"BUT A MOURNFUL REMEDY": DIVORCE IN
TWO TEXAS COUNTIES, 1841-1880.

THESIS

Presented to the Graduate Council of the
University of North Texas in Partial
Fulfillment of the Requirements

For the Degrees of

MASTER OF ARTS

By

Francelle LeNae Pruitt, B.A.
Denton, Texas
May 1999
Little scholarship has been dedicated to nineteenth-century Texas family life and no published scholarship to date has addressed the more specific topic of divorce. This study attempts to fill that gap in the historiography through a quantitative analysis of 373 divorce actions filed in Washington and Harrison Counties. The findings show a high degree of equity between men and women in court decisions granting divorces, and in property division and custody rulings. Texas women enjoyed a relatively high degree of legal and personal autonomy, which can be attributed, in part, to a property-rights heritage from Spanish civil law.

Texans adhered to gender-role notions inherent in the nineteenth-century ideal of "compassionate marriage," wherein men and women were equally accountable for fulfilling their particular roles. These standards crossed economic and racial lines. However, local political and social circumstances affected the frequency with which newly-freed blacks accessed the courts in each county.
"BUT A MOURNFUL REMEDY": DIVORCE IN
TWO TEXAS COUNTIES, 1841-1880.

THESIS

Presented to the Graduate Council of the University of North Texas in Partial Fulfillment of the Requirements For the Degrees of

MASTER OF ARTS

By

Francelle LeNaeet Pruitt, B.A.

Denton, Texas

May 1999
ACKNOWLEDGEMENTS

I wish to express my gratitude to my committee. I owe a special debt of gratitude to Dr. Randolph B. Campbell for his constant support and guidance on this project. His research advice and literary criticisms have been invaluable to me. Thanks also to Dr. Richard Lowe for his painstaking critiques and demand for high quality. Dr. Harland Hagler also deserves special thanks for his encouragement and intellectually stimulating conversations, which propelled me in new directions of thought.

This research was partially funded by the 1998 scholarship from the Daughters of Republic of Texas and the Miss Ima Hogg Student Research Travel Award, Center For American History, Austin. I want to thank these organizations for their interest in my research as well as the monetary assistance they provided.
TABLE OF CONTENTS

LIST OF TABLES ................................................................. vi
LIST OF CHARTS ............................................................... vii
LIST OF MAPS ................................................................. viii

Chapter

1. INTRODUCTION ............................................................ 1
2. STATUTORY CONTEXT OF DIVORCE ................................... 15
3. DIVORCE STATISTICS FROM WASHINGTON AND HARRISON COUNTIES .................................................. 31
4. NINETEENTH-CENTURY MARRIAGE AND TEXAS DIVORCE SEEKERS ........................................................ 79
5. AFRICAN-AMERICAN DIVORCE SEEKERS ........................... 119
6. A CASE STUDY .............................................................. 137
7. CONCLUSIONS ............................................................. 148

REFERENCES ................................................................. 153
# LIST OF TABLES

1. NUMBER OF DIVORCES AND PERCENT INCREASE BY COUNTY ........... 33
2. DIVORCE ACTIONS FILED PER YEAR .................................................. 35
3. ALLEGATIONS COVERING 1841 THROUGH 1879 .................................. 64
4. CHARGES FILED BY GENDER COVERING 1841 THROUGH 1879 .......... 66
5. AFRICAN-AMERICAN DIVORCE Suits ACCORDING TO CHARGES
   FILED AND GENDER OF PLAINTIFFS, COVERING 1841-1879 .............. 67
6. DECISIONS RENDERED BY COUNTY .................................................. 71
7. DECISIONS RENDERED BY RACE ....................................................... 74
8. DECISIONS RENDERED BY GENDER ................................................... 75
# LIST OF CHARTS

<table>
<thead>
<tr>
<th>Chart Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. NUMBER OF PLAINTIFFS BY GENDER</td>
<td>36</td>
</tr>
<tr>
<td>2. POST-CIVIL WAR CASES BY GENDER AND RACE OF PLAINTIFF</td>
<td>38</td>
</tr>
<tr>
<td>3. WEALTHHOLDING OF DIVORCE SEEKERS</td>
<td>40</td>
</tr>
<tr>
<td>4. PROPERTY VALUE COMPARISON FOR WASHINGTON COUNTY</td>
<td>43</td>
</tr>
<tr>
<td>5. PROPERTY VALUE COMPARISON FOR HARRISON COUNTY</td>
<td>45</td>
</tr>
<tr>
<td>6. OCCUPATIONS OF DIVORCE SEEKERS</td>
<td>48</td>
</tr>
<tr>
<td>7. OCCUPATIONS OF WHITE MALE DIVORCE SEEKERS</td>
<td>49</td>
</tr>
<tr>
<td>8. OCCUPATIONS OF AFRICAN-AMERICAN MALE DIVORCE SEEKERS</td>
<td>50</td>
</tr>
<tr>
<td>9. LENGTH OF MARRIAGE PRIOR TO SEEKING DIVORCE</td>
<td>53</td>
</tr>
<tr>
<td>10. DIVORCE CASES BY THE NUMBER OF CHILDREN PER FAMILY</td>
<td>56</td>
</tr>
</tbody>
</table>
LIST OF MAPS

1. MAP OF TEXAS COUNTIES......................................................................................... 8
CHAPTER 1

INTRODUCTION

“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 experienced by Americans over an ever-growing divorce rate across the nation. By 1880 a major movement for divorce reform and a campaign for uniform divorce laws developed in the eastern states. Fear over the so-called “divorce mills” of the more liberal western states accentuated fears that the American family, 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 century. Rather the moral and legal aspects of divorce 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

¹ Jonathon Smith, The Married Women’s Statutes and Their Results Upon Divorce and Society, An Essay Read Before the Social Science Club at Clinton, February 19, 1884. (Clinton, Massachusetts: Clinton Printing, 1884).
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, perhaps, the most vocal opponent of liberal divorce, debated the issue with free-love advocate Stephen Pearl Andrews and with Henry James, who took the middle ground between Greeley and Andrews. The extensive correspondences illustrate the emotional intensity that the subject inspired. Andrews rejoiced at the social changes he witnessed, stating, “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.” While Greeley and James disagreed with Andrews’s characterization of the nature of marriage and divorce, both conceded that divorce was indeed becoming more prevalent in the United States.³

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 women’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 women's-rights convention of 1860 elevated the topic to a primary issue. Debate raged within the movement over the morality of divorce and the various degrees to which it 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, which was 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!" She pleaded for the children of the "drunken, brutal [father]," who "flee to the corners and dark places of the house" for safety, yet who willingly rush to aid their mother, "dragged about 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 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

---


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).
consideration. In a series of editorials Horace Greeley debated Robert Dale Owen, author of a recent Indiana divorce-reform statute. The debate took place as New York legislators considered a bill similar to Indiana’s. Indiana earned a reputation as a divorce mill during the 1850s and moralists, including Greeley, hoped to prevent the further deterioration of American society. Yet the passion generated by the divorce question soon gave way to the greater urgency of the Civil War.\(^6\)

Although family issues remained important to individuals, the political and social upheaval of war and Reconstruction overshadowed public concern. The steady increase in divorce, however, prompted a renewal of interest by 1880. Stephen P. Andrews demonstrated the persistence of American interest when he collected the above-mentioned antebellum debate with Greeley and James for publication in 1889. The concern about divorce in the east continued to be greater than that in the western or southern states. The New England Divorce Reform League formed in 1881 and 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 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 biggest successes came in 1887 when it convinced Congress to commission the first statistical report on divorce in the United States, known as the Wright Report. Secretary of Labor Carroll Wright supervised an exhaustive and


Thus nineteenth-century Americans were more than just familiar with divorce as a theory or as an extreme and rarely used option for troubled marriages. The realities of broken marriages surfaced in virtually every community. Many Americans divorced, and many more knew or were related to divorced persons. The Wright Report concluded that 328,716 couples divorced during the two decades covered. The United States experienced a 157 percent increase in divorce between 1867 and 1886.\footnote{Wright Report, 130. The report contains data gathered from 2,496 counties throughout the United States, representing 98 percent of the national population.}

In spite of these statistics and the degree of contemporary interest in family issues and concern about divorce, divorce has only recently become a subject of historical study. Several historians have included discussions on divorce in more general works, but few have made divorce the main focus of their work. Those who have addressed national, regional, or state trends in divorce have relied on data from state superior courts, rather than local court records. Elizabeth May’s Great Expectations: Marriage & Divorce in Post-Victorian America (1980) was the first to incorporate a demographic profile of divorce petitioners in an effort to understand the heightened American propensity for divorce the nation entered the twentieth century. In perhaps the best
scholarship to date, *Family and Divorce in California, 1850-1890* (1982), Robert Griswold presented a critical and comprehensive analysis of 401 divorce cases between 1850 and 1890, relying on local records from two California counties. Paula Petrik investigated Montana divorce for roughly the same period by using local records from two counties with contrasting dynamics.9

Texas shared in the rising divorce rate. The Wright Report showed an escalation of 1,357 percent, giving Texas the fifth highest rate of increase in the nation. With a divorce rate that continually outdistanced population growth, more and more people witnessed or experienced the dissolution of marriages. Yet no published work specifically addresses the topic of divorce for the state.10

This thesis examines divorce in two Texas counties—Harrison and Washington—during the four decades encompassing early statehood, the Civil War, and Reconstruction. This largely neglected subject promises to yield important insight into several branches of social history, including women’s, family, gender, and ethnic studies.

---


10 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
The study begins chronologically in 1841, the year in which Texas enacted a statute that would regulate divorce throughout the nineteenth century. Prior to this enactment divorces could be granted only though an act of the legislature. That process lent itself to political manipulations and reflected social mores less readily than did judicial divorce, which took place at the county level after 1841. The study encompasses cases filed up to 1880.\textsuperscript{11}

Several considerations led to the selection of Washington and Harrison Counties. Both counties exhibit cultural and social dynamics that allow them to stand as a microcosm for the state in regard to the topic of divorce. Each reflects a Southern culture with an agricultural-based economy, supported in the antebellum period by slave labor. Although different in some ways from Texas's urban areas and remote western counties, these counties are reasonably representative of the state in general.\textsuperscript{12}

Both Washington and Harrison Counties have rich histories. Settlers from the United States, known as the Old Three Hundred, began to occupy the Washington County region as early as 1821 under the land grant provision of Stephen F. Austin. Andrew Robinson, a member of the Old Three Hundred started a ferry operation on the Brazos River in 1822. In 1824 he secured a Mexican land grant, which grew to become the city of Washington-on-the-Brazos, also known as Old Washington. This site


\textsuperscript{12} Unless otherwise stated, county descriptions are taken from Ron Tyler, ed., \textit{The New Handbook of Texas} 6 vols. (Austin: Texas State Historical Association, 1996), VI, 832-836 (Washington County); III, 487-488; IV, 521. (Harrison). (Hereafter cited as \textit{New Handbook of Texas}).
became a thriving commercial center by the mid-1830s and served as a supply point for the region. In 1836 the town served as the birthplace of the Republic of Texas, playing host to the drafters of the Texas Declaration of Independence, the Constitution of the Republic of Texas, and the ad interim government. The new legislature established the county of Washington, which was organized in 1837, with Washington-on-the-Brazos as its capital. From 1842 to 1845, Washington-on-the-Brazos served as the state capital. The county seat moved permanently to the city of Brenham in 1844.

Slave labor and cotton production constituted important parts of the county’s antebellum economy along with corn and cattle production. In 1850 the population of 5,983 whites and 2,817 slaves produced 4,000 bales of cotton and 162,000 bushels of corn. Linked to national markets by steamboat traffic, and later by railroads, the population grew and prospered. The 1860 U.S. Census recorded 15,215 county residents. A slave population of almost eight thousand constituted over half that number. Cotton production had risen to 24,400 bales and corn production to over 541,000 bushels.

The Civil War altered the cultural landscape and economy, as large plantations gave way to small and tenant farms. By 1880 two-thirds of all farmers rented their land. African Americans continued to compose more than 50 percent of the population, but now they counted as part of the free labor force rather than as a gauge of white prosperity. Signs of recovery began to surface as early as the late 1860s. In 1870, Washington County farmers planted 59,000 acres in cotton and produced 789,000 bushels of corn. An influx of German immigrants helped to stimulate the economy and increased the population to just over 23,000.
Reconstruction-era politics reflected the tensions of the postwar period. The large number of former slaves in the county prompted the Freedmen's Bureau to set up an agency near Brenham. The agency's presence triggered hostility from many local whites. Undeterred by this opposition, the federal troops provided crucial protection for blacks that allowed them participation in the political and judicial arenas. A local branch of the Republican Party formed in 1869. With the support of the black-majority population and the large number of recent-immigrants from Germany, Republicans retained power until 1884.¹³

Harrison County shared many similarities with Washington County. Like Washington, most of its early immigrants came from southern states, drawn to Texas by the prospect of Mexican land grants. They began settling in significant numbers in the 1830s. The county was organized in 1839, just three years after Texas gained its independence from Mexico. Marshall became the county seat in 1842. Soon the county boasted a thriving cotton-based economy dependant on slave labor.¹⁴

By 1850 its population had soared to 11,822, roughly twice the size of Washington County. Of that number, a 53-percent majority lived in slavery. The county produced 4,581 bales of cotton that year. By 1860, cotton production reached 21,440 bales and the population had grown to 15,001. The slave population had risen to 59 percent of the population, with 8,784 persons living in bondage. The county's large African-American population remained in the majority to the end of the century.

As in Washington County, the Civil War set back Harrison County's economy and influenced political activity. Postwar economic recovery went at a slow gait, with cotton production remaining below the 1860 level until 1930. By 1880, however, a resurgence in growth had increased the population to just over 25,000. African Americans retained a majority in the county, rising to two-thirds of the population by 1880. The white conservative minority, however, exercised a powerful influence in politics. Through questionable means, they managed to restore control of local politics to the Democratic Party in 1878. Although "Redemption" came to Harrison County four years after Democratic control was restored statewide, it lagged six years behind Washington County, where Republicans enjoyed a very strong base of support.15

Another consideration in the choice of Washington and Harrison Counties is that their courthouses have excellent civil-court records, material crucial to this investigation. Combining district-court divorce records, demographic data collected on case subjects from the U.S. census and state tax rolls, state Supreme Court decisions, and manuscript material relative to the topic affords a comprehensive base for analysis. How exactly can this material contribute to our understanding of nineteenth-century Texas social history? District court records contained a total of 373 divorce petitions filed in Harrison and Washington counties between 1841 and 1879. These cases represent 373 marriages or 746 spouses. Each case involved at least one lawyer and one judge. Since divorcing

15 "Harrison County" in Randolph B. Campbell, Grass-Roots Reconstruction in Texas (Baton Rouge & London: Louisiana State University Press, 1997), 99-141; Campbell, A Southern Community, 337-364. The election of 1878 does not represent a true voter preference for Democrats. Rather a dispute over results led to the usurpation of power amidst legal allegations of fraud and voter intimidation. A clearer victory marked the final step toward "redemption" in 1880, but the same type of allegations also tainted that election.
couples waived a trial by jury only rarely, a jury of twelve increases the count to sixteen persons involved in each case. Many cases relied on witness testimony; others concerned the fate of children. Therefore, one divorce petition involved a minimum of sixteen persons from the community, perhaps more. While no accurate count is possible, it is safe to say that these cases involved thousands of county residents whose lives were in some way affected by divorce. Information contained in divorce records reflects the attitudes and values of the community as a whole.

Petitions for divorce included charges against the defending spouse. In order for the charges to be considered in court, petitions offered details such as the nature of an act of cruelty or the name of a partner in adultery. These details show exactly what constituted the various legal provisions for granting a divorce and reveal societal expectations for family life. To clarify, when one spouse accused another of certain inappropriate behavior and a jury and a judge agreed that the behavior was indeed inappropriate, then the general views of society begin to become clear in regard to that particular charge. When numerous cases demonstrate a similar pattern, stronger conclusions can be drawn.

This thesis will address three basic groups of questions. First, what views and realities governed Texas marriage and family life? Did Texans strive to live up to Victorian ideals? Did the notions of separate spheres and compassionate marriage influence marital behavior? What gender-role standards did Texans set for themselves? What, if any, were the social consequences for failing to live up to those ideals? How did children, relatives, and neighbors fit in? This topic is best addressed by examining the
wording of petitions and witness depositions. In the adversarial system, one party must prove the other guilty of some serious infringement while simultaneously defending his or her own behavior. Consequently, the records clearly define expected behavior and attitudes, as demonstrated in this quotation from a Harrison County case, filed in 1851.

She endeavored to make him a dutiful and affectionate wife as she was in duty and feeling bond [sic] to do, but not withstanding her efforts and desire to please, and discharge her matrimonial duties, The said [husband] regardless of all social and moral duties and in violation of his vow to love and protect... .

Specific incidents listed in the petitions reveal what types of behavior violated the standards sufficiently to warrant a divorce. Texas law provided three basic reasons for which a divorce might be granted: desertion for three years, adultery, and “excesses, cruel treatment, or outrages.” The statute provided only one gender-specific provision: a man had to be guilty of adultery and abandonment, whereas a woman needed only to commit adultery, to justify a spouse’s request for divorce. Does this provision mean that adultery earned men no censorship? Aside from an absence of three years, what constituted desertion? In regard to the cruelty clause, what constituted “excess” or “outrage”? Did courts adhere to the strict and traditional criterion of physical abuse only or did they extend cruelty to include mental abuse and neglect?

A second group of questions involves the status of women. Did the rules apply equally to both sexes? Who filed for divorce more often, men or women? Did women win their cases in equal proportion to men? Did courts penalize women for moral

infractions more severely than men? Who won custody of the children and why?

Ascertaining the legal standing of women simply involves a review of statutes. However, the way courts applied the law gives a better indication of the actual situation in which women lived and the degree of autonomy they possessed.

The third set of questions deals with African-American cases. During the period covered, former slaves worked to establish new lives as free citizens. Divorce suits filed by freedmen comprised 23 percent of the total number of suits after the Civil War—15 percent of Harrison County cases and 28 of Washington County cases. To what degree did freedmen trust the legal system? Was that trust justified? Did blacks strive toward the same ideals for family life as whites, or did they embrace a unique set of family values?

In order to address these questions it is necessary to examine the history of divorce law in the state of Texas, which is the topic of the following chapter. Establishing the statutory context provides a basis for examining the local court data. The third chapter presents statistical data from Harrison and Washington Counties, and is followed by an interpretive analysis in Chapters 4 and 5. The fourth chapter addresses the general findings and the fifth deals specifically with the African-American cases, which were filed after the Civil War. A case study is presented at the end of this work to familiarize the reader with the various components of divorce actions and to emphasize the unique nature of each couple’s experience.
CHAPTER 2

THE STATUTORY CONTEXT OF DIVORCE

In 1897 Columbia University published a paper entitled *The Divorce Problem*. In it Professor Walter F. Wilcox interpreted the statistical data collected in the Wright Report. "The conclusion of the whole matter," Wilcox 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.¹

Certainly, no major legislative changes transpired in Texas that could account for any significant shifts in divorce trends during the nineteenth century. Instead divorce regulations remained remarkably constant, particularly considering the numerous fluctuations in the political and social settings.

¹ 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; 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), 156, hereafter cited as Wright Report.
The earliest divorce after Texas gained its independence from Mexico involved 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. Corzine granted the divorce, but its legality quickly came into question. Still in a period of transition, the new Republic had not yet formulated 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 the Protestant Anglo population, recognized full divorces only if granted through an act of the legislature. To appeal to the legislature would have required Houston to reveal intimate secrets about his first marriage, which he refused to do. Instead, the closed judicial proceeding protected his and Mrs. Houston's privacy. Houston's lawyers argued that a marriage contract, like any civil matter, lay well within the jurisdiction of the courts. Thus, they argued, the irregular procedure was both legal and appropriate.

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.²

Court jurisdiction, however, did not immediately supercede legislative power to grant divorces, which remained the more common procedure in the Republic era. For example, Sophia Aughinbaugh used both avenues to seek a divorce from her absentee husband, Jesse. She first petitioned the Harris County District Court for divorce in July 1838. The judge did not recognize jurisdiction and dismissed the case at the plaintiff’s expense. Aughinbaugh then made a plea to the legislature. On January 25, 1839, Sophia received her divorce from the legislature. Sam Houston may have used his influence with the legislature once again, to secure a positive decision on behalf of this friend, Sophia. According to folk history, their association dated at least to the Battle of San Jacinto, after which she personally tended the General’s wounds. Rumor even circulated about a romantic connection between the two. Sophia certainly benefited from the assistance of Representative Holland Coffee, who voted in favor of her divorce. Coffee’s motives are easy to discern. He married Aughinbaugh six months later, and the two appear to have already set up housekeeping at the time she filed for divorce. The

---

Aughinbaugh divorce clearly demonstrates that legislative divorces placed divorce seekers in precarious positions, reliant on the sympathy of elected officials.\(^3\)

The issue 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 Mrs. Upton's plea for divorce on the grounds that as a resident in a county that had not been judicially organized, she should apply for divorce in 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, but that the issue should be the sole province of the judiciary. The majority, however, believed that the "extraordinary" circumstances (unspecified) of the Haynie case warranted their passing the bill.\(^4\)

Perhaps with the subjective nature of legislative divorce in mind, Texas lawmakers passed "An Act concerning Divorce and Alimony" on January 1, 1841. Soon after this new law went into effect citizens began to file for divorce at the local level. Nevertheless, some still looked to the legislature for "relief," or legal remedy. In formulating the state constitution of 1845, Texans specifically forbade legislative


\(^4\) *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, 230.
divorces, bolstering the power of the 1841 statute. This law remained the divorce standard throughout the nineteenth century, with few alterations. Texans had chosen a simple law, which proved time worthy, in that it was readily adaptable to changing social attitudes.\(^5\)

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.” While 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. Or perhaps, the nineteenth-century assumption that women naturally possessed a higher moral constitution inspired this differentiation.

Only the crime of adultery prompted the legislature to elaborate and provide details on the how 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

\(^5\)“An Act concerning Divorce and Alimony,” January 1, 1841, Gammel, comp., *Laws of Texas*, II, 483; For examples of legislative divorce see Gammel, comp., *Laws of Texas*, II, 72, 820; Constitution of the State of Texas, 1845, Art. 7, Sec. 18.
“divorce mill” where 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 to either party.

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 what might fall under this provision. Rather, courts exercised freedom of interpretation, subject to Supreme Court precedents.

The statute went beyond merely specifying grounds for divorce. It also provided several ways to protect women financially. Since Texas marriages operated under a community-property law, a divorced wife was entitled to one-half the property acquired during marriage as well as to her separate property. Yet, the husband retained control of all property until the marriage officially ended. This managerial authority gave an unscrupulous or incompetent husband the power to destroy the wife’s estate. A wife choosing to dissolve her marriage risked financial devastation should her husband dispose of her assets before a final divorce decree could be issued. In an attempt to
prevent such an event, the 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 court might 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 could be issued. However, a final divorce terminated a man's obligation to provide and support his then former spouse.6

The 1841 divorce law empowered district courts to exercise considerable leeway in divorce suits. Once the jury ruled on the truth of the facts presented, the court granted or denied the divorce based on the jury's findings. He then ruled on property division "in such way as to [him] shall seem just and right," keeping in mind the rights of both parties and their children. This permitted deviation from the strict fifty-fifty division of community property, provided neither party was divested of titled land or slaves. Most of the time standard property division prevailed, but occasionally judges used great latitude to achieve justice in property settlements.

District courts also possessed the power to issue any temporary orders that might seem "necessary and equitable," in regard to both the persons and property involved. Such comprehensive authority empowered judges to ease difficult situations for abused or impoverished women and children. This broad power potentially extended to include

6 "An Act To adopt the Common Law of England,—to repeal certain Mexican Laws, and to regulate the Marital Rights of parties." Gammel, 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.
orders such as those pertaining to temporary custody of children, decisions on who might continue to reside in the homestead, or a pre-trial distribution of property.

In matters of child custody authority again fell to the district courts to make “right and proper” decisions. The 1841 statute recognized parental control for either father or mother without specific preference to one gender over the other. To the court fell the task of determining which was the more prudent and able guardian, capable of insuring an education for the children. As criteria for making the decision they considered the age and sex of each child as well as his or her safety and well-being. Theoretically, judges looked to the welfare of the children as their primary goal in custody settlements.

In 1845 Texas joined the United States. In 1861 it seceded from the Union and joined the Confederacy to fight a long, bloody civil war that brought financial, social, and political turmoil to the state. A Union victory forced Texans to readjust their lives to a new, non-slaveholding society. The growing population and westward thrust continued to bring change. Considering the many ups and downs of social change and shifting political power, Texas divorce law evolved very little.

Not until 1876 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. Six years later a second amendment added one more reason for which a divorce might be granted. The spouse of a convicted felon, 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 a six-month residency requirement and the imprisonment provision made little difference in divorce trends.7

With the exception of these two additions, the law of 1841 remained unchanged until well into the twentieth-century. Basically the three grounds for divorce—abandonment, adultery, and cruelty—proved sufficient for Texans. Divorce petitions record a wide variety of details, which in and of themselves did not meet the state’s requirement for divorce or which were used to describe the nature of one of the charges. For instance, a husband’s mismanagement of his wife’s separate property, although illegal, was not a ground for divorce. Yet, local courts could construe such action as ill treatment and still dissolve the marriage. The liberty to interpret these few provisions in a broad, common-sense way supplied many women and men with an avenue out of bad situations.

The law of 1841 provided one ground on which a marriage might be annulled—impotency at the time of marriage. All other dissolution of marriage in Texas fell under the rubric of a vinculo matrimonii, which Black’s Law Dictionary defines as “(divorce) from the chains of marriage.” Blackstone’s Commentaries, often consulted during the early nineteenth century as the authority on English law, states that such a divorce is

total, with ties completely severed *ab initio*, that is to say, from the beginning. It could only be granted for “canonical causes of impediment existing *before* the marriage.” Therefore, according to Blackstone, a total divorce amounted to an annulment and rendered all children of the union bastards.

Divorce *a mesa et thoro*, a legal separation or “bed and board divorce,” provided an alternative to those living under the common law. Divorce *a mesa et thoro* entitled the 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 marriage dissolution 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.  

Americans from the earliest days of colonization gave greater leniency in resolving marriage disputes than did Europeans. George Tucker edited Blackstone’s *Commentaries* and published them in 1803 for consultation by American lawyers and justices. Yet by that time the 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.9

What advantages did one type of divorce have over the other? A total 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

George Tucker, 4 vols. (New Jersey: Rothman Reprints, Inc., 1803; New York: Augustus M. Kelley,
1969), II, 440, 441.
9 Censer, “Smiling Through Her Tears,” note 9; Blake, Road to Reno, ibid.; Marylynn Salmon, Women and
the Law of Property in Early America (Chappell Hill and London: The University of North Carolina Press,
debts. Women lucky enough to live where both types of divorces were available faced a difficult choice between regular financial support and legal autonomy.\(^{10}\)

In January 1840, Texas replaced Mexican law with English common law. Marriage and property laws were exceptions, and included aspects of both legal systems. Civil law, however, provided no model for divorce law, leaving only the English system as an example. Texas legislators chose certain elements of common law divorce, mingled them with civil law notions about women's legal status and, in the end formulated a system unique to the state. Texas granted 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. Divorced women took full control of their property and regained their legal status of \textit{feme-sole}. Women might receive alimony, but only until the divorce was finalized.\(^{11}\)

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. Texas women never suffered the full extent of restrictions inherent in the common-law theory of coverture. 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.\(^{12}\)


In 1840 the Republic set up a version of the Spanish community-property law. Under this system 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 a spouse, the sole survivor inherited all property after debts. In the event of children, the spouse inherited one half. The other half would be divided among the children. This practice contrasts to common law in 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.13

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. 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 sue for redress.14

---

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 might argue that legislators instituted such safeguards for married women for the sole purpose of protecting husbands from creditors by allowing them to hide assets in their wives' estates. This argument denies genuine concern for the protection of women and requires one to dismiss the words of the framers of Texas law.\textsuperscript{15}

A Washington County delegate to the 1845 constitutional convention, John Hemphill served as chairman of the Judiciary committee, which formulated the section on women's property. 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 common law, which also allowed "tyrannical husbands in their last will—[to extend] their capricious despotism beyond the grave—limiting portions to their widows."\textsuperscript{16}

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

\textsuperscript{15} "To Provide for the registration of separate Property of Married Women," Gammel, comp., \textit{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., \textit{Laws of Texas}, IV, 1437.

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 burthen 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?” 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 “spirit of perverseness” refused to obey her husband; and of George Wright, who supported a co-partnership theory of marriage in which each partner’s assets were subject to debt payment. Convention president Thomas J. Rusk recognized that some property protections for women should be included but 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.

In the end, those concerned about the welfare of women prevailed, and Texas secured constitutional protection for married women’s property. Incorporating

17 Weeks, reporter, Debates of the Texas Convention, 600, 601.
18 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.”
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 as well as control of his wife's personal wealth. She might use this knowledge to effect behavioral changes in her husband. In securing a divorce with a sufficient property settlement, a woman stood a better chance of prospering on her own. This consideration 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 high degree of autonomy. These legal standards corresponded to basic, contemporary attitudes and beliefs about family life, gender roles, and the nature of marriage. With an eye toward understanding these notions and the realities connected with them, this study now turns to an exploration of county-level records.
CHAPTER 3

DIVORCE STATISTICS FROM WASHINGTON AND HARRISON COUNTIES

The Wright Report presented proof in 1889 that public perception about the burgeoning divorce rate was indeed accurate. In one decade alone, 1870 to 1880, 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. Although comprehensive and thorough, the Wright Report was limited in its ability to explain the social dynamics affecting this upward trend in divorce. For a more complete understanding of divorce in Texas, we must turn to local records.¹

This chapter presents statistical data regarding divorce in Washington and Harrison Counties with particular attention to the issues of who filed for divorce and why, what decisions courts rendered and in favor of whom, and how child custody and property matters were handled. County civil papers, district court records, marriage records, and U.S. censuses compose the body of sources used to form the database from

which the following analysis has been drawn. Unless otherwise stated, the data in this chapter come from these sources.²

From 1841 through 1879, 373 individuals in Harrison County and Washington County petitioned their respective district courts for divorce. Washington County residents filed 210 petitions; Harrison County residents accounted for the remaining 163. Overall the number of divorces in both counties steadily increased over the four decades covered in this study. The population increased significantly during this period, but the burgeoning divorce rate rose even more rapidly. The population of Washington County grew by 154 percent during the 1850s, but Washington County courts handled a 500-percent increase in divorce suits over the preceding decade. Population grew by 27 percent in Harrison County from 1850 to 1859, yet the divorce caseload increased 142 percent during the same period.

During the third decade of this study, 1860-1869, Harrison County presented the only anomaly in the general pattern of increase. The number of divorces fell from 46 in the 1850s to 17 during the 1860s—a decline of 63 percent. The effects of the Civil War, which unsettled normal social functions for at least half of the decade, most readily explains the reduction in divorce. Washington County divorce rates also reflect a slight aberration in the pattern, but a less drastic one than the actual reduction in Harrison

² District Court Civil Case Papers, Office of the District Clerk, Washington County Courthouse, Brenham, Texas; District Court Civil Case Minutes, Office of the District Court, Washington County Courthouse, Brenham, Texas; Final Record, Office of the District Clerk, Washington County Courthouse, Brenham, Texas; Marriage Records, Office of the District Clerk, Washington County Courthouse, Brenham, Texas; District Court Civil Case Papers, Office of the District Clerk, Harrison County Courthouse, Marshall, Texas; District Court Civil Case Minutes, Office of the District Court, Harrison County Courthouse, Marshall, Texas; Marriage Records, Office of the District Clerk, Harrison County Courthouse, Marshall, Texas; U.S. Bureau of the Census. Seventh Census, 1850, Schedule 1 (Free Inhabitants), U.S. Bureau of the
County. The number of Washington County divorces continued to grow, but at a reduced rate of 78 percent—from 18 during the 1850s to 31 in the 1860s.3

Table 1. Number of Divorces and Percent Increase by County

<table>
<thead>
<tr>
<th></th>
<th>Washington County</th>
<th>Harrison County</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of Divorces</td>
<td>Percent Change</td>
</tr>
<tr>
<td>1841-1849</td>
<td>3</td>
<td>---</td>
</tr>
<tr>
<td>1850-1859</td>
<td>18</td>
<td>500</td>
</tr>
<tr>
<td>1860-1869</td>
<td>31</td>
<td>78</td>
</tr>
<tr>
<td>1870-1879</td>
<td>158</td>
<td>396</td>
</tr>
</tbody>
</table>

Following the Civil War, population and divorce resumed the swift prewar acceleration. During the 1870s Washington County’s population, already at 23,104 in 1870, grew by 20 percent, reaching a total of 27,656 by 1880. Harrison County experienced a 90 percent population surge during the 1870s. By 1880 the population had risen to just over 25,000—an increase of almost 12,000 people. Once again divorce rates outdistanced population growth for both counties. In Washington County 158 divorce seekers filed suits—an increase of 396 percent over the previous decade. A 376-percent

---

3Statistics on population change between 1860 and 1870 are unreliable due to the inaccuracy of the 1870 census. Problems include the inexperience of census collectors and resentment on the part of Southerners toward the federally sponsored project. Harrison County reported a 12-percent reduction in population. According to the census, the population fell from 15,001 to 13,241. Yet Randolph B. Campbell, Texas historian and expert on Harrison County, has found that many families who were not included on the 1870 census, still resided in the county. According to Campbell, while it is impossible to know exactly how much, if any, Harrison County grew, it is certain that the population did not decrease. The 1870 census reports a population growth of Washington County at a significantly reduced rate of 52 percent. Given the notable inaccuracy of the 1870 census and evidence contradicting its findings, no correlation can be drawn between a reduction in the population fluctuation and a reduction in the divorce rate.
increase in divorce petitions brought the number of suits to eighty-one in Harrison County. The number of divorce petitions filed per decade as well as the percent of change are found in Table 1.

Because of slavery African Americans did not figure into the divorce pattern for Texas prior to 1865. Under slavery, Texas law recognized no marriage between slaves; therefore, no legal means was necessary for ending cohort relationships. After emancipation, however, former slaves received the right to marry or to have their existing relationships recognized as legal marriages. Although not specifically stated, a legalized marriage entailed the right to sue for divorce. In Harrison County African Americans filed thirteen cases out of the eight-nine filed after 1865—15 percent of the total. In Washington County, they filed 28 percent of the cases or forty-nine individual suits. Although these figures are disproportionately low in comparison to the black-majority population of both counties, the cases represent a significant number of freedmen who accessed the court system in the years immediately following emancipation.4

Yearly averages also provide an instructive look at the pattern of divorce movement. Washington County residents filed only three petitions prior to 1850, averaging about one divorce every three years. By 1880 Washington County residents filed sixteen petitions annually. Between 1841 and January 1880, the number of Harrison County divorce suits jumped from two per year during the 1840s to eight annually during the 1880s. Comparing the average number of cases per year from the antebellum period

---

4 Texas recognized slave marriages in the Constitution of 1869. Texas Constitution of 1869, Art. XII, Sec. 27.
(1841-1860) to the post-Civil War era (1866-1879) reveals a significant jump in Washington County and a moderate increase in Harrison. Washington County couples averaged one divorce suit per year prior to 1861 and thirteen per year following the war; Harrison County divorce suits rose from four per year prior to the war to six after 1865. The five years during the Civil War saw an annual average of one and one-half divorces per year in each county, with eight suits filed in Washington County and seven in Harrison County. Looking strictly at African-American families, we find that freedmen sought an average of four divorces per year in Washington County and one per year in Harrison during the postwar years, significantly fewer than whites during the same period. Whites filed nine divorce suits annually in Washington County and five per year in Harrison County. Yearly averages are displayed in Table 2 below.

Table 2. Divorces Actions Filed Per Year

<table>
<thead>
<tr>
<th></th>
<th>Washington County</th>
<th>Harrison County</th>
</tr>
</thead>
<tbody>
<tr>
<td>1840s</td>
<td>Less than 1</td>
<td>2</td>
</tr>
<tr>
<td>1850s</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>1860s</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>1870s</td>
<td>16</td>
<td>8</td>
</tr>
<tr>
<td>Pre-1861</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Post-1865</td>
<td>13</td>
<td>6</td>
</tr>
<tr>
<td>Post-1865-Whites Only</td>
<td>9</td>
<td>5</td>
</tr>
<tr>
<td>Post-1865 Blacks Only</td>
<td>4</td>
<td>1</td>
</tr>
</tbody>
</table>

Figures have been rounded to the nearest whole number.

Who, then, were these individuals who sought to end their marriages? What type of profile fits the “typical” divorce seeker? The majority of divorce seekers were female. A total of 207 female plaintiffs constituted 55 percent of the total number of cases, which
compared to 165 male petitioners, who made up 44 percent of the total. County-level percentages follow a similar pattern. Women filed 54 percent of the cases in Washington County—114 suits. They initiated 93 divorce suits in Harrison County—57 percent. Washington County men filed for divorce 96 times and Harrison County men did so 69 times. See Chart 1 for a visual representation of the ratio between male and female plaintiffs.\(^5\)

When examined by decades the pattern varies between the counties. In the 1840s Washington County residents filed only three divorce suits, two of which were filed by men. Although this small number appears somewhat inconsequential in the overall pattern, the two-to-one ratio, nevertheless, is worth noting. For the same period Harrison County residents filed nineteen divorce petitions. Women initiated fourteen of those

Chart 1: Number of Plaintiffs by Gender

\(^5\)One case was cited using only initials for both parties. The incomplete record does not reveal the gender of the plaintiff. F. Gned v. I. Gned, District Court Civil Papers, Harrison County Courthouse, Marshall.
cases—three-fourths of the total. During the 1850s Washington County women filed 78 percent of 18 cases, reversing the 1840s pattern in which men filed the majority of cases. Harrison County divorce records showed an almost even distribution between male and female plaintiffs during the 1850s; women initiated twenty-two divorce cases and men filed twenty-three suits.

During the 1860s husbands filed nineteen divorce petitions in Washington County, five more than wives filed. Those nineteen cases constituted 61 percent of the total. The trend in Harrison County ran counter to this, with women filing 76 percent of the seventeen cases. During the last decade of this study, 1870 through 1879, each county displayed a similar pattern. Washington County women sought eighty-seven divorces or 55 percent of the total. Men filed seventy-one petitions—45 percent. In Harrison County women sought forty-four divorces, accounting for 54 percent of the cases. Men filed 37 divorce suits or 46 percent of the whole.

Dividing the cases into two chronological categories gives a clear view of the pattern. Antebellum-era women initiated 65 percent of the twenty-six Washington County cases filed prior to 1861. Women filed thirty-seven cases or 56 percent of those filed prior to the Civil War in Harrison County. From 1861 forward, the pool of plaintiffs remained majority-female. Washington County men, however, began to exercise their prerogative to sue more frequently. Instead of the earlier 35 percent they initiated 47 percent of the divorce suits—86 cases. Washington County women filed 98 suits—53 percent. Harrison County figures remained consistent with the antebellum figures, with

Texas, No. 5257 (1857).
women filing just over half of the petitions. Fifty-six wives and forty husbands filed for
divorce in Harrison County—58 percent filed by women and 43 percent filed by men.
African-Americans filed 23 percent of the of 267 post-Civil War cases. Combined
county figures show that black women initiated fewer divorce suits than did black men.
Women filed thirty petitions—48 percent, which compares to thirty-two filed

Chart 2. Post-Civil War Cases By Gender and Race of Plaintiff

by black men—52 percent. In Harrison County women filed 75 percent of the freedmen
cases—nine out of thirteen. Yet, in Washington County, where the majority of freedmen
cases were filed, men initiated more cases than women. Men filed twenty-eight divorce
suits and women filed twenty-one—57 percent and 43 percent respectively. This
minority of female-petitioners contrasts to figures for whites only, which show that
women initiated over half of the cases in each county. Yet, as Chart 2 demonstrates,
although men composed the majority of petitioners, a fairly even distribution existed between male and female plaintiffs for both races.

Who, specifically, were these men and women? Understanding the societal implications of divorce depends in part on determining the social standing of divorce seekers. Although wealth is not the only factor influencing social status, it is the most tangible determinant and thus is the best means of assessment. Census records, tax rolls, and property statements taken from divorce records provide enough facts to categorize 241 (65 percent) families by wealth. This group includes ninety-seven Harrison County families (60 percent of Harrison County cases) and 144 Washington County families (69 percent of Washington County cases).

Chart 3 demonstrates the wealth distribution of divorce seekers in Washington and Harrison Counties. One-third of the families reported that they owned no property—seventy-seven cases. Sixty-eight percent or 164 families owned less than $1,000 worth of property. Of the upper one-third, 14 percent reported between $1,000 and $3,000, 10 percent owned between $3,000 and $10,000 and 8 percent owned over $10,000. These figures alone, however, are not particularly instructive. Wealth of divorcing couples must be related to wealthholding among the general population in order to establish the social-economic status of individuals. Yet, cycling periods of inflation and deflation as well as the loss of slavery as a component of wealth render assessment of relative wealth problematic. Such fluctuations and changes in the economic situation present difficulties in determining a suitable criterion from which to compare an individual family's wealth.
To minimize these difficulties and to achieve a higher degree of accuracy, families were grouped into four ten-year periods. The wealthholding of the divorce-case couples was then averaged to determine a mean property value. An average also was taken from the tax rolls for Washington and Harrison Counties for the years 1850, 1860, 1870, and 1880. These averages were determined by dividing the actual number of appraisals recorded on the tax rolls into the total assessed value for the county. The mean property value of divorcing couples for each ten-year period was then compared to the tax roll average for the appropriate year. The appropriate year for comparison is defined as the one that falls in the middle of the ten-year period.
The first period included all cases falling between, and inclusive of, the years 1841 through 1854. The tax-roll averages for 1850 served as the standard for determining the relative wealth of families from this period. The five divorce cases in Washington County for which property value is known averaged $2,236 per family. The average tax appraisal value for 1850 was $3,070. Most were somewhat below the county average. Twenty divorce seekers in Harrison County, from the same period, averaged $7,217, twice the holding of the county average of $3,920. However, this average is distorted somewhat because it includes the wealthiest divorce case in the database. Rebecca and Spire Hagerty owned over $80,000 in property, significantly more than in any other cases. Only a portion of the Hagerty property lay in Harrison County and, therefore, is not factored into the Harrison County tax-roll average. Removing the Hagerty case yields an average of $3,382, which is much closer to the county average and better reflects the majority of divorce seekers. It is also closer to the averages for Washington County. Three-fourths of the divorcing couples owned less than the county average of $3,920.6

The average taken from the 1860 tax rolls served as the standard for assessing relative wealth for couples seeking divorce from 1855 through 1864. Fifteen divorcing couples in Washington County owned an average of $5,247. The average tax appraisal was 33 percent higher at $7,838. Twelve couples (80 percent) owned less than the county average. In Harrison County divorce seekers were wealthier, on the average, than the general population. The average property value for the county was $4,969. Eighteen

6 Rebecca Hagerty v. Spire M. Hagerty, District Court Civil Case Minutes, Harrison County Courthouse,
divorce-case couples owned an average of $6,569. Sixty percent of the case families held more property than the average taxpayer.

The 1870 tax rolls provided the standard for cases filed from 1865 through 1874. Sixty cases from Washington County averaged $1,562 per family, just over half the county average of $2,860. Eighty-five percent—fifty-one families—owned less than the average. In Harrison County twenty-six property values are known for divorcing couples. They yielded an average of $655 per family, which was less than one-third of the county average of $2,144. Twenty-three divorce case families reported less than the county average—88 percent of the cases.

Those cases filed in 1875 or later are gauged according to 1880 tax appraisal averages. In Washington County the county appraisal values averaged $1,209. Sixty-four divorce couples owned an average of $1,384. Eighty percent of the divorcing couples possessed less than the county average. Harrison County residents owned an average $592 in 1880; the average property holding for thirty-three divorcing couples was $782. Chart 4 and Chart 5 compare the average county property values to the average property value owned by divorce seekers. Notice that Chart 5 uses the true county average of $3,382, which represents the average after the Hagerty case was removed.7

---

7 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. The 1870 tax roll form includes three sections evaluating property holding according to different criteria. General Form B was used for this study, which is an evaluation of the property within the county for residents of the
Not surprisingly, African-American divorce seekers usually owned very little property or none at all. Figuring their property holding separately from white families yields a much lower property-holding average. The overall average for African-American divorce seekers was $65 for each family, which compares to the $2,995 average property value for white families who filed for divorce following the Civil War. Unfortunately, tax rolls do not indicate the race of taxpayers, which prevents this study attaining county averages for each race. It is safe, however, to conclude that these figures not only reflect the poverty of freedmen, but also indicate that white divorce seekers owned over twice as much property as the average citizen following the war. That is, since black divorce seekers owned little or no property they brought the average down.
White divorce seekers were wealthier than average citizens and pulled the average wealth for divorce seekers up to the average citizen’s wealth, which also reflects a combined figure for both blacks and whites.

In Washington County, the property value is known for twenty African-American families who filed for divorce prior to 1875. Twelve owned no property; all but two owned less than $200 in property. Their property value averaged $150, whereas white couples owned an average of $2,269. Four black families were included in the property figures for Harrison County. Three reported no property on the tax rolls and one family owned $60, giving an average of averaged $15 per couple. White divorce couples averaged $774.

Cases filed in 1875 and later show little change in the economic situation for freedmen who sought divorces. In Washington County, nineteen African-American cases show an average of $140 for freedmen and $1,910 for white families. Nine black divorce seekers owned no taxable property. Fifteen—79 percent—held property valued at less than $200. Six African-American families in Harrison County owned an average of $73. Half of those possessed no property and one reported only $3. The remaining two families owned $106 and $330 each. Of all freedmen cases in both counties the highest value of property recorded was $1,428.

Although wealth serves as the best criterion for judging social status, adding the occupations to the formula enhances our understanding of what types of individuals sought divorces. Census records served as the primary source for learning the occupation counties.
of divorce petitioners. Also some divorce petitions mentioned a husband's occupation or discussed a family business or farm. Occupations were found for one hundred and thirty-six husbands—36 percent of the cases. As depicted in Chart 6, the majority of these divorce seekers relied on agriculture to earn their living. In Washington County an occupation was found for ninety-two divorce seekers—44 percent of the county's divorces. Sixty-four percent of the ninety-two families earned their living primarily through farming; thirty-eight percent—thirty-four men—were classified as farmers or planters and another 26 percent—twenty-four men—worked as farm laborers. In Harrison County 39 percent were farmers or planters—17 individuals; seven others—16 percent—worked as farm laborers. All together 55 percent of the Harrison County

Chart 5: Property Value Comparison For Harrison County

![Chart showing property value comparison for Harrison County with years 1850, 1860, 1870, 1880, and property value ranging from $1,000 to $7,000. The chart compares 'Divorce Seeker Property Holding' and 'County Average Property Holding'. The 1850 value for wealthholding of divorce seekers was calculated without the Hagerty estate included.]

The 1850 value for wealthholding of divorce seekers was calculated without the Hagerty estate included.
divorce cases were initiated in families who supported themselves primarily through agriculture.\(^8\)

Those persons who worked in service jobs or hired jobs composed the second-largest occupational group for both counties. This category included clerks, hotelkeepers, saloonkeepers, nurserymen, draymen, and mechanics. Thirteen of the Washington County cases—14 percent—belonged in this category. Eleven divorce seekers in Harrison County worked in these types of jobs—25 percent.

The third-largest group was almost equally represented by two occupational categories: professionals (lawyers, physicians, editors, railroad entrepreneur) and tradesmen or skilled craftsmen (shoemaker, stonemason, barber, machinist). In Washington County six professionals and six skilled craftsmen sought divorces—7% each. In Harrison County five craftsmen and three professionals composed 11 percent and 7 percent of the cases respectively.

Only one other group was represented in Harrison County. One soldier was the only member of the category entitled “Other”—2 percent. This group potentially included such occupations as gambler, gentleman, student, engineer, or any occupation not appropriately placed in another group. In Washington County five merchants

\(^8\) A number of families who may have participated in agriculture as a significant, but secondary, part of their livelihood are excluded from the figures representing agricultural occupations. For instance, physician J. L. Matchett of Washington County is listed in the 1870 federal census as a farmer and cultivated land is listed in divorce records. Nonetheless, he apparently relied on his work as a physician as the primary source of income and as a social distinction. *Margaret Matchett v. J. L. Matchett*, Civil Case Papers, Office of the District Court, Washington County Courthouse, Brenham, Texas, Case No. 4747 (1874); Ninth Census (1870), Schedule 1.
accounted for 5 percent of the cases. One public official (a district clerk), one overseer, and one engineer (Other) each composed 1 percent of the total.

As shown in Chart 6, these statistics show a similar pattern for both counties. Farmers and farm laborers top the occupation list, a finding that parallels the general profile of the counties as rural, agricultural-based communities. Laboring as hired workmen in some capacity constituted the second most common means of earning a living. Skilled tradesmen/service workers and professionals were the next significant group. Only in Washington County did merchants figure into the results, and then only marginally. No more than one individual was included in any other group.

When considering the race of the divorce petitioners, a sub-pattern develops, which corresponds to the disparity in wealth between former slaves and whites and to the limited job opportunities available to freedmen. The combined figures for both counties show that 94 percent of the black couples earned their livings as laborers, including farm labor, or in service jobs, as opposed to 20 percent of the white families. Compare Chart 7, which depicts job distribution among white divorce seekers, to Chart 8, which represents the same type of data for African-Americans.

In Washington County about half of the individuals for whom an occupation has been established were African-American husbands—forty-four men. Half of these cases involved farm laborers and another 18 percent were farmers. By contrast, fifty-four percent of the white men were farmers, yet only 3 worked as farm laborers (6 percent). While agriculture sustained the vast majority of all divorcing families, the difference
between freedmen and whites is that most African-Americans worked as hired laborers, whereas white men farmed for themselves, either as tenant farmers or landowners.

Chart 6. Occupations of Divorce Seekers

Twenty-five percent of the black men worked in service jobs or as hired laborers, which contrasts to only two white men or 4 percent of white workers. Seventy-five percent of the freedmen worked as laborers for other people, either on farms or in some other capacity. Three Washington County freedmen worked as skilled craftsmen, which amounts to 7 percent of the total African-American occupations for the county. The same number of white craftsmen filed for divorce—6 percent of the total occupations for whites. Only white men laid claim to the remaining occupational categories: merchant, professional, overseer, and other (engineer).
In Harrison County ten of the forty-four known occupations held by divorce seekers belonged to African-Americans. As in Washington County, the majority worked in farm labor—60 percent. Three worked in other types of labor jobs and one worked in a service position. All cases involved husbands who worked in wage jobs. No farmers, skilled jobs, or professionals numbered among the African-American divorce seekers. Also similar to Washington County, half of the cases filed by white families came from
the farmer category. Yet, a larger percent of white husbands worked in service jobs or as hired laborers than in Washington County—32 percent or eleven individuals. Five craftsmen (15 percent), three professionals (8 percent), and one other, a soldier, made up the rest of the occupations.

Chart 8: Occupation of African-American Male Divorce Seekers

Relatively few occupations were found for divorcing wives, either prior to or after the divorce. A total of twenty-six women with known occupations composed 7 percent
of all wives who sought divorces in Washington and Harrison Counties. All were African Americans but five. Occupations are known for two white women in Washington County and three in Harrison County. Sarah Stewart of Washington County worked as seamstress to support her family prior to her divorce. She also had separate property in the form of cattle on which she could rely. Mahala Bradford, also of Washington County, supported herself and a young son by taking in washing and ironing, having been abandoned by her husband. In Harrison County, one woman earned an income as a seamstress prior to and after her divorce. Another established a business, selling baked goods and knickknacks, which she continued to run after her divorce. Rebecca Hagerty assumed a very active role as matriarch of a large extended family and managed her own large estate, which included two plantations. All of these women had some experience or skill on which they relied during their marriage and which provided them with a means of support in the absence of a husband. Nevertheless, in census records or in their petitions, the majority of women (both races) listed only the occupation of housewife or none at all, indicating no monetary compensation. After divorcing they did not stay in the county as single, working women. Most remarried or left the county, or both.9

Twenty-one African-American women reported some type of occupation (70 percent). Four were Harrison County cases. After divorcing, two worked as farm laborers, and one hired out as a laborer of an unspecified nature. The fourth, Phebe Love,

9 Walter A. Stewart v. Sarah, Washington County Civil Case Papers, Case No. 3182 (1863); Mahala Bradford v. Wm. Bradford, Washington County Civil Case Papers, Case No. 5478 (1878); Lucy Phillips v. L. M. Phillips, Harrison County Civil Case Papers, Case No. 6877 (1879); Rebecca Hagerty v. Spire M.
worked as a farm hand prior to her divorce, yet is listed as a farmer after the divorce. Ten pre-divorce occupations were found for Washington County freedwomen. Six worked as farm laborers, two as domestic servants, and the remaining two took on some type of hired job. Eight post-divorce occupations reveal that two women took jobs as farm laborers, four worked as domestic servants, two worked in an unspecified hired job, and one—Mary Smith—exchanged her job as a domestic servant for the role of farmer. Black women were apparently more geographically persistent and less eager to remarry than white women.10

The question of marriage length provides us with another avenue of inquiry into the identity of divorce seekers. How long did spouses tolerate unsatisfactory relationships before they resorted to divorce? Divorce petitions and marriage records furnish this study with the marriage length for 309 cases, 83 percent of the total. Divorcing couples lived together an average of seven years prior to seeking a divorce. Suits filed during the third or fourth year of marriage make up the largest group—almost one-fourth of all suits. Fifty-one percent remained married less than five years. (Eight out of every ten marriages that ended in divorce did so within ten years.) The longer a marriage endured, the less likely spouses were to end the union. Twelve marriages of fifteen-to-twenty-years duration came before the district courts of Washington and Harrison (4 percent); nine twenty-to-thirty-year marriages (3 percent) ended in divorce court; and only two couples (less than 1 percent) dissolved their union after thirty years.

---

10 Hagerty, Harrison County Civil Case Papers, Case No. 1175 (1850); Magdalene Newmann v. Frank Newmann, Harrison County Civil Case Papers, Case No. 6706 (1877).
10 Phebe Love v. Wilson Love, Harrison County Civil Case Papers, Case No. 6759 (1878); Mary Smith v. Luke Smith, Washington County Civil Case Papers, Case No. 5347 (1877).
Both men and women in Washington County filed their petitions at an average of seven years. On the average Harrison County women waited seven years into a marriage before filing for divorce, whereas, husbands sought divorces after an average of eight years. In fact, the figure of eight years, rounded down from 8.2, indicates that less than a year’s difference existed between the time at which men sought divorces as opposed to women, who did so after 7.4 years. The greater distinction existed between couples with children and those without them. Couples with children tended to remain married nine years, which is five years longer than the average for childless couples, who divorced after only four years of marriage.

Chart 9: Length of Marriage Prior To Seeking Divorce
Freedmen marriages ended slightly earlier than white marriages. In general freedmen filed for divorce after an average of five and a half years. White marriages that ended in divorce lasted about seven and a half years. African-American men in both counties initiated their divorce suits six years into marriage; African-American wives in Harrison County also filed after six years. In Washington County women filed a year earlier, after a five-year duration. White men and women in Washington County generally filed their suits after eight years of marriage, as did white women in Harrison County. White Harrison County husbands, however, filed somewhat earlier, with marriages enduring seven years.

Although the length of time that most couples remained married was relatively short, petitioners were not particularly young when they married. Rather, most were adults in their mid-to late-twenties. Of the 746 spouses represented in the database, the age at which 110 of them married has been ascertained through the use of census data and marriage records. These account for 15 percent of the all spouses. Because of the difficulty in tracing women in census records, all but nineteen of these were men. The few women included in the figure, however, married, on the average, at age twenty-four. Figures derived from categorization by race show no notable difference between the age at which white women married and the age of African-American brides. Given an average marriage length of seven years, women usually divorced around the age of thirty.

The larger portion, ninety-one men, represented just under one-fourth of all divorcing husbands. Male litigants entered into matrimony at an average age of twenty-nine. This holds true for white men in both counties and is only slightly higher than the
average of blacks. African-American men in both Washington and Harrison Counties married at age twenty-seven on the average. Thus, male divorcees were in their mid-thirties.

Cases involving the abuse of stepchildren or a wife’s inheritance from a former spouse indicated that a number of litigants had had previous marriages. Supplementing this information with census data revealed that at least thirty-eight spouses or 5 percent were previously married. All except four second marriages involved stepchildren. The overwhelming majority of cases (95 percent), however, gave no indication of a previous marriage by either spouse.

Given a relatively short duration of marriage for most divorcing couples, it is not surprising that many divorce seekers had few children or none at all. In the 373 divorce cases, 274 couples (73 percent) had no children. Female plaintiffs were twice as likely to have no children than to be mothers. Male plaintiffs were even less likely than women to be parents: eight out of ten had no children. Chart 10 demonstrates the preponderance of childless couples among the divorce seekers. While unstable marriages may have been less likely to produce offspring, it is more likely that the absence of children among divorce seekers indicates that children acted as a stabilizing force upon marriage. The responsibility of rearing children in intact homes may have taken precedence over the personal happiness of parents. Undoubtedly, the advent of children complicated marital relationships, strengthening emotional ties and family commitments.

Of ninety-nine couples with children, forty had only one child—40 percent. One-third had only two children. Seventy-three couples—almost three-fourths—had two
children or fewer. Eighty-four percent—eighty-two cases—had no more than three children. Only eleven couples had more than three: five with four children, five with five children, six with six children, and one with seven. Mothers were more likely to initiate divorces than fathers. Women with children filed seventy-one divorce suits—seven out of every ten cases involving children; fathers filed twenty-eight suits—less than 30 percent. \(^{11}\)

Chart 10. Divorce Cases By The Number of Children Per Family

Among whites who petitioned for divorce after 1865, the same basic pattern applies. Three-fourths had no children. Wives without children accounted for 78 percent

\(^{11}\) Stepchildren are not included in the analysis because custody was not disputed.
of female-initiated cases. Husbands without children sought divorce five times more
often than did fathers—seventy-five to fifteen respectively. African-American divorce
seekers were even less likely to be parents than were white petitioners. Freedmen
without children filed almost four times as many cases as those with children—49
without to 13 with children. Black wives having no children filed twice as many cases as
mothers. Only three African-American fathers filed for divorce, less than one percent of
male-initiated cases.

Men and women sought divorce, prompted by a belief that dissolving their
marriages would in some way improve their lives. What circumstances justified resorting
to such a grave measure? Several difficulties arise in determining motivations behind
decisions to end marriages. Between 1841 and 1875 the state of Texas allowed divorce
for three basic reasons: desertion, adultery, and cruelty. Beginning in 1876 Texas added
imprisonment in a state penitentiary as a fourth reason for divorce. Since the 1841
divorce statute did not prohibit petitioners from combining charges, roughly one-third
(113) of the cases cited more than one charge. About 3 percent of the suits (11 cases)
accused the defendant of violating all three standards. Further complicating the matter,
litigants sometimes cited multiple and diverse instances of particular charges, making it
difficult to know which transgression held the most sway over juries and judges. Another
problem lies in revisions made to petitions. Some plaintiffs updated their petitions to
clarify allegations or to add new ones.\(^\text{12}\)

\(^{12}\) Since only one case in the database was based on a spouse being sentenced to confinement in a state
penitentiary, this reason for divorce is not considered in the analysis. *Louise Westerfeld v. Christian
Westerfeld*, Washington Civil Case Papers, Case No. 5527 (1876). Two other women stated that their
husbands were or had been in prison. One of those cases was dismissed because of jurisdiction: the
Jeff Williams v. Bettie Williams, a Harrison County divorce action filed in 1879, stands as an example of the difficulties involved in categorizing specific cases. Jeff Williams originally sued for divorce on abandonment charges. Lawyers apparently advised him to revise his plea, knowing that the two-year desertion described in his petition was inadequate as a ground for divorce. In a revised petition he accused his wife of ill treatment and adultery. In claiming ill treatment he said that she “continually quarreled, harassed, and annoyed [him]” and neglected her household duties. Instead she went “gadding about the neighborhood into doubtful society,” which led to an adulterous affair. In this case the plaintiff emphasized his wife’s neglectful behavior and quarrelsome attitude in equal proportion to the adultery charge. Which charge held more sway over the bench and jury cannot be determined since neither the jury verdict nor the divorce decree elaborated on the matter.\(^\text{13}\)

Despite these complications, it is still possible to organize the data into reasonable categories that will facilitate our understanding of nineteenth-century divorce motivations. Organizing the material first by decade reveals a basic consistency throughout the period. With the exception of the 1860s when adultery charges equaled abandonment charges, desertion accounted for the highest percentage of cases for which only one charge was cited. During the 1840s six cases of abandonment represented 38 percent of all cases for which a reason is known. In the 1850s fourteen cases of

---

\(^{13}\) Elizabeth A. McFarland v. James McFarland, Harrison County Civil Case Papers, Case No. 6607 (1876); An earlier case, which took place before the 1876 law was enacted, charged abandonment after the husband failed to return home upon his release from prison. Clara Moore v. Calvin More, Washington Civil Case Papers, Case No. 4390 (1872).

Joe Williams v. Bettie Williams, Harrison County Civil Case Papers, Case No. 6865 (1879); Harrison County Civil Minutes, Book H, 22.
abandonment constituted 30 percent. Fourteen cases during the 1860s accounted for 33 percent. During the 1870s sixty-two abandonment-only cases made up 30 percent of the known charges.\textsuperscript{14}

Taking into consideration the cases that claimed desertion along with other charges raises the number considerably and shows that in roughly 60 percent of all cases the plaintiff accused his or her spouse of desertion. Prior to 1850, petitioners brought three abandonment and cruelty suits and one that included abandonment, cruelty, and adultery charges. These cases made up 63 percent of the total filed in the 1840s. During the following decade 58 percent of the cases included abandonment. They included eight abandonment and cruelty cases, four abandonment and adultery charges, and four cases that included all three charges. However, during the 1860s, abandonment charges figured into a smaller percentage of cases—38 percent or 16 cases. These included two abandonment and adultery combinations and one abandonment and cruelty suit. The pattern resumed during the last decade of this study, with 131 cases—64 percent—involving charges of desertion. Sixteen cases cited abandonment along with cruelty, forty-eight coupled desertion with adultery, and five cited all three charges.

Allegations of “outrages and ill treatment” constituted the second most common type of suit. During the 1840s accusations of cruelty alone accounted for 31 percent of the cases. Between 1850 and 1859, 21 percent of the suits—ten cases—charged the defendant with ill treatment. During the 1860s these cases composed 26 percent of the

\textsuperscript{14} When calculating percentages for the various charges, the cases for which no reason was recorded were excluded from the calculation. There are 309 cases for which the reasons were recorded (83 percent of the total cases). The remaining sixty-four cases were found in Civil Minute Books, where allegations were not usually stated or they have damaged or incomplete documents.
total (11 cases), falling behind both abandonment and adultery cases, each of which constituted 33 percent of the total. By the 1870s, cruelty accusations once again rose to the position of the second most common charge: forty-nine cases accounted for 24 percent during the 1870s.

Combination charges show that cruelty remained the second most often cited transgression before the 1860s, after which it was rivaled by adultery accusations. During each of the two decades prior to 1860, cruelty charges were included in about half of all divorce suits. Three plaintiffs used a combination of abandonment and cruelty during the 1840s and one cited all three possibilities. During the 1850s eight plaintiffs based their suits on abandonment and cruelty. Two used adultery along with charges of ill treatment and four accused their spouses of guilt on all three grounds. Between 1860 and 1869 ill treatment factored into only one case in addition to those based solely on this charge. That case, which combined adultery with ill treatment, brought the number of cases involving cruelty to twelve—29 percent of the whole. From 1870 forward forty-nine suits were brought on charges of cruelty only—24 percent of the total. An additional thirty-four suits cited cruelty in conjunction with other charges. Sixteen combined ill treatment with abandonment, thirteen with adultery, and five with abandonment and adultery. These cases included, cruelty charges played a part in 41 percent of the divorce-suit allegations during the 1870s.

Cases based solely on adultery were the least common. During the first decade of the study, only one case was brought on adultery charges. The 1850s saw an increase to six cases or 13 percent of the cases. However, the number of adultery cases rose during
the 1860s to equal abandonment cases. Fourteen suits represented one-third of the total. Yet, during the next ten years the actual number dropped to eleven cases. As in the
1840s adultery-only cases filed during the 1870s accounted for just 6 percent of the total.

This statistic does not mean that adultery failed to play a major role in divorce. Combination charges reveal that adultery was a significant factor. During the 1840s adultery was mentioned in 12 percent of the petitions. In the 1850s divorce seekers brought four adultery and abandonment suits, two adultery and cruelty suits, and four cases based on adultery, abandonment, and cruelty. Incorporating these combination cases reveals that adultery factored into 32 percent of the divorces during 1850s. In the 1860s and 1870s adultery figured into four out of ten cases. Seventeen cases involving adultery during the 1860s—43 percent—included two adultery and abandonment cases and one adultery and cruelty case. In the 1870s, charges of adultery factored into eighty-seven cases—43 percent. This places adultery slightly higher than cruelty, which was used in eighty-three suits during the same decade.

Did the motivations for seeking divorce vary between the counties? Washington County residents filed three cases prior to 1850. One case cited adultery, one cited ill treatment, and one cite abandonment along with cruelty. Of the twelve cases filed during the 1850s for which charges are known, three used only adultery (25 percent), three used only cruelty (25 percent) and two used only abandonment (17 percent). Two cruelty-and-abandonment cases and one adultery-and-cruelty case show that cruelty factored into the greatest number of cases—7 suits or 58 percent. Adultery and abandonment followed close behind, each contributing to five cases—42 percent each.
In the 1860s eleven adultery cases represent 38 percent of the suits; nine abandonment cases represented 31 percent of the cases and eight cruelty cases account for 28 percent. One suit alleged both of adultery and abandonment. During the 1870s Washington County residents relied most heavily on abandonment charges to secure divorces. Forty-five cases used only abandonment charges (27 percent), another thirty-seven used abandonment along with adultery, six cited abandonment and cruelty, and one case used all three charges. These cases accounted for over half of the divorce petitions. Thirty-six petitions charged only cruelty—26 percent. Eight cited cruelty along with adultery. Ill treatment, therefore, was mentioned in over one-third of the cases. A total of four cases relied solely on adultery (4 percent) but when combined with other allegations, adultery is shown to have factored into 37 percent of the cases.

Harrison County divorce petitioners used abandonment allegations most frequently in each decade of this study. In the 1840s five abandonment cases accounted for 38 percent of the total. Four cases using only cruelty represented 31 percent of the cases and one adultery case represented 8 percent. Combination charges included two abandonment and cruelty cases and one citing all three reasons. Abandonment, therefore, factored into six out of ten cases, cruelty into over half the cases, and adultery into 15 percent. During the 1850s, abandonment was used in twelve petitions (34 percent). Four plaintiffs added adultery to abandonment; six added cruelty; three more cited abandonment, cruelty, and adultery. Abandonment factored into over 60 percent of the cases. Seven cases citing only cruelty are 2 percent of the total. Yet, combination charges show that ill treatment was involved in half the suits filed during the 1850s.
Petitioners used adultery the least often: three plaintiffs relied only on adultery (9 percent). Four cases added abandonment to the adultery charges, one added cruelty, and three added both abandonment and cruelty. Thirty percent of all Harrison-County cases begun during this period cited allegation of adultery.

In the last two decades abandonment remained the most frequently used charge and cruelty as the second most common allegation in Harrison County. Thirty-eight percent of the cases (5 cases) cited abandonment in the 1860s. Cruelty and adultery each represented 23 percent of the total—3 cases each. Adultery was cited in just one more suit than was cruelty. One petitioner used adultery and cruelty and one cited adultery along with abandonment. During the 1870s, abandonment cases retained their position, with 26 percent of the cases using this charge only. Plaintiffs, however, brought twice as many cruelty suits than they did adultery cases. Cruelty factored into forty-eight percent of all cases: ten abandonment and cruelty, five adultery and cruelty, and four citing all three charges. Adultery played a role in 39 percent of the suits: eleven abandonment and adultery, five adultery and cruelty, four citing all charges. Table 3 shows the actual distribution of allegation among the cases for which allegations are specified.

What types of charges did men bring as opposed to those used by women? This question is essential to interpreting gender-role ideals and actual behavior of married couples. The reasons for which 143 men and 166 women filed for divorce are known. Men filed for divorce in a consistent pattern throughout the study period. Abandonment was cited in 103 male-initiated cases and was the only reason listed in forty-seven cases.
Men relied solely on abandonment in one-third of their cases and included it in 72 percent of their suits.

They cited adultery as the sole reason for wanting a divorce in twenty-seven cases and added it to other charges in seventy-six instances. Thus adultery served as the basis for 19 percent of the cases and figured into over half of the divorce suits filed by men.

Husbands relied on allegations of cruelty far less often than the other charges. Twelve men requested a divorce solely on the grounds of cruelty—8 percent; they included the charge in an additional eighteen cases, bringing the total to twenty-eight or 19 percent.
Of those citing cruelty as a factor, ten men gave examples of physical abuse—38 percent of the male-initiated cruelty cases.

Women followed a less rigid pattern. Throughout the period adultery remained the least used option. A total of five wives cited adultery as the only cause for their seeking a divorce. Since Texas law stated that a wife could receive a divorce if her husband had “abandoned her and lived in adultery with another woman,” [italics mine] it is important to note that nine cases cited abandonment along with adultery. Seven more used all three available charges. Adultery featured in one out of every five cases initiated by wives. Prior to 1860 the greatest number of suits filed by women were based on charges of abandonment—14 cases or 38 percent. Cruelty cases followed, with thirty percent of the cases (11) citing only this reason. Only 5 percent of the cases filed by women during the 1840s and 1850s were adultery cases.¹⁵

By the 1870s female plaintiffs shifted the focus of their petitions from abandonment to cruelty. After 1869 fifty-four women used cruelty as their only ground for seeking to end their marriages—42 percent. Thirty-five abandonment cases still accounted for a large portion of the allegations—27 percent. Adultery remained at 4 percent with only two cases citing this as the primary cause.

The overall picture reveals that women included accusations of cruelty most often, citing instances of ill treatment in 103 cases or 63 percent. Eighty-four percent of those cruelty cases included references to physical abuse. The second most common ground upon which women based their petitions was abandonment, which played a role
in half of the cases—84 instances. Adultery earned the least amount of attention from wives. Thirty-three wives accused their husbands of adultery—20 percent of the cases.

Table 4: Charges Filed By Gender Covering 1841 Through 1879

<table>
<thead>
<tr>
<th></th>
<th>Men</th>
<th></th>
<th>Women</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of Cases</td>
<td>Percentage</td>
<td>Number of Cases</td>
<td>Percentage</td>
</tr>
<tr>
<td>Known Allegations</td>
<td>143</td>
<td>—</td>
<td>166</td>
<td>—</td>
</tr>
<tr>
<td>Abandonment</td>
<td>47</td>
<td>32</td>
<td>49</td>
<td>30</td>
</tr>
<tr>
<td>Adultery</td>
<td>27</td>
<td>19</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Cruelty</td>
<td>12</td>
<td>8</td>
<td>65</td>
<td>40</td>
</tr>
<tr>
<td>Abandonment &amp; Adultery</td>
<td>43</td>
<td>30</td>
<td>9</td>
<td>5</td>
</tr>
<tr>
<td>Abandonment &amp; Cruelty</td>
<td>10</td>
<td>7</td>
<td>19</td>
<td>11</td>
</tr>
<tr>
<td>Adultery &amp; Cruelty</td>
<td>2</td>
<td>1</td>
<td>12</td>
<td>7</td>
</tr>
<tr>
<td>Abandonment, Adultery, &amp; Cruelty</td>
<td>4</td>
<td>3</td>
<td>7</td>
<td>4</td>
</tr>
</tbody>
</table>

Percentages were taken from the number of known cases.

Among African-American divorce cases the allegations are known in thirty cases initiated by men and in twenty-four cases initiated by women—87 percent of the cases filed by freedmen. Men alleged abandonment and adultery. Nine cases based on abandonment represent 30 percent of the known charges filed by men; three cases were based on the sole charge of adultery, representing 13 percent of the allegations. Fifty-

three percent of the suits charged wives with both abandonment and adultery. One
cruelty allegation was found among the suits filed by African-American husbands.

Table 5: African-American Divorce Suits According To Charges Filed
And Gender Of Plaintiffs, Covering 1841 Through 1879

<table>
<thead>
<tr>
<th></th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of</td>
<td>Percentage</td>
</tr>
<tr>
<td></td>
<td>Cases</td>
<td></td>
</tr>
<tr>
<td>Known Allegations</td>
<td>30</td>
<td>—</td>
</tr>
<tr>
<td>Abandonment</td>
<td>9</td>
<td>30</td>
</tr>
<tr>
<td>Adultery</td>
<td>4</td>
<td>13</td>
</tr>
<tr>
<td>Cruelty</td>
<td>1</td>
<td>—</td>
</tr>
<tr>
<td>Abandonment &amp; Adultery</td>
<td>16</td>
<td>53</td>
</tr>
<tr>
<td>Abandonment &amp; Cruelty</td>
<td>0</td>
<td>—</td>
</tr>
<tr>
<td>Adultery &amp; Cruelty</td>
<td>0</td>
<td>—</td>
</tr>
<tr>
<td>Abandonment, Adultery, &amp;</td>
<td>0</td>
<td>—</td>
</tr>
<tr>
<td>Cruelty</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Percentages were taken from the number of known cases.

Following the general pattern of allegations brought by women, African-
American women cited adultery least often. Only one case was based on this charge
exclusively. One coupled adultery with cruelty and one more used all three possible
charges. Each case accounted for 4 percent of the known charges brought by African-
American women. Cruelty comprised the largest group of allegations. Ten divorce suits
were based on this charge alone—42 percent—and three others included it along with other charges. Cruelty, therefore, influenced 54 percent of African-American women.

Abandonment was present in roughly the same number of cases as cruelty. Abandonment as the only reason was used by eight women—one third of the cases—and factored into four others, influencing half of the petitioners. Table 5 gives a visual representation of these figures, comparing African-American petitioners by gender.

Given the magnitude of the Civil War, which occurred in the middle of this study's time period, and given the increase in divorce after the Civil War, the question arises: Was the war a direct contributor to family instability and a motivating factor in decisions to sever marital bonds? In an attempt to gain insight into this question, this study sought to identify veterans among the divorcing couples. Excluding the African-American men as possible veterans left seventy-seven divorce suits that were begun in 1865 or later. Thirty-three percent or twenty-five men can be definitely identified either as veterans or as having not served in the military during the Civil War. Of those, nine served in the Confederacy; sixteen did not participate. Veterans, therefore, represented 12 percent of husbands involved in divorce suits following the Civil War. No record indicating veteran status has been found for fifty-two husbands—68 percent. Forty-two of those did not reside in Harrison County when the war began; nor did they or their wives file for a Confederate pension while residing in Harrison County. Nine names of the fifty-two are categorized as possible veterans from Harrison County because their military participation can be neither verified nor denied, due largely to inconsistencies in the documents. Assuming that these nine men were indeed veterans would bring the
percentage to twenty-three, less than one-fourth. The vast majority of husbands were not
veterans or at least were not veterans from Texas.16

Only two divorce petitions even mentioned the war. Elizabeth Hull sued her
husband for divorce while he was “somewhere in Mississippi,” serving in the
Confederacy. Her complaint, however, revolved around “sundry acts of adultery with
sundry loose women” that had taken place before he left home. A returning Confederate
filed the second case after discovering that his wife had set up housekeeping with another
man. The pressures of war, or even the hardships of Reconstruction, were absent from all
other petitions. Although more extensive research is needed before definitive
conclusions can be made, current evidence shows no direct or verifiable link between the
Civil War and marital instability.

Having examined the characteristics of divorcing couples, this study now turns to
the outcome of divorce suits. In order to assess how divorce petitioners fared in court we
must ascertain how many divorces were granted, denied in favor of the defendant, or
dismissed. Eliminating those divorce suits for which no decisions were recorded and
those that were abated by the death of one of the spouses leaves 310 cases for which a
decision is known. As depicted in Table 6, 219 of those cases plaintiffs received the
requested decrees of divorcement. These cases accounted for almost three-quarters (71
percent) of the known decisions. In 19 percent (60 cases) plaintiffs withdrew their suits,

---

16 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
having apparently achieved a satisfactory arrangement without legally ending their marriages. Combining these two numbers—cases granted to plaintiffs and cases dismissed by plaintiffs—shows that in 279 cases plaintiffs received an acceptable settlement of some type. In other words, plaintiffs enjoyed a tremendous overall-success rate of 90 percent.

Only fourteen defendants won their arguments. Decisions favorable to defendants composed less than 5 percent of decisions rendered. In at least one case, the divorce was granted in favor of the defendant. Five out of the fourteen plaintiffs re-filed, requested a new trial, or appealed to the Supreme Court. Most were unsuccessful, the truth of plaintiff allegations already having been proven false. Courts were equally reluctant to dismiss cases and did so no more than 4 percent of the time. The remaining 1 percent consisted of four cases recorded as dismissed, but without specification as to why or by whom. There is no way to ascertain whether courts or the parties dismissed them.

Out of the 210 cases filed in Washington County, 209 are considered in this assessment, excluding one case that never reached court due to the death of the defendant. Of the remaining cases, the result of 181 cases—87 percent—can be determined. County records contained decisions for 176 cases. However, supplementing this information with census data and marriage records revealed that nineteen cases, otherwise classified as dismissed or of unknown decision, had actually ended in divorce. Reclassifying these cases (19 cases) brought the number of granted divorces to 181.

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.
Granted divorces, unless specifically awarded to the defending party, are counted as part of the overall plaintiff-success rate, since the plaintiff’s goal of ending the marriage was realized and since a decision on behalf of the defendant would not, necessarily, have ended the marriage. Using this method of calculation puts the number of cases granted—in favor of the plaintiff—to 135, three-fourths of the cases with known decisions.

Table 6. Decisions Rendered

<table>
<thead>
<tr>
<th></th>
<th>Overall Plaintiff Success</th>
<th>For Plaintiff</th>
<th>Dismissed By Plaintiff</th>
<th>For Defendant</th>
<th>Dismissed By Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Combined (310)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>279</td>
<td>90%</td>
<td>219</td>
<td>71%</td>
<td>60</td>
</tr>
<tr>
<td>Harrison (129)</td>
<td>114</td>
<td>88%</td>
<td>84</td>
<td>65%</td>
<td>30</td>
</tr>
<tr>
<td>Washington (181)</td>
<td>165</td>
<td>92%</td>
<td>135</td>
<td>75%</td>
<td>30</td>
</tr>
</tbody>
</table>

The Overall-Plaintiff-success rate combines cases awarded to plaintiffs and those dismissed upon plaintiff request.

Dismissed suits account for the next largest grouping, with thirty-seven Washington County cases. Of this group, three were simply recorded as dismissed without reference to why or by whom. Courts specifically dismissed only four cases—2 percent. The remaining thirty cases were dismissed by the plaintiffs and account for 17 percent of the total. Adding this figure to the 75 percent plaintiff-success rate shows that filing for divorce yielded satisfactory results for 92 percent of the plaintiffs. In the four decades of the study, Washington County courts issued only nine pro-defendant decisions—less than 5 percent.
Harrison County residents filed 163 petitions. Removing twenty-eight cases that have no recorded decisions and six that were abated by the death of one party, leaves 129 cases for which decisions can be determined—80 percent of the total. As in Washington County, Harrison County plaintiffs won the clear majority of their cases—eighty-four cases or 65 percent. They also asserted their prerogative to dismiss their suits at a rate of 23 percent, a slightly higher figure than in Washington County. Overall, plaintiffs received a favorable outcome in 88 percent of the cases for which decisions are known.

Again similar to the Washington County pattern, Harrison County courts dismissed cases with reluctance. They did so only 8 percent of the time, for a total of ten cases. They were even disinclined to find in favor of defendants. The five successful defendants made up less than 4 percent of the Harrison County decisions. See Table 6 for an overview of the decisions rendered.

Freedmen divorces followed a similar pattern, with only minor deviations from the general trend. In Washington County, where black citizens submitted 38 percent of the petitions filed after 1865, plaintiffs of both races enjoyed a high degree of success. Of those who elected to follow through with their suits, black plaintiffs won 80 percent of their cases, while white plaintiffs achieved success 71 percent of the time. Although judges were more likely to dismiss black cases than white cases at a rate of three to one, black plaintiffs still maintained a 9 percent higher success rate over whites. The difference is explained in the greater tendency for whites to dismiss their own suits. African Americans withdrew just four suits or 8 percent of their cases. Whites, on the other hand, dropped one of every five cases. Also, white defendants earned the court's
favor more often than did black defendants. Only one black defendant won her case.

Even with these minor divergences, the general patterns run basically parallel. The combined total of pro-plaintiff decisions and suits freely withdrawn yields a plaintiff-success rate of 88 percent for blacks and 90 percent for whites in Washington County. See Table 7 for the specific numbers.¹⁷

Harrison County's thirteen freedmen cases accounted for 15 percent of the post-war divorces, a much smaller portion than in Washington County. Twelve decisions are known. Plaintiffs won six suits and dismissed five—46 percent and 38 percent respectively—giving them an overall plaintiff-success rate of 84 percent. White plaintiffs earned a lower initial success rate of 63 percent—seventeen percentage points below that of freedmen. The overall success rate for white plaintiffs is 17 percentage points higher than for blacks, with courts awarding divorces to 63 percent of white petitioners. Black plaintiffs, however, exhibited a greater proportional propensity to dismiss their own suits than did whites who withdrew 24 percent of their suits. Therefore, the overall plaintiff-success rate for blacks (84 percent) falls just three percentage points behind the overall success rate for whites (87 percent) in Harrison County.

Having determined a comparable success rate between freedmen and whites, the question of whether gender bias determined the outcome of suits must be considered.

¹⁷ *Solomon Randle v. Anna Randle*, Washington County Civil Case Papers, Case No. 5499 (1878); Anna won her case on cruelty charges and nonsupport. Her husband charged her with abandonment after he forced her from their home and refused to provide for her.
Specifically, what chance did a woman have of earning a favorable decision as compared to a man? Statistics from each county show a remarkably level playing field.

Table 7: Decisions Rendered By Race

<table>
<thead>
<tr>
<th></th>
<th>Overall Plaintiff Success</th>
<th>For Plaintiff</th>
<th>Dismissed By Plaintiff</th>
<th>For Defendant</th>
<th>Dismissed By Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harrison Whites Only</td>
<td>87%</td>
<td>37</td>
<td>63%</td>
<td>14</td>
<td>24%</td>
</tr>
<tr>
<td>Harrison Blacks only</td>
<td>84%</td>
<td>6</td>
<td>46%</td>
<td>5</td>
<td>38%</td>
</tr>
<tr>
<td>Washington Whites only</td>
<td>90%</td>
<td>74</td>
<td>71%</td>
<td>20</td>
<td>19%</td>
</tr>
<tr>
<td>Washington Blacks only</td>
<td>88%</td>
<td>39</td>
<td>80%</td>
<td>4</td>
<td>8%</td>
</tr>
</tbody>
</table>

Overall Plaintiff success rate combines cases awarded to plaintiffs and those dismissed upon plaintiff request.

for women and men. In Washington County ninety-four cases filed by women and eighty-two cases filed by men have recorded decisions. These numbers exclude 16 percent of the original cases, the records of which contained no mention of the decisions rendered or which were abated by the death of one of the parties. Of the 84 percent of those that did include final decisions, male and female plaintiffs each won two-thirds of their cases. Both genders lost 5 percent of their cases to defending spouses. Thirty percent of the cases filed by men ended in dismissal, as did 30 percent of those filed by women. Women withdrew 22 percent of their own suits; men dismissed 23 percent of their suits. Courts dismissed four of the female-initiated suits (4 percent) and five of those filed by husbands (6 percent). Three dismissed cases that
did not specify the reason for dismissal account for the final 2 percent of female-
initiated cases and 1 percent of male-initiated cases.

Harrison County divorce suits also showed very similar patterns of success for
both genders. Filtering out the suits for which decisions were absent leaves 80 percent
of the original suits. These include seventy-five divorce suits filed by women and fifty-
five filed by men. Of these cases, female plaintiffs won their suits 53 percent of the
time and male plaintiffs won 55 percent. Women dismissed 33 percent of the suits they
filed and men dismissed 25 percent. Courts ruled in favor of defendants three times
against women and twice against male plaintiffs—4 percent for each group.

Table 7. Decisions By Gender

<table>
<thead>
<tr>
<th></th>
<th>Overall Plaintiff Success</th>
<th>For Plaintiff</th>
<th>Dismissed By Plaintiff</th>
<th>For Defendant</th>
<th>Dismissed By Court</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Harrison Men</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>75</td>
<td>88%</td>
<td>30</td>
<td>55%</td>
<td>18</td>
<td>33%</td>
</tr>
<tr>
<td><strong>Harrison Women</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>75</td>
<td>79%</td>
<td>40</td>
<td>53%</td>
<td>19</td>
<td>25%</td>
</tr>
<tr>
<td><strong>Washington Men</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>82</td>
<td>89%</td>
<td>54</td>
<td>66%</td>
<td>19</td>
<td>23%</td>
</tr>
<tr>
<td><strong>Washington Women</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>94</td>
<td>88%</td>
<td>62</td>
<td>66%</td>
<td>21</td>
<td>22%</td>
</tr>
</tbody>
</table>

Overall Plaintiff success rate combines cases awarded to plaintiffs and those dismissed upon plaintiff request. Dismissed cases that did not specify the reason for dismissal and those abated by the death of one of the spouses account for the final percentage of cases.

Clearly, the tendency toward decisions in favor of plaintiffs transcended race
and gender biases. Did this equity transfer to the specific terms of divorce settlements?

Child custody and property division are essential components to understanding the
practical outcome of severed marriages. The adversarial nature of Texas divorce entailed a certain degree of a “winner take all” attitude. Nevertheless, Texas judges enjoyed enormous discretion in making their determinations, with no specific rules to restrict their decisions. How then did women fare in divorce settlements as opposed the men?

In custody settlements most Washington County and Harrison County cases favored the party who won the suit, which was usually the plaintiff. Of ninety-nine cases involving children, twenty were dismissed and no recorded decisions exist for another thirty-seven cases. The remaining forty-two families represented 42 percent of the cases in which custody was an issue. Custody went to the winning plaintiff in thirty instances—83 percent of the known custody decisions. In three cases—7 percent—children were divided between the parents, with allocation made according to sex. Plaintiffs in two of these reached a mutual agreement and avoided court intervention in the matter.

Defendants won custody in four cases—10 percent of the known decisions. All four instances took place in Washington County. Two of the defendants—one man and one woman—received custody after the successful plaintiff voluntarily yielded possession of the children. In the other two cases a divorce was granted but in favor of the defendant rather than the plaintiff. Again, one case favored the wife and one favored the husband. This evidence shows that victorious spouses always won at least partial custody and usually full custody. No detectable gender bias influenced courts to award custody in favor of one sex over the other.
Among the freedmen the pro-plaintiff pattern persists. African-Americans filed six cases for which custody decisions are known. Of those, one couple divided custody by mutual agreement. Four plaintiffs won their divorces and custody. One defendant was awarded the divorce and custody. Again, courts favored the victorious party.

As with custody, Texas judges had considerable leeway in apportioning property, with the provisions laid out in community-property and separate-property laws serving as guidelines. The 1841 divorce law stated that the court "decree and order a 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." They could not, however, divest either party of personal real estate or slaves. Unfortunately, the type of data regarding property division does not lend itself to a strict quantitative interpretation and can be better dealt with in a later chapter. Nonetheless, it should be noted that the pattern of equity rendered by Texas courts in other matters continued in the disbursement of property.18

As with the issue of property division, the dynamics of divorce in nineteenth-century Texas are complicated and diverse. Yet, the quantitative data presented in this chapter allow us to develop a profile of the "typical" divorce seeker, although no individual will fit the profile perfectly. The average divorce petitioner was a white female. She married in her mid-twenties and remained in the relationship for seven years before bringing her suit. Her husband was a farmer and, after 1865, most likely not a veteran. She resorted to divorce after her husband abandoned her or abused her in

someway. She would have won her case as well as custody of any children. However, custody probably was not an issue. More than likely she had no children. If she did she had only one or two. She listed her occupation as housekeeping. She might have come from any social level, but probably her social status was comparable to the average county citizen. Following her divorce she remarried and probably left the county. This profile is not to be taken as a definitive description but a general assessment, of the quantitative data. Divorce touched the lives of many individuals who do not fit this description and many more who fit it in some respects but not others. It does give a general description of the characteristics of those who sought divorces in Texas during the years between 1841 and 1880.
NINETEENTH-CENTURY MARRIAGE AND TEXAS DIVORCE SEEKERS

The nineteenth century was one of great mobility and change for Americans. The industrial and transportation revolutions, turbulent economic cycles, political upheavals and war, the acquisition of vast amounts of land, and heavy westward migration, were but a few influences on the American family. Regional and cultural peculiarities also affected family structure and identity. Yet, a general pattern toward what is usually referred to as "compassionate 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."¹

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 in the status of women that is, within the feminine sphere of domesticity. Marriage based on affection and emotional support naturally brought with it expectations of mutual benefit. Men and women set demands on their partners concurrent with those expectations.

This quest for personal satisfaction implied a sense of individualism and autonomy. Marriage came to be 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 came to be seen as a secular right, a civil contract between two free citizens.2

An 1890 discourse on the reasons for the national increase in divorce argued that “the Middle-age idea of indissoluble marriage was a mere theory, produced vicious results in practice, and [was] inconsistent [with] modern notions and the inevitable progress of civilization.” According to the writer, the basic cause for the contemporary increase in divorce was the evolution of popular thought away from marriage as a religious mystery or sacrament and toward a belief that marriage was a man-made institution. Reinforcing what he believed was a trend toward distancing divorce from

moral decay, the author asserted that most people who applied for divorce were “by no means degraded or corrupt; that they lived moral lives before the divorce and that they live[ed] moral lives afterwards.” He pointed out that most of the divorce seekers were women, and he “certainly [saw] no signs of general immorality among American women.”

Although never completely denouncing the religious tenet that marriage was a holy union, Americans increasingly embraced the more secular view of the husband-wife relationship as a civil contract. The growing number of individuals who turned to the legal system for redress in marital issues demonstrates this trend. Texans were no exception. Like most Americans, they embraced a multifaceted view of marriage, seeing the institution as a legal, secular contract, with roots in the religious concept of marriage as a holy institution, and one in which the ideals of compassionate marriage governed spousal interaction. The words of James Darress of Harrison County illustrate this dichotomy. In 1843 he requested a divorce from his wife because she had disregarded “the Laws of God and her holy marriage vows” when she committed various acts of adultery. For Darress and others like him, marriage was a temporal contract, an arrangement that could be ended in a secular court. But it also had religious and moral significance, which he expected a jury and judge to take into consideration.

---


2 James S. Darress v Eliza Darress, District Court Civil Minutes, Office of the District Clerk, Harrison County Courthouse, Marshall, Texas, Book A, 261. Hereafter cited as Harrison County Civil Minutes.
As a personal relationship, with or without religious sanction, marriage was by nature different from other legal contracts. The terms of the marital contract were not enumerated in a legal document. Rather the obligations of each party were common knowledge, passed down through families and other social institutions. Yet marriage was indeed a contract, legally binding and governed by some basic concepts that applied to other legal transactions. Each partner willingly agreed to meet certain requirements, with the understanding that serious violation of the unwritten contractual terms could sever the relationship. Law and society obliged both parties—husband and wife—to meet certain gender-specific expectations. Each was entitled to release from the contract, should the other significantly violate his or her obligations. Under Texas law, divorce was absolute, absolving both parties—guilty and innocent—of any future responsibilities to the other and freeing both to remarry.5

The high success rate for plaintiffs shows that Texas courts fully supported this popular view of marriage (See Table 6 in Chapter 2). They readily granted divorces to petitioners who proved that their spouses had failed to live up to their specific obligations. Harrison County and Washington County courts rarely refused to grant divorces. They dismissed only 4 percent of all cases. Even when a jury found that guilt lay with the party who brought the initial charges, a court might still issue a decree of divorcement in favor of the defendant. Texas Supreme Court opinions and legal treatises

5 “An Act Concerning Divorce and Alimony,” H. P. N. Gammel, comp., Laws of the State of Texas, 1822-1897, 10 vols. (Austin, 1889-1902), II, 483; Section 8 allowed for alimony during pendency of a suit but not after the divorce was finalized. Property division was used to deal with post-divorce maintenance. Section 13 deals with child custody and maintenance. It includes no specific provision for child support. James Paulsen argues that one 1870 Texas Supreme Court decision allowed permanent alimony. James W.
affirmed this view of marriage and actually addressed the topic by using the term civil contract.\(^6\)

As is the nature of any contract, marriage required the exercise of free will by an independent agent. Texas legal tradition held that there must be “mutual consent, mutual wills, and capacity to contract” for a marriage contract to be binding. No person—male or female—could be legally forced into a marriage. Parental dictates on the selection of marriage partners had diminished significantly by the nineteenth century, even for daughters. The courtship process allowed women to pick and choose 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. According to Carl Degler, “at no other point in the course of a marriage was a woman’s autonomy greater or more individualistically exercised” than during courtship. Elizabeth Fox-Genovese’s research shows that this privilege was highly appreciated among antebellum Southern women as one of the two major life decisions, church and husband, that they made for themselves. Given societal limitations in political and economic arenas, women undoubtedly clung tenaciously to this right to self-determination through mate selection.\(^7\)

Certainly nineteenth-century Texas women guarded their right to select their own spouses. Ann Raney carefully weighed the attributes of suitors before finally accepting a

---


\(^6\) The reasons for dismissal vary, usually having to do with jurisdiction or other legal technicalities. Few divorce papers, however, specify reasons for dismissal. *Moore v. Moore*, 22 Texas 237 (1858); *Sheffield v. Sheffield*, 3 Texas 79 (1848).

proposal, and then she qualified her acceptance by making specific demands. Ann
bypassed one suitor because he was a “Butterfly who goes from flower, to flower,” who
she believed 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 first husband died, leaving her with a
mortgage that she could not pay. Reluctantly, she entered into a second marriage to a
man who promised to pay her debts. She did so not “from the right motive Love,” but
was “obliged to marrey to save my home, I did not want to, for I had maney reasons for
not marring . . .” [sic] She regretted this decision for the rest of her life and admonished
others to act cautiously in selecting mates. In 1855 Ann divorced and determined to
remain unmarried for the rest of her life. As an old woman, she reflected on her past and
advised a young niece: “[Y]ou will do well[,] my dear child[,] if you Keep single[,] [I]t
is a wise woman that keeps single.” Ann and other Texas women fully embraced their
rights to make this important life-altering decision as well as their right to remedy the
results of bad choices through divorce.  

Acceptance or rejection of a potential mate was certainly subject to influence by
family and friends, but women as well as men exercised their freedom greatly in this area
and often acted counter to the advise of others. Yet failing to heed good advice or
making poor decisions did not preclude dissatisfied spouses from seeking divorce. As

8 Lisa Christina Maxwell, “Class and Freedom of Choice In the Marrige Patterns of Antebellum Texas
Women,” (M.A. thesis, University of North Texas, 1991), 47; Ann Raney Thomas Coleman, Papers, Center
For American History, University of Texas, Austin, 113, 136, 200, 318; Coleman Letters, “My ever dear
Neice [sic],” July 22, 1890.
individuals with the freedom to choose, they were entitled to repudiate those choices. Washington County divorce seeker Mary Ann Shrimpf lamented her unwise and youthful decision to marry against her family’s admonitions. Hers had been an unwise decision and, after thirteen years, she wanted out of the marriage. Likewise, Augusta Summerfeld failed to heed warnings against marrying her husband, Wilhelm. She had been told that he was unfit as a husband and that he drank too heavily. Even this admitted foolishness, however, did not prevent these women from seeking release from their suffering. Having unwisely put their futures in the hands of untrustworthy men did not override the fact that their husbands failed in their contractual duties. By seeking divorce, women availed themselves of a citizen’s right to have the marriage contract honored by law. In accepting responsibility for decisions and in attempting to remedy their own situations, women asserted individual freedom and personal autonomy.9

In general Texans entered into marriage as a life-long commitment and took their vows seriously—“until death do us part.” An 1856 article in the Washington American described the gravity of thought that Texans hoped young people would bring to the mate-selection process. It 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.” The decision was a weighty one and should not be made lightly.\textsuperscript{10}

In an 1848 opinion, Chief Justice of the Texas Supreme Court John Hemphill elaborated on the nature of marriage. He defended 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.” It was only for serious infractions that divorces could be obtained. 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. Writing in the early twentieth century, Ocic Speer defined the legal tradition of Texas marriage as both a contract and a relationship: “But 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 . . . .” As a natural relationship with “its origin in the breast of Divinity,” yet governed by the principles of civil contract, marriage was not a commitment that could be easily disavowed.\textsuperscript{11}

\textsuperscript{10} Washington, Washington American, December 30, 1856.
\textsuperscript{11} Sheffield v. Sheffield, 3 Texas 79 (1848); Moore v. Moore, 22 Texas 237 (1858); Speer, Marital Rights, 3, 4, 1.
The statistical data from the previous chapter indicate that divorce seekers did not enter into marriage frivolously. In the late nineteenth century, divorce reformers warned that youthful marriages were one of the causes for the high divorce rate. Yet Washington County and Harrison County divorce seekers married in their mid- to late-twenties. The fact that women married at the average age of twenty-four and men at age twenty-nine discounts immaturity as an obvious issue. There is nothing in the marriage-length statistics to indicate a particular cause. Some lived together for many years, while others divorced after only a few weeks. On the average couples divorced after about seven years of marriage. Class does not seem to have played a significant role, either. Most divorce litigants fit an economic profile similar to the average citizen, but this study’s database includes couples from all social segments, from very wealthy planters to impoverished freedmen. Poverty may have influenced individual Texas cases, particularly in cases of nonsupport, but it was not a general cause. None of these things provides an easy explanation of why Texas couples chose to end serious life commitments.

What, then, did nineteenth-century Texans believe were sufficient grounds for dissolving a marriage contract? What rendered the relationship "insupportable"? Although Texas law does not provide a blueprint for how husbands and wives should behave in their personal relationships, the divorce law does enumerate what was unacceptable behavior. In providing adultery, cruelty, and abandonment as potential grounds for divorce, Texas lawmakers determined that there were certain crucial components of marriage: sexual fidelity, a reasonably pleasant home environment, and a
general pattern of cohabitation, during which both spouses fulfilled gender-specific duties. Looking at the basic provisions for divorce under Texas law, how divorce seekers utilized those provisions, and Texas Supreme Court rulings clarifies the more specific aspects of gender-role expectations.

Since one of the most basic components of marriage is cohabitation, desertion seems to have been the most blatant way of rejecting one’s marriage. Of those cases for which the reasons for the suits are known, 32 percent of the husbands used abandonment as the sole reason for seeking divorce. Women used abandonment as the only charge in 30 percent of their actions. Thus, men and women demonstrated an equal propensity to sever relationships by simply walking away. When including cases that combined abandonment charges with other allegations we see that women were accused of abandonment in higher proportion than men. Men accused women of desertion in 72 percent of their cases, whereas women accused men in 50 percent of their suits (See Table 4 in Chapter 2).

Abandoning one’s spouse took many forms. Some individuals simply disappeared, seeking a new life in some other community. Others took up residence nearby but refused to interact with their spouses in any meaningful way. Texas law stated that a man could receive a divorce from his wife if she had, with the intent to abandon, left him and remained absent from his home for a minimum of three years. Most husbands who sought divorce on abandonment charges alone, gave little or no explanation as to what prompted their wives to leave. Unless a wife contested or countered the suit, her side of the story is unknown. In an attempt to establish a lack of
culpability, husbands argued that wives left voluntarily and had not been forced in some way to seek another home. Amanda Buzbee left her husband within the first year of marriage. According to his petition, she left without just cause, for he had been a "kind and affectionate" husband and had "made ample provisions" for her. Lovinia Chappell left her husband "without arry [sic] a cause whatever." In the case of Josiah Foster, a jury found that he had been responsible for the separation by provoking his wife to leave. Unfortunately, the records did not elaborate on what constituted provocation. Other men bolstered their cases by showing efforts at reconciliation. Women such as Mary Hinsey and Paula Newmann repeatedly refused attempts at reconciliation, opting to remain separated. When their husbands pleaded with them to reestablish the relationships, they stood recalcitrant and determined not to return.12

From the petitions of those who did offer explanations we find that the reasons for which women left were varied and individualistic. Anna Randle won her counter suit because of her husband’s physical abuse, which only ended when he forced her to leave the home and two of her children. Other women used desertion as a way to exert control over their own destinies by returning to their home communities or refusing to accompany their husbands to Texas. Such was the case of Barbara Muller, who abandoned her husband in 1861 for "her native country" and Martha Turner, who left her husband to live with brothers in another Texas county. These women rejected the idea

12 Eli R. Buzbee v. Amanda Buzbee, District Court Civil Case Papers, Office of the District Court Harrison County Courthouse, Marshall, Texas, No. 1167 (1848). Hereafter cited as Harrison County Civil Case Papers; Washington Chappell v. Lovinia Chappell, Washington County Civil Case Papers, No. 4968 (1874); Josiah A. Foster v. Arabella Foster, Harrison County Civil Case Papers, No. 4172 (1859); G. T. Hinsey v. Mary Hinsey, Washington County Civil Case Papers, No. 5348 (1877); Wilhelm Newmann v. Paula Newmann, Washington County Civil Case Papers, No. 5412 (1877).
that a woman was duty-bound to follow her husband wherever he chose to go, no matter how unacceptable the circumstances. In his research on California divorce, Robert Griswold has suggested that desertion was the “boldest display of independence from a wife.” Indeed, Texas women used abandonment both to escape intolerable living conditions and to assert control over their own lives.13

Petitions in which women charged men with desertion were more acrimonious in tone and discussed the serious consequences of the abandonment. Women accused husbands of “maliciously and willfully” or “suddenly and cruelly” deserting them. Husbands bore the responsibility of financial support for the family. When men left their wives they failed to live up to the societal obligation to provide material necessities. Deserting men rarely took the children with them. Rather they burdened the wife with full responsibility for the family’s wellbeing. Female-initiated petitions emphasized the dire circumstances that followed abandonment and the cruelty inherent in such an act. They strongly resented being left to the mercy of relatives or friends for financial support. Sarah Ashley complained in 1863 that her husband had left her “utterly dependant on her friends for food.” Some women were fortunate enough to have relatives living nearby on whom they could rely, but this was not the case for everyone. Others found ways to support themselves, but not without difficulty. An abandoned woman and her children

13 Solomon Randle v. Anna Randle, Washington County Civil Case Papers, No. 5499 (1878); Robert L. Griswold, Family and Divorce in California, 1850-1890 (Albany: State University of New York Press, 1982), 79. Griswold found that 64 percent of male-initiated suits were based on charges of desertion. Lewis Turner v. Martha Turner, Harrison County Civil Case Papers, No. 6683 (1877); H. J. Muller v. Barbara Muller, Washington County Civil Case Papers, No. 3946 (1869).
became a societal responsibility and prompted witnesses to deliver harsh condemnations of men who would stoop to this low level.\textsuperscript{14}

Men who left their wives in this way often had a history of nonsupport and neglect. They did not always leave the community and very often drunkenness played a major role in the scenario. Sarah Hackworth, a former slave, suffered from her husband's intemperance for years before she left him. Nick Hackworth took up residence elsewhere in the community, where he spent his days "lay[ing] about the liquor shops," running up a debt. Sarah's attempts to encourage him to labor and provide for the family were in vain. For five years she worked to support her three children. Witnesses testified to the difficulty of her task. Once Sarah received a divorce, her earnings and property were secure from her husband's debts. Witnesses characterized A. N. Shrimpf as a "worthless vagabond" for failing to provide for his family. Other victims of neglectful husbands, especially those who remained as cohabitants, phrased their complaints in terms of cruelty charges, a topic covered later in this chapter.\textsuperscript{15}

Adultery was another bold assault on the institution of marriage. It was also the second most common way in which women violated their marriage contracts. Divorce petitions from Harrison County and Washington County were filled with references to "unvirtuous" women. Men filed 32 percent of their cases on abandonment charges, 19 percent on adultery charges, and another 30 percent on a combination of the two. In total, adulterous women were responsible for over half of all suits filed by men (51

\textsuperscript{14} Sarah E. Ashley v. Henry M. Ashley, Harrison County Civil Case Papers, No. 4718 (1863).

\textsuperscript{15} Sarah Hackworth v. Nick Hackworth, Washington County Civil Case Papers, No. 4903 (1874); Griswold found that Californians associated moral turpitude with poverty, especially drunkenness. Divorce in California, 106-7.
percent or 76 cases) in Harrison and Washington Counties. Feminine adultery brought "great shame and disgrace . . . grief and mortification" to husbands. The sexually deviant woman was described by one husband as "unmindful of every sense of womanly virtue and modesty."\(^{16}\)

Most adulterous wives committed their "crime" as a way of determining a new course for their lives by choosing a new mate. At least 67 percent had only one adulterous partner. Many of these women left their husbands to set up housekeeping with the other man. Taking her infant and a servant, Annie Olivia Williams left her home in Washington County to live in Austin as the "wife" of F. L. Randle. She presented herself as Mrs. Randle, introduced her infant as Randle's child, and shared public accommodations with him. These second "marriages" were often long-term relationships, sometimes producing children. Such women exercised their freedom of choice once again, selecting a new mate and a new home. These women did not reject the notion of marriage itself or even the responsibilities of a wife. They rejected a particular man. Their reasons for doing this were not discussed in plaintiff petitions. Husbands merely portrayed the defendants as immoral women who failed to live up to their commitments.\(^{17}\)

Contrary to findings about California divorce, adultery on the part of the wives did not cause husbands to rush into a divorce. Robert Griswold concluded that adultery was the single worst offense for women, and a single act of adultery was "an act of

\(^{16}\) *Nathan Ross v. Mary Ross*, Washington County Civil Case Papers, No. 5349 (1876).

\(^{17}\) Ten percent of the cases do not specify the number of partners. *Daniel C. Williams v. Annie Olivia Williams*, Washington County Civil Case Papers, No. 5557 (1879).
dramatic finality." A significant number of Texas women, 23 percent of those charged with adultery, participated in sexual activity with multiple partners before their husbands took legal action. Mary Lammers had at least two sexual partners and showed little discretion in her encounters. One witness surprised her in the "act of violating the Marriage Bed" with "a wagon maker by trade, who had a stiff leg (a German) in broad open daylight." Marshall Payne's wife "led a life of notorious lewdness [and] chaleting."[sic] Marshall knew of three specific men with whom she had illicit relations and suspected there were others. But he was apparently unaware of James Jenkins, the man she married immediately after the divorce was granted. Jack Allcorn called his wife's overt sexual promiscuity "grossly immoral, unnatural and outrageous." Still other wives earned reputations as strumpets or prostitutes.18

Even in such cases, admirable husbands sought reconciliation. Martin Hair forgave his wife's indiscretions and decided to move to a new area where they could have a fresh start. He hoped that "change of place might work a reformation in her morals." Unfortunately, while he was away looking for a new home, she sold all of his property and gave the proceeds to her lover. How many couples did not seek divorce after a wife committed adultery cannot be determined. Nevertheless, it is safe to say that although women were expected to live up to the ideals of feminine chastity, not every act of adultery warranted a scarlet letter. Neither did sexually deviant behavior preclude women from receiving fair settlements. Albert Arnot sued Lucinda Arnot for divorce in

1852 on adultery charges. A jury found her guilty and granted the divorce. However, it also found Albert guilty of trying to defraud Lucinda by deeding community property to their children as a way of cheating her out of her portion. She may have been an adulteress, but she was also a citizen and entitled to an equitable property settlement.\(^1\)

The fact that women filed adultery charges far less often than men did, appears to support the generally held belief that nineteenth-century society held men to a lower standard of sexual morality than it did women. (See Table 4.) Texas divorce law stated that a woman was entitled to a divorce if her husband abandoned her for three years or if he abandoned her and lived in adultery with another woman. It is sometimes interpreted to read that a man had to actually forsake his first wife to live as though he were the husband of another in order for the court to award a divorce. In that case women had no right to bring adultery charges unless they were accompanied by abandonment charges. Since men could obtain a divorce if the wife abandoned him for three years or committed adultery, this interpretation would have legalized a double standard. Court records show this was not necessarily the case. Three percent of the female plaintiffs in this study based their cases solely on adultery charges, and women used the combination of cruelty and adultery charges more often than they used the abandonment and adultery combination.\(^2\)

\(^1\) Martin H. Hair v. Sarah Hair, Harrison County Civil Case Papers, No. 3047 (1856); A. M. Arnot v. Lucinda Arnot, Harrison County Civil Case Papers, No. 2286 (1852). Section 9 of "An Act Concerning Divorce and Alimony" specifically forbade husbands from disposing of community property or contracting debts on the community property after a suit for divorce had been filed. Gammel, comp., Laws of Texas, II, 483.

Female divorce seekers in Texas undoubtedly put forth more complaints about cruelty or abandonment than they did adultery, but this does not mean that male promiscuity was acceptable. What then explains this low proportion of adultery charges against men? Were women truly more tolerant of infidelity? Such an assumption may well be true in light of the Victorian notions about female chastity. Certainly if female adultery was a more serious infraction against the sanctity of marriage, then men would have filed more readily than women did upon discovering a spouse's infidelity. If it were less serious for men to engage in sexual activity outside marriage, then women would have been less interested in bringing charges. It would also mean that many women did not seek divorce, but continued to live with unfaithful husbands. But these women left no record indicating that such was the case. However reasonable the assumption, it must remain in the realm of speculation since no positive data exist to support it.

The fact that women filed adultery charges at all shows that wives did demand sexual integrity from their husbands, just as husbands did from their wives. That only two women lost their cases indicates that the all-male juries and courts agreed that married men ought to refrain from extramarital sex. Of the two suits that were dismissed by the courts, one was because both spouses had committed adultery, which under Texas law disqualified the couple from receiving a divorce at all. The other was apparently dismissed because of a jurisdictional problem. Women who brought adultery charges usually pursued their cases to the end, dismissing only five suits. In all other instances women won their cases. In addition, adultery charges against men actually earned a
slightly higher success rate than those against women—66 percent to 61 percent. Men also withdrew adultery cases more often than women did—29 percent to 18 percent.\textsuperscript{21}

As did men, women considered adultery a humiliating rejection of the marriage contract. Just as women often left their husbands to live with another man, men sometimes forsook their wives to live with another woman. But when a husband did this, he rejected his role as provider and protector and left his wife in a vulnerable situation. Adultery claims often mentioned nonsupport. When describing their husband’s adultery, they often referred to humiliating, disgraceful, or cruel behavior. Rachel Brown’s husband diverted his loyalties—and funds—to his mistress, going so far as to build a new home for the two of them. Not only was this a public display of rejection, it deprived Rachel of her rightful claim to the benefits of her husband’s labor.\textsuperscript{22}

Washington County physician William Byars forced his wife to watch him having sexual intercourse with female slaves. Byars’ behavior went beyond flaunting his sexual activities. He sought to disgrace his wife in the eyes of the slaves, thereby diminishing her authority, to say nothing of the rape of the slave women. Sarah Munden divorced her husband after only five months of marriage, when he began a sexual relationship with a freedwoman who he had hired as a domestic servant. After finding them in bed together, Sarah went to spend a few days with her family. When she returned, he told her that he


\textsuperscript{22} \textit{Rachel Brown v. William M. Brown}, Harrison County Civil Case Papers, No. 5634 (1871).
preferred the servant to her and would “bed her” as soon as his wife left the house.

Denigration of this nature was unknown to male plaintiffs.23

Robert Griswold links fidelity on the part of husbands to the notions of compassionate marriage prevalent in the nineteenth-century, which emphasized an egalitarian relationship and in which self-control and moderation were the sexual ideals. In his words, these values “were grounded in respect for and recognition of the legitimate rights and desires of women. . . . [T]he emphasis on male kindness, emotion, and respect for wives placed demands on husbands that assumed an egalitarian basis for the husbands’ and wives’ relations in the home.” Such relationships required both marital faithfulness and respect for wives’ control over their own sexuality. In accordance with this explanation, Texas women did not hesitate to describe sexual violations and demand the sympathy of the courts. In 1876 Maria Hartwig told a Washington County jury the details of spousal rape. One month after her marriage she filed for divorce because her husband’s “lusts knew no bounds.” He “made indecent assaults upon her person” using “fowl, loathsome, and abusive language.” He forced sexual intercourse on her during her menstrual cycle, which caused her “great shame and suffering.” Nancy Price refused to consummate her marriage when she realized that her new husband had syphilis. The disease, she said, had rendered him “incompetent [sic] and unable to have sexual intercourse.” Nonetheless he tried to force her to comply with his desires. In frustration and anger he beat her so severely that she was confined to her bed for several weeks. Other women sued for divorce after husbands contracted a venereal disease from

---

23 Mary A. Byars v. William M. Byars, Washington County Civil Case Papers, No. 1848 (1857), Final
encounters with “lewd women.” Women demanded honor and respect in regard to their sexuality. Sexual misconduct that endangered their health or that caused some type of humiliation was not tolerated by divorcing wives or by the courts.24

Sexual brutality was but one area of cruelty charges made against husbands. Women alleged cruelty more often than any other charge. Cases based on cruelty comprised 40 percent of the female-initiated suits and figured into an additional 22 percent of the cases. Texas lawmakers used very broad and general language in wording the cruelty clause. 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 Texans a wide range of possible interpretations as to what constituted ill treatment.

Women defined cruelty in a variety of ways, but most commonly as physical abuse. Physical abuse provided the basis for 84 percent of all female-initiated cruelty cases. Wives often endured repeated or extreme beatings before seeking a divorce. When Elizabeth Ward turned to friends for refuge, her husband tried to force her to return home. When she refused, he threaten to kill everyone on the premises and to imprison his wife in some dark place where, as he said, “the days could not find her.” Although he wielded a pistol, Elizabeth refused to be intimidated and filed for divorce in September
Her case was not unusual. Eliza Jackson’s husband beat her as she lay in her sickbed and inflicted upon her “various indignities and indecencies too revolting to mention.” In 1877 Hannah Clark listed a series of cruelties inflicted by her husband, which caused her to live in fear for her life. On one occasion he beat her with a rope, then bound her hands and feet to the bed, where he continued to beat and choke her. At another time he beat her with a plow bridle and he often threatened her with a knife.25

A common expression used in the divorce petitions and witness depositions was that the wife “was forced to seek protection” from strangers, friends, a brother, or a father. An abusive husband not only failed to meet his obligation to protect his wife from harm, he became the evil from which others must step in and offer their protection. A man of “ungovernable temper and violent passions,” also referred to as “unmanly,” created an unnecessary societal burden and defied the sanctity of his marriage vows.

Many women feared for their own safety as well as for that of their children. The state Supreme Court strongly denounced physical abuse and issued an early ruling designed to free women who lived under even the mere threat of violence. In 1852 the Texas Supreme Court emphasized fear and apprehension of danger as an important consideration in cruelty cases. In its opinion the “duties of self preservation are paramount to those of marriage,” and the Texas divorce statute of 1841 not only authorized but also required that a union steeped in fear should be broken.26

25 Eliza Jane Jackson v. Thos. Jackson, Washington County Civil Case Papers, Case No. 2644 (1860); Hannah Clark v. Simon Clark, Harrison County Civil Case Papers, Case No. 6688 (1877). The term plow bridle may have referred to a plow line.

26 Nogees v. Nogees, 7 Texas 539 (1852); In 1848 the Texas Supreme Court ruled that an accusation had to involve a specific act rather than a general charge. It suggested several possible circumstances that might be
Texas communities neither condoned nor approved of such behavior. In addition to pro-female decisions by juries and courts, neighbors and family members harshly denounced men who exhibited violent behavior toward their wives. Completely absent from the court records is any defense of men who dared to raise a hand against their wives. Instead, members of the community often stepped in to render aid to abused women by providing medical attention, shelter, and emotional support and readily offered opinionated testimony to help these women secure a divorce. The testimonies of women who felt compelled to explain why they tolerated abuse further supports the fact that society did not expect men to beat their wives nor did it expect women to tolerate abuse. Mary Watson explained that she forgave her husband because she “yielded to the persuasion and solicitations of her said husband” and others. Mattie Young discovered her new husband’s irrational temper “to her great surprise.” The violence began two weeks after the wedding, but Mattie endured it for only a short while before leaving him. Like Mattie, Elizabeth Chappell claimed she would not have married her husband if he had shown his true nature before the nuptials.  

Men, too, were sometimes the victims of domestic violence. While not the norm, some women did assault their husbands with fists or weapons. Learanara Russum attacked her husband, “puncturing with her nails in his face and other parts.” Another aggressive wife terrorized her husband by hitting and biting him and by carrying around a considered acts of cruelty: “harsh and menacing language, neglect in sickness, or refusing the comforts and necessaries of life, etc., etc.” Wright v. Wright, 3 Texas 168 (1848).  

bottle of strychnine, which, she made clear, was to be used for his personal consumption. Mary Longinotti kept a pistol at her side with which she continually threatened her husband. She actually attempted to carry out her death threats on two occasions, but not with the gun. She first poisoned his meal. In the second incident she heaped gunpowder and matches into a pile under the sheets of his bed, hoping that somehow the concoction would explode when he lay down. Her ignorance did not preclude malicious intent.

Mathilda Gajeske found expression for negative sentiments about her husband by calling her husband "a ferocious bull, an old fool, and a trifling booby." She then clarified her attitude by firing a shotgun in his direction.²⁸

Violent women stepped out of their proper roles and behaved in unnatural ways, according to Victorian ideals of gender-appropriate behavior. When women asserted themselves in what seemed like manly ways, they tore at the very foundation of gender-role ideals. Yet, divorce records give no indication that women suffered more from breaking out of their prescribed role in this area than men did. The way in which men complained of violent wives reveals the attitude that they had about their own roles. No petitions recorded men saying that they returned the blows or even defended themselves. They gave no indication that they retaliated in any way. The compassionate marriage was one based in mutual respect and consideration. Each party believed he or she was entitled to be treated with a reasonable degree of kindness, and that he or she was compelled to behave in a kind manner even if the other party did not.

²⁸ Thomas Russum v. Learanora Russum, Harrison County Civil Case Papers, No. 3137 (1856); Washington Samuel Gajeske v. Mathilda Gajeske, Washington County Civil Case Papers, No. 4441 (1872); James v. Martha K. Lee, Harrison County Civil Case Papers, No. 3233 (1856); A. B. Longinotti v. Mary Longinotti, Harrison County Civil Case Papers, No. 6243 (1874).
Respect, love, kindness, and patience are words found throughout Texas divorce petitions. Not only was the ideal of compassionate marriage embodied in the minds of nineteenth-century divorce seekers, it was embedded in state legal precedents. Emotional gratification inherent in this type of marital arrangement dictated that the mental wellbeing was equally important to physical or material concerns. Mental cruelty charges took a wide variety of forms. The earliest type of nonphysical abuse dealt with by the Texas Supreme Court was defamation of character.

Slander cases almost always involved husbands who accused their wives of sexual immorality. In 1848, Chief Justice Hemphill, delivered an opinion in favor of Lydia Sheffield, whose husband sued for divorce on allegations that she had planned a sexual liaison and that she had been sullen at times. The court's opinion rang with sarcasm and condescension against the husband for bringing frivolous charges against his wife and, in the process, destroying her good name. The court made it clear that "occasional sulkiness or something of a gadding disposition" (on the part of the wife) did not constitute just cause for a divorce. However, impugning the reputation of a respectable woman carried much weightier consequences and should not be tolerated. In Hemphill’s words, “. . . the wounds inflicted by calumny on the delicate texture of female reputation . . . are scarcely healed, by the lapse of time.” An undeserved reputation as an immoral woman deprived a virtuous wife of certain entitlements. It might interfere with her ability to earn a living. Women were limited in job opportunities, most of which involved some type of domestic work. Potential employers might have been reluctant to bring an unchaste woman into their home. Prospective
partners for a second marriage, which was also a means to financial stability, may have been limited as well. A soiled reputation enhanced the risk of victimization at the hands of sexual predators or malicious gossips. A woman's future comfort and happiness might have hinged on her ability to maintain a good name.\textsuperscript{29}

In 1855 Mildred Bently complained that her husband spread the rumor that she indulged in sexual relations with other men in the community and with her slaves. Not only did he seek to malign her in the community, but he also made these accusations in front of her children, undermining her ability to fulfill her maternal responsibilities. Two decades later the issue was just as relevant. In 1876, divorce seeker Mary Porter's husband spread rumors that she had engaged in sexual relations with divers men and that he was not the father of all her children. Women often reported that they had suffered under the disparaging epitaph of "whore" or other crude verbal assaults on their sexuality.\textsuperscript{30}

In 1852 the court concluded that 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 sexual immorality, an allegation of theft was not of itself enough to warrant a divorce but if combined with other circumstances it might be. Again the court addressed the issue of slander in 1855, on an appeal from Harrison County. It ruled that in bringing false accusations of adultery against his wife a man would commit "an act of grossest cruelty." A second opinion that year affirmed a

\textsuperscript{29} Sheffield \textit{v.} Sheffield, 3 Texas 78 (1848).
\textsuperscript{30} Mildred Bently \textit{v.} Thomas Bently, Harrison County Civil Case Papers, No. 2860 (1855); Mary Porter \textit{Anthony v. Willis Anthony}, Harrison County Civil Case Papers, No. 6443 (1876).
wife’s right to divorce if her husband brought unjustified adultery allegations against her in his divorce suit. 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.\textsuperscript{31}

Defamation of character violated the basic principles of marriage in much the same way as physical abuse, adultery, or abandonment. Increasingly broad interpretations of the cruelty clause opened the door even further to divorce. 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 1855 the court upheld a cruelty case, wherein the most violent act inflicted on the wife was when her husband threw a hat in her face. The court ruled that the marriage was rendered insupportable by the husband’s “continued unkindness, much ill-will, a total want of love and affection.” By 1857, the Court had solidified the doctrine of mental cruelty in Texas legal tradition, by introducing the criterion of “outrages of the \textit{feelings}.” \textsuperscript{[Italics mine]} In 1870 the court offered an opinion 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.” Married couples

\textsuperscript{31} Noge\textit{ees v. Noge\textit{ees}}, 7 Texas 540 (1852); \textit{Felana Pinkard v. V. S. D. Pinkard}, 14 Texas 335 (1855);
expected reciprocal emotional support and commitment. They also expected each partner
to do his or her best to live up the prescribed chores or work assignments necessary for
the family to prosper.\textsuperscript{32}

Aside from the more serious acts of physical violence or adultery, men argued
that their wives treated them cruelly when they refused to tend properly to domestic
chores. Household duties such as laundry and meal preparation fell largely within the
wife’s domain. As scholars of women’s history have shown, plantation mistresses and
farm wives alike worked very hard on a daily basis, making crucial contributions to the
family’s upkeep. A woman who deliberately shunned household tasks defied her role as
the domestic caretaker and stood defiantly against the dictates of social custom.\textsuperscript{33}

The most common description of household or wifely duties included cleaning,
washing (laundry), cooking, and childcare. Nancy Young left her husband and children
to care for themselves for weeks at a time. She had, according to her husband, become a
“roaming, roving, wandering individual,” neglectful of all household duties and
unconcerned with the welfare of her family. The performance of daily chores seems to
have been directly connected to, if not the source of, Sarah Gaylon’s “fits of passion,”
during which she refused to do laundry or cook. In one violent outburst of temper Sarah

\textsuperscript{32} \textit{Wright v. Wright,} 3 Texas 168 (1848); \textit{Sharman v. Sharman,} 18 Texas 522 (1857); \textit{Shreck v. Shreck,} 18
Texas 578 (1870).
\textsuperscript{33} Degler, \textit{At Odds,} 8. For descriptions of daily routines of southern or frontier women see: Catherine
Clinton, \textit{The Plantation Mistress: Woman’s World in the Old South} (New York: Pantheon Books, 1982);
Catherine Clinton, \textit{Tara Revisited: Women, War, and the Plantation Legend}, New York: Abbeville Press,
1995; Elizabeth Fox-Genovese, \textit{Within The Plantation Household: Black and White Women of the Old
South} (Chapel Hill and London: The University of North Carolina Press, 1988); Ann Firor Scott, \textit{The
Southern Lady: From Pedestal to Politics, 1830-1930} (Chicago: University of Chicago Press, 1970); Julie
whirled a flat iron at her husband’s head. Apparently she had the instrument already in hand and was in the process of ironing clothes. Having finally had her fill of domestic chores, Sarah abandoned her eight-year marriage. Likewise, Susan Council used a domestic tool to inflict agony on her husband, by poking the sharp twigs of her broom into sores on his legs.34

Women such as Polly Martin may not have been actively or intentionally challenging their lot, but instead suffered from some sort of mental or emotional disorder which prevented them from living up to domestic standards. Jonathan Martin charged his wife with prolonged and continual dereliction of her duties by refusing to “attend [the children], to cloth them, to feed them.” Jonathan regularly returned from his farm labors at the end of the day to find the children hungry and crying while Sarah sat “in sullen silence,” unresponsive to their needs. Polly was “deficient in motherly tenderness” to the extent that she claimed to hate her oldest daughter. For whatever reason, Polly failed miserably to live up to the ideal of an attentive and industrious wife.35

Yet Texas wives were not merely glorified housekeepers involved in a grossly unequal labor contract, as is asserted by historian Sara Zeigler. Neither was their status only one rung above that of slaves, as other historians have asserted about women in the slaveholding South. One Harrison County wife adamantly resented her husband’s attitude, which caused him to treat her “not a wife, but as a slave.” While household

34 W. H. Young v. Nancy Young, Harrison County Civil Case Papers, No. 6351 (1875); A. S. Galyon v. Sarah Galyon, Washington County Civil Case Papers, No. 2510 (1859); Alfred Council v. Susan L. Council, Harrison County Civil Case Papers, No. 5377 (1858).
35 Johnathon Martin v. Polly Martin, Harrison County Civil Case Papers, No. 1189 (1850).
duties were indeed a part the expectation for wives, failure to fulfil them was not enough, in and of itself, to justify a divorce. Most accusations involving the dereliction of household duties involved weightier problems as well. Johnathon Martin left his wife when her behavior became prolonged and destructive to the family, actually endangering the well-being and safety of her family.²⁶

Although women dominated the domestic sphere, men were not above stepping into traditionally feminine roles. Female divorce seekers often complained to juries—and received sympathy—because their husbands had failed to care for them in illness by bringing food or other comforts. Frank Sledge specifically defined his role as a good husband to include nursing his wife through illness. Time and again witnesses condemned men for leaving their wives alone and sick, with no one to care for their needs or those of the children. Custody requests often came from husbands who believed they were better suited to rear the children than their mother.³⁷

Just as wives expected husbands to occasionally step into the role of caretaker, husbands expected their wives to assist them in providing for the family. One of James Lee’s complaints against his wife was that she would not help him run the hotel they

²⁶ Sara L. Zeigler, “Wifely Duties: Marriage, Labor, and the Common Law in Nineteenth-Century America,” Social Science History 20 (Spring 1996): 63-96. Zeigler asserts that “The employee contract within the marriage contract was the centerpiece (79).” Although her study is based only on common-law states, she asserts that even in Texas and Florida, where a combination of common law and Civil Law existed, economic dependency kept women in a subordinate position as virtual employees and legalized prostitutes (77, 79). Two primary works that present this view of Southern women as only slightly higher in station than slaves are: Catherine Clinton, Plantation Mistresses, ibid.; Scott, The Southern Lady, ibid. Clinton states that “a woman remained as securely bound to the land as her husband’s other property: shackled however enshrined, and melancholy however maintained” (179).

owned. Thomas Russum complained that his wife refused to contribute in any way
toward her support or the family's, whether through the performance of household chores
or otherwise. Agriculturists in particular depended on their wives as partners in a family
business. Occasionally petitions or witness depositions refer to a wife picking cotton or
doing some other type of fieldwork. At the very least, wives were not to interfere with
their husbands' efforts to provide. When Polly Martin left open the door to the meat-
storage house and allowed animals to carry away the family food supply, she sabotaged
her husband's efforts to provide for the family. Ideally, she should have participated in
the goal of attaining financial stability through careful efforts to preserve the provisions.
Another woman's harsh treatment of the slaves interfered with the efficient management
of the plantation. When a slave child died because of her severity, the family suffered the
practical and monetary loss of valuable human property.\(^\text{38}\)

Although most women willingly acted as helpmates, they did not want the sole
responsibility of earning a living. Wives greatly resented being forced to take public jobs
and considered it an unjust circumstance, inflicted upon them by the cruelty of their
husbands. Women forced to work found few lucrative opportunities. Most jobs involved
domestic or fieldwork, which required arduous efforts and were monetarily
unsatisfactory. Over and again the words of neglected wives portrayed the difficulty in

supporting a family. A friend of Mahala Bradford described a rather dismal existence for
the young mother, saying that "her style and manner of living has been such as might be
expected from one who supported herself from washing and ironing." The ideal husband
fit Frank Sledge's self portrayal: "[H]e supported her in a style agreed to his means,
furnishing her with a comfortable home and plenty of the necessaries and some of the
luxuries of life. . . . [H]e was to her a loving, good husband."\(^{39}\)

Texas families strongly differentiated between male and female work obligations.
Husbands and wives held one another accountable for any major, intentional deviation
from the expected roles. Courts also showed a remarkable equity in holding men and
women accountable, as shown in Table 7 of Chapter 2. Yet at the same time, couples
understood that realities might sometimes blur the boundaries, and they made appropriate
adjustments for circumstances. Emotional commitment to one another and regard for
mutual family goals often overrode the demands of gender roles.\(^{40}\)

The greater aspect of marriage, albeit more difficult to gauge than gender-specific
duties, was the emotional and spiritual commitment to one another as life-partners. The
rise of the compassionate marriage throughout the nineteenth century carried with it the
notions of individual freedom, which in turn entitled each partner to respect and honor as
autonomous persons. Spouses expected to benefit from the love, kindness, and affection
of the other. These expectations are found throughout divorce records as men and

\(^{39}\) Walter A. Stewart v. Sarah Stewart, Washington County Civil Case Papers, No. 3182 (1861); Lizzie
Sledge v. Frank Sledge, Washington County Civil Case Papers, No. 4323 (1871); Mahala Bradford v. Wm.
Bradford, Washington County Civil Case Papers, No. 5478 (1878).

\(^{40}\) In Harrison County men enjoyed a 55 percent success rate to 53 percent for women. Washington County
men and women each earned a 66 percent success rate.
women accused one another of failure to bring these things to the marriage. As they accused their spouses of lacking in these virtues, plaintiffs used these same words to defend their own actions as innocent parties. The absence of these emotional benefits brought numerous couples to divorce, the complaint citing a violation of the cruelty clause as the charge.

Victorian notions that women were moral superiors prompted women to represent themselves as paragons of virtue. Free of sexual immorality, they were also industrious, kind, affectionate, respectful, and attentive to their household duties. Ann Smith told a jury that she was “a kind, amiable, loving, and indulgent wife, always promptly and cheerfully performing her duties and obligations as a wife.” Men emphasized their role as providers, but also represented themselves as kind, affectionate, loving, patient, and morally upright. Martin Hair stated that “out of great love and affection” he had forgiven his wife’s adultery. Alfred Council, whose wife tortured him with the broom, emphatically stated that he had always been kind to his wife, hoping to live in peace with her.  

The home was to be a place of happiness and refuge and not, in the words of one Harrison County husband, a “yoke of unmitigated misery and wretchedness.” Catherine Hines filed for divorce on mental cruelty charges in 1876. Her petition clearly shows that women expected marriage to be emotionally satisfying. Her husband, James, had been “cold and indifferent towards her.” Even though they lived in the same house, he would not speak to her for days or weeks at a time. This “cruel and unusual behavior” made her

41 Anna M. Smith v. James H. Smith, Harrison County Civil Case Papers, No. 5878 (1873); Martin H. Hair.
life miserable. His final act of mental cruelty came when he refused to visit their dying daughter or to attend her funeral. According to one witness, James was a “stern, obdurate man” and this conduct “very much hurt” his wife. A former slave testified that he had never seen Mr. Hines strike his wife, but that he habitually tortured her with prolonged silences and was generally disagreeable with her. Twenty years earlier, Elizabeth Petteway contrasted her husband’s behavior with her own. She had endeavored to “make him a dutiful and affectionate wife as she was in duty and feeling bound to do, but not withstanding her efforts and desire to please and discharge her matrimonial duties” he had failed to live up to his obligations. He had disregarded “all social and moral duties” and violated his “vow to love and protect.”

Local newspapers reinforced the emotional element of marriage in numerous articles that espoused the values of the compassionate marriage and gave advice to men and women on how to behave appropriately to one another. An article from the Washington American gave a particularly colorful description of the perfect marriage. It 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

---

v. Sarah Hair, Harrison County Civil Case Papers, No. 3047 (1856); Alfred Council v. Susan L. Council, Harrison County Civil Case Papers, No. 5377 (1858).

42 Catharine L. Hines v. James R. Hines, Washington County Civil Case Papers, No. 5388 (1876); Elizabeth Petteway v. Macaijah Petteway, Harrison County Civil Case Papers, No. 750 (1859); Isaac Croom v. Elizabeth Croom, Harrison County Civil Case Papers, Case No. 2948, (1855); Roderick Phillips, Putting Asunder: A History of Divorce in Western Society (Cambridge & New York: Cambridge University Press, 1988), 451. Phillips shows that mental cruelty was already a consideration in Louisiana by the mid-1830s and by 1849 in Arkansas. In 1848 the Texas Supreme Court upheld mental cruelty as legitimate consideration in regard to slander of a wife’s reputation. In 1852 it extended mental cruelty beyond the specific circumstance of slander. The practice of considering mental abuse as at least one important component of divorce actions is evident in local cases at least as early as 1847. Mary J. Starnes v. Arthur G. Starnes, Washington County Civil Case Papers, No. 8 (1847). Some of the earlier cases of ill treatment do not give specific information as to the nature of the charges.
of a compassionate 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, going 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!"\(^43\)

The realities and ideals of nineteenth-century Texas marriages mirror the image depicted in the wedding-ring quilt pattern pieced by so many women of the period. Each ring represents the separate sphere of duties for each partner. For men, the obligations to provide and protect dominated the circle. For women, the household duties and daily childcare filled the ring. Marital unity—the marriage itself—is depicted by a generous overlapping of those rings. This section of overlap supported the union and housed the mutual goals and responsibilities of the couple. Here each spouse benefited from, and contributed to, the emotional and spiritual health of the union. But unlike the stationary quilt pattern, the gender-specific spheres were moveable, allowing the overlap to encompass more of one of the partner's duties. As circumstances necessitated men and women compensated for shortages in their spouses' contributions: Men acted as caretakers when women could not, and women helped with farm or business activities when required.

This canon of mutual benefit and responsibility carried over to property distribution and child custody settlements. Male and female plaintiffs alike put their fates in the hands of the court system. Had they not expected to receive a fair settlement, they

would not have accessed the courts in growing numbers. More economically and socially vulnerable than men, women would have been hurt by inequitable practices, yet they initiated the majority of divorce actions—54 percent in Washington and 57 in Harrison County.

Did Texas property laws actually encourage women to seek divorce, who might otherwise have resigned themselves to staying married for the sake of financial security? Texas women enjoyed a high legal status and acted with an awareness of their legal rights when filing for divorce. They boldly asserted claims to their share of the property, making sure that all community and separate property was accounted for in inventories, and secured injunctions against husbands to prevent them from divesting community property before a divorce settlement could be reached. How the courts reacted to these claims shows that women benefited from a societal recognition of their rights.

The divorce statute of 1841 stated that courts should divide estates between the parties “in such a way as shall seem just and right, having due regard to the rights of each party and their children.” Most divorce settlements adhered to the principle set forth under Texas community property statutes, dividing the community property equally between the parting spouses and reserving separate estates for the appropriate parties. This was not always the case, however. In 1855, Chief Justice Hemphill offered the opinion that under certain circumstances even separate property might be subject to division, “especially in favor of the wife.” Women no less than men expected to receive a fair portion of the family estate to which they were legally entitled.
In 1859 Milton Maxwell deserted his wife, Mary, having lived with her for only six months. Mary was then forced to support herself, earning a “a very modest allowance.” Ten years later Mary learned that Milton had recently purchased some land. She sued for divorce, requesting $25 per month alimony during pendency of the suit and a final settlement of half of his property. The court granted Mary’s requests, and Milton lost half of his wealth to the woman he had abandoned a decade earlier. When Mary Beazley’s husband left her for another woman, he forfeited all rights to the estate. In addition to her separate property, the court awarded Mary half of the community property in her own right and control of the second half on behalf of her children. Magdalene Newmann is yet another example. Unable to rely on her drunken husband for support, she established a small business selling cakes, candies, “confectionaries” [sic] and knickknacks. Successful management and industry not only allowed her to support and educate her children; she also put away a modest saving. She was devastated, however, to learn that Frank had taken her money and “squandered it in drunkenness and debauchery.” Magdalene’s petition emphasized that she had built up the business by herself and that her husband made no contributions to the business or the family’s maintenance. The court awarded her all of the community property and her separate property as well as custody of the children.44

Even guilty women were entitled to equitable property distribution. A. M. Arnot won a divorce when he proved that his wife had committed adultery. Knowing that she

44 “An Act concerning Divorce and Alimony,” Section 4, Gammel, comp., Laws of Texas, II, 483; Mary Maxwell v. Milton Maxwell, Washington County Civil Case Papers, Case No. 3991, (1870); Mary E. Beazley v. Edward E. Beazley, Harrison County Civil Case Papers, Case No. 4458 (1860); Magdalene
was still entitled to half the community property, he set about deeding it to his children. The same jury that found Lucinda guilty of adultery found her husband guilty of fraud. An out-of-court settlement left Lucinda with the homestead plus one-third of the community property. Her husband kept his separate property ($650) and one-third of the community property. The final one-third went to the maintenance and education of the children under their father’s care.\footnote{A. M. Arnot v. Lucinda Arnot, Harrison County Civil Case Papers, Case No. 2286 (1852).}

Property issues sometimes became the central focus of divorce actions for families with a significant amount of property. Yet, most Texas divorce seekers were not extremely wealthy, especially after the Civil War. The amount of taxable property for the average divorce seeker was on a par with, or fell below, that of the average county citizen. Nonetheless, even less wealthy women sued for divorce and demanded a fair share of what property the couple did have. Texas law gave women significant control of and access to property as well as the right to act as their own agents. An attitude of independence and confidence is found among nineteenth-century Texas women that may have been lacking in more restrictive states. Texas women benefited from a long heritage of women’s property rights and protection, which they saw as an entitlement due to them as citizens and autonomous individuals. Living in a state where, primarily because of Spanish influence, the laws and courts strongly supported women’s property rights may well have given women psychological advantages in seeking divorce.\footnote{For a discussion on the status of Texas women under Spanish law, see Donald Chipman and Harriett Denise Joseph, “Notable Men and Women of Spanish Texas,” Unpublished manuscript. Forthcoming from The University of Texas Press, 1999; Jean Stuntz, “The Persistence of Castillian Law in Frontier Texas: The...}
As with property distribution, no institutional gender bias influenced child custody arrangements. Custody went to the party who won the case in almost every instance. That is, it went to the parent, whether husband or wife, who demonstrated the higher moral standard and who had least violated the social ideals for family behavior. In only one instance did the court decide to divide the children between the parents, specifying that once the children reached the age of fourteen they would be allowed to decide for themselves with whom they would live. The few remaining exceptions involved out-of-court arrangements made by the mutual consent of both parties. Two families agreed to divide the children between both parents. In both cases the boys went to the father and the girls or infants to the mother. In two other situations, the winning parties—one man and one woman—requested that their spouses take the children. The courts, however, showed no gender preference in assigning custodial privilege.

Throughout the nineteenth century, custody laws across the United States evolved to favor mothers. Women's rights advocates argued that legislatures and courts should give women greater consideration in the guardianship of their own children at least as early as 1848 with the Seneca Falls Convention. Yet by this time Texas women already had equal consideration under the 1841 divorce statute. Section 13 of the statute stated that the district courts had "power in all cases of separation, between man and wife, 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 . . .” Yet at no point in the four decades of this study did courts favor one gender over the other in parental rights.

By mid-century the Victorian notion of women as the natural caretaker of young children influenced American courts to adopt the “tender years doctrine,” which favored mothers as guardians of young children. A preference for mothers, unless they specifically proved unfit, came to dominate American courts. California courts, for example, awarded female plaintiffs 91 percent of their custody requests, whereas male plaintiffs won only 37 percent of their requests.47

Texas courts, however, consistently awarded custody based on guilt or innocence. Men won custody in equal proportion to women. Individuals who failed to live up to their gender-appropriate obligations—male or female—violated the terms of the marriage contract and forfeited any moral claim to their children. Courts held both genders accountable and considered both capable of rearing children in the absence of the other. Texas courts looked at marriage as a contract between equals. Thus, when couples chose to work out a custody arrangement on their own, the courts honored the agreement, just as they did with property settlement.

Equitable distribution of decisions between men and women, fairness in property settlements, and even-handedness in custody settlements indicate that Texas courts treated men and women as equal but separate partners in the marriage. That men and

women appealed to the courts in almost equal proportions shows that both genders could be equally dissatisfied in marriage. It also shows a belief on the part of both men and women that they would receive a just redress upon appeal to the courts. We may never know how many married couples chose to suffer under adverse conditions without seeking a divorce. But the divorce actions filed in Washington and Harrison Counties show that when individuals decided to end unsatisfactory relationships, courts as well as family and friends supported their efforts. Texas courts readily dissolved marriages, freeing individuals to fashion new lives for themselves, unencumbered by a "yoke of unmitigated misery."

CHAPTER 5

AFRICAN-AMERICAN DIVORCE SEEKERS

June 19, 1865, marked the first day of freedom for Texas slaves. On December 26, 1866, Wiley Hubert became the first African-American in Washington County to avail himself of a free citizen’s right to sue for divorce. Wiley and his wife, Sallie, entered into a slave marriage in 1851. In a brief petition, Wiley accused his wife of adultery, saying that Sallie had alienated him from her affections. Moreover, she had become “loose” and immoral, bestowing her affections on several other men. Wiley was the first of forty-nine Washington County freedmen to file for divorce between emancipation and 1879 (inclusive). These cases represent 28 percent of the county’s divorce actions filed after 1865. In Harrison County thirteen African-American couples comprised 15 percent of that county’s postwar divorce suits.¹

These numbers are disproportionately low compared to the majority-black populations of both counties. Unaccustomed to having legal recourse for domestic troubles, freedmen may have opted for private solutions, such as desertion or mutually agreed upon separation. It has been argued that the rural setting in which most black

¹ Wiley Hubert v. Sallie Hubert, District Court Civil Case Papers, Office of the District Clerk, Washington County Court House, Brenham, Texas, No. 3569 (1866). Hereafter cited as Washington County Civil Case Papers. Wiley Hubert’s petition did not make any reference to the marriage having been legalized. At the time of his divorce suit, slave marriages had not yet been recognized by Texas law, yet he felt compelled to seek a legal divorce.
Texans lived contributed to marital stability. Many solicited help from the Freedman’s Bureau. But the Freedman’s Bureau was only a temporary agency and could not be a permanent aid.

The fact that newly freed slaves had any access to the court system in such matters and that they took advantage of that access is noteworthy. Those who chose to obtain a divorce recognized the value of participation in the legal system. Legal divorce gave validity to their marriages. It also allowed for legal second marriages. Unofficial second “marriages” were unsanctioned bigamous relations, and children from those unions were illegitimate. They also may have recognized the importance of having legal papers regarding property settlements. Although few African-American families possessed much wealth, what they did have was hard earned and valuable to them. Having documentation of ownership was a valuable tool in establishing economic and social stability. Moreover, availing oneself of legal protections and rights was to engage in an activity that affirmed status as a free man or woman—a psychological victory and practical step toward true autonomy.²

An initial examination of Washington County and Harrison County divorce actions found only five cases indicating that the couples were African American. The same complaints and defenses, the same language and terminology, characterized the divorce petitions of both races, making them indistinguishable by race. Closer investigation, primarily through the use of census records, identified a total of sixty-two

divorcing couples as African Americans. Statistical data were then used to determine any significant differences in the two groups.

As the statistics presented in Chapter 2 show, freedmen were among the most impoverished divorce seekers. As in the general population, a major disparity of wealth existed between the newly freed slaves and white couples. Blacks reported an average of $65 in taxable property, far less than the $2,995 average for whites. Like whites, most earned a living through agriculture, but unlike whites, they usually did not own the land they worked. As depicted in Charts 7 and 8, 90 percent of black men earned their living by performing some type of wage labor, including farm laborer, as opposed to 20 percent of the white divorce seekers. It also showed that more African-American women worked in wage jobs than white women did—70 percent compared to 3 percent of the white female divorce seekers. Their work was largely that of farm laborer or domestic servant. Necessity demanded that some of these women work while married. Most remained single after divorcing and worked to support themselves. White women, on the other hand, disappear from the local census count and tax rolls, indicating that they remarried or moved or both. Black women were more geographically persistent than white women were and they were less inclined to remarry.  

Divorced black couples were more similar than dissimilar to white divorce seekers. Black men and women both filed for divorce after an average of six years of marriage, only slightly less than white couples who filed on the average after seven and a

half years. No appreciable difference in the age at marriage existed between the white and black couples. Most divorcing couples of both races had no children. Most gave no indication of a previous marriage. Women in general filed 54 percent of all divorce suits, only marginally more often than men. Likewise, African-American men filed an almost equal number of petitions to African-American women—thirty-two men to thirty women. Table 7 of Chapter 2 shows a remarkably even overall success rate for blacks and whites. In Washington County whites enjoyed an overall-success rate of 90 percent, blacks of 88 percent. Harrison County whites earned an 87 percent overall-success rate compared to 84 percent for freedmen.

Yet an interesting difference exists within the success rates: Courts tended to dismiss the cases of black divorce seekers somewhat more often than those of whites, and white plaintiffs tended to voluntarily withdraw their suits more than black plaintiffs. Court dismissals are difficult to analyze, since usually no reasons were given for the dismissal. Dismissal could result from jurisdictional matters, failure to pay securities, or failure to submit a proper petition. The voluntary withdrawals are more telling, however. A possible reason for this difference between blacks and whites might be that white defendants more readily conformed to their spouses' wishes upon threat of divorce, thus, rendering the divorce action unnecessary. Were blacks, then, less concerned with the stigma of divorce or less interested in maintaining family relationships? It could also mean that freedmen who went to the trouble of filing divorce actions were more adamant in their demands, perhaps refusing to remain yoked to anyone who encumbered their newly gained freedom.
The latter is more probable. The family unit was extremely important to slaves and freedmen. Nuclear families were not uncommon among Texas slaves. The family unit provided a bulwark against the daily oppression inherent in slavery, and this need for a supportive family carried over into freedom. Life for the former slaves was difficult at best, and the family unit provided a place of refuge and emotional revitalization. It also helped individuals to survive by pooling monetary or material resources. In addition, the legalization of marriage between the former slaves affirmed their freedom. In slavery, the will of masters had determined the degree of stability a slave family could enjoy. No law protected slave families from forced separation or even gave them the dignity of a legal marriage. Upon receiving their freedom, black couples throughout the South flocked to have their marriages legitimized, giving dignity and sanctity to relationships, as well as legitimacy to their children. It is unlikely that these individuals were less committed to marriage than whites, who for so long had taken the privilege of legal marriage and family unity for granted. 4

Three divorce actions in this study involved couples who married while in slavery. Although Texas law did not officially recognize slave marriages until the adoption of the 1869 constitution, local courts did accept them as legally binding arrangements and entertained these divorce suits. In the case of Wiley Hubert, the jury found in the plaintiff’s favor and granted him a decree of divorcement. Alfred and Sallie Cooper began living together as man and wife in 1859, having obtained the consent of

their masters. Sallie abandoned Alfred in 1870, and he sued for divorce in 1874. County records contain no final decision for this case. The third divorce suit was that of Cloe Ann and Darias Jones. Cloe sued on grounds of abandonment and nonsupport in 1879, but dropped her case.5

These couples valued their “contracts” of marriage, and as freedmen they wanted an official end to their unofficial ties. These are not cases of forced marriage in which unhappy individuals rushed to distance themselves from their partners as soon as they were free to do so. The Huberts filed for divorce about a year and a half after they received their freedom, but the Coopers remained committed to one another for nine years after emancipation; the Joneses lived together for fourteen years after they gained their freedom. Rather, these appear to have been unions of choice, with emotional relevance that persisted long after the bonds of slavery were lifted. All other African-American cases involved post-emancipation unions, entered freely by autonomous individuals. The freedom to select one’s life partner, without permission from any other party, was a privilege that many African Americans embraced with zeal.6

The new freedom to marry brought with it the right to sever marital bonds, either legally through divorce or unofficial separation. When African-American men sued for divorce they most often charged their wives with abandonment or adultery, as was the

5 Texas Constitution of 1869, Art. XII, Sec. 27.
6 Alfred Cooper v. Sallie Cooper, District Court Case Papers, Office of the District Clerk, Harrison County Courthouse, Marshall, Texas, No. 6182 (1874); Hereafter cited as Harrison County Civil Case Papers; Cloe Ann Jones v. Darias Jones, Harrison County Civil Case Papers, No. 6864 (1879); District Court Civil Minutes, District Court Case Papers, Office of the District Clerk, Harrison County Courthouse, Marshall, Book H, 122. Hereafter cited as Harrison County Civil Minutes.
case with men in general. Fifty-three percent of the male initiated suits alleged a combination of abandonment and adultery (16 out of 30 cases for which a decision is known). Nine cases (30 percent) charged abandonment only and four charged adultery only. No male-initiated suits alleged any type of cruelty other than the hardship associated with these charges. Of the twenty cases that included adultery charges, fifteen women left their husbands to live with another man. These female defendants took full advantage of their new right to choose and to reject mates according to personal preference. Like white women, they left relationships that proved unsatisfactory and acquired new mates that they hoped would better suit their needs and desires. (Refer to Table 5 in Chapter 3 for the specific number of cases filed by African-American men.)

The remaining five women took multiple sexual partners or engaged in serial monogamy. Sallie Smith exercised her prerogative to experiment with mate selection when she left her husband, Taylor Smith, to live with Mack Anderson in 1870. When the relationship with Anderson no longer suited her, she switched partners yet again. Each time she took on the name of her current partner, living as though she were married to him. Like most divorcing females—black and white—it was not marriage that Sallie rejected but particular men. Anna Johnson showed no discretion in her sexual encounters, giving employers and neighbors several opportunities to testify against her. The lack of social and economic stability for blacks probably contributed to the roaming nature with which these women sought ways to achieve security. Anna Johnson’s story included several residences as she moved between husband, employers, and lovers. As
with white women, freedwomen opted to exercise their right of mate selection even after taking marriage vows.\(^7\)

Blacks and whites shared the same ideas about morality and the appropriateness of fidelity within marriage. In their petitions, husbands emphasized the immoral nature of adultery. Black women who asserted sexual freedom suffered the epithets of "whore," "strumpet," and "common lewd woman." Isaac Wright, as did other husbands, described his wife's adultery as an indulgence in carnal and unholy lust. Virtuous women defended their honor against husbands who made slanderous charges of immorality or used sexually explicit or derogatory language to insult their wives. These women demanded the same status that white women enjoyed within compassionate marriages. As with white men, the responsibility of a husband to protect his wife extended to preserving her good name. Sexually and economically vulnerable, black women could scarcely afford reputations as loose or accessible women. Destroying a wife's good name might open her to abuse from sexual predators or cause her to be shunned by the community. Black women wanted the same rights to protection and dignity that were afforded white women. To achieve this goal they had to maintain chaste and virtuous reputations. Publicly demanding redress for verbal assaults on their sexual integrity was one way they did this.\(^8\)

---

\(^7\) Zingo Sloan v. Ada Sloan, Washington County Civil Case Papers, No. 6876 (1879); Henry Johnson v. Ann Johnson, Washington County Civil Case Papers, No. 5537 (1879); Taylor Smith v. Sallie Smith falias Sallie Reavis, Washington County Civil Case Papers, No. 5301 (1876); Isaac John Wright v. Harriet Wright Washington County Civil Case Papers, No. 3797 (1868).

The ideals of domesticity regarding household chores found in white divorce actions were less apparent in those filed by African Americans. While some petitions did include the less tangible notions of compassionate marriage—affection, kindness, and so forth—no allegations regarding specific work obligations were made against black women. Husbands included no accusations that wives failed to cook, clean, or do laundry in their petitions. The ideals of motherhood were somewhat more prevalent. As with the general pattern, most African-American divorce couples had no children. Yet, those who did adhered to the belief that mothers should be kind and instructive caretakers, as is seen in the petition filed by George Bosteck. George argued that Hannah Bosteck’s cruelty to her stepchildren forced them to find another place to live and that her adulterous activities had set a negative example, all of which was contrary to appropriate behavior for a mother. Again similar to whites, husbands and wives both requested custody of their children and based their arguments on their already having shown a capacity to provide for and train up the children in a proper manner.  

Infidelity on the part of husbands was of little concern to black women who sought divorce. As depicted in Table 5, black women used cruelty and abandonment charges most frequently, citing only five instances of adultery. Cruelty charges were either the only charge or were one of a combination of charges in over half of the female-initiated suits (54 percent). African-American women always defined cruelty to include physical abuse. Although they sometimes cited emotional strain or verbal assault as a

---

9 Geo. Bosteck v. Hannah Bosteck, Washington County Civil Case Papers, No. 4303 (1871). Freedman’s Bureau agents reported that black women often sought help from them, complaining that their husbands had deserted them and abused them physically. See Crouch, The Freedman’s Bureau and Black Texans, 58.
part of the scenario, physical assaults were never absent from the allegations. Some of these women suffered abuse at the hands of their husbands as severe as any they might have encountered under slavery. Yet, now they could refuse to live under such conditions. Laura Whitaker endured six months of violent assaults by her husband before leaving. In an effort to protect herself she sought refuge among friends. After she attempted reconciliation, the beatings worsened. One hot August day, her husband accosted her as she was working in the field and beat her. Laura, severely wounded and alone, had great difficulty making her way home. On another occasion he inflicted such blows as to leave her blind for several days. Refusing to tolerate these assaults any longer, Laura returned to live “under the protection” of her father.10

Like whites, black families considered this abuse wrong and intolerable in a marriage. Witnesses supported Mary Smith’s assertion that her husband, Luke, had exhibited “unmanly” behavior. “Unmindful of his sacred marriage vows and of his duty as a husband and forgetful even of his manhood … [Luke] show[ed] a wicked and depraved nature,” by cruelly inflicting bodily abuse. Mary told her husband that she could no longer live with it and left the relationship. In 1877 she filed for divorce, having established a new relationship with a more acceptable mate. Mary Bradford’s husband beat her with a rope and choked her until she was “almost insensible.” In January, 1876, she fled to a friend’s house, saying that she dared not return. Sallie Hall’s turbulent and

10 Laura Whitaker v Felix Whitaker, Washington County Civil Case Papers, No. 4587 (1873).
violent marriage lasted only six months before she initiated a divorce action against her husband.\(^{11}\)

Abandonment charges comprised one third of the female-initiated suits and figured into an additional 16 percent; That is, women brought allegations of abandonment in exactly half of their suits. These wives complained of the same problems associated with abandonment as white women. They were left without means to support themselves or their children. Freedmen embraced the notion that providing for the material need of the family was primarily a masculine responsibility. When George Bosteck accused his wife of adultery, he defended himself as a good husband who had loved, cherished, and provided a comfortable home for his wife. Men who failed to live up to their obligation to provide for their families were unfit husbands.\(^{12}\)

Drunkenness, prevalent in so many of the nonsupport allegations in white divorce actions, did not play a major role in African-American suits. Mary Smith reported that her husband’s violence began after eight years of marriage, but gave no indication of the reason for the change. Alex Bradford lived with his wife more than three years before he began his “unkind and tyrannical behavior.” Although we may speculate that intemperance caused these sudden alterations in behavior, the petitioners did not blame alcohol for their husband’s cruelty or neglect. Only one African-American petitioner,

\(^{11}\) *Mary Smith v. Luke Smith*, Washington County Civil Case Papers, No. 5347 (1877); *Mary Bradford v. Alex Bradford*, Washington County Civil Case Papers, No. 5413 (1879); *Sallie Hall v. Moses Hall*, Harrison County Civil Case Papers, No. 6645 (1878).

Sarah Hackworth, claimed that her husband's "drunken and idle habits" had destroyed her marriage.\textsuperscript{13}

In general, African-American divorce seekers brought the same expectations to marriage as white couples. Fidelity within a monogamous relationship, mutual emotional support, and a gender-based division of labor were the ideal. As with many white families, a complete division of responsibility along gender lines was not always practical. Nonetheless, black Texas couples strove for the ideal of a marriage in which the husband provided for his wife and protected her to the best of his ability from internal and external dangers. She should not live in fear of poverty or abuse because of his refusal to meet these obligations. When the husband fulfilled these duties, he freed his wife to pursue her domestic duties. Black women wanted to engage in the ideals of domesticity and separate-sphere ideology and many refused to engage in wage labor after emancipation. As one historian has said, "The coming of emancipation then offered black women the possibility of returning to the home, and gave black men a powerful sense of agency over their own lives and responsibility for their families." Participation in the gender norms of white society reaffirmed the black man's or woman's new status as a free citizen, with new responsibilities. By holding one another accountable for gender-specific obligations within the marriage, husbands and wives asserted their freedom in the larger context of society.\textsuperscript{14}

\textsuperscript{13} Sarah Hackworth v Nick Hackworth, Washington County Civil Case Papers, No. 4903 (1874).
\textsuperscript{14} Winegarten, Black Women in Texas, 43; Jim Cullen, "It's a Man Now": Gender and African American Men," in Divided Houses: Gender and the Civil War, ed. Catherine Clinton & Nina Silber (New York & Oxford: Oxford University Press, 1992), 90.
Individuals married of their own choice. Inherent in that right to choose was the right to reject. Individuals selected mates for personal reasons and demanded reciprocity and accountability from their chosen spouses. Like whites divorce seekers, black plaintiffs expressed their expectations in Victorian terms associated with the emotional and spiritual nature of the marriage union. Indiana Vickers told a jury that she "made [her husband] an attentive, industrious, economical, and prudent wife, giving him no cause to leave her..." Isaac Wright, on the other hand, had been “true and faithful in the performance of his duties as a husband.” Spouses who strove to live up to the accepted ideals acted toward one another with kindness, tenderness, and patience. Failure to incorporate those things in a marriage was to fail in one’s contractual obligations.\(^{15}\)

Black witnesses affirmed that they held to the same values as the divorcing couples. When black jurors made decisions based on these complaints they passed judgement on the values themselves. Witness testimony and jury decisions, therefore, confirmed that the values found in the petitions of African-American divorce seekers reflected values within the black community as a whole. A few blacks testified in white trials as well. Their testimony also demonstrated the like-mindedness between whites and blacks on the subject of spousal obligations. For example, Susan Edwards, a former slave, testified on behalf of her neighbor, Mahala Bradford, against her adulterous and absentee husband. Edwards also assisted the plaintiff by offering her a place to sleep when her estranged husband returned to the home. Peter Bostick offered opinionated

\(^{15}\) Indiana Vickers v. Henry Vickers, Harrison County Civil Case Papers, No. 6738 (1878); Orville Vernon Burton, In My Father’s House Are Many Mansions: Family, Community in Edgefield, South Carolina
testimony against his former master, James Hines, in 1876, saying that he was a rough and disagreeable man whose behavior toward his wife grew worse through the years. Bostick qualified these opinions, and thus his own views on appropriate husbandly behavior, by saying that he had never seen Hines beat or strike his wife, but that in anger he would go for sustained periods of time without speaking to her or otherwise acknowledging her presence. This harsh treatment had brought on “spells of nervous prostration” in Mrs. Hines.16

Why did so many black men and women voluntarily put their fate in the hands of a civil government under white domination? As with women in general, blacks men and women would not have made themselves vulnerable without the assumption that they would benefit from their actions. If they had expected to be harassed or have their petitions summarily denied, would they have not avoided the process altogether?

Perhaps, this was true for some individuals in unsatisfying relationships, but not for the sixty-two couples who ventured into the courts of Washington and Harrison Counties. An examination of the dynamics at work in each of these counties will clarify the actions of African-American divorce seekers. The divorce records in Washington County differed distinctly from those in Harrison County, where the general pattern of success and accessibility to the courts did not apply.

16 Mahala Bradford v. Wm. Bradford, Washington County Civil Case Papers, No. 5478 (1878); Catharine L. Hines v. James R. Hines, Washington County Civil Case Papers, No. 5388 (1876). “Julia Crum (a colored women)” was subpoenaed to testify on behalf of the defendant in the case of Margaret Matchett v. J. L. Matchett Washington County Civil Case Papers, No. 5283 (1876).
In Harrison County thirteen blacks petitioned the district court for divorce from emancipation through 1879. Rhody Morton was the first to attempt the process in 1869. The court dismissed her case. Two years later Moses Butler filed for divorce, but the court dismissed his request also. Another freedwoman, Sallie Reed, turned to the court for help 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. Out of the thirteen cases initiated, only four actually went to trial. Three of those plaintiffs received a decree of divorcement, the other case records contain no decision. All other plaintiffs withdrew their suits voluntarily. Harrison County blacks had little success in obtaining divorces. The three pro-plaintiff decisions equal 23 percent of the thirteen cases. Combining these three with those cases that plaintiffs voluntarily withdrew brings the overall-success rate to 69 percent.

Rhody Morton, Moses Butler, and Sallie Reed, may have been encouraged to engage in the legal process by political events. Republicans were elected to office that year largely because of high black votes. Two blacks were elected that year as delegates to the constitutional convention. By 1869 Republicans had won every important county office. Between 1865 and 1870 a Freedmen's Bureau agent was stationed at Marshall. Federal troops held white-on-black violence to a minimum. Even the conservatives began to court black votes in hopes of regaining control of political offices. Redemption came to Harrison County five years after the rest of the state in 1878.17

But apparently, most Harrison County blacks continued to live under intimidation and preferred to keep their marital problems private or take them before the Freedman's agent. The courts had ignored early efforts by blacks to obtain divorces, and blacks made few other attempts to file divorce actions until 1878. Reconstruction was a hotly debated issue in Harrison County. Political tension ran high in this community of strong Southern leanings among whites. Slow growth in the economy and population most certainly contributed to societal anxieties. Blacks apparently reacted to the tension by keeping personal matters to themselves. Ironically, it was after Democrats regained local control that over half of the black divorce seekers initiated their suits.

Washington County divorce records present a different picture. Not only did they bring more divorce actions than Harrison County blacks; they enjoyed more success. Forty-nine divorce actions were made by African-Americans. As early as 1866, blacks began to take advantage of the court system. Washington County courts dismissed only five freedmen cases over a fourteen-year period. Plaintiffs enjoyed a 63 percent success rate (31 pro-plaintiff decisions). When voluntarily withdrawn cases are added to the number, the overall-success rate rises to 82 percent. In addition, all black witnesses allowed to testify in white divorce trials did so in Washington County.\(^\text{18}\)

The decisions handed down by these courts show no significant differences in the treatment of divorce seekers based on race. Black plaintiffs almost always won their cases and custody. Custody issues were handled in much the same way as white cases, although it applied to only a few couples. Likewise, property settlements reveal the same

\(^{18}\) Of the remaining four cases, one was a pro-defendant decision and the others have no recorded decisions.
even-handed attitude between black men and women as between white men and women. Those few black divorce seekers who owned property listed it in terms of separate and community property and courts divided it appropriately.

As in Harrison County, the Reconstruction politics of Washington County took their toll on the peace and stability of the citizens. Yet, blacks seemed to have enjoyed a somewhat less oppressive situation than in Harrison County. In the 1860s and 1870s an influx of German immigrants boosted the county population. Slavery was not a long-standing tradition among the immigrants and they favored Republican political views. Their presence bolstered the Republican Party with genuine and long-term ideological support and mollified racial tensions. Republicans controlled county politics until 1884, mainly because of the German and African-American voters. Germans were usually farmers whose arrival stimulated the postwar economy. The economic boost and diversity that the Germans brought to the county may well have accounted for a lower proportion of resentment against blacks. This is not to say that Washington County was free from animosity or resentment toward the freedmen, but these elements probably were not as universal as in Harrison County.19

Donald Nieman has shown that blacks in Washington County participated in the political and legal system in very real ways during this period. With Republican domination, blacks held some local political positions. They even won most of the nominations for seats in the state legislature. Nieman also found that black men

comprised 40 percent of jurors for criminal cases between 1870 and 1884, giving them a considerable amount of power. Even after the state legislature introduced a literacy requirement for jurors in 1876, juries still had enough black members to give them a real influence on the outcome of trials. Although no one has done such a study of the civil court system specifically, it is reasonable to assume that blacks would have enjoyed the same responsibilities there. Nieman found that in criminal cases black jurors earnestly embraced their responsibilities and rendered just decisions based on fact, even against black defendants. There is no reason to doubt that this was the case in civil court cases as well. Under these circumstances blacks would have developed a greater trust for the legal system and become more inclined to take advantage of the process for their own benefit.\(^{20}\)

With emancipation came the struggle to form new identities for themselves as free men and women. Freedmen families embraced white gender norms, although turbulent times sometimes prevented them from living up to these ideals completely. They recognized that freedom brought responsibility, accountability, and access to the legal system. The individuals who sued for divorce availed themselves of a citizen’s right. As free individuals they not only exercised their right to legal marriage; they also embraced the congruent right to have a marriage contract severed. They did not take lightly the freedom of choice or the liberty to pursue personal happiness. Rather, black divorce seekers took a bold step to ensure their participation in civil government by putting their fate in the hands of district courts.

CHAPTER 6

A CASE STUDY

The divorce records of Washington and Harrison Counties displayed a wide variety of circumstances and degrees of complexity that could govern the lives of nineteenth-century Texas families. By way of conclusion and to acquaint the reader with the variety of dynamics that were inherent in many divorce actions, a short case study is offered. *Mary Stuckert vs. A. [Albert] Stuckert*, a Washington County case, was chosen not as a “typical” case, since no one case would fit perfectly the profile established in this study, but because it incorporated many of the elements found throughout the divorce records: a property dispute, a struggle over child custody, the intervention of family or friends, testimony by witness, and a clear expression of the ideals of compassionate marriage and gender-appropriate behavior.\(^1\)

Thirty-one years old and pregnant with her sixth child, Mary Stuckert filed a petition for divorce from Albert Stuckert, on November 14, 1868, just four days after her twelfth wedding anniversary. She based her case on allegations of cruelty. According to Mary, Albert had grown “forgetful of his marital vows” and had for years “been guilty of

\(^1\) *Mary Stuckert vs. A. Stuckert*, District Court Civil Case Papers, Office of the District Clerk, Washington County, Brenham, Texas, Case No. 3874; District Court Civil Minutes, Office of the District Clerk, Washington County, Brenham, Texas, Book I, 100, 137. Unless otherwise noted these case papers are the source of all the facts cited concerning the Stuckert divorce.
petty tryannies and annoyances endeavoring to render [her] life miserable.” He had refused to allow her to communicate with family or friends and burned her books. Mary’s charges went far beyond this mental cruelty to allege repeated acts of violence. Family and friends confirmed her accusations of physical abuse. Since an early Supreme Court ruling demanded that specific instances be cited for the general charges, she focused her case on two recent examples.²

The most poignant testimony came from her young daughters. Eleven-year-old Meta stated that her father often started quarrels with her mother. Meta had seen him strike her mother on several occasions. Once, she testified, her mother sat working at the sewing machine when her “father pretended to know it better.” He grabbed his wife by the hair, pulled her to the floor, then proceeded to kick her in the stomach and side before throwing her across the room. Nine-year-old Hermina also stood watching.

The second incident led directly to their separation and Mary’s suit for divorce. Albert wanted his daughters to assist him in roping a stallion. He instructed them to stand in front of an open corner of the fence to prevent the horse from running out of the corral. When the stallion bounded past the children, Albert became enraged and started to whip Meta with a rope that he had intended for use on the horse. Mary intervened to protect her daughter, calling his behavior cruel. Angered that she dared interfere with his version of parental discipline, Albert turned his rage on his wife. Mary picked up a stick to defend herself and her unborn child, but he wrenched it from her hand and used it to

² Nogees v. Nogees, 7 Texas 541 (1852); Mary Taylor v. Charles L. Taylor, 18 Texas 516 (1857); John D. Wright vs. Margaret T. Wright 3 Texas 168 (1848).
beat her mercilessly. Young Meta, unable to watch, ran to a hiding place. In court Albert produced character witnesses from among his business acquaintances and neighbors, but none could counter the compelling testimony of his own children.\(^3\)

Mary’s stepfather, Rudolph Richter, a resident of Burnet County, had made a short visit to the Stuckert home the night prior to the incident in the corral. He had left for home that morning, but planned to stop for a visit with friends who lived nearby. Knowing this, Mary fled to the neighbor’s house to seek help from her stepfather. Richter’s testimony revealed a number of important aspects to this case. Upon seeing his daughter’s condition, he immediately returned to confront her abuser. Unwilling to admit in court that he had encouraged Mary to leave her husband, Richter stated that he initially accepted Albert’s excuses, in hopes of a peaceful solution. Yet, his actions depicted a very protective demeanor. He refused to leave his daughter to the mercy of her husband. Instead, he secured a safe, temporary home for her with a neighbor, Mrs. Conely. Mary had agreed to this arrangement because it allowed her to remain near her children until she could make more permanent arrangements.

In court, Richter offered very damaging testimony about Albert’s character. Several years earlier Albert sent a letter to his father-in-law in which he referred to having beaten Mary. Richter wisely preserved the letter and gladly offered it as evidence. He also told the court that during the recent Civil War, Albert left his wife and children alone under the pretext of serving in the army. In fact, they discovered that he had been hiding out, cowardly avoiding the war. As for Mary, her stepfather staunchly defended

\(^3\) The child, Mina, was born during the separation and prior to the final divorce settlement.
her as a moral, intelligent woman and a capable mother.

Clearly, Rudolph Richter exemplified the better aspects of domestic paternalism, while Albert Stuckert represented the worst of masculine tyranny. Richter lived up to the ideal of Southern manhood by protecting and providing for his daughter. As a married woman, Mary Stuckert expected her husband to meet his obligations by securing for her material needs and a safe environment. Instead, not only did he neglect to do these things; he actually became the object of her fears, forcing Mary to seek protection elsewhere. His unmanly behavior as a draft dodger certainly did little to help his case with the jury. It confirmed that in addition to shirking his patriotic duty, he willingly left his family to their own devices in order to keep himself from danger. Both men were judged by the same standard of "protector-provider." Yet, they represented the polar examples of male behavior, which can be found throughout the divorce records of Washington and Harrison counties, displaying the complex reality of nineteenth-century Texas manhood.

As in so many cases, the Stuckert divorce suit demonstrates the importance of family and friends to a woman's success. Mary's strong family ties helped her through life's crises, both during her marriage and after. Albert had purchased the farm on which he and Mary lived from Richter, who testified that he made generous discounts on the interest, obviously for Mary's sake. Perhaps distrustful of his son-in-law, he kept meticulous records, indicating which payments had come out of his daughter's separate estate. Mary's brother, Herrmann Richter, witnessed these business transactions and testified to them.
Again the family came to her aid when they believed that Albert was fighting in the war. Concerned for Mary's material and emotional well being, they wished to "save her from exposure to the hardships of her loneliness [sic] during the war, and to enjoy her company in [their] family for a while." Mary's father traveled to Washington County for the purpose of bringing her and the children to stay with the family in Burnet County. While there, he was shocked to see Albert return home in the night, thus exposing himself as a shirker or draft dodger. Only reluctantly did Albert consent to let Mary and the children go home for a visit. No doubt, he understood that he could dominate her only by keeping her from the protection and influence of her family. His fear of their intervention manifested itself by his subsequent refusal to allow his wife to write home or to receive letters from family or friends. Only by isolating her could he retain his tyranny.

The day of the corral incident, Mary realized that if she could get to her father she could end her suffering permanently. Perhaps for the first time, he was within reach. When her husband realized that Mary was gone, he understood the implications. He stole away the children to a neighbor's house for safekeeping. Evidently, he believed that he could not prevent their grandfather from taking them to their mother, were they present when he arrived.

Mary later petitioned for temporary custody during pendency of the trial. The court awarded her possession of the three female children, Hermina, Meta, and the toddler, Lillie. The boys, ten-year-old Willie and seven-year-old Rudolf, remained with Albert. When the sheriff's deputy executed his orders to retrieve the girls from their
father's home, one of Mary's brothers accompanied him. Only after wresting a revolver from Albert's hands, did the men accomplish their task. The girls then went to live with their mother, who by now had moved in with yet another brother in Burnet County.

In court Mary firmly asserted that, if given custody, she could provide for and educate her children with the help of her brothers and sisters. Her father confirmed the family's commitment to help. As to her ability to raise the children, he said, "there [was] no doubt that she is ten times more able to raise and educate" them than their father. However, "if any necessity for it should be, there will all assistance be rendered to her by her relations."

Texas law invested the power to determine custody issues in the district courts. It instructed them to make their judgements in such a way "as 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." Judges were to consider both a child's safety and education before rendering a decision. This broad power given to the local courts allowed judges a significant amount of leeway in dealing with the unique circumstances of each case. Generally, custody also went to the plaintiff without sexual bias. Keeping in mind that plaintiffs usually won their cases, this is but a logical extension of the verdict in an adversarial system. A few exceptions to the norm can be found, which demonstrate the way courts exercised their discretionary power in custody battles. The Stuckert case numbers among them.4

---

During the pendancy of the suit, Mary requested and received temporary custody of the female children. She told the court that with the help of her siblings she was “able to maintain and educate at least the girl children ... girls of such tender years.” The court agreed and also granted her request for temporary alimony of ten dollars per month to aid her in caring for them. It also allowed her to retrieve half of the “household furniture,” half of the beds and bedding, and the sewing machine. For some reason, Mary did not request custody of her sons. The tender-years doctrine, which became popular in the United States during the nineteenth century, held that all prepubescent children required a mother’s care. At seven and five years old, Mary’s sons certainly met this criterion. Nevertheless, gender seems to have been the only factor under consideration in dividing the children. The reasons for this anomaly in Texas custody patterns cannot be determined. Perhaps, Mary did not believe she should burden her relatives, with whom she was living, with too many children in the house. Or the sons may have expressed a preference to stay with their father.

The same custody arrangement followed the divorce as during pendancy. The court ordered that the children be allowed to choose for themselves which parent to live with once they reached fourteen years of age. Each parent won “the right to visit [the] children at suitable times without molestation.” The court apparently believed that both parents were suited to the task of rearing the children and should retain access to them. According to census records the boys remained with their father until adulthood, as did
the girls with their mother. Unfortunately, no records tell us how amicably the situation played out.\footnote{United States Bureau of the Census, Ninth Census (1870), Schedule 1, Inhabitants (microfilm, National Archives); United States Bureau of the Census, Tenth Census (1880), Schedule 1, Inhabitants (microfilm, National Archives).}

Mary won her case on the grounds of ill treatment to herself, not to the children. Although the incident in the corral began when Albert started whipping his daughter with a rope, parental discipline or abuse seems to have been of no consideration. Albert and Mary each sought custody by proclaiming his or her individual virtues as a capable parent who would educate and provide for the children. Each summoned character witnesses to testify to their ability to fulfill these tasks. Witnesses agreed that each was well educated and in possession of resources for meeting the material needs of the children.

Albert, however, seems to have worked harder at trying to prove his wife unfit. He told the court that Mary must certainly be insane. “Why else would she leave him?” he argued. He summoned a long-time business acquaintance to testify that Mary “took less interest in her household affairs than women generally do.” The man considered Stuckert to be a “good husband and father, also a good provider.” On one occasion he saw Albert “doing household work while his wife was standing around not seeming to take notice.”

Yet others concluded that Mary was indeed an affectionate mother and wife. Her education and capabilities equaled or exceeded her husband’s. According to Mrs. Conely, Mary exhibited intelligence and industry, attended well to her household duties, and showed no signs of insanity. Judging from the character of the girls, their mother
was best suited to continue bringing them up, she concluded. A male witness told the
court that Mary was “... without blame in her moral character, and attached to her
children with motherly love, and in return loved by them.” Although Mary certainly
proved to be a suitable parent, the judge decided that Albert was also a fit parent. Thus,
the court reached a compromise of division of custody along gender lines.

With regard to property division, the Stuckert case once again deviated from the
general pattern. At the time Mary filed for divorce, the couple possessed $4,780 in
property. The Stuckerts were wealthier than other Washington County divorce seekers
and the average citizen as well. The final settlement decreed that Albert pay his wife a
total of four hundred dollars over a twelve-month period. Mary waived the unremitted
fifty dollars owed to her for alimony payments. For security the court provided her with
a lien on the homestead. All other property was divested of her into the community
estate, which then became Albert’s sole property. No clear reason for this particular
division appears in the records. We might infer that the real property was of more value
to the husband who continued to live on the homestead and make his living from the
farm. The wife, on the other hand, had other resources. Yet, no explanation for this
deviation was recorded.

Mary Stuckert and others like her counted it their good fortune to have a strong
family on which to rely. Yet, other women appealed to juries on the grounds that they had
been “forced to seek the protection of strangers.” Nonetheless, even these women
benefited from some sort of support network. Repeatedly these records reveal a societal
commitment to the protection of individual women from abusive or neglectful husbands.
The accounts and opinions of physicians and neighbors regularly aided plaintiffs in proving their allegations and in winning child custody and satisfactory property settlements. For example, Julius Mackins testified sympathetically that he had seen Loula Baker’s husband strike her with a blow such as “would fell down any person of Mrs. Baker’s feeble strength.” Loula’s next door neighbor, Suzanne McCain came to her aid on several occasions. After one beating, she rubbed her blue and swelling arm with liniment. Mrs. McCain told the jury that she heard many “rows and fusses” and that “many a time when the plaintiff was sick and lying in bed, [Mrs. Cain] had to provide her food, the defendant utterly failed to do so.” She gave a very detailed and opinionated description of the night when Joseph left his wife for dead after attempting to murder the badly beaten woman with a derringer.

Although it is difficult to determine the degree to which propriety allowed interference in a neighbors’ domestic affairs, divorce cases show that many people willingly offered medical attention, shelter, food, and emotional support to women in crises and offered public testimony to help them win divorces. According to his neighbor, Baker very carefully refrain from insulting or striking his wife in the presence of others, obviously kept in check by their condemnation. Likewise, Albert Stuckert made excuses for his behavior and ultimately denied his actions all together.

Mary Stuckert moved from her brother’s home to live near her parents, where she reared her four daughters in the comfort of her family. Records indicate that she never worked outside her home for pay. Albert remarried within a few years. By 1880 his

household included four young sons and daughters in addition to Mary's sons, who
helped their father run his farm. Within two years of the divorce, Albert had increased
his wealth to $11,000 in real estate. Although no such information is available for Mary,
it appears that she spent her life in relative comfort and chose to remain unmarried.\textsuperscript{7}

\textsuperscript{7} Ninth Census (1870), Schedule 1, Inhabitants; Tenth Ninth Census (1880), Schedule 1, Inhabitants.
The divorce records of 373 couples in Washington and Harrison Counties have provided this study with several points of conclusion. Statistical analysis has shown that a high degree of equity existed between male and female divorce seekers. Women took advantage of the legal process to sever unsatisfactory marital bonds more often than men did, but not in much greater numbers. Men and women who filed for divorce in these counties enjoyed comparable success in obtaining divorces. Washington County plaintiffs of both genders won their suits 66 percent of the time. In Harrison County men won 55 percent of their cases and women won 53 percent. Both sexes demanded equitable distribution of property, carefully accounting for all separate and community property in inventory lists. Likewise, fathers and mothers requested and received custody of children in equal proportion.

The words of petitioners, defendants, and witnesses reveal the pervasive nature of Victorian notions concerning separate spheres and compassionate marriages among nineteenth-century Texas families. Spouses expected love, kindness, and affection from their marital partners. These traits were to be manifested in a pleasant home atmosphere, wherein each partner worked for the common good by fulfilling gender-specific duties. Men and women of all social and economic categories, including
freedmen, sought divorce when spouses failed to live up to the expectations inherent in Victorian ideology. Neighbors, friends, relatives, and mere acquaintances volunteered opinionated testimony as to whether one or both of the parties had violated the unwritten terms of the marriage contract. Defense arguments were also structured around these same ideals.

African-American divorce seekers who figured into this study after 1865 expressed attitudes that did not differ from those held by white divorce seekers. They used the same terminology regarding gender-appropriate behavior as did whites and complained of the same infractions. However, blacks initiated divorce suits in far lower proportion than whites, indicating a strong tendency to keep personal matters out of court. They were notably more willing to take marital problems to Civil Court in Washington County than in Harrison County. This difference appears to have been associated with general societal circumstances and local political situations rather than with different expectations for marriage. Black divorce seekers in both counties expressed similar concerns about family life and gender roles.

Men and women of both races held one another equally responsible for fulfilling their gender-specific duties. Men expected wives to cultivate a warm and cheerful home environment, which entailed the performance of household chores. Wives expected men to provide, to protect, and to treat them respectfully. Both demanded sexual fidelity. Daily childcare remained primarily within the wife's domestic sphere, although husbands certainly took an interest in the welfare of the children. Men and women both stepped into the other's gender roles when necessary. Ideally, both partners worked together to
achieve common goals. Divorce actions were not granted for frivolous infractions but for overt and intentional dereliction of marital obligations. Husbands and wives were held to the same level of accountability for upholding their particular gender roles.

The fairness and evenhandedness of Texas’s court system as it speaks volumes to the question of women’s place in nineteenth-century Texas society. A even-handed attitude was embedded in state property laws and enhanced through state Supreme Court decisions regarding divorce. Community-property provisions were retained in the state constitution of 1845, largely through the efforts of John Hemphill, Chairman of the Judiciary Committee. Hemphill was a great proponent of Spanish civil law with its superior protections for women. Thanks to his leadership in this area, Texas women continued to enjoy the same degree of autonomy under the Republic and statehood as they had under Spanish civil law.¹

As Chief Justice of the Texas Supreme Court, Hemphill, along with fellow justices Albert Lipscomb and Royall T. Wheeler, bolstered the practical and legal status of women at every opportunity. During the 1840s and 1850s, these justices rendered a number of decisions in divorce cases that promoted the welfare of women and set important precedents for how Texas would address women’s issues throughout the century. In 1848 the Court handed down an opinion that “Where 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 prosecute or defend, as if she were an unmarried woman and laboring under no disability of her coverture.” Under a legal system, which offered women power to control their own destinies to the extent that Texas law did, women benefited from a general societal esteem as well as strong sense of personal autonomy.2

As the local records prove, Texas women had every reason to expect fairness and equity from the local juries and district court judges as well. District courts normally followed the letter of community-property law, although they occasionally deviated from it in order to render a fairer settlement. In such cases judges usually favored the wife or the parent who retained custody of the children. In an 1855 decision, Hemphill clearly stated the principle of property division to be used in Texas divorce cases:

... the separate property should be restored to its owner respectively, and that such division of the community property be made as may seem just and right; it being understood that a due regard must be had to the rights of the parties, that suitable provision must be made for the education and maintenance of the children, if any and that, although the community property is the primary fund from which such property should be made as would render the division just under all the circumstances, yet there may be cases in which the separate property will be subjected to such charges, and especially in favor of a wife, as may be equitable and right. [Italics mine.]3

Even guilty wives received fair property settlements. Texas property protections benefited all women, including the poorest among them, by giving them a sense of

2 Lydia Sheffield vs. James R. Sheffield, 2 Texas 78 (1848); (Quotation) Wright v. Wright, 3 Texas 168 (1848); Byrne v. Byrne, 3 Texas 341 (1848); Hare v. Hare, 10 Texas 357 (1853); Nogees v. Nogees, 7 Texas 539 (1852); Fitts vs. Fitts, 14 Texas 449 (1855); Pinkard vs. Pinkard, 14 Texas 355 (1855).
3 Fitts vs. Fitts, 14 Texas 449 (1855).
individual worth and autonomy of action—a psychological edge in determining their own destinies.

Women filed the majority of divorce petitions, indicating a basic trust in the Texas judicial system and in the community. Certainly no great fears of repercussions hindered them in turning to this public forum for a redress of grievances. Once a woman filed a divorce action, her private life became an open book. If jurymen came to court unacquainted with the involved parties, they left with intimate knowledge of their neighbors’ personal affairs. Yet, women and men alike repeatedly laid their causes before the community in this way. They would not have done so had society denied them a fair hearing and a chance for a better life. Although, in the words of Chief Justice Royall T. Wheeler, divorce was “at best, but a mournful remedy,” it was indeed an attractive and viable option for many nineteenth-century men and women, freeing them to determine happier courses for their own lives.⁴

⁴ Moore v. Moore, 22 Texas 237 (1858).
REFERENCES

Primary Sources

Manuscripts and Local Records


Hagerty, Rebecca McIntosh Hawkins. Papers. Center For American History. University of Texas, Austin.

Harrison County Records:


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.


Washington County Records:


District Court Civil Case Minutes. Office of District Clerk. Washington County Courthouse, Brenham, Texas. Microfilm.


Published Documents


McKay, Seth Shepard, ed., *Debates In The Texas Constitutional Convention of 1875.* Austin: The University of Texas, 1930.


Secondary Sources

Contemporary Sources


Stanton, Elizabeth Cady. "Address of Elizabeth Cady Stanton before the Judiciary Committee of the New York Senate in the Assembly Chamber, Feb. 8, 1861." Albany: Weed, Parsons, and Company, Printers, 1861.


Newspapers

Brenham. The Texas Ranger.
The Lone Star and Southern Watchtower.
The Texas Ranger and Brazoria Guard.
Brenham Banner


Washington. Washington American
Books


**Articles**


**Unpublished Works**


**Theses and Dissertations**


