# DIVORCE IN NINETEENTH-CENTURY CONNECTICUT

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Women entering into marriage in Connecticut in the nineteenth century found themselves forsaking their own identity for that of their husbands. The marital contract and resulting coverture disallowed wives not only the same rights as their husbands, but also those rights they possessed prior to marriage. While marriage in Connecticut evolved from being considered in the ecclesiastical domain into being understood as a legislative issue prior to the nineteenth century, it was not until the late nineteenth century that marriages became a contract dispute left to the judicial system to resolve. Buoyed by the emancipationist rhetoric in post-Civil War America, spheres of political activism by radical feminists emerged in direct response to the oppression of women within the bonds of marriage; legislators, hoping to appease and subdue protesters, broadened the definition of marital cruelty and bestowed marginal property rights to wives seeking divorce. As a result, examination of divorce judgments in late nineteenth century Connecticut exhibit a marked increase in favor of women's equality within the marital contract and also in the event of its dissolution.

Connecticut's approach to divorce proceedings has always been liberal in comparison with other colonies and states. While many of the early colonial settlements referred to English policies as a model, the Puritan settlements in Connecticut chose a different course. Rather than handling divorce matters solely as an ecclesiastical issue as the English had, the Puritans aimed for unified communities free of discord, and set about to handle divorce as a civil matter decided through legislative means so as to maintain peace within their colony. In discussing a 1640 statute on banns, historian Henry S. Cohn notes, “these men were determined to adopt a progressive approach to divorce and find a place for this action in civil society as a means of eliminating community strife. Thus not only did Connecticut throw off the ‘shackles’ of the English ecclesiastical court, but also chose

to avoid the freedoms of the other colonies in developing its divorce procedure."[16]

Throughout most of the Connecticut colony during this period, the General Court, serving as both a legislative body and a judicial office, granted divorces without predetermined grounds, and did so rather freely after attempts had been made to reconcile the parties. While the towns of Windsor, Hartford, and Wethersfield comprised the Connecticut colony, the New Haven colony was first to make divorce a solely judicial matter, decreeing that divorces must only be granted with proof of adultery, conjugal neglect, and desertion.[17] Upon the union of these colonies in a post-revolutionary Connecticut, divorce procedures merged, forming a complex system involving elements of both legislative and judicial bodies. As Cohn concludes, "the use of the judiciary, the penal nature of the grounds for divorce, and the strict procedural framework seen in these New Haven laws were to influence the future development of divorce in Connecticut."[18] No longer would divorces be ruled upon haphazardly. Instead, husbands and wives seeking divorce found themselves in a maze of court proceedings, with appeals directed to the General Assembly for ruling, until the early nineteenth century when the Supreme Court of Errors was created. Moreover, with fewer resources and a subordinate role within the home, women felt the burden of proof fall predominantly upon their shoulders.

In analyzing divorce cases and appeals from early nineteenth century Connecticut, one can witness the legal and legislative supplication of women within marriage. In the case of *Delliber v. Delliber* (1832), Mrs. Delliber sought a divorce from her incarcerated husband. Though Mr. Delliber had been imprisoned for adultery, Mrs. Delliber engaged in sexual intercourse with her husband after his imprisonment, fulfilling her marital duties as she believed was expected of her, her counsel argued. In doing so, the Supreme Court of Errors—as Connecticut's Supreme Court was called in the nineteenth century—found that she had forfeited her right to a divorce on the grounds of adultery, ruling that:

> The remedy by divorce is a civil and private prosecution under the control of the party aggrieved; and he may avail himself of it, or bar

[16] Henry S. Cohn, "Connecticut's Divorce Mechanism: 1636-1969," *The American Journal of Legal History*, 14 (1970): 37.
[17] Ibid., 38.
[18] Ibid., 39.

> himself, by his own act...If the husband or wife, subsequently to the adultery of the correlate, and after the just grounds of belief in his or her guilt, cohabits, it is, in judgment of law, a *condonatio injuriae*, a remission or pardon of the offence and a bar to the divorce.[19]

Given the limited opportunities for women outside of marriage during this period, as well as the societal pressure to keep the family unit together under patriarchal control, it is not unfathomable that Mrs. Delliber would hesitate to divorce initially, despite her husband's transgressions. Per the attorneys for Mrs. Delliber was "presumed to be under the power of the husband; and cohabitation may have arisen from coercion."[20]

In another case, *Shaw v. Shaw* (1845), Emeline Shaw petitioned the court for dissolution of her marriage to Daniel Shaw on the grounds of intolerable cruelty. Mr. Shaw, according to his wife, was habitually verbally abusive to her, calling her "an old imp of hell" and "worse than the women at the Five Points in New York."[21] Though she was medically fragile, Mr. Shaw used force to exert his conjugal rights, fully knowing of her ill health. He often flew into jealous rages and forbade her from leaving the home even to visit family; at one point, Mrs. Shaw fled the house, escaping out a window.[22] Despite such torturous threats to her health and emotional well-being, the court ruled in Mr. Shaw's favor. According to the opinion of the court:

> Jealousy is the rage of a man…the fancies of a jealous man are as ungovernable as those of a madman, and often show themselves as suspicious of their best friends. But the unreasonable exercise of the authority of a husband, in such case, has never been held to be that kind of cruelty, which would authorize a separation.[23]

With regard to forcing his wife to occupy a bed with him, the court concluded that while it was certainly detrimental to her health, and Mr. Shaw was aware of this, he did not intend to physically harm her, therefore it did not constitute cruelty: "The unfortunate victim of this passion is indeed to be pitied; but the law furnishes no remedy for conduct like this…The court cannot draw a line by which his authority

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[19] *Delliber v. Delliber*. 9 Conn. 233(1832)
[20] *Delliber v. Delliber*. 9 Conn. 233(1832)
[21] *Shaw V. Shaw.* 17 Conn. 189 (1845)
[22] *Shaw V. Shaw.* 17 Conn. 189 (1845)
[23] *Shaw V. Shaw.* 17 Conn. 189 (1845)

can be restrained."[24] A mere three years prior to the convention at Seneca Falls, in a state considered progressive for the period, and the Shaw divorce stands as a prime example of the patriarchal power men held within marriage and how few options women faced in terminating intolerable marriages within an exclusively male-operated judicial and legislative system.

With divorce on the rise, an already confusing and inefficient system became overwhelmed with cases. In 1849, Connecticut sought to remedy its divorce debacle by passing the Act of 1849, providing "the great majority of grounds for divorce -- including intolerable cruelty and destruction of the marital happiness -- were placed in the Superior Court. The Superior Court was to have 'sole and exclusive jurisdiction of all petitions for divorce'."[25] A more streamlined divorce process facilitated greater numbers of persons seeking to dissolve their marriage access the system, including the working class, a group on the increase due to the rapid rise in industrialization during this period.

Yet the rapid upswing in divorces cases also arose on the heels of the Civil War, as feminist rhetoric increasingly utilized the language of emancipation to champion the cause of women's rights in matters of marriage, property, and suffrage. Historian Robert L. Griswold details the astronomical rise in divorce rates -- "From 1867 to 1906, United States courts granted 328,716 divorces; in the next twenty years, the number jumped to 945,625, far outstripping the proportionate rise in population….divorces granted to wives on the grounds of cruelty jumped 960 percent."[26] Feminists such as Elizabeth Cady Stanton and Victoria Woodhull viewed the patriarchal structure of marriage as oppressive and in dire of need of change to a more companionate model resting on individual rights. Woodhull denounces marriage in 1873, using the language of slavery: "[I] would rather be the labor slave of a master, with his whip cracking continually about my ears than the forced sexual slave of any man in any single hour…"[27] In her publication *The Revolution*, Elizabeth

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[24] *Shaw V. Shaw.* 17 Conn. 189 (1845)
[25] Henry S. Cohn, "Connecticut's Divorce Mechanism: 1636-1969," *The American Journal of Legal History*, 14 (1970): 47.
[26] Robert L. Griswold, "Law, Sex, Cruelty, and Divorce in Victorian America, 1840-1900," *American Quarterly*, 38 (1986): 722.
[27] Ibid., 733.

Cady Stanton regularly preached about the necessity to reform marriage and break the bonds which hold woman back. An article published in *The Revolution* on April 9, 1868 entitled, "Woman Wronged", Dr. Thomas W. Organ opines, "That truth is: every woman possesses the inherent right to the full and perfect control of her own person, in or out of the marriage relation. This is Revolution….This is the radical basis for women to stand upon, while fighting for her emancipation from this social and political slavery, to which she is so heathenishly consigned by the customs and laws of the age."[28] Stanton herself pontificated in The Revolution about the woes of wives and their deserved human rights as individuals:

> If a man sell a horse, and the purchaser find in him "great incompatibility of temper" --a disposition to stand still when the owner is in haste to go -- the sale is null and void; the man and his horse part company…You all know our marriage is, in many cases, a mere outward lie, impelled by custom, policy, interest, necessity; founded not even in friendship, to say nothing of love; with every possible inequality of condition and development…can there be anything sacred where brute force makes sacrifice of human beings -- of the weak and the innocent?...Call that sacred, where woman, the mother of the race…[is] held there by no tie but the iron chains of the law.[29]

Stanton harkened back to the verbiage of the Declaration of Independence a mere week prior, when she claimed that "an unmarried woman can make contracts, sue and be sued, enjoy the rights of property, to her inheritance, her wages, her person, her children; but in marriage, in many of the states, she is robbed by law of her natural and civil rights…It is only in marriage, that she must demand her rights to person, children, property, wages, life, liberty, and the pursuit of happiness."[30] The language used by these crusaders was not accidental; rather, the language was prudently chosen to draw a parallel between slaves and wives, and as slaves had been granted their emancipation, so should women. Historian Elizabeth B. Clark states, "In the post-Civil War period, the rhetoric of divorce changed dramatically as

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[28] Dr. Thomas W. Organ, "Woman Wronged." *The Revolution*, (April 9, 1868).
[29] Elizabeth Cady Stanton, "Marriage and Divorce." *The Revolution* (October 22. 1868).
[30] Elizabeth Cady Stanton, "Marriages and Mistresses." *The Revolution*, October 15, 1868.

the language of rights replaced that of duty to God and children."[31] Women, both in marriage and outside of it, were to be treated as individuals and bestowed equal rights in accordance with the principles set forth in the Declaration of Independence. Clark continues, "The women's rights movement's reliance on the mechanisms of human law grew reciprocally with the government's administration of equal protection standards through statutes and constitutional amendments."[32] By adopting the lexicon of slavery, the hot-button issue of the time, feminists grabbed the attention of the public, capitalizing on the outcome of the Civil War in the hopes of garnering more support for individual rights of women. Employing the language of assault, associated with the treatment of slaves, to describe the maltreatment of wives, advocates for equitable and accessible divorce yielded compassion for their cause.

Evidence of this shift toward a more progressive divorce mechanism can be discovered in Connecticut cases after the Civil War. In *Mayhew v. Mayhew* (1891), Mrs. Mayhew petitioned the court for a divorce on the grounds of intolerable cruelty. Much like the Shaw case, Mrs. Mayhew suffered from ill health, and while she did not consent to conjugal relations, Mr. Mayhew forced his wife to submit to him under the guise of marital duty. The court found "the acts were attended by danger and fear, and injury to the plaintiff and to her health, and were rashly and roughly and unreasonably done; and each of them when the defendant knew the condition of the plaintiff and the suffering and injury it would be likely to inflict on her, and her inability to properly and safely accede to his wishes."[33] The defendant makes light of the Shaw ruling as a precedent for intolerable cruelty; however, the court opined that his callous treatment of Mrs. Mayhew was "brutal" and "unendurable."[34] The court then made a statement illuminating the progress made in marriage equality:

> Marital rights exist on the part of the wife as distinctly as on the part of the husband…Any decision of what constitutes intolerable cruelty in these matters that should leave out of consideration the duty of

[31] Elizabeth B. Clark, "Matrimonial Bonds: Slavery and Divorce in Nineteenth-century America," *Law and History Review*, 8 (1990):30.
[32] Ibid., 31.
[33] *Mayhew v. Mayhew*. 61 Conn. 33 (1891)
[34] Ibid.

> the husband and look only to the duty of the wife, would be manifestly erroneous.[35]

Such a court opinion elucidates the paramountcy of individual rights within a union of husband and wife -- a denotation previously absent in divorce decisions.

A subsequent case, *Morehouse v. Morehouse*, provides evidence of the change of attitude of the Supreme Court of Errors over time, as the facts of the case are parallel with *Delliber,* but the conclusion is not. Minnie Morehouse filed for dissolution of marriage on the basis of adultery, habitual intemperance, and intolerable cruelty. While her claims of adultery and intemperance were disproved, the court awarded Mrs. Morehouse a divorce after finding her husband intolerably cruel. Mrs. Morehouse grappled with the effects of a heart condition, of which the defendant was aware, yet he physically forced her to submit to intercourse with him, and in the process, transmitted a venereal disease to her.[36] Mrs. Morehouse left the marital home only to return, despite being aware of her husband's abusive tendencies. Despite her return, and unlike the *Delliber* case, the court decided in her favor. Contradicting the *Delliber* ruling, the court ruled Minnie's return to the marital residence did not signify a pardon of her husband's transgressions. This decision illuminates the courts' better understanding of the plight of women torn between leaving and staying within the home as a financial necessity. The issue of cohabitation in the face of cruelty or other ills no longer stood as a hindrance in obtaining a divorce.

Property rights, and the freedom they afford women, factor into divorce as they can provide a greater chance of self-support for a woman exiting her marriage. In 1845, Connecticut enacted legislation aimed at enforcing equitable marriage settlements. Previously, according to Marylynn Salmon, Connecticut behaved conservatively on such matters:

> the first married women's property act in Connecticut may have resulted from continuing judicial refusal to enforce equitable principles on marriage settlements…in *Jones v. Aetna Insurance Co.* (1842), a case involving a married woman's separate estate, the chief justice of the Superior Court 'airily dismissed' the applicable

[35] Ibid.

[36] *Morehouse v. Morehouse*. 70 Conn. 420. (1898)

> equity principles. Similarly, in *Middleton v. Mather* (1843), the same court refused to enforce a postnuptial agreement between husband and wife, expressing its disapproval of separate estates.[37]

Salmon concludes this legislation propelled women in Connecticut forward enormously, as the legislation solidified the rights of women to hold their own property separately from that of their husband, both in and out of marriage, making divorce settlements enforceable. In an increasingly industrial workforce that saw more women laboring outside the home, women sought control over the earnings. By 1887, two-thirds of states had passed earnings legislation, according to Amy Dru Stanley, who elaborates: "the earnings legislation was not part of any sweeping plan by state assemblies to redraft the law of husband and wife. Passed in 'piecemeal' fashion, it aimed to preserve 'marital rights' but also to 'emancipate' the wife to enter into wage contracts and facilitate her dealings with third parties in the marketplace."[38] While women prior to changes in property and earnings legislature hesitated to leave their husbands due to not only the social stigma attached to divorce, but their inability to be self-sufficient outside of marriage, these laws were at least a small measure of comfort for women, compelling some who would not otherwise leave an intolerable marriage to divorce.

One Connecticut case explicates the increased property rights of wives. In *Foot v. Card*, the wife of Enos Foot sued his mistress for alienation of affection and won her case. Ms. Card and Mr. Foot carried on an extramarital liaison lasting fifteen years, for which the wife sought damages. The court determined, "of legal necessity, therefore, damages for injury to this right must be to her solely. If the law should permit the husband to share therein, it would be to the extent of such share to deny justice."[39] Prior to this case and the establishment of property laws in the mid-century, husbands could sue for damages related to the failure to fulfill marital duties as a wife's affection was considered the valuable property of the husband; this consideration was not extended to wives. Such a ruling demonstrates clearly the right women gained not only as far as property was concerned, but

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[37] Marylynn Salmon, *Women and the Law of Property in Early America* (University of North Carolina Press: Chapel Hill, 1986),139.
[38] Amy Dru Stanley, "Conjugal Bonds and Wage Labor: Rights of Contract in the Age of Emancipation," *The Journal of American History*, 75 (1988): 482.
[39] *Foot vCard*, 58 Conn. 1, (1889)

consideration as an individual, rather than the property of her father or husband, as was the case with coverture.

Historians face a conundrum, however, in attempting to determine the intentions of judges and legislators in a patriarchal society. Stanley observes, "Legislators…do not seem to have drawn deliberate lesson from the demise of slavery. They appear to have responded to more immediate pressures, to signs of distress in working-class marriages and to the explanations feminists advanced for the plight of laboring wives."[40] Norma Basch cautions that scholarship on divorce and property laws is incomplete, with legal and social historians taking different approaches in analysis.[41] Despite this, evidence clearly delineates a shift in divorce practices in eighteenth century Connecticut, with the Civil War serving as a crossroads of sorts. Certainly, the rise of the female workforce contributed to increased advocacy for women's civil rights, yet one cannot ignore the impact of the language used by feminists of the period. Capitalizing on the fervor of emancipation and life in a postbellum society, feminists employed language meant to incite outrage at the treatment of women within the bonds of marriage, and evoke compassion for their plight. Whether all-male legislative bodies bowed to the pressure of the feminist lobby when creating and passing legislation or they strove to alleviate the burdens of women in intolerable marriages, divorce in nineteenth century Connecticut illustrates a greater shift in the treatment and view of American women and their roles within the home and in the community as a whole. One must not measure progress by great leaps forward, but rather a succession of smaller steps -- the progress made in Connecticut during this period paved the way for other steps on the path to equality.

[40] Stanley, "Conjugal Bonds,"484.
[41] Norma Basch, "The Emerging Legal History of Women in the United States: Property, Divorce and the Constitution", *Signs*, 12 (1986):110.