and happy marriage.

"I never did put her in de field 'ceptin to helps me chop cotton or picks cotton, I gathered all de corn by myself. . . . After we married she done de house work, washing, raising chickens and helps me chop and pick cotton and milk at night. She did'nt has to work near so hard [after they married]. . . .

I lived there . . . fer 20 year after de war, farming first on de halvers and den on de third and fourth, and I done blacksmithing fer de public, made our groceries, paid de hired help out of it and my wife raised chickens and we sold some of dem every year and we had our crop clear ever fall . . ."40

Moye proudly reported that he had provided his family with plenty to eat and nice clothes to wear, as was his responsibility as a good husband and father. It was his efforts that kept his wife from a life of field labor, and he took pride in alleviating her from that burden. But Moye also expected his wife to contribute to the material needs of the family.

Clearly Moye's definition of keeping his wife free of field labor was a qualified one, by which he meant that she only occasionally engaged in crop production and that the labor was for their own crop, not for wages. In addition to the backbreaking tasks of cotton picking and chopping, she also tended and marketed livestock. All of this was done on top of childcare and household chores. Black women often contributed to fieldwork for the family production, and many hired out as farm laborers when necessary.

African American wives tended gardens and livestock regularly, and their labor was crucial to the family's survival. As Moye pointed out, most freedpeople worked hard to maintain even a minimum standard of living, and the marital partnership was essential. The best hope for family survival and prosperity lay in the joint-labor ventures of husbands and wives, with each fulfilling gender-specific, complementary, and sometimes overlapping chores.

After his wife's death, Moye refused to remarry for several years. He claimed, rather arrogantly, to fear that other women would want to marry him only because of the "easy" workload and the pleasure of rearing his three children rather than out of love. Marriage to such a woman would come to a bad end, he reasoned, because a new wife would not carry her responsibilities. Although Calvin Moye may have exaggerated the ease of his wife's workload, he recognized the importance of her contributions and the emotional commitment she brought to her endeavors and to the marriage.

Divorce petitioners echoed the expectations for mutual labor laid out in the Moye narrative, often expressing anger and resentment at spouses who failed to live up to their particular work obligations. Men usually worked such complaints into adultery cases or charges of abandonment. Nat Reeves, for instance, divorced his wife, Emma, when she left him for another man and took their child with her. Nat's story, as penned by his lawyer, began with a description of Emma's unsupportive conduct as a wife. Soon after their marriage, she began to display "an extremely lazy and slovenly disposition."

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41 See Edwards, *Gendered Strife and Confusion*, 141–61. Edwards shows that poor white and African American women did not stake their concept of womanhood to the elite notion of doing no manual labor. The poorer a family was, she argues, the more women ventured outside the home in search of work.

Although Nat had met his responsibilities by “exert[ing] himself to the utmost to earn for her a decent support . . . providing for her wants and supplying her with all things necessary to ensure them a comfortable home,” she had often refused to cook or wash clothes. Implying that it was her obvious duty to contribute, the petition stated that “instead of assisting him in his efforts, [she] would do nothing to help him along.” While the legal argument for Reeve’s divorce suit rested on the adultery and abandonment charges, Emma’s failures within the home had been very troublesome to Nat and constituted a failed partnership.43

In the same vein, divorce petitioner Simon Johnson told the court that his wife had repeatedly refused to work, “knowing that it was her duty to help [him] in his labor.” Her refusal to contribute had resulted in significant depletion of his crop and had been financially costly, he argued. Although Johnson presented himself as the primary breadwinner, he asserted a strong belief that his wife should be equally vested in the family income. It was obvious to him, and to her, that she was expected to work in the field when needed. Continual refusal on her part was tantamount to sabotage.44

In general black men were more explicit in their expectations that wives contribute directly to family productivity than were white men who filed for divorce. And black women—who as a group occupied the lowest economic status and who used abandonment charges in half of their divorce petitions—were less inclined to complain that a neglectful or deserting husband had caused them to resort to wage or field labor

43 Nat Reeves v. Emma Reeves, HCCC, Case no. 5855 (1873).
44 Simon Johnson v. Eliza Johnson, WCCC, Case no. 5977 (1883). The Johnson case is rare example of a black man basing his suit on cruelty charges. Johnson’s version of cruelty was the withdrawal of labor combined with malicious intent and extreme verbal abuse. He won the case.
than were their white counterparts. Many black women were accustomed to wage and field labor, functioning as they did within a societal paradigm that categorized black women as workers. Although far more likely to be reduced to field labor than white women, they were less apt to dramatize their work situations as hardships, seeking only to be free of the legal connections to absentee husbands. They anticipated less sympathy from courts for being unable to devote themselves wholly to the domestic home experience, and they generally refrained from vocalizing a sense of entitlement to the privilege. That is not to say that women were unscathed by desertion or financial incompetence. To be sure, absentee or neglectful husbands left African American women feeling the full brunt of supporting themselves and their children, and women left in difficult circumstances directed strong resentment toward their husbands. Some petitioners more emphatically asserted the right to the feminine sphere than others, but on the whole, wage work and manual labor were daily realities for freedwomen and their daughters and warranted little commentary.

When compared to whites, far more black women in this study are traceable by occupation. Only twenty-five white women can be identified with a stated occupation, either before or after divorce. Of those, eighteen were wage earners. Fifty-seven black women were found to have something other than housekeeping as their primary occupation. White women often owned property and could operate boarding houses (eight women). One woman owned and operated a large hotel, another taught school. Black women more readily turned to domestic work—thirteen divorced women as opposed to two white women—and manual labor. The most striking racial difference in
women's labor patterns was in the propensity for field work. Thirty-three black women litigants—58 percent—worked in the field for wages, whereas no white women were compelled to do so. Moreover, it appears that only one white divorce seeker, compared to seven black divorcees, became a prostitute.45

A sample taken from the 1870 census confirms that the wage-earning status of divorcing black women was on par with that of African American women as a whole. The sample, drawn from Washington County, reveals that exactly half of the black women worked in wage-earning capacities. Even women who listed only housekeeping as an occupation most likely engaged in some kind of income producing activity, as did Calvin Moye’s wife, who raised chickens for the market and assisted in maintaining and harvesting the crop. Selling eggs and taking in laundry were common endeavors. Driven by economic necessity to work outside the home, these women could remain satisfied with their lots because they labored jointly with working husbands, husbands who at least tried to earn a sufficient income to support their families. Divorce seekers experienced their labor differently, however, as unhappy and unprotected wives of ungrateful husbands.

For some the contention was not that women had to work outside the home or to share in family farm production. Nor were divorcing women concerned that public work exposed them to various dangers or abuses. Rather, their anger stemmed from the intentionally neglectful actions and hostile attitudes of nonsupporting husbands who

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45 Occupations were accessed through statements made in divorce petitions as well as from census records. (See Notes on Sources.) A total of 153 women who divorced after 1865 have an occupational designation. Of those, 104 can be definitively identified by race—twenty-five white women and seventy-nine African
robbed them of financial security by squandering money or by preventing them from earning adequate support. Divorcing women faced lives with uncaring spouses who continually deprived them of the chance to achieve the domestic ideals of nineteenth-century marriage and motherhood.\textsuperscript{46}

Former slave Louise Matthews recalled that her ex-husband had insisted that she work for wages, then took her hard-earned money and wasted it. She described him as a “Buck Passer,” explaining that she did the washing and ironing while “he passe[d] de buck Ise made away.”\textsuperscript{47} Sarah Hackworth of Washington County divorced for similar reasons. Nick Hackworth was a habitual drunk who often left his wife and children on their own. They had faced near starvation at times, Sarah claimed, because he refused to provide for them. A local physician testified on her behalf, stating that Nick had refused to pay for medical care or food when Sarah and her children fell ill. Ultimately, Nick stopped living with his family but remained in the same town, and his intemperance continued to cause problems for Sarah. He spent his days “lay[ing] about the liquor shops,” running up a debt that his wife was compelled to pay. For five years, Sarah worked to support her three children, and she desperately needed the freedom to govern her own finances and take care of her family.\textsuperscript{48} Through divorce Sarah Hackworth freed

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American women. Of those seven whites and twenty-two blacks claimed “housekeeping” as their primary occupation, leaving eighteen white women and fifty-seven blacks as wage earners.\textsuperscript{40} Jacqueline Jones, \textit{Labor of Love, Labor of Sorrow}, 58; Smallwood, \textit{Time of Hope, Time of Despair}, 47; U.S. Bureau of the Census. Ninth Census (1870), Schedule 1 (Inhabitants) National Archives. Microfilm, A sample of two hundred heads of households, taken systematically from the Brenham and Chappell Hill precincts, found 179 married women. Ninety of those women listed housekeeping as their occupation. Of those who listed outside occupations (89 women), 92 percent worked as farm laborers—82 women. Sixty-two percent of the families fit a nuclear family pattern; Another 33 percent can be described as extended families, that is a married couple with children and/or other relatives.\textsuperscript{47} Rawick, ed., \textit{The American Slave}, Vol. 7, Pt. 6, p. 2,608 (Matthews).\textsuperscript{48} \textit{Sarah Hackworth v. Nick Hackworth}, WCCCP, Case no. 4903 (1874).
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herself from responsibility for debts that she had not incurred, seeking a life in which she could act unilaterally and be responsible only for her actions.

Financial difficulties were of top priority for many black women, as they set about negotiating financial niches for themselves against the countering forces of vice-driven husbands. One divorce seeker reported that her abusive husband had kicked her out of the house and refused to let her take any personal property. In doing so, he withheld the laundry and sewing supplies that she used to earn her living, even refusing to let her take the clothing that belonged to her customers. He was, she argued, “injuring and ruining the only trade by which [she could] earn a living.”49 Such men not only blatantly refused to meet the obligations of manhood, they forced wives to become the primary breadwinners and then stripped them of the ability to control their incomes.

Unscrupulous men like Harry Coruthers used marriage as an excuse and legal means for swindling their own wives. Harry abandoned his wife, Rebecca, for the first time around 1878, during which time she supported herself through farm work. She faired well enough that Harry later returned, if only to take advantage of her financially. He stayed long enough to steal several head of cattle that Rebecca had acquired as her separate property, selling the livestock and running off with the money. In 1883 Harry again returned to his wife, promising to reform and treat her properly. At the time of his reappearance, Rebecca had a crop of cotton ready to be harvested, but she had become ill. Rebecca agreed to take Henry back, and because of her illness she left him in charge of

49 *Laura Witt v. Charley Witt*, HCCCP, Case no. 7885 (1891).
harvesting the crop. True to his nature, Harry sold the cotton and absconded with the money from the sale, this time leaving his wife destitute.

As a married woman, Rebecca Coruthers was continually placed at risk of being cheated out of her earnings. Women in such situations felt as though they continued to live under a form of bondage, and they saw their best hope for a safe future in the right to unmarry and regain their status as feme sole. Most black women did not have substantial property to claim in divorce settlements, and they had no expectations for monetary gain to result from divorce. They simply wanted to be rid of the financial and legal encumbrances of marriage.\(^50\) Whether divorcing women chose to remarry or to continue life on their own, they released themselves from the incapacities of one bad marriage and seized control of their own futures.

Texas community property and separate property laws allowed some wealthy women a measure of financial security upon divorce, but impoverished African American women rarely had any significant amount of property to divide.\(^51\) Out of the 324 African American cases of this study, 86 percent owned no community property or personal property worth mentioning in court. Most had nothing of any value that could be divided

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\(^50\) *Rebecca Coruthers v. Harry Coruthers*, WCCCP, Case. no. 6062 (1884).

\(^51\) Using Washington County as a sample reveals that black divorce seekers were less apt to own property than white divorce seekers. Freedpeople who sought divorce before 1875 revealed that twelve out of twenty owned no property; all only two possessed more than $200 of taxable property. Black divorce seekers averaged $150 in property compared to $2,269 for divorcing whites. Freedpeople seeking divorce after 1875 showed no economic advancement over their predecessors. Nineteen traceable African American cases showed an average of $140 for freedmen, significantly lower than the $1,910 average for white couples. Nine black families owned no taxable property; fifteen—79 percent—held property valued at less than $200. Thus, the community property law, which benefited some white women, had little application for African American women. Records of the Comptroller of Public Accounts Division, County Real and Personal Property. Archives Division, Texas State Library, Austin, Texas. Microfilm; Pruitt, "‘But a Mournful Remedy,’” 26–30, 113–15.
between the spouses. Only 2 percent (seven couples) had accumulated more than $500. Those who had been able to acquire land or other property, however, were eager to assert their claims.

Women made claims to property because they believed they had earned the right to it as equal partners in marriage. Texas community property law coincided with and supported the joint-effort definition of marriage held by African Americans. Women were quick to give an account of their own efforts in building financial resources when asserting their right to divorce. Jane Wormley of Harrison County, for instance, listed her virtues as a “true, faithful, and obedient wife” in her 1874 petition for divorce. Jane argued that she had for years “labored faithfully and constantly, and exercised a rigid economy, thereby to aid her said husband in the acquisition of property and earning a comfortable living.” Kit Wormley had driven Jane from their mutual home a few months earlier and replaced her with a new lover, thereby keeping her from the benefit of the community property. Jane listed in detail the “considerable” property they had accumulated, including a horse, mules, cattle, hogs, chicken, and household furniture.\(^52\)

Women whose husbands had completely abandoned them had at least some peace from interference in their daily lives. Black women used charges of abandonment in half of all the suits they initiated. Some combined the charges with accusations of adultery or cruelty, but clearly most of the marriages had been defunct for at least three years—the minimum time of separation required by law to validate desertion charges.\(^53\) Women also

\(^{52}\) *Jane Wormley v. Kit Wormley*, HCCCP, Case no. 6123 (1874).

\(^{53}\) African American women filed 151 divorce petitions. Of those, seventy-six used abandonment charges (50 percent) and 74 incorporated cruelty charges (49 percent). Sixty-two of the seventy-four cruelty charges
relied on cruelty charges in roughly half of their petitions, the majority reporting physical violence. Men who abused wives physically, mentally, or through financial detriment blatantly interfered with women's exercise of freedom. From the perspective of abused women, freedom was largely meaningless if daily life involved beatings, starvation, and emotional torment. Emancipation was of little worth if women were deprived of control over their own bodies and their own well being.

Divorcing women refused to merely shift dependency from a white master to a cruel husband or negligent partner. Instead they turned to the courts. One Texas divorcee described her decision from retrospect in 1937. She recalled that her first husband refused to work and whipped her if she complained until she concluded that she had been better off in slavery. At that point she took charge of the unhappy situation and divorced him—or as she phrased it, "I's transpo[r]ted that ornery husband." Rhoda Martin left her husband after only three months of marriage because he "from the first treated her as a slave."

Some black women endured long years of abuse before deciding that they had a way out. Annie Jones told the court that she had on many occasion tried to run away from an abusive husband, but each time that she made preparations to leave, he convinced her that he would kill her. For Jones, marriage had brought only fear and domestic bondage. Adaline Dixon described nineteen years of increasingly violent episodes. Her husband involved domestic violence at the hands of husbands. Men filed 171 petitions, 123 of which included abandonment charges.

54 Laura Whitaker v Felix Whitaker, WCCC, Case no. 4587 (1873); Rawick, ed., The American Slave, Vol. 8, Pt. 7, p. 3147 (Powers).
55 Rhoda Martin v. George Martin, WCCC, Case no. 6200 (1885).
56 Annie Jones v. Isaiah Jones, WCCC, Case no. 8046 (1897).
beat her with various objects, humiliated her by prodding her with a baseball bat to the neighbor’s house, “kicked, cuffed, and kneed” her, assaulted her with a knife, threw her into a fireplace, and finally pulled her from a wagon and pounded her head on the ground. The reason Dixon stayed in the marriage through those long years perhaps stemmed from her husband’s apparent talent for being a good material provider and her desire to keep her children together.57

But in the end even Adaline Dixon decided that she would no longer tolerate such a miserable life and filed for divorce. When she did, she asked the court for an injunction against her husband to keep him from interfering with the children or disposing of any property and requested alimony during pendency of the suit. Reasoning that she was entitled to more than the standard 50 percent community-property division, having both herself and her children to support, Dixon asked the court to give her all of the community property and to make her husband pay all court fees. Whatever the outcome of her settlement, Dixon had taken a bold step in defying the man who had terrorized her for two decades.

When women described domestic abuse in court, they utilized ideals of nineteenth-century manhood to portray husbands as cruel and lacking in their ability to fulfill the patriarchal role of a benevolent head of household. Mary Smith explained that her husband had grown “forgetful of even his manhood, and show[ed] a wicked and depraved nature.” Others used phrases such as “unkind and tyrannical man” and “a man of ungovernable temper and violent passions and vicious habits” to highlight the uncivil

57 Adaline Dixon v. John Dixon, HCCCP, Case no. 9394 (1897).
and “unmanly” nature of their abusers.\footnote{Mary Smith v. Luke Smith, WCCCP, Case no. 5347 (1877); Mary Brackens v. Edward Brackens, WCCCP, Case no. 5328 (1876).} Rhetoric used in petitions conjured images that ran against the grain of Victorian manhood, which valued compassion and restraint, and played into the racial myths that held black men to be savage and slovenly. In the eyes of black women, men who behaved more like cruel masters than loving spouses or paternalistic heads-of-household lost their claim to manliness. By inflicting injury on their wives, they not only abandoned their role as protector but also became the very force from which wives needed protection. At a time of extreme vulnerability for African Americans as a group, violence within the household only weakened the community as a whole.\footnote{Bettie Robertson v. Jeff Robertson, WCCCP, Case no. 5545 (1879).}

African American women also sought the respect and dignity that contemporary gender norms afforded white women, as seen in their denial of victim status and their indignation at slanderous accusations. Texas had recognized mental cruelty as a proper application of “excesses, cruel treatment, or outrages” for two decades before African American women began to make use of the divorce law. As early as 1848, the state Supreme Court suggested several acts that might be considered cruelty: “harsh and menacing language, neglect in sickness, or refusing the comforts and necessaries of life, etc., etc.” In 1870 the Court asserted that mental cruelty was actually worse than physical abuse. “Torture of the mind, constant wounding of the feelings, trampling upon the
affection, are far more insupportable than any mere apprehension of wound to the person."

African American women never relied on allegations of mental abuse or defamatory actions as the sole reason for seeking divorce, but they did incorporate it into their accusations of abuse and neglect. Mary Smith, for instance, told the court that her husband had "grossly insulted and outraged her feelings by his cruel and unmanly conduct" (emphasis added). She had "meekly submitted to him and endured" his behavior as long as she could and as a gentle woman might have been expected to do. Mary Brackens complained that her husband rendered her life miserable by repeatedly calling her names "too indecent for repetition." And Charlotte Scott declared that her husband’s insults had become too unbearable for her to stay with him.

Slander cases almost always involved husbands who accused their wives of sexual immorality. If, as the state of Texas had long recognized, defamation of character could endanger the future well-being and happiness of white women, the risk for African Americans was much greater. Sexually and economically vulnerable, black women could scarcely afford reputations as loose or accessible women. A reputation for sexual promiscuity put women at risk for unchecked victimization by sexual predators and exposed a woman to degrading treatment within the community. A bad name interfered with the attainment of respectable work and generally diminished a woman’s social

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60 Wright v. Wright 3 Texas 168 (1848); Shorman v. Shorman 18 Texas 522 (1857); Shreck v. Shreck 18 Texas 578 (1870).
62 Charlotte Scott v. Wash Scott, HCCC, Case no. 9509 (1898).
standing. Susceptibility to racial stereotypes that depicted blacks as morally lax compelled African American women to guard their good names with diligence.

In court women plaintiffs vigorously proclaimed their good reputations and declared that they had suffered when husbands insulted them directly or spread damaging rumors in the community. Women took great umbrage at sexually implicit curses and epithets such as *whore, hussy,* or *strumpet* or other accusations that implied a lack of virtue. They expressed particular grievance when husbands actually made accusations of adultery and even more so when husbands did so publicly. Although it provided no guarantee, publicly demanding redress for assaults on their sexual integrity helped freedwomen shore up their defenses against sexual predators and asserted their own good character in the community.

Female chastity was a common theme when husbands brought divorce suits, whereas female plaintiffs focused far less often on adultery committed by husbands. Women included adultery charges against husbands in only 18 percent of their cases, and never as the only reason for seeking divorce. Most often women cited adulterous husbands for having abandoned them and directed their financial attention toward another woman. Some women expressed grief at being married to a repetitive adulterer, but they also spoke with equal concern about financial and physical abuse that accompanied the general lack of commitment. This is not to say that black men were not adulterers. Rather, cruel treatment and lack of support were often more critical to a woman’s assessment of what constituted a viable marriage or determined an insupportable relationship. The other side of this issue is that women as defendants faced adultery
charges in over half of the suits brought by husbands. Combining the false charges of adultery that women cited in their petitions with the allegations of adultery made by male petitioners reveals that a significant amount of attention was directed at the control of black female sexuality. And, as the narratives bear out, the sexual conduct among black women who were involved in divorce suits was often indeed more independent and less restrained than that of their white counterparts.\textsuperscript{63}

Adulterous situations varied widely among litigants. Some women left husbands and later began to cohabitate with another man. Husbands then added adultery charges to what was originally an abandonment or separation. In other cases marriages ended when pregnancy resulting from an illicit relationship became evident. These women did not necessarily take up residency with the father of the child, however. Rather, they simply left marriages that were no longer sustainable. Twenty-two percent of black female adultery cases chose a new permanent relationship over an existing legal one. Such women opted to leave the marriage in what amounted to a de facto divorce and set up a new long-term cohabitational relationship that mirrored the stability of legitimate marriage. However, even this qualified version of stability eluded most black defendants.

The tendency toward multiple sexual partners was high among black women in this study. At once a survival technique and a personal assertion of freedom and choice, sexual independence among black women contrasted markedly with behavior of Caucasian women, for whom adultery took a more reserved form. White women were

\textsuperscript{63} Men filed 173 suits, 93 (54 percent) of which included adultery charges and 33 suits that were based only on adultery (19 percent). Abandonment constituted the largest number of cases filed by men, but roughly half of the abandonment cases were combined with adultery charges. Only fourteen male-initiated cases used cruelty allegations, and only two of those mentioned physical contact.
reported to have had only one adulterous partner in 78 percent of the cases against them, and in 76 percent of those situations wives left the marriage with the intention of setting up a stable relationship a specific man. African American adulteresses, however, were reported to have had only one sexual partner in just 34 percent of their cases; multiple sexual partners were referenced in 44 percent of the petitions and broad generalized accusations of adultery appear in another 22 percent.\(^{64}\)

The definition of marriage as a largely economic partnership may have motivated some African American women to seek new life partners as means of survival. As historian Noralee Frankel has shown, freedwomen left marriages with “ease” because “the lack of legally supported patriarchy meant that a woman encountered little financial, social, or legal pressure to stay in an unsatisfying relationship.”\(^{65}\) The financial security that many white women derived from marriage evaded most black women. If a white woman took a lover, she usually made certain that he would live with her and provide for her as his wife, fully expecting that her husband would divorce her should the affair be discovered. The economic and social risks were high. But African American women normally had less to lose financially, and many accepted the reality of working for wages as a part of black womanhood. Thus some were prompted to experiment with short-term relationships in hopes of finding a suitable economic partner and were less intimidated by the prospect of working for wages or finding other means of support. For

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\(^{64}\) Numbers were compiled from the database based on cases of verifiable ethnicity. Ninety-three black women and twenty-seven white women were accused of adultery by husbands in their petitions.

\(^{65}\) Frankel, *Freedom’s Women*, 12.
black women, the benefits of moving from one relationship to the next often outweighed the social risks of either legal or informal divorce.

One example is Nadie Haggerty, who married Oliver Haggerty in January 1874. By November she had decided the marriage was not for her and left him to live with Mack Blake. Nadie stayed with Blake for less than a month then moved into her mother’s house. Oliver then offered forgiveness and entreated his wife to come home, but Nadie refused. By the time Oliver decided to seek legal divorce, Nadie had lived with at least three other men—that is, at least five different men in six years. In another case, Nathan Jones supplied witnesses who named eight adulterous partners that his wife, Lucy, had been with prior to the couple’s separation, which took place four years into the marriage.

The ongoing adulterous behavior and the lapses in time before men filed for divorce suggest that African American men also accepted a level of fluidity within relationships regarding female sexuality. Adultery did not inevitably or immediately end a marriage. And husbands were sometimes willing to forgive and resume the relationship or to allow wives to move on to new situations. Moreover, the blatant indiscretion with which some women engaged in illicit relationships implies an assumption on their part of sexual independence that was not necessarily curtailed by reverence for the institution of marriage alone. Emma Green, for instance, boasted of her adultery, telling female friends that she had several white “sweethearts” and that these men provided her with money.

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66 Oliver Haggerty v. Nadie Haggerty, HCCCP, Case no. 6897 (1880).
67 Nathan Johnson v. Lucy Johnson, WCCCP, Case no. 6350 (1886).
68 George Green v. Emma Green, WCCCP, Case no. 5789 (1882).
Green did not think of herself as a “common prostitute,” but rather enjoyed her ability to supplement her income while continuing to benefit from a marital relationship.

Noralee Frankel’s study of Mississippi freedwomen has shown there to be what she calls a “subtle double standard” among blacks but one that allowed for “some sexual latitude” for women. The limits of sexual condemnation or tolerance, she argues, were situational and more often directed at particular actions rather than individuals themselves. Chronic or frequent infidelity and prostitution, however, pushed the limits.69 In conjunction with Frankel’s findings, this study argues that female adultery as portrayed in divorce petitions was weighted on an intangible scale of morality that distinguished between one-time adultery, exiting a marriage to begin a new relationship, and habitual promiscuity or prostitution. Whereas the law required but one instance of provable adultery for a man to receive a divorce, black men brought suit for legal divorce most often after numerous or flagrant acts of adultery. And, the petitions that involve overly active adulterous activity generated the most vociferous condemnations and descriptions.

Divorce seeker George Green held to a conservative view of marriage and fidelity, separating from his wife immediately upon discovering her adultery. Green made full use of the racial stereotype that portrayed black women as sexually promiscuous, and signed a petition that contained the line: “That plaintiff and defendant are both colored people; but, the plaintiff cannot live with a wife who will be guilty of sexual

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69 Frankel, Freedom’s Women, 98–101 (quotations on 100). See also Edwards Gendered Strife & Confusion, 54
intercourse with other men” (emphasis added). Boosting his own standing as a morally sound citizen, Green condemned his wife’s brazen behavior—simultaneously validating presumptions of black moral inferiority and personally distancing himself from them. Other husbands behaved similarly by describing wives as being “unmindful of every sense of virtue and womanly modesty” and having “promiscuously indulged her carnal and unholy lusts.”

A handful of divorcing wives actually became prostitutes in the fullest sense, some led there by a desire for independence and the need for self-sufficiency combined with a history of sexual independence. Women like Lucretia Parks, for instance, resorted to earning their livings as prostitutes when serial monogamy failed to provide for their needs. Parks left her husband to “live as the wife” of another man a few months after their wedding. Then a few months later she opted for a new unofficial husband. With none of the relationships proving successful, Parks became “notoriously known . . . as nothing put a common harlot and prostitute.” Since economic opportunities for black women were limited largely to backbreaking and subjugated work of farm labor or domestic service, prostitution may have seemed like a viable option for providing income as well as a degree of autonomy.

Sexually independent black women often suffered from a high level of instability in their personal lives, but they exchanged subjugation to bad situations or unloving men

70 George Green v. Emma Green WCCCP, Case no. 5789 (1882).
71 Nathan Ross v. Mary Ross, WCCCP, Case no. 5349 (1876); Nathan Ross v. Mary Ross, WCCCP, Case no. 5349 (1876).
72 Isaac Parks v. Lucretia Parks, WCCCP, Case no. 6265 (1885).
for the power to change their circumstances at will and according to need. “Quitting” one relationship for another allowed women to seek both financial betterment and improved interpersonal relationships. Sexuality among the black wives in these stories supports the argument that African American households embraced a broader and more flexible definition of marriage than whites. In the words of Leon Litwack, “Neither the legalization nor the sanctification of black marriages necessarily moved the ex-slaves to adopt in full the sexual code of upper-class whites.”

African American women in this study exhibited a strong sense of independence, whether as plaintiffs they sued for legal independence or as defendants their actions denied the constraints of marriage. In engaging in the various types of adultery that are described in divorce records, these women asserted their freedom of movement and right to choose, doing so in bold ways that defied submission.

Both men and women used contemporary gender notions and racial stereotypes to garner public favor when they brought suit against their spouses. Each lauded their own virtues as good, patient, supportive wives or manly providers and protectors while depicting their spouses in the worst possible light. Their arguments set white, middle-class gender ideology opposite the white perceptions of black promiscuity and the realities of their own lives. Positive jury verdicts reinforced these claims to mainstream gender norms and brought black men closer to the ideal of the paternalistic head of household and upheld female dignity.

Litwack, Been in the Storm So Long, 243.
The lives of African American divorce seekers took place within the complex world of new freedom and struggles for political and personal survival. As freed slaves and their children worked out their freedom, they clung foremost to notions of independence linked to their own versions of the pursuit of happiness. Freedom of choice played out in legal marriage as well as illicit relationships, and it was part and parcel of divorce suits. The right to move about freely, to choose one’s interpersonal obligations, and to leave a bad situation for a better one all played a role in the underlying ideas regarding marriage.

Citizenship offered new hope for a people so long denied even the right to legal marriage. The decision to obtain a legal divorce brought plaintiffs and defendants alike into the world of civic responsibility. Divorce actions provided avenues for individuals to claim public spaces and gave them a forum for proclaiming their own good and moral characters. By asserting individual liberty through court action, plaintiffs simultaneously expanded African American participation in public sphere. Whether consciously or as a byproduct of personal endeavors, freedpeople thereby extracted a higher level of legitimacy for black family status and citizenship.

At the heart of matter, however, were the personal stories of hope, disappointment, and overcoming, as black Texans struggled to define the parameters of family life and to come to terms with the external and interpersonal realities that governed their marriages. Economic and political realities prevented many couples from achieving the ideals of middle-class marriage that some might have wished for, but the
creative powers of custom and personal tenacity allowed families to forge their own definitions of workable marriages.

In 1938 Jack and Rosa Maddox looked back on almost seventy years of marriage. Jack claimed that he and Rosa had always been sweethearts. He had never failed to court her, he asserted. He had always been satisfied with the relationship and “never wanted to make no swaps,” and he was particularly appreciative of Rosa’s tolerant attitude about his sexual wanderings. Jack’s rosy assessment of the relationship contrasted with his wife’s. The best she could offer was the apathetic statement, “He was good ‘nuf to me.” Whatever Rosa’s expectation when she wed in 1869, experience soon taught her that married life entailed difficulties and pain, not romantic ideals. Rosa endured her husband’s unfaithfulness and other shortcomings, preferring to overlook the many hurts rather than seek divorce. The level of tolerance among individuals varied with personalities, economic consideration, religious convictions, and personality. Divorce petitioners were among those who refused to accept failed expectations. When their spouses fell significantly short of their standards, divorce seekers rid themselves of the burden and set about constructing new lives under more amenable conditions. They did so legally, avoiding the legal limbo of “quitting” and “taking up” informal relationships. For plaintiffs, who often claimed mainstream gender and marital conventions, an official divorce decree was proof that society officially backed up their decisions, agreed with their definitions of marital obligations, and accepted them as citizens.75

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Defendants represented the segment of society that rejected social proscriptions. Individual stories reveal the ambiguity of marital status in the early phase of emancipation as well as the complex and nuanced descriptions of family life among African Americans. While some men presented themselves as model providers and protectors, other men completely rejected these obligations and made no pretense to do so. Likewise, some women tenaciously defended their honor and virtue, while others threw off all moral constraints.

The words of Lu Perkins and Rosa Maddox highlight the individual differences and the varying levels of tolerance found within African American marriages. Perkins concluded that there was no good in men and rid herself of three husbands when each proved unsatisfactory. She was better off raising hogs on her own than enduring the emotional and economic strain that bad marriages had inflicted on her. For whatever reasons, Maddox had different expectations and possessed a higher level of tolerance for wrongs. For seven decades she lived with a husband who by his own admittance was a habitual womanizer. Her husband’s sexual escapades stripped her of the emotional security of a monogamous union, and we may assume brought a host of other problems associated with habitual adultery. But Maddox accepted some harsh realities in her marriage rather than divorce. Her simple answer to the question of why she stayed in the marriage resonates poignantly with echoes of abandoned ideals and the struggle for survival—“He was good ‘nuf to me.”
Chapter 6
Conclusion

Agonizing over poverty, physical abuse, and the welfare of their children, many
nineteenth-century women felt trapped and helpless under the domination of neglectful
and abusive husbands. The words of an old southern ballad capture the lamentations of
women who found themselves trapped in such marriages:

When I was single, Lord I dressed so fine,
Now that I’m married, I go ragged all the time.
Lord, don’t I wish I was a single girl again.

When he come home, there’s a fuss and a rile,
Knockin’ down the children and pull’n out my hair,
Lord, don’t I wish I was a single girl again.

Three little babes, a cry’n for bread.
With none to give ’em I’d rather be dead.
Don’t I wish I was a single girl again.
Oh, Lord, don’t I wish I was a single girl again.

Texas women expressed all of these concerns and more. But they were not trapped, and
many resolved to end their strife through divorce—a bold action of last resort through
which they regained their single status and embarked on a new unencumbered phase of
life.

Texas provided wives with legal powers that were stronger than in most other
states, particularly the southern states with whom Texas shared its cultural and economic
base. Unlike many older states, Texas adopted a progressive divorce statute that gave

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women as well as men ready access to courts and a high expectation for success. Texas women owed their elevated legal status to an inheritance of Spanish property-law and its inherent limitations on coverture for married women. Influenced also by frontier heritage and southern paternalism, the Texas legal code often worked to the advantage of women wanting divorce, and many seized upon it to free themselves from bad marriages that rendered their lives intolerable.

Men, too, experienced heartache when wives disavowed their obligations through desertion, adultery, or refusal to contribute harmoniously to the home and family productivity. Uncommitted and hostile wives deprived husbands of their hopes regarding financial security, rearing children, and living peaceably. Rather than being honored with wifely reciprocity for their efforts, husbands were stripped of their ability to attain the status of good provider and vigilant protector. Such wives challenged male dominance and interfered with their husbands’ efforts to live up the ideals of nineteenth-century manhood. Husbands also appealed to the courts for redress, hoping to rid themselves of grossly unsatisfactory relationships and to move forward with their lives. Like women, they also could expect fair hearings and reasonable settlements.

Throughout the century, reciprocity in its various forms was the expectation for marriage. Frontier men and women most heartily embraced the notions of contract and equity within marriage. The rigors of settling a new land required a significant degree of joint effort for a couple or family to prosper. Pragmatism characterized the marital experiences of early Texas settlers. Spouses expected and needed one another to make practical application of their appropriate gender roles and to be flexible in their concept
of labor division. When obligations went unfulfilled, families and individuals suffered and marriages were strained. Both men and women were prone to file for divorce only after egregious failure to meet daily responsibilities interfered with survival and progress. Desertion by a husband was no less offensive than actual acts of violence would have been, often resulting in serious deprivations. And a prolonged wait for remedy was unacceptable, especially for women. Both men and women appealed to the state in hopes of speedy redress and quickly restored single status.

The state itself supported the pragmatic notion of marriage in its approach to divorce. An early implementation of the judicial proceedings for divorce, the use of juries, the propensity of judges and juries to grant divorces with ease, and the broad phrasing of the cruelty provision addressed contemporary needs for an exigent means of addressing marital disunion. Living under Mexican rule, early Texans had learned both the need for creative approaches to legal issues and the effectiveness of local standards in regulating marriage and marital exits.

The American heritage of honoring contract, local governance, and freedom of choice can be dated to the British colonial era. These ideas were long-ingrained concepts for Anglo settlers who made their way to Texas, and frontier conditions only enhanced their meaning. Falling back on these principles, Anglo settlers in Mexican Texas implemented the practice of marriage by bond as a pragmatic solution to the problem of meeting Mexican religious and legal requirements for marriage. These ideas continued to govern both marriage and marital dissolution throughout the century, both in law and practice. The 1841 divorce law, enacted by the Republic of Texas, was almost completely
unchanged by 1900. The original provisions were broad and encompassing, reflecting the need for flexibility and a trust in local courts. Courts had considerable leeway to adequately address a wide range of situations, and little revision of the law was required. The tendency of courts to readily grant divorces to plaintiffs and to issue equitable property settlements and custodial arrangements was also remarkably persistent.

Any changes in the overall divorce narrative took place gradually and in accordance with social change rather than through alterations in the law or the basic concept of marriage. As eastern Texas shifted from a rugged frontier into the more settled and populated world of the antebellum years, marriages played out in an increasingly complex set of social dynamics. The evolving social landscape grew to look very much like older southern states, characterized by class hierarchy and slave labor, patriarchal or paternalistic household structure, and more recognizable kinship and neighborhood influences.

Divorce petitions of white Texans filed in the 1850s and 1860s reveal certain similarities as well as differences between the various socioeconomic groups. A sense of egalitarianism within marriage permeates the petitions of poor divorce seekers in recognition of the productive capacity of women and the necessity of their household contributions. The need for mutual endeavors carried an urgency for poor spouses in much the same way as it had for frontier men and women. Men and women alike continued to hold one another accountable for a lack of participation in family production or maintenance, and pragmatic expectations defined marriage and offered justifications for divorce.
Yeoman families comprised the largest group of divorce seekers, but not in keeping with their portion of the general population. These couples were married longer than poorer litigants. They had through mutual endeavors acquired property; they were more likely to have children; and they were well established within their own communities. Middle-class couples had much to lose in ending their relationships and were highly reluctant to seek divorce. Women of the middle class sought divorce only after extreme situations that almost always included physical abuse; husbands filed suit most often when wives had actually left the marriage. After reluctantly coming to the decision that they must put an official end to their marriages, men and women of the middle class appeared highly cognizant of their legal rights, expressing keen interest in property settlement and, when applicable, child custody.

Among the antebellum elite, only women took the divorce option. As individual women they were reticent about seeking divorce, but as a group they were far more likely than yeoman women to take legal action. Elite women laid out embarrassing aspects of their private lives in great detail, laying groundwork for paternalistic court sympathy and attempting to clearly delineate property rights. In contrast, wealthy men had few reasons to seek divorce. Doing so would only diminish their patriarchal power by depriving them of the control of material assets, including slave labor, and stripping them of personal authority over wives and, potentially, children.

Antebellum couples in all economic categories expected gender-appropriate fulfillment of marital responsibilities, but particular descriptions of those obligations varied according to a family’s social standing and financial capacity. Poor families
functioned in relatively egalitarian ways, with wives readily challenging the authority of husbands. Middle-class families embraced the companionate view of marriage and reciprocity of labor, but they lived closer to the domestic ideal in which wives could devote themselves entirely to domestic endeavors and act as mistresses to households that often included slave dependants. These yeoman families occupied a middle ground somewhere between the pragmatic descriptions of marriage espoused by the less wealthy divorce seekers and their frontier predecessors and the highly paternalistic ideal achieved by the planter elite. At once embracing ideals and engaging realities, yeoman women lay claim to gender privileges of the protected “weaker sex” while simultaneously asserting their legal rights as free agents.

Planter-class women enjoyed privileges of wealth that were denied to their less affluent counterparts. Slave labor in the field and in the home spared plantation mistresses much onerous labor, and wealth provided them with material luxuries and comfortable living conditions. The paternalistic household structure was most heavily entrenched in homes of the wealthy, and the social world of the plantation mistress was more circumscribed than that of women in the yeoman class. Whereas wives in loving relationships might have welcomed the protections and privileges, those in unhappy marriages rejected what had become a subservient station in life. Divorcing women were those who lived in homes where patriarchy had run amuck, with husbands abusing authority rather than administering loving care for dependants. Power and wealth facilitated wayward husbands in their misdeeds, providing the means by which to conceal their actions and giving rise to audacity and overconfidence. Domestic tyranny, however,
was halted when elite wives filed for divorce. These women wrested power from
domineering husbands and redefined the household in accordance with their own restored
autonomy.

An active state supreme court ruled on several divorce cases before the Civil War,
setting precedents that expanded divorce options for women by supporting their right to
sue independently, upholding their property rights, and by enhancing the potential use of
cruelty charges. The Texas Supreme Court expressed clear concerns over the rights of
married women, displaying both a paternalistic impulse and a desire to uphold the
hierarchical social structure. Only through recognition of the rights of women were the
courts able to protect women and curtail the behavior of domineering, unsupportive, or
abusive men. The foundations laid by the antebellum Court set the tone for legal divorce
in the postwar years as well.

Implementation of mental cruelty theory expanded after the Civil War and was
most often used by women. Although rarely cited as the sole reason for seeking marital
dissolution, the emotional and mental impact of abusive treatment was brought into the
discussion of individual litigants with greater frequency than in earlier years. In general
divorce seekers gave homage to the sentimental component of marriage with growing
intensity. Petitions continued to support the belief in reciprocity of action and appropriate
gender conduct while steadily giving greater articulation to emotional dissatisfaction.
Wounded feelings and the loss of love or affection may not have achieved coequal status
in terms of legal requirements for divorce, but emotional gratification became evermore
important to private expectations for marriage and found increasing expression in the public records.

In the same vein, the more detailed court records of the postbellum era presented clearer discussions of kinship and community networks not readily available in many early cases. While the clear-cut social hierarchy of the antebellum period is less evident after 1865, the long-standing southern tradition of reliance on kinship networks was clearly articulated in the experiences of women in need of protection, financial support, and emotional backing. Women often traded the ill treatment of miscreant husbands for the loving protectorship of caring kinsmen, who readily stepped forward to meet the necessary paternalistic responsibilities. Husbands, fathers, brothers, step-relations, and in-laws all readily offered their services to rescue endangered wives and restore their dignity within a properly functioning household. Women relatives and friends also assisted in cases of abuse or neglect. They offered comfort, medical attention, and even material assistance when sisters or neighbors cried out for help. Even more casual acquaintances came forward when needed and offered testimony to help wives gain redress. Community and kinship ties helped divorce seekers through rough times and offered them social validation of their grievances. Rarely did couples venture to court without having first exhausted a series of resources, moving from the home to the extended family to the neighborhood, finally reaching the public arena of divorce court.

The Civil War was a turning point in divorce, not because the war itself engendered dissatisfaction with marriage and promoted a higher degree of independence among women or because embittered war wives had come to reject husbands as inept
caretakers and failed protectors. Rather, throughout the nineteenth century, basic expectations for marriage remained intact. Husbands and wives were to love one another, or at least offer respect and kindness. They were to work together for the common goals of raising a family and obtaining material comforts. Men were called on to provide and protect. Wives were to attend primarily to domestic issues and childcare. Both were to remain sexually faithful and loyal. Even after divorce, men and women continued to support the institution of marriage and contemporary gender roles by seeking out new spouses in hope of future marital success.

Social changes after the Civil War, however, were significant. Confederate defeat brought about a major social restructuring as well as shifts in the labor and production system of the agricultural state. Although Texas did not suffer the losses of the eastern states in terms of economy or destruction by occupying Union forces, the dismantling of slavery had significant effects. For whites, the world looked very different, with former slaves no longer under bondage and white supremacy challenged. For former slaves stepping out into the world of free agency, life took on the flavor of a new frontier, with survival challenges and legal impediments that could easily tax their resolve.

In some aspects, the struggles of former slaves were comparable to those of Anglo settlers on the Texas frontier. Each battled for the legal of their marriages and the security and benefits that accompanied official sanctioning. With citizenship linked to legitimate marriage, political identity was in part defined by one’s marital status and, by extension, one’s right to dissolve a marriage legally. Each contingent found basic survival difficult at times—the first because of the elements of nature and distance from resources, the
later because of economic disadvantages and white hostilities. The practicalities of daily life necessitated the coequal commitment of husbands and wives to family goals.

Family structure for African Americans mirrored that of whites insofar as circumstances permitted, and goals were similar. Fathers embraced the role of protector and supplier of material needs; wives longed for the safety and comfort of domestic seclusion and the joys of motherhood. But black families faced unique challenges. And they nurtured a particular heritage of pragmatism forged under the peculiar circumstances of slavery that influenced their views of marriage and marital dissolution. Definitions of freedom as applied to marriage varied among black divorce seekers. Some put great store in the sanctity of marriage and legalities; others exercised their freedom of movement and lack of restraint by denying impositions inherent in martial vows. Views of appropriate sexual conduct, particularly for women, also varied. Some women highly valued the benefits of respectability and adhered to strict moral standards while others acted out their freedom by readily going between sexual partners at will and according to their current needs.

The flexibility of black households and the conflicting ideas about appropriate behavior for men and women play out in the divorce records, with plaintiffs presenting themselves as strong adherents to traditional family values and mainstream moral convictions. Plaintiffs presented themselves as respectable members of the community who were worthy of social recognition as good citizens and moral agents. By participating in legal divorce, they exercised a right of citizenship, brought other African Americans into the public exercise, and proclaimed their own desire to uphold
community standards and practices. Defendants, in contrast, defied mainstream proscriptions for marriage. Their alleged infractions demonstrated a rejection of conventional rules for acceptable conduct within marriage espoused by the majority of Texans.

Although courts readily and speedily granted divorces to those who requested it, the process was not an easy one for the individuals involved—regardless of race, gender, or class. Their suffering was often long-standing and egregious. Many had exhausted personal resources before taking this final step. They did so for many reasons—to end abuse, to be free of debt, to find new mates, to protect children, and to seek personal affirmation, to name a few. But at the core of all divorces lay personal expressions of freedom—freedom to choose a marital partner and the freedom to unchoose. Men and women of all socioeconomic standings sought divorce as a last resort to liberate themselves from unhappy lives in which another’s vices or failings dictated their future well-being. They opted for an extreme and unpopular but legal and secure way out of intolerable relationships. Those who chose to desert spouses or unofficially begin new relationships acted out a different kind of freedom. But, in the end, divorce was the most viable option for many men and women wishing to seize control of their own destinies and begin new lives.
Note on Sources

Divorce in Texas has almost from the beginning been conducted at the district court level, with the Texas Supreme Court as the only site of appeal. Exceptions to this are the few legislative divorces that took place in the earliest days of the Republic of Texas, which are addressed in Chapter Two of this study. Research for divorce must therefore rely largely on data found in the Office of the District Clerk of any given county and on Supreme Court records of appellate cases.

This study is based on records from Harrison County and Washington County in part because the records from each are well preserved and remarkably complete. The principal record collection for this study is the Civil Case Papers of each county, supplemented by the Civil Case Minutes. In their most complete state, Civil Case Papers files include petitions filed by plaintiffs, answers of defendants, witness depositions, witness and defendant summons, property inventories, injunctions, verdicts, and commentary on settlements and child custody. The petitions provide basic information required by law such as date of marriage, residency of plaintiff, and the date of and reasons for separation. They often include considerable personal and tangential material, ranging from living conditions to relationships with neighbors to personal attitudes. Responses from defendants and witness depositions further add to the bulk of data for any given case. One case file might have only a short, terse petition and nothing more; another will have many pages of detailed information. The completeness of a case file depends on the nature of the case and the preservation status of the documents. Civil Case
Papers are filed according to date and have been assigned case numbers that are indicative of their chronological filing. Case names are assigned with the name of the plaintiff as the first party versus the defendant as the second party, as in *John Smith v. Jane Smith*, Case no. 1111, with John Smith as the petitioner.

Entries into the minute books are according to date, utilizing the case name and number assigned to each suit. A name index usually accompanies the minute book records. Minute book entries most often contain only brief notations regarding the status of the case or verdict. However, some contain detailed information regarding settlements and even the reasons for divorce, which may or may not be supplemental to the case-papers file. In addition to the papers and minute books, Washington County records also contain a Final Record book, which normally contains only a brief notation about a case. Not all cases have a full compliment of records, some having only one or the other of the possible sources.

The database for this study is compiled from the extant records in Washington and Harrison Counties case papers, minute books, and the Washington County final record book up to the year 1900. Information from county tax rolls and marriage records as well as federal census records were also added to the database. Miscellaneous other local sources such as city directories were also examined, and any information gleaned from them was included in the database. The database includes all known divorces in those counties during the nineteenth century, which amount to 1,578 suits. Quantitative analysis is based on this database.
Unless otherwise cited or described, quotations and general information regarding specific divorce suits come from petitions that are found in the case-papers file for any particular case. Cases can be found readily with the case name, case number, county, and year of filing. Microfilmed records are cited in the bibliography, and they are available through the Texas State Library in Austin.

Cases in this study will be cited as in the following examples, with HCCCP referring to the Harrison County Civil Case Papers and WCCCP referring to the Washington County Civil Case Papers:

*John Smith v. Mary Smith,* WCCCP, Case no. 1111 (1887).

Note should also be taken of the presumed validity of the accusations and stories found in the petitions. Divorce seekers sometimes penned their own petitions, particularly in earlier cases. Most often a clerk or lawyer assisted them in the process, however. Petitions were required by law to give proof of residency, marriage, and offenses. Petition format normally followed a particular pattern that covered all of these legal bases. Phraseology was sometimes formulaic, but often the words of petitioners seem to have been dictated verbatim. Determining the validity of their stories, which were presented as one-sided offensive maneuvers in an adversarial process, is somewhat subjective. However, with the propensity of judges and juries to agree with plaintiffs and the numerous supportive depositions brought by witnesses, the petitions can to some degree be taken as a statement of proven facts.
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