Not a 'Women's Issue': Divorce and the family as a political battleground for Secularizers and Catholics from 1792 to 1816

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ABSTRACT

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This thesis explores the political ramifications of divorce legislation and its relevance to France's progressive secularization in the nineteenth century, using legislative debates, newspapers, memoirs, and pamphlet literature. In looking at arguments for and against divorce a pattern is evident, tying divorce symbolically to the social and political changes produced by the Revolution. This pattern is illustrated by a chronological examination of France's political history beginning with the introduction of Enlightenment ideas of contract theory, individual liberty, and personal happiness. These arguments pitted Republican ideals against Catholic tradition -- divorce and contractual marriage represented the secularism of the Revolution, and therefore divorce was restricted under conservative regimes such as the Consulate, Empire, and Third Republic and abolished under the Ultraroyalist *chambre introuvable*. The pattern of republican and liberal support of divorce, overcome by periods of social conservatism, continued until divorce's reintroduction under the Third Republic in 1884.

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Introduction

Revolutionary divorce legislation has been researched in some depth, as have most aspects of the French Revolution, but little attention has been paid to its subsequent abolition under the Bourbon Restoration, or the political context of either of these events. To address this lacuna, this thesis will augment analysis of the subject with a discussion of divorce's abolition and its relation to emergent modern political culture. In addition, it will explore the discourse surrounding divorce to demonstrate the links between the personal and political spheres divorce represented, and its strong connection to other secularizing legislation and anticlerical agendas. This thesis will concentrate on the political aspects of divorce legislation -- the politics propelling discussion of the issue rather than the intricacies of its social aspects such as individual divorce cases, the choice of cohabitation over marriage, desertion, etc. These issues have been dealt with in social histories of the period, and would over extend the scope of this thesis. Moreover, the chronological focus will be the period from 1792, when divorce was legalized under the Revolution, to 1816, when it was abolished under the Bourbon Restoration, as this period illustrates the greatest changes and most concentrated discussion of divorce and contractual marriage. By looking at the divorce debates rather than individual cases, this thesis attempts not to address the social realities of married life during the period, but instead to illustrate shifts in viewpoint and the implementation of contractual marriage in what had been a Catholic nation. It is not assumed that all people, especially those in urban areas, followed the written, legal dictates of the period; however, the importance of studying legal changes lies in the impetus they provide to changing mores.

This introduction will provide a cursory outline of both the divorce legislation and its abolition, as well as a literature survey of works focusing on divorce in France. Unfortunately, beyond brief allusion to the event and its date in 1816, virtually no histories of divorce have focused in any detail on its abolition or on the political ramifications of the divorce debates. Although some primary sources were available, such as Bonald's <u>On Divorce</u>, and allusions to divorce by Enlightenment thinkers such as Rousseau, Condorcet, and Diderot, the secondary sources available focus more on the Revolutionary legalization of divorce than divorce in its broader context. Therefore, the survey below contains works that address only the legalization of divorce or other social, religious, and political events pertaining to divorce. Moreover, these basic elements must be supplemented by general histories of the Revolution and Restoration to investigate the political situation and culture which triggered these events. Both the

introduction and literature survey will illustrate the need to complement the more prevalent studies of divorce's introduction in 1792 with increased scrutiny of its abolition.

New ideas, introduced by the Enlightenment, engendered a desire for change which would provide support for the French Revolution of 1789. Because arguments put forward during the Enlightenment encouraged the legalization of divorce in 1792, they must be explored in order to understand later events. Divorce had been formally abrogated by the Council of Trent in 1563, and, thus, was not available in France under the Catholic Bourbon dynasty. The Catholic Church viewed marriage as a divine sacrament, which bound a couple together as one entity until death. During the eighteenth century, *philosophes* began to question the temporal authority of the Church, while the state became increasingly involved in 'disputes involving marriage', to the extent that civil marriage was permitted for Calivinists in 1787.[1] This more secular view of marriage led to a reciprocal call for divorce. The logic behind the calls of *philosophes* such as Hennet and Montesquieu was that since marriage was a contract, it must, therefore, be permissible to break that contract -- an option unavailable under the Catholic sacrament. The distinction between contractual and sacramental marriage was intrinsic to the arguments put forward by proponents and adversaries of divorce throughout the period.

The Enlightenment called into question the secular power of the Catholic Church. Therefore, Enlightenment ideas naturally affected areas such as marriage which provided an intersection of religious and secular jurisdiction. The desire for increased secularization of the state, destroying the bond between Church and State, was integral to the Enlightenment, which sought out a more Natural religion which would force men to look to their own conscience rather than unquestioningly obeying the dictums of the clergy. Men such as Rousseau provided a new outlet for spirituality, without the overarching organization of the Catholic Church. Rousseau also instilled interest in contract theory through his idea of the Social Contract; he demonstrated the ties of society to contract, wherein states had been formed through the willingness of 'men' to give up certain freedoms to be replaced by societal laws and basic order. He illustrated this as a conscious choice made by 'man', rather than the traditional view of society as a gift from God, set in motion with Adam and Eve. Some proponents of divorce used this view of

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[1]Traer, Marriage and the Family, 81-2.

contract to promote divorce; however it seems unlikely, given Rousseau's views of the perfect, docile wife, that he would have supported the notion of divorce; certainly in Rousseau's novel Emile, Sophie would never have considered such an outlet from life with Emile.[2] Condorcet, on the other hand, led discussion of women's equality, especially within the home. These theoretical discussions on liberty, society, and Nature, which may have spurred the Revolution, also affected the new legislators under the Revolution, and would lead to great changes within France, including its secularization.

The divorce debate intensified when, in 1792, the National Assembly passed a law introducing a civil, rather than a solely religious, marriage ceremony. Placed within the context of a more general trend towards secularization, the Assembly acknowledged the contractual, rather than sacramental, nature of marriage. Following this event, a liberal divorce law was passed, making divorce legal not only on the grounds of adultery and abuse on the part of husband or wife, but also for such varied reasons as personal incompatibility, mutual consent, and emigration. Revolutionary rhetoric used within the debates promoted individual liberties and general secularization of the state over religious considerations. Catholic theorists and royalists contested this law, but the anticlerical climate of the Revolution prevailed. The secularizing acts of the Revolutionary government enraged staunch Catholics in the West and South of France, and would lead to counterrevolutionary measures, including revolts in regions such as the Vendée and Midi.

Liberalized divorce was maintained, with few modifications, until the instigation of the Napoleonic Civil Code in 1804. The Terror (1793-4) was followed by a period of conservative reaction, which strongly emphasized the family and the power of its male head. The counterrevolution, headed by Catholics and dispossessed aristocrats who found renewed faith under the trials of the Revolution, favoured more traditional views of family and marriage. Men such as Louis de Bonald fought to have divorce eliminated from the new Civil Code. Counter-revolutionary theorists, such as Louis de Bonald, Joseph de Maistre, and François René de Chateaubriand, felt that the family represented the state on a small scale, the unquestioned authority of the father reflecting the unquestioned authority of the monarch.

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[2]"...within the four walls of their home they devoted themselves to the care of their household and family. This is the mode of life prescribed for women alike by nature and reason." Jean-Jacques Rousseau, Emile trans. Barbara Foxley (New York: Dutton, 1969), 330.

They pointed to the Revolution as the destructive force that had decimated the family through divorce and the state through revolution and social change.

Napoleon, attempting to bridge the gap between revolution and counterrevolution, wanted to return power to the patriarch on a primary level. Although divorce remained legal, it was no longer available for mutual incompatibility, insanity, or male adultery, unless the act took place within the family dwelling. Many of the liberal aspects of the 1792 law were removed. The Civil Code limited divorce to reflect restrictions on liberty in society in general and the increased importance placed on the patriarchal family as the first defence of societal order.

This trend culminated in the abolition of divorce in 1816, passed during the White Terror that followed the Second Bourbon Restoration after Waterloo and the apparent moral victory of the counterrevolution. Abolition appeased reactionary Ultra Royalists, who saw divorce as a symbol of revolutionary chaos and blasphemy. Thereafter, until it was finally legalized in a very conservative form under the Third Republic in 1884, divorce fluctuated on the political tides of the nineteenth century, and it remained part of a broader battle between secularizers and traditional Catholics.

A survey of divorce literature can begin as early as the Enlightenment, when proponents of divorce began to make themselves heard above the traditionalism of the Catholic Church and its supporters. Literature on divorce is available from various Enlightenment sources, including *l'Encyclopédie*, the encompassing work of Diderot and d'Alembert. Although divorce is described only briefly, its inclusion in such a central work demonstrates an important step in the promotion of its legalization. The Encyclopedia defined divorce as a separation allowing remarriage, with a description of divorce's historical usage, perhaps as an object lesson for contemporary readers. Many *philosophes*, including Rousseau, used the ancient Republics of Greece and Rome to illustrate changes that they desired for the modern nation -- the arguments for divorce followed the same path. As cited in the Encyclopedia,

> *L'usage du divorce ayant été porté dans les Gauls par les Romains, il fut encore observé pendant quelque tems depuis l'establissement de la monarchie françoise: on en trouve plusieurs examples chez*

nos rois de la première et de la seconde race.[3]

As Diderot pointed out, even Charlemagne had been permitted to repudiate his first wife, since divorce was present in canon law, although it did not permit remarriage. The article does not give an opinion as to the moral merits of divorce; however, the prevalent discussions of its earlier legality would seem to demonstrate support.

As early as 1790, proponents of divorce began to increase their demands. One volatile and forceful speaker was the female writer, playwright,and activist Olympe de Gouges who was willing to stand up for unpopular issues, including divorce. Moreover, she presented a statement to the Convention, promoting divorce as a liberty that should not be refused under the new government. As she stated: "*.. je pense qu'il est très nécessaire aux moeurs et à la liberté de l'homme: son plus cher intérêt, est celui de la posterité.*"[4] Divorce was only one of the rights demanded by de Gouges, and though she also promoted political rights for women within the Revolutionary government, the language she used to support divorce played up its universal aspects, rather than its possible benefits for women. This distinction is important, in that the Revolutionaries were interested in promoting "universal" liberties, but they were unwilling to attempt anything so radical as extending them to women. Unlike her male counterparts who followed in Rousseau's footsteps and relegated women to separate spheres, de Gouges demanded the rights of Man, such as voting, serving in the Assembly, and owning property for women as well. Her appeal that since "woman has the right to mount the scaffold, she ought equally to have the right to mount the rostrum"[5] was certainly relevant to her own life; she would die at the guillotine for her beliefs and her relationship with the Girondins.

Unlike Rousseau, who sought to separate the natural state of family governance from the

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[3]*Encyclopédie*, 985.

[4]Olympe de Gouges, "*Plaidoyer pour le droit au divorce et un statut equitable pour les enfants naturels extrait d'une motion au Duc d'Orléans*," Oeuvres (Paris: Mercure de France, 1986),113.

[5]Cited in Jules Michelet, Les Femmes de la Revolution (Paris: Calmann Levy, 1889), 112 and Joan Wallach Scott, "French Feminists and the Rights of Man," 10.

constructed (or contracted) state of society, de Gouges saw state and subjects as being linked just as man and woman within a marriage: "...she defined the Nation as 'the union of Woman and Man.' By this she meant to equate marriage and society, both voluntary unions, entered either for life or 'for the duration of our mutual inclinations' by rights-bearing individuals."[6] Moreover, the different position of the family in juxtaposition with the state is an interesting point of difference within the various schools of thought. Rousseau saw no comparison between the two,[7] while traditionalists saw the family as the core component and representative body of the state handed down inexorably from God; even further from this was de Gouges with her notion of the family as representative, but a family of a different sort -- a voluntary union, dissoluble by the will of the parties involved.

Other, albeit more ambivalent, proponents of divorce included the members of the National Convention, which promoted the legalization of divorce despite a lack of interest from the general public. It seems likely that the Convention viewed divorce within the context of a natural progression towards secularization rather than as symbolic of the restructuring of the nation. As recorded in the *archives parlementaires*, their discourse surrounding divorce relied on terms laden with the idiom of liberty and individual rights, rather than an overarching desire to democratize the family or empower women. The general public was generally uninformed regarding alternative arguments for divorce, as newspaper coverage was largely relegated to reprinting of the legislative debates; however, information could be gained in the form of pamphlets from a few highly charged sources.[8]

Under the Revolution and subsequent regimes, pamphlet literature produced by individual authors resulted whenever divorce was debated in the legislature, creating a body of related primary

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[6]Joan Wallach Scott, "French Feminists and the Rights of 'Man': Olympe de Gouges's Declarations," *History Workshop* (Autumn 1989), 11. These passages are translated from de Gouge's '*Forme du Contrat social de l'Homme et de la Femme' : "Nous N[ation] et N[ature], mus par notre propre volonté, nous unissons pour le terme de notre vie, et pour la durée de nos penchants mutuels . . ."* Oeuvres, 109.

[7]Jean-Jacques Rousseau, The Social Contract trans. Christopher Betts (Oxford: Oxford University Press, 1994), 5.

[8]The three journals used in this study include: *le Conservateur, la Quotidienne,* and *le Journal de Paris.*

sources for the historian. Such works were highly polemical, written either to support or to contest legislation. Treatises, such as the counterrevolutionary Louis de Bonald's fiery epitaph for the end to marital dissolubility, which he felt threatened both the Catholic Church and logic itself, reflected the fervour of their authors.[9] Bonald wrote a point-by-point refutation of Enlightenment proponents of divorce, using history to decry the evils of divorce within ancient cultures, in contrast to divorce proponents such as the minor *philosophe* Hennet, who used Roman and Judaic divorce laws to illustrate divorce's positive qualities. Bonald countered the *philosophes'* ideal of Nature with Christianity -- the idea of a society where people created their own rules versus one where God made rules for his people.

In the same vein, but not directly addressing the issue of divorce, was the Catholic counter-revolutionary theorist Joseph de Maistre. Maistre believed that society could not be formed by a contract, but instead had been created through the agency of a higher power. The Catholic Church was, therefore, the only true Church with the infallible Pope at its head. He took great pains in refuting Rousseau's and the general Enlightenment view of the Noble Savage -- that man had begun with great goodness, but had been soured by society. Instead, de Maistre held to the Catholic perception of original sin, entailing the necessity of laws and society to hold man's bestial nature in check. As stated in Lebrun's introduction to Maistre's Considerations on France: "Maistre maintains that religion must be recognized as 'the unique basis of all durable institutions.'"[10] Moreover, his belief in Providence was very strong, causing him to view the Revolution as a means of 'purifying' France, after which the King would be returned. Because France had forsaken its religion through the secularization of the Revolution, punishment was inevitable: "*all is evil*, since nothing is in its place."[11] The traditional order had been disrupted, causing chaos in all areas -- of which, chaos within marriage was just one example.

Chateaubriand is also placed in the category of Catholic theorist with Bonald and de Maistre,

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[9]Louis de Bonald, On Divorce. trans. Nicholas Davidson. (New Brunswick: Rutgers, 1992).

[10]Joseph de Maistre, Considerations on France trans. Richard A. Lebrun (Montreal: McGill-Queen's University Press, 1974) 12.

[11]Maistre, Considerations, 62.

and indeed he collaborated on works such as *Le Conservateur* with Bonald; however, he did not share the extremity of their views. Chateaubriand was a more "liberal" counterrevolutionary, turned towards the Church by his own misfortunes as an *emigré* rather than being a staunch believer throughout his life.[12] His *Génie du Christianisme* made him famous, but it serves better as a description and critique of society than as a cohesive plan for change as did the works of Bonald and Maistre. Moreover, Chateaubriand was far less forthcoming regarding the place of the family within society, which is the main point of interest for Bonald. His only mention of marriage or divorce comes under the heading of civil law, which is a small element within *Génie*'s greater text: "*L'Église, prenant toujours la morale pour base, de préférence à la politique (comme on le voit par les questions de rapt, de divorce, d'adultère), ses ordonnances doivent avoir un fonds naturel de rectitude et d'universalité.*"[13] Given his religious beliefs and the above statement it is clear that Chateaubriand, while not addressing the issue of divorce in detail, would not have been a supporter.

Likewise, contemporary published works by women, or even notes regarding divorce in private journals, are uncommon. Cailly's "*Griefs et plaintes des femmes mal mariées*," (sic) addressed to the National Assembly in 1789, was exceptional in presenting the complaints of contemporary French women.[14] It pleaded for the right to end marriages, arguing that divorce would make marriage more respectable by ensuring that married people, rather than being joined by an unbreakable bond that neither desired, would retain respect for one another. This pamphlet was the exception to the rule, however, and few other *cahiers de doléance* mentioned the desire for a divorce law. It may be that French society was so strongly male-dominated that the majority of women were not thinking in terms of their own emancipation through divorce, and if they were, they were not prepared to voice those opinions in the

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[12]Chateaubriand, The Memoirs of Chateaubriand trans by Robert Baldick (Harmondsworth: Penguin Books, 1965), 224 and Jacques Godechot, The Counter-Revolution Doctrine and Action 1789-1804 trans by Salvator Attanasio (Princeton: Princeton University Press, 1971), 133.

[13]Chateaubriand, *Oeuvres de Chateaubriand*, (Paris: Dufour et Mulat, 1852), 114.

[14]M. de Cailly, "*Griefs et plaintes des femmes mal mariées.*" (Paris: s.n., 1789).

public sphere.[15] It seems more likely that women and men alike were so mired within Catholic dogma, which had been an unquestioned part of their lives, that divorce was not a consideration. Women and men concerned with domestic rights and divorce were on the fringes of the political and social spectra.

Other available primary literature includes the *archives parlementaires*, which provide an invaluable text of the political debates from 1792 until 1830, allowing for an informed view of the discourse of the debates surrounding divorce. Less useful are newspaper reports from the same period, which were largely disappointing in their lack of commentary. Nevertheless, both are helpful in establishing the discourse of both the proponents and detractors of divorce, helping to create an understanding of the mores and culture which shaped their ideas.

Secondary literature falls into two categories: works which address divorce as an issue in its own right, and more general histories, which discuss a spectrum of issues such as religion, culture, and family that include divorce.

Histories of divorce in France will be considered first, beginning with those of the early twentieth century. Both Marcel Cruppi's *Le divorce pendant la Revolution 1792-1804* (1909) and Olivier Martin's *La crise du mariage dans la législation intermédiaire* (1901) reflected French academics' growing concern with the issue of divorce. Martin wished to delve into the Revolutionary past to weigh the merits of the divorce law as a response to contemporary debates in the Third Republic.[16] Accordingly, he explored the way in which divorce necessarily links issues concerning society, law, and morality. By contrast, Cruppi used statistics to focus more upon reaction to, and use

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[15]Literary women who remained in the mainstream were not in favour of the divorce legislation. For instance, Germaine de Stael followed in her mother's footsteps in rejecting the possibility of divorce, despite her own predeliction for extramarital affairs. Her affair with the divorcé Benjamin Constant was well known. Another noblewoman promoted the virtues of the traditional family - Claire de Rémusat. Her memoirs are filled with the happiness of her family life, and are not encouraging of the liberal reforms put in place by the Revolution. Barbara Corrado Pope, "Revolution and Retreat: Upper-Class French Women After 1789," Women, War, and Revolution eds. Carol R. Berkin and Clara M Lovett (New York: Holmes & Meier Publishers, 1980), 215-236.

[16]Olivier Martin, *La Crise du mariage dans la législation intermédiaire 1789-1804*. (Paris: n.p., 1901), 6.

of, the divorce law; however, he did conclude that the law was probably premature, because there was no public outcry against its abolition in 1816.[17] Nevertheless, due to their focus on the Revolutionary legislation, both works are useful primarily for establishing the chronology of events in the legislative debates. Beyond this, Martin's study examines the effect of Enlightenment thinking, whereas Cruppi attaches more meaning to the role of the Church and its diminished stature under the Revolution. Of the two, Cruppi's is the more useful study, because it explains the revolutionary legislators' motivations and the place of divorce within their larger agenda with greater clarity and detail. The publication of these two works in such a short period of time indicates that interest in the subject may have been prompted either by debates regarding divorce in the contemporary legislature of the Third Republic, or the climate of anticlerical debate over the Separation Law passed in 1905.

It was not until the 1960s that interest in the history of divorce was renewed. Wesley Camp, an American sociologist, considered statistical data from the pre-Revolutionary period up to the present day, hoping to establish a relationship between the French Revolution and changes in conceptions of family and marriage. His study relied on surveys, taken during the Revolution and the Empire, which established numbers of separations and divorces. This statistical approach led Camp to reiterate the point made by Cruppi that the Revolution was premature in establishing divorce in France, as it was not widely accepted except in large urban areas, and that, rather than setting up a forum for future reforms, it was merely an aberration quickly remedied by the legislation of the *chambre introuvable* in 1816.[18] Given the lack of public response to divorce's abolition, this conclusion is tenable.

One French historian, Raymond Deniel, also grappled with the issue in the 1960s. Deniel discusses family legislation and divorce in *Une Image de la Famille et de la Société sous la Restauration (1815-1830)* (1965) and, unlike his predecessors, ignores the Revolution in favour of the Restoration. He develops an image of the family in France by discussing its portrayal in the Catholic journals of the Restoration period: *le Conservateur, la Quotidienne, L'Ami,* and *le Mémorial*

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[17]Marcel Cruppi, *La Divorce Pendant la Revolution 1792-1804*. (Paris: n.p., 1909), 1-3.

[18]Wesley D. Camp, Marriage and the Family in France since the Revolution, (New York: Bookman, 1961), 128.

catholique. By such means, Deniel presents a conservative view of divorce and family law and clearly situates the abolition of divorce within the larger clerical agenda of the Restoration period.[19] Thus he emphasizes that abolition was promoted within the context of other social and religious legislation passed during the Bourbon Restoration, such as the removal of pensions for married priests and the exemption of the clergy from military service.[20]

Several social histories of French divorce were published in the 1980s. The first of these was James Traer's Marriage and the Family in the Eighteenth Century (1980), which laid the groundwork for subsequent histories. Traer gives a detailed description of the traditions, laws, and beliefs surrounding marriage during the period. He also looks at opinions expressed in the legislature concerning divorce, giving an overview of the changes that had occurred due to the Enlightenment and people's increased belief in the possibility of companionate marriage, rather than the more businesslike arrangements of earlier times. He notes that

> ... despite the slowness of social change, the more conservative attitudes of the framers of the civil code, and some retrograde legislation such as the elimination of divorce from the civil code between 1816 and 1884, the direction of change was clear. In ideas, in the law, and in their everyday lives, men and women began gradually to reject earlier, traditional relationships in favor of a modern marriage and family.[21]

Traer thus describes an evolution of relationships and marriage, unlike Camp, who interpreted the divorce legislation of 1792 as anomalous.

Roderick Phillips' Family Breakdown in Late Eighteenth Century France (1980) is limited to the period from 1792-1803 and based on a case study of Rouen. Nevertheless, he provides an overview of divorce legislation and a detailed statistical analysis of data collected from divorce cases of the period.

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[19]Raymond Deniel, *Une Image de la Famille et de la Société sous la Restauration (1815-1830)*. (Paris: Les Editions ouvrières, 1965), 106.

[20]Deniel, *Une Image de la Famille*, 224.

[21]James Traer, Marriage and the Family in Eighteenth-Century France, (Ithaca: Cornell University Press, 1980), 21.

Like Traer, Phillips works within the confines of social history, basing his study of divorce on its social effects on the family. Phillips does not explore the political ramifications of divorce and social legislation; instead, he examines the structure and procedures of the revolutionary and family courts, which were organized to grant divorces. The publication of his book in 1980 corresponded to the rising interest in women's history and Phillips acknowledged his indebtedness to Olwen Hufton, one of the most important scholars of women's roles within the Revolution.[22]

A singularly uninspiring look at divorce in France is presented by Themistocles Rodis' "Marriage, Divorce, and the Status of Women during the Terror" (1981). He attempts to illustrate the moral implications of rhetoric surrounding divorce and marriage through the use of rampant generalizations. Rodis equates the desire of Revolutionary legislators for increased secularization with a desire to "accept women on an equal basis with men."[23] This connection is not proved, however, and fails to recognize that many women were not in support of either secularization or divorce. In all, the article provides little new information and perhaps best represents the inconsistencies of the Revolutionary period within its own devolutions.

French scholars responded to the interest of North American and British historians with works of their own. Two French monographs were printed in 1981: Dominique Dessertine's study of Lyons and Jean Lhote's of Metz and the Moselle. Both histories utilize records of divorce proceedings and statistics to present the common person's attitudes regarding divorce, and they provide a more comprehensive picture of women's role within the Revolution and the relation of social class to reaction to the divorce legislation. Dessertine's study discusses divorce's benefits for women in helping them to avoid abusive relationships and marital violence, and she explores the concept of the ideal family that prompted both the Revolutionary legislation and its later modification and abolition by more

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[22]Olwen Hufton, "Women in Revolution, 1789-1796," *Past and Present* vol. 52 (1971), 90-108.

[23]Themistocles Rodis,"Marriage, Divorce, and the Status of Women During the Terror," in Bourgeois, Sans-Culottes and other Frenchmen, eds. Morris Slavin and Agnes M. Smith (Waterloo: Wilfrid Laurier Press, 1981, 41-58.

conservative regimes.[24] Moreover, Dessertine demonstrates the economic biases that dictated which women sought divorce, and which did not -- women with skills or some financial support other than their husbands' sought divorce more frequently.[25] Jean Lhote's findings are similar to those of Dessertine, establishing a class basis for ascertaining the likelihood of people to divorce, as well as its almost complete restriction to urban usage.

These smaller, localized monographs provide pieces of a much larger puzzle, which Rod Phillips attempts to solve in Putting Asunder: a history of divorce in Western society (1988). In the latter work, Phillips gives an overview of divorce in England and the United States in addition to France. Nevertheless, as a survey this work does not provide the same clarification as his earlier monograph, although his discussion of the Revolutionary legalization and usage of divorce remains detailed.[26] Putting Asunder does adeptly describe the social effects of divorce in the Revolutionary period and the basic events of the nineteenth and twentieth centuries, but the interactions between the political and the social realms are given less attention in favour of a more strictly social approach.[27]

Recently, Francis Ronsin, a French historian, has published two studies, taking the field back from the English-speaking historians exploring divorce and the family in France. Relying on legislative sources, Ronsin's works, *Le Contrat Sentimental* (1990) and *Les Divorçiaires* (1992), present the practical politics of divorce, focusing on the legislation and the attitudes towards the Catholic Church that made those changes permissible. *Le Contrat Sentimental* illustrates the motivations of historians writing on divorce, claiming that politics not only had a role in divorce reforms, but also in the

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[24]Dominique Dessertine, *Divorcer à Lyon sous la Révolution et l'Empire*, (Lyon: *Presses Universitaires de Lyon*, 1981), 2.

[25]Dessertine, 165.

[26]Although his discussion of the Revolutionary period and the twentieth century are comprehensive, both the Napoleonic and Restoration periods are dealt with in a cursory manner.

[27]Phillips, Putting Asunder, 180, 186.

production of works cataloguing the effects of divorce legislation.[28] Ronsin's work allows readers access to original sources, including copies of the legislation, as well as text from the legislative debates which preceded it. This thesis will explain the broader political situation of the divorce debates, although Ronsin admirably illustrates how divorce mirrored political discourse of the period.

Les Divorciaires discusses the role played by proponents of divorce who came to the fore from 1816 to 1884, concretizing their discussions from the abstract to demand reform from the legislators, whenever the regime in France changed hands. Ronsin aptly argues that the debates surrounding divorce shed new light on interactions between Church and State in France -- and the consequent waxing and waning of the political power of the Catholic Church. Accordingly, Ronsin states:

> *À chaque ébranlement du pouvoir, la question du divorce a systematiquement rejailli. L'étude de ces débats renouvelés permet naturellement de mésurer l'évolution des esprits et des moeurs. Elle témoigne également de la vivacité du conflit originel entre l'entité monarchie-théocratie catholique-mariage indissoluble, d'une part, et l'association république-démocratie-divorce, d'autre part, complète du mythe forgé en Thermidor: divorce=crimes de la Convention = anarchie = corruption des moeurs.*[29]

Ronsin seeks to establish philosophers', historians', writers' and politicians' use of this viewpoint in their disparate efforts to control social change within France, and he extends the study he began in *Le Contrat Sentimental*, to describe the use of the *séparation de corps* under the Bourbon Restoration.[30] While Ronsin is the most applicable history to this thesis, his study will be augmented below to illustrate the political culture and relevant events which affected divorce, which were not discussed by Ronsin.

One historian who does utilize aspects of cultural history is Theresa McBride in her article, "Public Authority and Private Lives: Divorce after the French Revolution," (1992). McBride explores

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[28]Francis Ronsin, *Le Contrat Sentimental: Debats sur le mariage, l'amour, le divorce, de l'Ancien Regime à la Restauration*, (Paris: Aubier, 1990), 257.

[29]Francis Ronsin, *Les Divorçiaires* (France: Aubier, 1992), 16-7.

[30]Ronsin was not alone in looking into the theological nature of the Ultras during the Bourbon Restoration. The same year, 1992, saw the publication of a translation of Bonald's On Divorce by a conservative, Nicholas Davidson, whose other work claimed the "failure of feminism." Clearly divorce was becoming a topic ready for debate, from both the left and the right of the academic spectrum.

the evolving relationship between state and family, as each attempted to maintain its role at the same time that women were also being acknowledged as players within the family dynamic. Her article chronicles the political debates in the legislatures over divorce from 1793 to 1884, addressing in detail the political manoeuverings which enabled the passage of the relegalization of divorce under the Naquet Law, and the symbolism through which it was promoted. McBride outlines both the political and social issues surrounding divorce in 1884, and the way in which the divorce proponent, Alfred Naquet, played on the family metaphor used by Bonald to enable passage of his legislation. According to McBride, "Naquet and his colleagues transformed a vote on the law of 27 July 1884 into a referendum on the Republic; a vote *against* divorce was a vote for clericalism, for monarchy, against freedom."[31] Her article illustrates the continuity of the debates on divorce, although she elides the larger religious agenda that provided the platform for divorce.

Two additional works focused on later developments in the legalization process; the first is William Fortescue's "Divorce Debated and Deferred" (1993) on the Second Republic's handling of the divorce issue.[32] Fortescue uses newspapers of the period to illustrate the important links between divorce, images of the family, and their ties to republicanism and anticlericalism. He explains the inability of the Second Republic to pass the divorce law, because of its descent into conservatism after the June Days of 1848, and the historic presence of divorce within the larger anticlerical and feminist agenda. Divorce was not a priority within the Republican agenda,[33] and would eventually be seen as detrimental to the maintenance of familial order.[34] Fortescue establishes the political reasons behind divorce's continued failure to be legalized, and the implications of religion within French politics.

Michele Suzanne Plott's 1993 doctoral dissertation continues with the progress of divorce

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[31]Theresa McBride, "Public Authority and Private Lives: Divorce after the French Revolution," *French Historical Studies* vol. 17, no. 3 (Spring 1992) 766.

[32]William Fortescue, "Divorce Debated and Deferred: the French debate on divorce and the failure of the Cremieux Divorce Bill in 1848," *French History* 7, n. 2, 137-162.

[33]Fortescue, "Divorce Debated and Deferred," 143.

[34]Fortescue, 151.

legislation under the Third Republic. She identifies the importance of "marriage, divorce, and women's place in French society, using prescriptive literature, private papers, and the debate over divorce."[35] Her study investigates the effects of marriage on women, and the way in which the capability to end marriages expanded women's horizons. While recognizing the political implications of divorce as it was tied to the revolutionary ideals of the past, she concentrates on the social implications of gender relations and roles, and the social effects of divorce within Third Republic society.

Alternatively, William Reddy's "Marriage, Honor and the Public Sphere in Postrevolutionary France" (1993) ignores the feminist theoretical concepts of political culture and family metaphor in favour of a class-based discussion of separation cases.[36] His study focuses on case studies of requests for *séparations de corps* or judicial separations after the abolition of divorce in 1816, analysing them to establish the effect of class on separation proceedings. Moreover, he does not look at the legislation which left the *séparation de corps* as the only means to address marital breakdown in France.[37]

Aside from the limited number of works cited above, which focus directly on divorce, the subject has been studied within secondary sources as a sideline to other issues, such as the family or social policy. Traditional political histories of the period are helpful in gaining the background to events which surrounded divorce, but remain quiet on the subject of divorce itself. Moreover, religious histories, such as Dansette's classic overview, are equally focused on politics as they pertained to the Catholic Church, and divorce is mentioned only within the context of more drastic secularizing legislation. This categorization includes the implementation of civil registers for births, deaths, and marriages, education laws, marriage of priests, and other legislation. Dansette records that divorce was passed in 1792,

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[35]Michele Suzanne Plott, "Marriage, Divorce, and Women's Place in French Society, 1860-1914," (Yale University, 1993), i.

[36]William M. Reddy, "Marriage, Honor, and the Public Sphere in Postrevolutionary France: *Separations de Corps*, 1815-1848," *Journal of Modern History*, 65 (September 1993), 458.

[37]Reddy's article is intriguing in its portrayal of marital breakdown, but not useful in gaining knowledge of its more explicit political effects.

abolished in 1816, and returned in 1884, but his discussion of divorce goes no further.[38] Nor do historians of the counterrevolution explore divorce within its greater context or metaphoric importance, despite their usefulness in establishing the political culture of those opposed to Revolutionary social changes. For instance, Godechot describes the political thought of Bonald, Maistre, and Chateaubriand, and alludes to their reliance on the family as a pillar of societal understanding; however, he does not explore Bonald's work on divorce.[39]

The first to investigate divorce within a larger study of social and family values was Jacques Donzelot, whose interest may have been piqued by the completion of reforms in France in 1975. He touched on the subject in a sociological history published in 1977, which was translated into English as The Policing of Families (1979). Donzelot analyzes the effect of government on families, and how government policies are propagated through families, to create "good" citizens.[40] Donzelot uses Foucault as a theoretical basis for understanding the role of the family within the structure of state authority and contradicts Camp's claim that the people were not ready for divorce in 1792. In the latter regard, he notes that, after divorce was removed by the government, citizens refused to enter into indissoluble marital unions, and, instead, began to cohabit informally. Later articles have contested this premise, however, citing monetary concerns as the reason behind increased cohabitation.[41]

Women increasingly became a historical topic unto themselves during the 1980s, bringing divorce into greater discussion as it was considered a "women's issue." For instance, Barbara Corrado Pope's "Revolution and Retreat: Upper-Class French Women After 1789"(1980) discusses the impact of Revolutionary social changes on women of the period, including divorce and reactions to it. She

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[38]Adrien Dansette Religious History of Modern France trans. John Dingle (West Germany: Herder, 1961),I 83, 159, 179; II 57.

[39]Godechot, The Counter-Revolution, 96-101.

[40]Jacques Donzelot, The Policing of Families, trans. by Robert Hurley, (New York: Pantheon, 1979), 90-1.

[41]See Barrie M. Ratcliffe, "Popular Classes and Cohabitation in mid-Nineteenth Century Paris," *Journal of Family History*, vol. 21 no. 3 (July 1996), 316-50.

demonstrates the return of women to traditional roles and concerns under Napoleon, led by literary women, such as Claire de Rémusat, who was the wife and mother of active politicians under Napoleon and the Bourbon Restoration.[42] This study uses a social approach to delve into women's lives after 1789, mentioning women on both sides of the political spectrum from Olympe de Gouges to the aforementioned Mme de Rémusat. The article serves to remind us that not all women, in fact very few women of the period, were seeking political rights, and that their very limited power base even at the end of the *Ancien Regime* remained private.

On the other extreme, Suzanne Desan recognizes the power of common women in her study, "The Role of Women in Religious Riots during the French Revolution" (1988).[43] She illustrates the importance of religion as a community bond and ritual that women in rural communities were unwilling to surrender, even those who otherwise supported the Revolution.[44] Her article is well researched and supported by archival reports of religious riots throughout the period, wherein women (for a variety of reasons) took the lead from men. Women's politics were played out in this traditional forum, as rioting for bread, and the like had been seen as women's prerogative for some time. Desan points out that at this juncture their rioting moved to "spiritual" instead of physical sustenance. The symbolic form taken by these riots indicates the effects of the political culture of the Revolution. Moreover, Desan illustrates this point with a quote from the women themselves: "The women of Vaux excused their violent demands for the parish church keys with the comment, 'Since everyone had the freedom of opinion, we desired our religion and thought we were authorized to demand it.'"[45] This also relates to the importance placed on oaths such as marriage, which had similar symbolic importance for both religious supporters and revolutionaries.

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[42]Barbara Corrado Pope, "Revolution and Retreat," 215-27.

[43]Suzanne Desan, "The Role of Women in Religious Riots during the French Revolution," *Eighteenth Century Studies* 22 (Fall 88-Summer 89), 451-68.

[44]Desan, "Women in Religious Riots," 460.

[45]Desan, 460.

Olwen Hufton wrote along the same theme of women and religious action in Women and the Limits to Citizenship in the French Revolution (1992).[46] Her study shows women actively participating in local politics through informal avenues, but working together to protect institutions integral to their idea of society -- the Church and its environs. Hufton attempted to uncover the *mentalité* of working women in the cities and towns; in doing so she expanded our knowledge of women and the sway which religious and community beliefs held within their communities, thereby allowing divorce to be seen in the light of a religious issue rather than a "women's" issue.

Taking a different tack, Antony Copley's study, Sexual Moralities in France (1989), on the pertinence of sexual moralities to the family, divorce, and sexuality between 1780 and 1980, deals solely with the social and moral versus the political aspects of divorce.[47] Writing from the perspective of the late 1980s, he is able to put a liberal spin on the history he presents, placing the psychology of the 200 year period on trial. Through studies of the Marquis de Sade and Charles Fourier, Copley provides a theoretical perspective on the morality of the eighteenth and nineteenth centuries. In doing so, he presents the sexual morality of those on the outskirts of French society, rather than that of the common populace.[48]

Rising interest in divorce and the family coincided with the study of French political culture. Lynn Hunt's Politics, Culture and Class in the French Revolution (1984) provided a new approach to interpreting changes within the French family and the use of divorce. Hunt did not herself explore the Revolutionary family or marriage and divorce law; however, her work identifies the importance of "common values and shared expectations of behaviour"[49] in establishing a new culture and rhetorical space within the Revolution. Divorce can surely be seen within this symbolic context, as attitudes

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[46]Olwen Hufton, Women and the Limits of Citizenship in the French Revolution (Toronto: University of Toronto Press, 1992). The work was based on a series of lectures given in 1989.

[47]Antony Copley, Sexual Moralities in France, 1780-1980. (London: Routledge, 1989).

[48]While interesting, Copley's study is useful more as a sketch than as a full debate on morality, divorce, or the family.

[49]Hunt, Politics, Culture and Class, 10.

towards divorce reflected political and religious affiliations and divorce itself was used as a metaphor. Symbols, language, and attitudes within the Revolutionary sphere could be used both to extend new thought patterns and to create them. Hunt demonstrates the use of these methods by both Revolutionaries and counterrevolutionaries to gain adherents; both sides used figures either to question societal constructions or to promote them.[50] Nevertheless, symbolic power was not extended to women. The patriarchal figure was alive and well in conservative writers' analogies, for example Bonald's idea of head, minister, and people, while the symbols of the Revolution relied more upon images of fraternity.

Joan Landes' study, Women and the Public Sphere (1988), brings the issue of separate spheres to the study of the French Revolution. She uses philosophical works and secondary sources to give an overview of the experience of exceptional women.[51] Divorce bridges the personal and the political, illustrating the infringement of government legislation into familial and personal liberties. The works of Landes and Hunt have limited direct relevance to the history of divorce, but they do shed new light on the political history of the period and the possible reasons behind the actions of the National Assembly.

Furthering the reinterpretation of the Revolution is Joan Wallach Scott in "French Feminists and the Rights of 'Man': Olympe de Gouges's Declarations" (1989). She examines the way in which writings by Olympe de Gouges contested the liberal theories of the Revolution and how this critique was constructed. Her interpretation of de Gouges' life certainly demonstrates how the social and political interweave themselves, as in trying to establish political rights for women, de Gouges continually returned to the social role of women as a civilizing influence on society, and how this society was constructed with a bond that was similar to marriage in its need for continued support and the inevitable dissolution should this support fail. Scott's work establishes a new way in which to view "women's" or

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[50]Lynn Hunt, Politics, Culture and Class in the French Revolution, (Berkeley: University of California Press, 1984), 31.

[51]For a veiled critique of Landes, and political culture in general, see Olwen Hufton, Women and the Limits of Citizenship in the French Revolution. (Toronto: University of Toronto Press, 1992), Introduction.

"feminist" history and reflects on divorce through her discussion of one of its proponents and also the greater societal relationship which de Gouges felt was reflected within contractual marriage.

The importance of divorce's foremost early nineteenth-century proponents is also addressed in Cross and Gray's work The Feminism of Flora Tristan (1992), which focuses on the life of Flora Tristan, a feminist and proponent of divorce during the July Monarchy.[52] This work presents Tristan's battle to have divorce legalized. Tristan presented a petition to the legislature in 1837, bringing divorce to the light of day after the issue was shelved by the Senate in 1834. She identified divorce with revolutionary "and God-given" freedoms, stating that God had made only true love indissoluble, not marriage itself. Moreover, Tristan argued that should love end, then so too should marriage, and tried to overcome divorce's links to anticlericalism through her arguments about God's intentions.[53] She was unsuccessful, but regardless Cross and Gray's biographical sketch is useful in identifying where Tristan's writing impacted the progression towards divorce's legalization in 1884.

Illustrating the continued importance of pre-Revolutionary experience is Sarah Maza's Private Lives and Public Affairs (1993), which utilizes the methods of political culture to explore the *Ancien Regime* and its use of scandal within marriage to make societal statements. Her work is useful in establishing methods of looking at family law that also can be applied to later periods. Maza describes the symbolic reciprocity between the marital relationship and governmental structure, exploring

> ... the analogy at the ultimate point of transiting from absolute monarchy to contractual government... [she] argue[s] that the archetypal narrative of a wife's infidelity and insubordination was laden, at this juncture, with connotations of political chaos and change, and that questions of style both in sexual conduct and in language were similarly charged with sociopolitical significance.[54]

Maza uses the written accounts of lawyers involved in family trials and journals to provide a fresh discussion of public opinion at the end of the *Ancien Regime*, blending with them the theoretical

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[52]Máire Cross and Tim Gray, The Feminism of Flora Tristan (Oxford: Berg Press, 1992).

[53]Cross and Gray, 18-19.

[54]Sarah Maza, Private Lives and Public Affairs, (Berkeley: University of California Press, 1993), 264.

approaches of the *philosophes*.

Articles on women and feminism approach the issue of divorce more frequently than do traditional male-centred histories, for instance R.B. Rose's "Feminism, Women and the French Revolution" (1995). Rose attempts to illustrate the benefits of the Revolution for French women and to refute the arguments of feminist historians such as Joan Landes that "the revolution was created against women not just without them."[55] Moreover, he indicates that women were catered to by the Revolutionary Assembly in their liberalization of marriage law and the legalization of divorce. From this argument one can infer that Rose looks upon divorce as a "women's issue," which is more a twentieth-century attitude than a Revolutionary one. In fact, the men involved in the legalization of divorce in 1792 were carrying out their own interpretation of increased individual liberties - foremost for citizens, who were male. Women gained from this as well, but only through a trickle-down effect rather than an intentional act by the legislature. The intention of the Revolutionaries was not to bring women into an equal social position, especially within the public sphere, as subsequent restrictions on women's organizations and movements would prove.

The literature above, when compared with the numerous works on other areas of the Revolution, illustrates the general lack of interest in pursuing the study of French divorce legislation even within its Revolutionary and social origins, and the failure of secondary sources to incorporate the abolition of divorce as an important adjacent effect of the Bourbon Restoration's more general counterrevolutionary agenda. Divorce's by-play as a sop to the sensibilities of both clericals and secularizers was noted by later participants in the struggle over divorce, but by and large is not addressed by writers of revolutionary legalization. Because of this, works on divorce have been largely limited to the Revolutionary period, and thus fail to illustrate the breadth of change and reaction within French society and the political developments that these engendered. The ramifications of divorce and its abolition need to be explored because of the impact of their debates on a France poised between the Catholicism of the *Ancien Regime* and the secularism of the modern state. To address the present oversight, divorce within both the anticlerical and religious agendas of the nineteenth century will be explored in detail below in

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[55]R.B. Rose, "Feminism, Women and the French Revolution," *Historical Reflections*, 21, 1 (1995), 192.

order to introduce the political aspects of the divorce legislation to supplement previous depictions of its social history.

Chapter 1 - The Enlightenment and its effect on ideas of marital indissolubility

"Opinion governs the world, and in the end the philosophes govern men's opinions." - Voltaire

This chapter will demonstrate the encouragement of contractual marriage by certain streams of Enlightenment thought, not as a means to emancipate women, but rather as an aspect of 'universal' personal liberty. The Enlightenment of the eighteenth century initiated a shift in ideas which contributed to the French Revolution of 1789 and, in turn, the Restoration. This was especially the case concerning the institution of marriage, and there is a need, therefore, to explore the lines of thought within the Enlightenment that encouraged the legalization of divorce in 1792 and its subsequent abolition in 1816. The Enlightenment consisted of a large number of writings by a diverse range of authors, and, of course, it did not constitute a systematic programme or blueprint for reform. This chapter will focus on the ideas of Rousseau, Montesquieu, and Condorcet as representative of those elements of the Enlightenment that supported 'universal' liberties, which in retrospect were directed towards the 'universal' male. Nevertheless, consideration of Enlightenment ideas does reveal certain broad points concerning discussion of divorce.

During the Enlightenment, divorce was linked by writers such as Montequieu and Condorcet to broader discussion of society and government through ideas of contract and individual rights. Arguments based on contract theory and individual rights became means for challenging Crown and Catholic Church authority and opponents of those challenges therefore also opposed divorce. Yet even among *philosophes*, application of theories of contract and individual rights to gender relations proved limited, due to the predominant belief in 'natural' gender differences. Thus while Enlightenment writers often did advocate divorce on the basis of contract theory and individual rights, they seldom extended such arguments to include full political rights for women. Women were generally consigned to a non-political private sphere, although some advocates of divorce did see it as a means to reduce male tyranny in the family.

Because families traditionally had been considered to represent society as a whole, *philosophes* (philosophers and social critics) used critiques of the family and the overarching power of the father as a means to criticize the absolutism of the Bourbon monarchy. Marriage, the family, and subsequently

divorce were, therefore, intrinsically linked to larger ideas of social change and secularization; as Sara Maza states, there were "...manifold links between marriage contract and political covenant, between private misfortune and public concerns."[1] Nevertheless, Enlightenment attitudes were countered by equally strong rhetoric on the part of Catholics and conservatives who wished to maintain the societal status quo. The battle between these two elements -- one, rational and secular, the other, reliant on faith and religion -- created a rift that would not be resolved during the nineteenth century.

Although Enlightenment thinkers such as Montesquieu did not reject either God or the monarchy outright, their ideas, including human perfectibility and the application of rationalism and logic to religious belief, were intrinsically revolutionary. The authority of the Catholic Church had its basis in the unquestioning faith of its members, and the Church transferred that faith to the Bourbon monarchy through the principle of divine right. Moreover, both Church and monarchy benefited from Catholicism's emphasis on the afterlife. Therefore, bringing these principles under the harsher light of scientific method and critical thought endangered Church and royal authority. As the Enlightenment progressed, calls for secularization became more strident, in some cases becoming almost anticlerical. For instance, d'Alembert's publication of the Encyclopedia prompted the animosity of the Church due to the work's openly critical attitude towards Catholic practices (such as describing the eucharist as cannibalism) and its illustration of the historical availability of divorce.

Moreover, questioning of divine right entailed the denial of monarchs' absolute power over their subjects; instead, Enlightenment thinkers held that governments must earn the loyalty of their subjects. Following this logic, governments that became arbitrary, failing to protect property rights or individual liberties, could rightfully be overthrown.[2] Rousseau's philosophy exemplifies this ideal -- under the

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[1]Maza, Private Lives and Public Affairs, 262.

[2]"Locke's theory, in its broad outlines, stated that the right to govern derived from the consent of the governed and was a form of contract. When people gave their consent to a government, they expected it to govern justly, to protect their property, and to ensure certain liberties for the propertied. If a government attempted to rule absolutely and arbitrarily - if it violated the natural rights of the individual - it reneged on its contract and forfeited the loyalty of its subjects." Perry, et al. Western Civilization (Toronto: Houghton Mifflin, 1992), 412.

Social Contract, people gave up their individual rights in order that society might create order and laws to promote human happiness; however, sovereignty lay with the people rather than with a monarch. This transfer of ultimate authority was a highly revolutionary ideal, but one which the *philosophes* would not extend to all people.[3] Women were not included in the sovereign nation, limiting half the population to passive participation in the political sphere.

Nevertheless, women had always maintained power within the closed atmosphere of the court, a position deferred to by Condorcet and decried by Rousseau. The *salonières* who had gained power through the use of wit and social position supported in their own way the Enlightenment and the Men of Letters who created it. The salons provided within the homes of society women a space for discussion of politics, literature, and the arts, permitting to a few elite women a semi-public role in the political life of France. These women held the reins of public opinion and internal connections within Parisian society.[4] The *salonières* could gain entrance to society and the ear of influential men for those who found their favour; they could make people who would otherwise have been outcasts fashionable. The fact that their power was maintained behind the scenes and within the private sphere did not reduce the importance of their presence as "cultural mediators".[5] Men such as Condorcet owed much of their prestige to the good auspices of women.[6] It was this subtle power that Rousseau so disliked, feeling that it would never be tolerated in a Republic of men, and that women threatened order by removing themselves from their proper place in the private sphere.[7]

Within the structures of the *Ancien Regime* most power was of a private nature, delegated by the only *true* authority, that invested in the person of the monarch. Power then was centred in the

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[3]Jean-Jacques Rousseau The Social Contract trans. Christopher Betts. (Oxford: Oxford University Press, 1994), 145.

[4]Maza, Private Lives and Public Affairs, 110.

[5]Maza, Private Lives and Public Affairs, 171.

[6]Goodell, The Noble Philosopher, 133-7.

[7]Maza, Private Lives and Public Affairs, 15.

monarch, filtering through people of influence in the court. Those without favour at court were excluded from the patronage chains, which could greatly affect social status and wealth. Those born outside of the court nobility were then hindered from the outset. This imbalance was recognized in the writings of the Enlightenment, which questioned the inevitability of the patronage process. The writings of men such as Rousseau criticized the crossover of public and private spheres, desiring instead to create a greater division between the two arenas and a greater sense of political responsibility within landholding men. Gender was also brought to the fore in the arguments of Rousseau, who accused the absolutism of the *Ancien Regime* of "feminizing" men and giving underhanded power to women such as the *salonières*. He attacked the private nature of this power, lambasting the private sphere's influence in many of his writings. Sarah Maza notes:

> ...One of the most insistent themes in Rousseau's discussion is that the power invested in women in such settings [the theatre and high society] has as its inevitable corollary the weakening of men, who are reduced by female authority to the level of adoring eunuchs: "Every woman at Paris gathers in her apartment a harem of men more womanish than she."[8]

Rousseau sought to bring greater transparency to government, creating a Republic of men where manipulations within the court were no longer the primary means to power. Moreover, Rousseau wanted to create a division between the private and public spheres, feeling that men could have a better chance of attaining justice in the public sphere where decisions were based on logic rather than popularity or feminine intrigues.

In contesting the monarchical power structure and the public role of the private sphere, Rousseau also attacked women. He described public women as inherently chaotic, duplicitous, and manipulative, their need to manipulate springing from their physical weakness. Private women, those content to remain in the home, could promote morality and goodness through their role as mothers, although they still

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[8]Maza, Private Lives and Public Affairs, 167, quoted from Jean-Jacques Rousseau, Politics and the Arts, 101.

needed to rely upon male strength for safety and support.[9] He saw women as incapable, by their physical make up, of utilizing political freedoms. For this reason, Rousseau exemplified one aspect of Enlightenment thinking, which promoted individual liberties without extending them to the entire population. Nevertheless, this misogyny was not apparent within all Enlightenment thought. Condorcet decried women's lack of political rights, using Rousseau's misogynistic arguments against themselves -- Condorcet claimed that women's entry to the public sphere would open their ideas to scrutiny so that they could be monitored as were those of men.[10]

The idea of different spheres hardened through the writings of Rousseau and the actions of his followers during the Revolution. As the political climate changed and "active citizens" (all male) were offered a larger role, they became more protective of this newfound power, creating women as a category of "other" that entailed a passivity that had not been a foregone conclusion under the *Ancien Regime*.[11] As contract theories became entrenched the lines within the political sphere were clarified, hardening the boundaries between private and public through increasingly rigid definitions.

Moreover, women's political emancipation was not contemplated even within those social critiques that included divorce and remained virtually unrecognized by most Enlightenment thinkers. Even Diderot and Condorcet delved into divorce only within the context of larger social and secularizing reforms. Paternal authority was unquestioned; therefore, *philosophes* did not question the subjection of women. Instead, they rejected notions of monarchical authority and divine right, which they felt would provide 'universal' benefits. The Enlightenment was not a time of intensive discussion of women's place

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[9]For further discussion of Rousseau's opinions of women in the private and sphere, see Carol Pateman, The Sexual Contract (Cambridge: Polity Press, 1988), 3-7; Landes, Women and the Public Sphere, 85-6; and Maza, Private Lives and Public Affairs, 167-172.

[10]Schapiro, Condorcet and the Rise of Liberalism, 191.

[11]For further discussion of active and passive citizenship see Joan Scott, 'French Feminists and the Rights of Man,' 1989 and William H. Sewell Jr., 'Le citoyen/la citoyenne: Activity, Passivity, and the Revolutionary Concept of Citizenship.'

in society, because women's place in the private sphere was firmly entrenched.[12] The majority of *philosophes* firmly maintained that women's presence should be limited solely to the private sphere; the full freedoms offered to men were not to be extended to women. As mentioned above, the exception to this rule was Condorcet,[13] who promoted women's equality on a political level rather than relegating women to the private sphere of home and family. He argued that although women lacked in education and opportunity, they did not have an inherent biological inablility to reason or maintain an active political existence.[14] Nevertheless, more common arguments proposed to improve women's position solely within the private sphere, instead of allowing them into the public domain.

Enlightenment thinkers promoted change in the social structure of France under the *Ancien Regime* because they desired to further individual liberty and a more "'natural' order based on reason."[15] *Philosophes* used the family and marriage to criticize society at large; and as part of this they also recognized the utility of divorce. Although the arguments favouring divorce on the part of figures such as Montesquieu, Diderot, and Condorcet were very general, some lesser known thinkers, such as Cerfvol and Hennet, strongly supported divorce and effectively used the language of the Enlightenment to make their arguments known.[16] These men believed that forced indissolubility of a conjugal bond was contrary to reason. Since society was meant to improve man's state of being and increase personal happiness, they argued that marriage was intended not only to maintain the procreation of the species, but also to promote happiness and well-being. Thus, if one or the other partner, but more usually the woman,

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[12]Elizabeth J. Gardner, "The Philosophes and Women: Sensationalism and Sentiment," Women and Society in Eighteenth-Century France, 25-7.

[13]Schapiro, 187.

[14]For further information on Condorcet's feminist views and marriage, see Elizabeth J. Gardner, 25-7; Edward Goodell, 156; Schapiro, 75; and Keith Micheal Baker, Condorcet: Selected Writings, (Indianapolis, 1976), xxv and 97-104.

[15]Gordon Wright, France in Modern Times 4th ed. (New York: W.W. Norton, 1987), 24.

[16]For a full explanation see Traer, Marriage and the Family, Chapter 2 "The Rise of Criticism," 48-78 and Phillips, Putting Asunder, 165-7.

wished to end a marriage, this would be preferable to continuing a bond that caused harm. In addition, they successfully demonstrated the historic availability of divorce under Judaic and Roman law. Montesquieu and d'Holbach also argued that allowing women access to divorce would be a useful counterweight to male authority and would result in husbands being more considerate and less tyrannical. As Phillips states: "Montesquieu proposed giving the right of repudiation (unilateral divorce) only to women; to confer it on the husband, the master of the house, would be to give him only another means of abusing his power."[17]

Diderot offered yet another scenario. He detailed a tropical utopia wherein "natural" man was able to terminate relationships at will, both parties being free to consummate a relationship, procreate, and then end the affiliation through mutual consent. Childrearing was to be a community effort rather than being broken down into family units.[18] Diderot's idea of communal childrearing may have reflected general concerns regarding population and belief that France needed to increase in numbers in order to rise in power. Montesquieu, Cerfvol, and Hennet also propounded this demographic argument. They felt that "the legalization of divorce would, ironically, encourage marriage, cure all immorality, and give France a large and vigorous population."[19] Their opinion held that happy couples had sex more often, increasing the likelihood of pregnancy. These arguments were also anticlerical in nature - celibacy was described as an attack on the state, as was the idea of separation. Allowing couples to separate, but not to form new unions, was a hindrance to the developing power of the French nation. The rising power of Prussia, where divorce was legal, was used as an example.[20] Critics of indissolubility pointed to the

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[17]Phillips, Putting Asunder, 171.

[18]The direct effect of this thought would have been minimal as *Supplement au Voyage de Bougainville* was not published until after the Revolution. However, it is significant that these ideas were present. See discussion of this work in Traer, Marriage and the Family, 57; Phillips, Putting Asunder, 166 and Robert Niklaus "Diderot and Women," 80.

[19]Phillips, Putting Asunder, 169.

[20]Phillips, Putting Asunder, 170 and Traer, Marriage and the Family, 54-6.

growing German population, which they felt correlated to the positive influence of divorce.

New ideas regarding sentimentality also supported arguments for divorce. The emotional bond of companionate marriage was to be based on mutual affection; therefore, if sentiment changed that bond could, in turn, be broken, leaving both partners free to seek a new relationship wherein they could be happy.[21] Such arguments demonstrate the importance of Enlightenment thinking, which influenced views of society and marriage, and greatly challenged the authority of the Catholic Church. As James Traer states: "they insisted that the bonds joining man and wife and parents with children ought to be those of affection, not authority."[22] The *philosophes* believed that temporal emotion was of as much importance as the eternal rewards to be gained by obedience to Catholic dogma.

Enlightenment arguments for divorce were not situated in the same context as modern debates. Instead of being a "woman's" issue, it was marriage's viability as a "contract" that prompted debate over its status.[23] The dissoluble nature of contract was expounded by Condorcet: "so, in the face of such simple principles, we see the disappearance of the belief in the existence of a contract between the people and their lawgivers, which can be annulled only by mutual consent or by the defection of one of the parties...".[24] Extrapolating this theory to the marriage contract, we can see that marriage should end if there is mutual consent, infidelity, or abandonment, which break the civil contract created by the marriage vows.[25] Thus, marriage, from the Enlightenment perspective, was a contract rather than a holy

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[21]Phillips, Putting Asunder, 165.

[22]Traer, Marriage and the Family, 49.

[23]For further discussion of this topic see: Phillips, Putting Asunder, 165-8 and Traer, Marriage and the Family, 48-78.

[24]Baker, Condorcet: Selected Writings, 222 translated from "Sketch for a Historical Picture of the Progress of the Human Mind," (1793).

[25]A feminist view of the role of contract is provided by Carol Pateman. She sees the Social Contract as being the initial arbiter of contemporary patriarchal society - the marriage contract, and all contracts for that matter, evolved from this primary contract, wherein man gave up his freedoms in return for the protection of civil society. Women were subjected to men by the marriage contract, just as man subjected himself to the state. The Sexual Contract (Cambridge: Polity Press, 1988), 3-7.

sacrament. As Sara Maza notes "...in the 1780s, familial and matrimonial [legal] cases served as the means for addressing the nature of the social contract by pointing to analogies with the marriage contract."[26]

The indissolubility of marriage thus relied upon its status as a religious sacrament, and in attacking marital indissolubility the *philosophes* also attacked the power of the Catholic Church which upheld it, denying the Church the power to enforce its dogma on the population of France. The basic division within the eighteenth and nineteenth centuries remained between secularizing rationalists and conservative Catholics. The concept of contract was intrinsic to this division. Enlightenment thinkers supported the idea of a contract between the individual and society, and a contract between husband and wife, both of which were dissoluble should the obligations under the contract not be met. Contract theory, however, was in direct opposition to the traditional thought of the *Ancien Regime*, which held that the individual was subject to the divine right of the King, who gained his power from God and the Catholic Church. In the same manner, husband and wife were subject to the sacrament which indissolubly bound them in marriage, also through the auspices of God and the Catholic Church. The ties that bound the Church to the Bourbon monarchy were strong, consisting of a desire to uphold each other's authority as the basis of their own. Therefore, the rationality and secular spirit of the Enlightenment threatened traditional ideas of society and the family because of its support of theories of contract, which ignored the divine nature of both the monarchy and the marital tie. It was this disparity of ideas which would be enhanced by the events of the Revolution and create internal strife within France -- between secularizers and traditional Catholics, many of whom would become revolutionaries and counter-revolutionaries after 1789.

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[26]Maza, Private Lives and Public Affairs, 15.

Chapter 2 - The Revolution: Divorce as the implementation of Enlightenment ideas

This chapter will illustrate the means by which certain Enlightenment ideas were implemented under the different Revolutionary governments after 1789. Their main effect is evident in legislation promoting secularization, increased civil liberties, and the introduction of contract theory over religious faith as a basis for society. Included in this idea of contract theory was contractual marriage, which symbolized the new state in its secular and legal binding of a couple, without the sacramental ceremony of the Catholic Church. In order to understand its significance, divorce must be situated within this larger political context of secularization. The first stage of the Revolution brought about gradual political change towards constitutional monarchy, but it also introduced the nationalization of Church lands and the Civil Constitution of the Clergy. This attack on the Catholic Church became a turning point, strengthening counterrevolutionary attitudes amongst Catholics, especially in the south and west of the nation. As the Revolution radicalized, the dichotomy between rural Catholics and urban Revolutionaries would only increase. Moreover, secular legislation for divorce and civil registries for birth, death, and marriage (inevitable under the Constitution of 1791) were passed even before the introduction of the radical National Convention. Women's civil rights were also increased during this phase of the Revolution; however, women remained 'passive' citizens without political rights of their own. Restrictions on individual rights, including political rights for men, would increase after 1793 and the rise of the Jacobins. Desiring a more transparent government[1], the Jacobins closed political clubs, salons, and gatherings; they also moved from secularism to anticlericalism with the dechristianization campaign of 1793. Women did retain their equality before the law, however, and they were sent to the guillotine along with men. The final stage of the Revolution, the Directory, was less extreme, favouring decentralization, but problems remained with counterrevolutionary, reactionary movements led in many cases by disgruntled Catholics such as those found in the Vendée. Although the government introduced new festivals, the populace dismissed them in favour of a return to the Catholic fold. By 1797, divorce

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[1]Transparency at this juncture meant a government controlled by the Rousseauian idea of the 'public will' rather than the interests of members within that government. Government was to be conducted wholly before the eyes of the public. Political clubs were, therefore, disdained as 'private' meetings that promoted individual interests.

rates had dropped to half their original numbers (from 4,296 to 1,891) and the conservatism that would favour Bonaparte was already discernible.

This chapter will illustrate changing ideas of marriage and divorce, which ran parallel to alterations in public and political attitudes in France;[2] thus, after the Revolutionary tides had receded, divorce would be a source of continual debate, because it symbolized to successive governments the larger anticlerical and social agenda of the Revolution. In tracing the events leading to passage of the divorce law on September 20, 1792, and subsequent changes with the end of the liberal phase of the Revolution, one can thus follow the political evolution of the nation and also interpret the effect of political changes on social issues such as divorce.

Two main factors influenced the process of social change during the Revolution: the secularization of the state due to Enlightenment influence; and the value placed on individual liberties, including religious toleration, personal choice, freedom of action, and the pursuit of happiness. These elements combined with the prominence of contract theory to produce legislative debate on marriage and the family. Moreover, as attitudes changed regarding the place of the monarch as unquestioned head of society (in the period from 1789 to 1792), so too did some people's views of the father as unquestioned head of the family. The concept of marital indissolubility proved unable to survive the Revolutionary rejection of both Papal authority and the patriarchal authority of fathers within the family under the *Ancien Regime*. As James Traer notes:

> ... In place of the ancien regime's traditional family, dominated by the husband and father, they hoped to substitute a democratic form of family organization, providing more nearly equal rights for all family members.[3]

The rejection of arbitrary authority was intrinsic to Enlightenment theories that influenced the first stages of the Revolution. However, it is also important to note that while this legislation provided "more nearly equal rights" it clearly did not transfer equal power into the hands of women -- men were still considered

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[2]Marcel Cruppi, *La Divorce Pendant la Revolution 1792-1804*, (Paris, 1909), 111-13.

[3]Traer, Marriage and the Family, 137.

head of the household, although a few restrictions were placed on their authority.

The initial phase of the Revolution, beginning with the Estates General in 1789 and ending with the suspension of Louis XVI and the convening of the National Convention in September 1792, favoured gradual change and replacement of power structures. Legislators prior to the Convention period (October 1792) strove to increase individual liberties, but did not necessarily translate those liberties into political rights. The original Estates General was elected by a wide suffrage based on indirect elections;[4] future votes would see the franchise restricted by gender as well as property or age requirements, through limitations on active citizenship. Active citizenship carried different restrictions for those seeking to participate in the political process throughout the Revolution. Nevertheless, women were considered by their 'nature' to be passive citizens.[5] This inherent passivity was indicated within the term of '*citoyenne*', which gained popularity after 1792, and contrasted against the public vigour entailed by the opposing term of '*citoyen*'. Women were needed within the private sphere of home and family to provide new '*citoyens*'. Any increased rights for women thus remained civil, granting rights to hold property and other legal rights within the private sphere, signifying a refusal to allow women to breach the gap into the public realm through an extension of political rights, for instance the vote.[6]

The search to provide increased liberties, in combination with state fiscal needs, led to increased secularization in the Assembly's legislation.[7] State finances and the increased need for taxation to pay off Crown debts increased France's revolutionary troubles; in consequence, Church lands were nationalized and then sold off to save France from bankruptcy. Needless to say this appropriation aggravated the Catholic hierarchy, an aggravation furthered by the institution of the Civil Constitution of the Clergy in 1790. The Civil Constitution democratized the Church -- the clergy became elected employees of the state, rather than appointees of the Vatican, and residence restrictions were enacted.

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[4]Sutherland, France 1789-1815, 40.

[5]William J. Sewell, 109.

[6]Sewell, 121.

[7]Adrien Dansette. Religious History of Modern France vol. 1. (Edinburgh: Nelson, 1961), 49.

Moreover, clerical opposition was guaranteed by the seizure of Church property, elimination of the tithe, and the refusal of the Assembly to recognize the traditional authority of the Catholic Church. This act upset many conservatives, including Louis XVI, and areas strong in the Catholic faith such as the Vendée.

The Civil Constitution of the Clergy signalled a turning point in the Revolution. Monarchists used clerical influence to gain support for counterrevolutionary measures from local people, who were unhappy with the Revolution's effect on the Catholic Church. The clergy's power was most evident in rural areas, due to its basis in religious faith and personal ties. Urban areas were less constrained by community norms and therefore had found it easier to forego the strictures of Church authority, strengthening animosities between rural and urban areas. Paris demanded change and supported the Jacobins, who applauded the Civil Constitution's implementation, because it increased independence from the Catholic Church. At the same time, Catholic moderates found it more difficult to support a regime that failed to recognize the needs of the Church, increasing counterrevolutionary activity in the south and west -- especially in parts of the Midi and Vendée. This counterrevolutionary activity frightened Parisians, who had already become distrustful of Louis XVI after the Flight to Varennes in July of 1791.[8] Moreover, the Catholic Louis, despite his promulgation of the Civil Constitution, had refused to support legislation in 1791 threatening the clergy with deportation if they failed to take an oath to the Civil Constitution of the Clergy. This failure to embrace the Revolution, combined with his refusal to submit to the will of the Assembly, aggravated the people of Paris, leading to popular revolt.

Exacerbated by the intervention of foreign powers in 1792 and French military defeats in August, 1792, fear began to rival ideas as the Revolution's guiding force. The call for new elections in the chaotic summer of 1792 left the Legislative Assembly largely under the influence of anticlerical Paris,[9] leading to yet another decree against refractory priests who refused to swear the oath. Radical

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[8]Jacques Godechot, The Counter-Revolution Doctrine and Action 1789 - 1804, (Princeton: Princeton University Press, 1971), 143-45.

[9]William Doyle, Oxford History of the French Revolution. (Oxford: Oxford University Press, 1989), 190.

elements rose to prominence, nourished by the Jacobin clubs and represented by the Paris Commune after August 10, 1792, which allowed the people of Paris increased power, causing the Assembly to enact precipitous changes. The September Massacres followed, driven by Parisian fears of enemies, both foreign and domestic.[10]

Secularization held an increasingly prominent position in the Revolutionary agenda as resentment against the Catholic Church grew. Although those in power under the initial phase of the Revolution had been willing to work within the traditional structures of French society, as the Revolution radicalized, it was viewed as necessary to remove, and in some cases destroy, the structures of the *Ancien Regime*. The monarchy had been supported by notions of Divine Right, and in turn the First Estate had received its lands and tax-free tithes from the people of France. The partnership, therefore, had emboldened both Church and State to extend their powers, which, in turn, led to their demise as the Revolution sought to destroy any infringements on the sovereignty of the people. In the same vein, passage of the Civil Constitution of the Clergy had swept away the privileged position of the independent Catholic Church in France. Moreover, after 1790, the Church became tied to a State that no longer placed great importance on its socializing influence. This changed relationship was illustrated by new laws governing marriage: in place of a religious ceremony to validate the sacrament of marriage, came a civil ceremony which contractually bound a couple in marriage.

Divorce became inevitable due to the introduction of contractual, secularized marriage under the constitution of 1791 -- any contract can be broken. And although women's liberation was not the legislators' primary goal, women could profit from these new attitudes, which created greater democratization in the home[11]. The Legislative Assembly had made marriage into a civil contract, under the auspices of the state rather than the Church, an inevitability given the stature attributed to contract under the Revolution. Therefore, several unhappy couples demanded the dissolution of their marriages

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[10]Sutherland, France 1789-1815, 154.

[11]Suzanne Desan, "War Between Brothers and Sisters": Inheritance Law and Gender Politics in Revolutionary France," *French Historical Studies*, vol. 20 no. 4 (Fall 1997), 604.

as civil contracts, and, under the new constitution, won their cases prior to the passage of the divorce law.[12] Thus the concept of contractual marriage embedded itself in Revolutionary culture and the state apparatus.[13] However, problems arose from this shift for staunch French Catholics -- the Church did not initially acknowledge the validity of civil marriage ceremonies, symbolizing the general problem of Catholics under the secular Republic.

The importance of this distinction between marriage as a contract and marriage as a sacrament has been addressed above; however, what concerns us here is the divorce law that evolved from this distinction. Marriage was seen as a civil contract based on a secular ceremony; thus it became necessary to provide a legal exit for those who wished to end their contractual obligation. Not to do so would jeopardize individual liberties:[14] "*...les légistes de 92, épris de liberté individuelle, se refusent à envisager le côté "social" du mariage; c'est de quoi se plaindront surtout par la suite les anti-divorcaires.*"[15] Yet herein lay the problem. The Revolution proclaimed the importance of individual liberties and was, therefore, unable to constrain people to remain in marriages: "*...votre amour pour la liberté vous faisait désirer depuis longtemps de l'établir au milieu même des familles, et vous avez décrété que le divorce avait lieu en France.*"[16] The Legislative Assembly, forced by its own philosophy, declared the secularization of marriage and legalization of divorce in 1792.

Much of this period's legislation was guided by Parisian desires, including a renewed

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[12]An example of this type of case is cited in Traer, Marriage and the Family, 117-8: "In November 1791 a citizen named Espinay divorced his wife by an authenticated act prepared by a notary and executed before witnesses. He remarried almost immediately." These types of divorce are also mentioned in Martin, *La Crise du mariage*, 79 and Phillips, Putting Asunder, 177.

[13]Cases were prevalent, after the secularizing law, of marriages being sanctioned only by refractory clergy, but for official record keeping and legal purposes contractual marriage was dominant. Sutherland, France 1789-1815, 216, notes the notebooks kept of marriages and baptisms by refractory clergy.

[14]Traer, Marriage and the Family, 123 and Cruppi, *Divorce pendant la revolution*, 55-7.

[15]Cruppi, *Divorce pendant la revolution*, 56-7.

[16]*Archives parlementaires*, 7 septembre 1792, 432.

anticlericalism which heralded the imposition of the law against the refractories.[17] The more liberal social mores of the Parisians were amenable to the proposed divorce legislation, which was pushed through during the final days of the Legislative Assembly. Certainly, divorce was an urban demand[18] and Parisians would make widest use of the legislation; nevertheless, it must be kept in mind that divorce legislation was the last work of an Assembly dedicated to individual liberties. The legislation's timing is an important factor in determining the place of divorce within politics and the Revolution. The Legislative Assembly recognized marriage as a contract that was dissoluble through divorce on August 30, 1792; the legislation returned from parliamentary committee on September 7, and a report was presented, declaring that:

> *Le comité a cru devoir conserver ou accorder la plus grande latitude à la faculté du divorce à cause de la nature du contrat de mariage, qui a pour base principale le consentement des époux, et parce que la liberté individuelle ne peut jamais être aliénée d'une manière indissoluble par aucune convention.*[19]

The 19th of September saw the promulgation of the law on civil registry of births, deaths, and marriages necessitated by the dwindling numbers of constitutional clergy available to perform this function.[20] Continuing this secularizing trend, divorce was the second-to-last piece of legislation enacted by the Assembly on September 20, the last day before the transfer of power to the National Convention.

This slate of social and secularizing legislation and the more extreme attitude of the Convention hurt the already tenuous position of the Catholic Church, as new norms were embraced, placing emphasis on personal liberty instead of order, tradition, and faith. The symbolic link of divorce to the Revolution, valuing individual liberties over a corporative image of the family, would trigger demands for its

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[17]Refractories were non-juring Catholic priests, those who refused to swear the Oath to the Civil Constitution of the Clergy.

[18]A group of Parisians had sent a letter to the Legislative Assembly demanding divorce earlier in 1792. *Archives parlementaires*, 13 Febuary 1792, vol 38, 466.

[19]*Archives parlementaires*, vol 49, 7 septembre 1792, 433.

[20]Sutherland, France 1789-1815, 152.

abolition under the Bourbon Restoration. Divorce symbolized liberal legislation and changes made in both the constitution of France and French ideas of society, because arguments for divorce in the Legislative Assembly centred around individual liberties. The loaded meanings and subtext of political discourse of the period made it next to impossible to argue against divorce at that time. As M. Cambon, a supporter of divorce within the Legislative Assembly, stated:

> *...il n'est aucun citoyen, ami de la liberté et de l'égalité, qui puisse s'opposer au décret qu'on vous propose. Je vais plus loin; le divorce est établi dans la déclaration des droits, il en est une conséquence nécessaire: l'intention de l'Assemblée nationale est de respecter les opinions religieuses, mais elle ne souffira jamais qu'elles puissent influencer sa législation.*[21]

Individual liberties were paramount during the Revolution, replacing tradition, absolute monarchy, and the authority of the Catholic Church.

Despite the emphasis placed on conforming to the General Will as expressed in the Legislatiave Assembly, the secularization of French social laws was not universally popular; nevertheless, the timing of the legislation was such that few spoke out against it. France had been invaded during the summer of 1792 by Austrian and French *emigré* forces who had crossed the Belgian border and inflicted several harsh defeats. Rumours threatened that foreign troops were headed for Paris and that Verdun had fallen. Thus minds were turned to matters more pressing than divorce legislation:

> *Après cette séance du 13 septembre où la discussion fut, on le voit, assez animée, il n'y aura pour ainsi dire plus de débat pendant les séances du 14, du 16 et du 19; la loi sera votée le 20, à une séance du soir, sans discussion. Elle a donc bien un caractère de hâte et d'improvisation. L'assemblée est nerveuse, impatiente, inquiète; pendant la séance du 13 septembre, des bataillons de volontaires défilent dans la salle, on lit des bulletins de Dumouriez concernant les opérations de l'armee du Nord.... faudra-t-il envoyer de nouvelles troupes?*[22]

The presence of foreign troops supported by French *emigrés* influenced the progress of the divorce

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[21]*Archives parlementaires*, 30 august 1792, vol 49, 118 The speaker was M. Cambon.

[22]Cruppi, Divorce pendant la revolution, 57.

legislation and the Revolution generally, just as fear of counterrevolutionary reprisals while Parisian men were off soldiering sparked the September Massacres.[23] Catholics and staunch monarchists incapable of accepting the changes wrought in the government were pushed to the side as the Revolution knocked down the institutions of the *Ancien Regime* and suspended the Monarchy in August 1792. Within this atmosphere of suspicion and intrigue, those participating in political debates had their loyalty questioned and weighted regardless of the issue under discussion, politicizing opinions on day-to-day matters.

Divorce in the Ideology and Popular Culture of the Revolution

The importance placed on supporting the governmental vision of individual liberty raises questions regarding Revolutionary secularization. The desire to separate Church authority from that of the state did not inevitably demand antireligion or atheism. In fact, the Gallican traditions already present within the French Catholic community were capable of supporting many of the ideas within the Civil Constitution, such as the residence requirements placed on bishops.[24] Instead, secularizers aligned themselves against the temporal power of the Catholic Church as an institution, desiring the separation of Church and State, but not an end to the Catholic faith. Conservatives such as de Maistre and Abbé de Barruel accused the Revolution of planning the destruction of the Catholic faith; however, increased secularization was a result of social change within the Revolution, rather than a motivating factor.

A smaller element of anticlericalism was present in France before the calling of the Estates General in 1789,[25] a sentiment which became more acceptable, along with more mainstream calls for secularization, through the Enlightenment's open questioning of Catholic authority and traditionalism. The tenets of 'natural law' directed by reason were not always reconciliable to Catholic dogma, and while the trend towards 'natural law' was strengthened by the Revolution, it did not originate within it. As illustrated by the speech made by Cambon in the Legislative Assembly quoted above, the authority of the Church was secondary to the wishes of the people and their representatives. The government would

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[23]Sutherland, France 1789-1815, 155.

[24]Doyle, Oxford History of the Revolution, 140.

[25]Phillips, C. S. The Church in France 1789-1848. (New York: Russell & Russell, 1966), 4.

not be guided by religious principles.

Moreover, Rousseau's and other philosophers' questioning of Catholic theology and the role of the sacraments made it easier for France to turn to individual liberty and contract theory over religious doctrine. Enlightenment concepts had led to greater consideration of authority as their effects were transmitted gradually to lower levels of society; thus, divorce became conceivable in a society which looked to its government, rather than its Church, as a guide. Nevertheless, both Enlightenment and Revolutionary proponents of divorce, known as *divorciaires*, factored the Catholic Church into their arguments. Hennet, one of the foremost *divorciaires* of the time, straddled the Enlightenment and Revolution -- he had made arguments in support of divorce during the Enlightenment, but his influential pro-divorce brochure was printed in the auspicious year of 1789. The revolutionary legislation would follow closely the concepts set out in Hennet's pamphlet.[26]

According to Marcel Cruppi, Hennet and his fellow *divorciaires* were not inherently anticlerical, but rather favoured a secularizing approach, evident in their attempt to fit divorce into Catholic theology. Cruppi points to attempts in brochures and pamphlets to demonstrate the sanction of divorce in the gospel of Matthew (19:9; 5:31 -32)[27]: "*cette démonstration eût été bien superflue si les auteurs eussent été animés de sentiments antireligieux.*"[28] However, to gain passage of divorce legislation, it was necessary to place divorce within the larger agenda provided by secularization. Certainly, most *divorciaires* wanted to take power away from the Church in the matter of marriage, and held that religious belief did not have to equate to belief in marital indissolubility. Protestants had found in the Bible enough evidence to support divorce on a limited scale, as had members of the Orthodox Church in Poland; the *divorciaires* played on these aspects early in the 1780s and into 1789. Hennet's pamphlet of 1789 advocated twelve circumstances in which divorce could be obtained by husband or wife: "condemnation to death, sentence to a degrading punishment, or sentence to a long term of

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[26]Phillips, Putting Asunder, 174.

[27]Traer, Marriage and the Family, 26.

[28]Cruppi, *Divorce pendant la revolution*, 7 Note 2.

imprisonment; captivity when no release could be foreseen; the exile or disappearance of one of the spouses; sterility for a specified period; incurable illness; insanity; any crime; adultery; extreme dissoluteness; and incompatibility of temperament."[29] This pamphlet was widely read and undoubtedly influenced the form of the divorce legislation of September 20, 1792.

From 1789 on, the influence of the *divorciaires* grew as the rhetoric for marital dissolubility came to match that of individual liberty -- the progression of Revolutionary secularization matched that of divorce legislation. After the promulgation of the Civil Constitution of the Clergy, arguments for divorce took on a more revolutionary edge and became more dismissive of the relevancy of Catholic dogma. As the historian Francis Ronsin states:

> *Au cours de son plaidoyer en faveur de l'attribution aux époux séparés du droit de se remarier, donc du divorce, il n'évoque pas les Evangiles, la tradition des Eglises mediévales ou polonaise, mais la responsabilité des constituants qui ne doivent être motivés que par le souci du bien public et le respect de leur principes.*[30]

The Revolution demonstrated its willingness to favour state interests over religious freedom with the enactment of the Civil Constitution of the Clergy. At the same time, marriage was taken into the hands of the civil government, again symbolizing the Catholic Church's lack of importance to the revolutionaries. The secularization of the state was completed during the first five years of the Revolution.

Divorce, as a civil liberty, was symbolic of the Revolution, not just as a political parallel, but as a component of the battle that the Revolutionaries waged for public opinion within Paris and the urban centres of France. As an example of the "shared values and shared expectations of behaviour"[31] which the Republic hoped to instill, divorce could be used as an indicator of political affinity. The introduction of civil marriage and divorce affected the common person, shifting the locus of power from the parish

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[29]Phillips, Putting Asunder, 173 taken from Hennet, *Du Divorce*, 122-3.

[30]Francis Ronsin, *Le Contrat Sentimental*, 91.

[31]Hunt, Politics, Culture, and Class, 13.

priest and the Catholic Church to the civil magistrate and the French State -- whose sovereignty lay in the hands of the people: "...explicitly drawing links between the family and nation, petitioners asserted that reformed families conformed to the wishes of the sovereign people and would underpin the Republic."[32] The French were taking power through everyday actions as well as governmental processes.[33]

The radicalized Revolution after 1792, with its promotion of *fraternité*, attacked the monarchical presupposition of the "father as head," but divorce was not indicative of a desire among the Jacobins to free women from the domestic sphere. Male authority was unquestioned during the Revolution, and divorce, though symbolically important, was not promoted on a wide scale. However, divorce can be used to illustrate the interweaving aspects of the social and the political during the Revolution, as civil liberties were being promoted. Nevertheless, divorce was not legislated to empower women or as a precursor to political rights. The average male legislator did not credit women with the ability to function in the public sphere, were they to be given such an opportunity. Women, by definition, were passive citizens dependent on the male head of the family to act for them politically.[34] Those Revolutionary orators who addressed the place of women emphasized their liberty to make change and gain freedom from tyranny *within the home*; they were not suggesting that women gain political freedoms.

The Jacobins who came to power under the Revolution had in their political culture a dichotomy that was integral to their newfound sovereignty. Men under the Republic were to be active, political and reasoned, possessed of both liberty and individual sovereignty. However, to maintain a balance in society it was necessary for women to provide the complementary traits as passive citizens, who by their

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[32]Suzanne Desan, "War Between Brothers and Sisters," 630.

[33]Sheryl Tracy Kroen, "The cultural politics of revolution and counterrevolution in France 1815-1830" (Ph.D. diss., University of California at Berkeley, 1992), 188.

[34]Sewell, 107; and Scott, "French Feminists and the Rights of 'Man'", 2-5.

'natures' were private, domestic, and silent, motivated by duty and their dependence on men.[35] Therefore, it was not conceivable that women should be given political rights that would endanger societal balance. General belief at this time, irregardless of political ideology, held that women were emotional and disorderly by nature, and if allowed out of the protective embrace of the home would cause disorder in society at large. As stated by André Amar to the Committee of General Safety:

> The private functions of which women are destined by their very nature are related to the general order of society; this social order results from the differences between man and woman. Each sex is called to the kind of occupation which is fitting for it; its action is circumscribed within this circle which it cannot break through, because nature, which has imposed these limits on man, commands imperiously and receives no law.[36]

A woman who embodied this feminine disorder was Olympe de Gouges. She sought to challenge and overcome the mold set out for her, but was defeated by the strength of Jacobin rhetoric and contemporary attitudes towards gender roles. Her dalliance with the 'unnatural' world of politics would end at the guillotine. Olympe was neither silent nor passive; nevertheless, she failed to gain the political rights she fought for with her Declaration of the Rights of Woman. Her petitions for change within the family were little more successful, with the exception of her petition in favour of divorce legislation. Support for divorce legislation did not indicate a general willingness on the part of the Convention to revamp the family, but instead indicated the desire to increase individual liberties and personal happiness through social change. Most of Olympe's attempts to gain recognition were dismissed as the emotional rantings of an 'hysteric'.

Nevertheless, achievements within the private sphere were apparent under the Revolution, including the ability of women to inherit property, make decisions for their children, divorce their husbands, and make legal petitions. This social legislation provided women with more power within the home; although, as mentioned above, it was never the intention of the legislators to offer women political

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[35]Scott, "French Feminists and the Rights of 'Man'", 4.

[36]As quoted in Scott, "French Feminists and the Rights of 'Man'", 3.

rights in the public sphere. Divorce was legislated to increase individual liberties,[37] and as a plank in the secularizing platform of the liberal Revolution, not as part of a grand plan to emancipate women.[38] According to Suzanne Desan:

> In their ambitious attempts to rebuild society from the ground up, regenerate the family, and transform the very fabric of private life, the French revolutionaries had embarked on a far-ranging and controversial reform of family law: they weakened paternal authority, lowered the age of majority, legalized divorce, secularized marriage, overhauled inheritance practices, facilitated adoption, and offered illegitimate children new civil rights.[39] [all by September of 1792]

The family, while including wives and mothers, was not interpreted from a feminine perspective, and men, as husbands, brothers, and sons were very much a part of the Revolutionary legislators' decision to extend civil equality within the family. This view of the masculine family offsets sweeping statements regarding the "democratization of the family," and its great benefits for women. The benefits for women were secondary to the idea of building a new society without the authoritarian presence of king or Church. Revolutionary theorists needed to establish a new metaphor for the family in response to new ideas of government and state. The democratized family was part of this restructuring, but rather than placing equal power in the hands of husband and wife, it left things imbalanced within the relationship. The balance was shifted more favourably for women, but they were not offered equality with men, even within the family.[40]

The institution of family tribunals demonstrated the limits to democratization and the relations

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[37]Sewell, 108.

[38]Desan, "War Between Brothers and Sisters," 620 and Jane Abray, "Feminism in the French Revolution," *American Historical Review*, vol. 80 no. 1 (February 1975), 58-9.

[39]Desan, "War Between Brothers and Sisters," 597-8.

[40]Many women were not receptive to these attempts to change the basic traditions and social relations within their communities. While a minority of urban women claimed a space for themselves within the Revolution, this was not common throughout France nor were they widely supported even by other urban women. Olwen Hufton, Women and the Limits of Citizenship in the French Revolution. (Toronto: University of Toronto Press, 1992), 96.

between the public and private spheres inherent in the divorce process. These committees were formed, in place of a formal judiciary, to investigate and grant divorces during the Revolution. They consisted of representatives chosen by both husband and wife, family members or friends who knew the couples well, in order to keep divorce closely tied to the family structure and lessen the embarrassment of public discussion of private matters. Unfortunately, problems arose within the committees, such as committee members failing to appear.[41] Also, some not surprising, "inequalities remained. . . in practice they [women] were excluded from sitting on the Tribunaux de Famille . . .".[42] Similar inequalities were apparent when cases concerning inheritance were brought before the tribunaux.

The Terror and reduction of individual liberties

The tenets of the liberal phase of the Revolution fell by the wayside after 1792. Gains in terms of individual liberties were sharply reduced by Jacobin despotism during the Terror, heralded by the election of the more extreme National Convention. The National Convention convened in September of 1792 at the same time that a beseiged France began to feel the strain of both her internal and external conflicts. In 1793, the government shut down women's clubs and most other organized group meetings, male or female; they were attacked for hiding their activities from the public eye. Moreover, initial supporters of the liberal phase fell out of power, in some cases losing their heads, as did Condorcet in 1794. Robespierre and the Montagnards, in power during the Terror, supported transparency and the General Will, following Rousseau's arguments for a wholly 'public' government. This desire for transparency led to the closure of political clubs, salons, and other semi-private organizations, which expressed the political aspirations of 'passive' citizens. Suspicion ran wild, and the activities of counterrevolutionary *Chouans* and the massive rebellion in the Vendée only fueled the flames.

In this atmosphere, the dechristianization campaign, which began in September 1793, sharply increased rural animosities. Radical Terrorists such as Fouché and others feared the Church's domination

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[41]Desan, "War Between Brothers and Sisters," 615.

[42]Jane Abray, "Women and the French Revolution," 59; Roderick Phillips also maintains this position in his article "Women Neighbourhood and Family in the 18th century," *French Historical Studies*, vol. 18 (Spring 1993), 7. As did Ronsin, *Le contrat sentimental*, 269.

of the rural populace;[43] therefore, the government decided to close all churches, whether led by constitutional or refractory priests. Priests were encouraged to marry to prove their loyalty, while churches in urban areas were desecrated and religious icons burned. It appeared to many Catholics that the dechristianization campaign was an attempt to remove all spiritual solace provided by the Church, including symbols of faith such as crosses and church bells, and the necessity of teaching catechism to the young. This rerouting of religious policy destroyed what little credibility the Constitutional Church possessed and alienated the religious segments of the population, especially women.[44]

The attack on the Constitutional Church corresponded with a crackdown on women acting in the public sphere in urban areas. Legislators' concepts of private and public spheres can be clarified by comparing legislation on political groups and movements with legislation on divorce. The legislation of October 30, 1793, which suppressed the Society of Republican Women and all other women's clubs and popular societies, curtailed women's activities in the public sphere.[45] Meanwhile, divorce legislation was increasingly liberalized. In December of 1793 the Convention passed a law allowing men requesting divorce to avoid the one-year waiting period before remarriage which had been included in the initial legislation. A ten-month waiting period was maintained for women to avoid any questions regarding the paternity of children from a new marriage. This trend continued in 1794. Divorce was permitted if an absence of six months could be proved on the part of either spouse, requiring verification by six people only.[46] During this same period restrictions on 'active' citizens were increasing, as political clubs were closed and voting laws were tightened. While women (and men as well) were being restricted in the public sphere, the private was being democratized -- to an extent.

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[43]Doyle, Oxford History of the Revolution, 259.

[44]Olwen Hufton, Women and the Limits of Citizenship, 106.

[45]Joan Landes, Women and the Public Sphere in the Age of the French Revolution. (Ithaca:Cornell University Press, 1988), 143; Hufton, Women and the Rights of Citizenship, 37 and Abray, "Women and the Revolution," 57.

[46]Traer, Marriage and the Family, 121-3.

Reaction and the Directory

The changing tide of the Revolution put a halt to divorce's easy acquisition. The last two adjustments to the divorce law were suspended in August 1795 as the Convention neared the end of its term.[47] Although the events of *Thermidor* heralded the return of the Girondins in 1794, it was not until the Convention agreed to adopt a new constitution in August of 1795 that the Revolution transformed itself once more. The Directory rejected Jacobin centralization and allowed local actors to regain control over their destinies. Reaction began to gather in a nation wearied by violence, war, and 'freedoms' that were fleeting at best. Subsequently, the franchise was effectively reduced 'to barely half that of 1791,'[48] while counterrevolutionary elements unleashed the 'White Terror' in the Midi, as a reprisal to the Red Terror and the dechristianization campaign.[49] The governing executive was comprised of five Directors who sought to find a middle path between the extremes of royalism and Jacobinism. Unfortunately, decentralization only worsened the chaos in the provinces, where revolutionary and counterrevolutionary factions struggled for control.

The economic crisis that accompanied the Directory caused consternation among legislators and the common person alike. Crops were poor in 1794 and 1795, causing bread riots and misery throughout France; much of what little food was available went to feed the army, and the supply of able-bodied young men was depleted by military conscription.[50] Support for the government faltered, increasing the numbers of counterrevolutionaries in rural areas; these groups now included bands of deserters, who became brigands in rural areas, supported by counterrevolutionaries and family members. Inflation was rampant, and the state near bankruptcy, leading to the renewal of hated indirect taxes, such as the one on tobacco. All of these economic woes renewed people's attachment to the Church despite the continued

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[47]Traer, Marriage and the Family, 126.

[48]Doyle, Oxford History of the Revolution, 319.

[49]Denis Woronoff, The Thermidorean regime and the Directory 1794-1799. trans by Julian Jackson, (Cambridge: Cambridge University Press, 1984), 29.

[50]Doyle, Oxford History of the Revolution, 322 and Hufton, Women and the Rights of Citizenship, 41-2.

anticlericalism of government policies.[51]

Recognizing the people's need for a spiritual and social outlet, the Revolutionary government under the Directory instigated the celebration of a number of festivals, attempting to counteract the Catholic Church's influence through popular culture. Various Revolutionary festivals were contrived to celebrate aspects of the new France. In the case of marriage, the *fêtes de l'amour conjugal* were developed to reintroduce the importance of companionate love to Republican virtues, tying into notions of sentimentality. Yet, as Olivier Martin notes

> *Cette tentative de reforme n'était que l'echo d'une réaction dans l'opinion publique ou plutôt dans un parti rémuant de cette opinion. Une campagne violente fut en effet menée dans le courant de l'an IV contre le divorce ou du moins contre le motif d'incompatibilité qui provoquait le plus de scandale. L'importance de cette campagne pourrait faire songer à un mouvement spontané et unanimé de réaction.*[52]

The festivals were largely unsuccessful, and the Directory witnessed a strong return to Catholicism. People returned to the Church[53] after the Revolution's worship of Liberty had proved unable to provide prosperity or even a modicum of comfort in their lives. As economic conditions worsened, people, especially women, came back to the Church and the solace it provided.[54]

Betrayed by Revolutionary rhetoric that failed to feed their children or return soldiering loved ones, women returned in repentance to the bosom of the Church. These women treasured the popular

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[51]Doyle, Oxford History of the Revolution, 333-4.

[52]Martin, *La crise du mariage*, 184.

[53]While exact figures are not available as to parish populations from this period, the literature surrounding the Church seems to accept the rise as fact. For examples see: Hufton, "The reconstruction of a church 1796-1801", 21-52; Woronoff, The Thermidorean Regime, 124-5; and Dansette, Religious History, 107-114.

[54]The Revolution and its hostility to aristocratic fashions destroyed the lace industry which provided employment for many women, supplementing their family incomes. "Women [then] were quick to associate the Revolution with increasing immiseration..." Olwen Hufton, Women and the Limits of Citizenship, 92-3.

Church, not for the formal practices of the Catholic hierarchy, but for the protection of Mary and other intermediary saints congruous with popular superstitions and practices.[55] Moreover, these women were willing to revolt physically in order to protect the traditions that they held dear, and, in many cases, their actions were successful in halting governmental incursions in rural areas. Women involved in religious riots were moved not only by their spiritual piety, but also by their sense of community, which required the local Church's restitution as a gathering place. These women were more concerned by their immediate problems within the community than with Revolutionary ideals developed for a more urban populace. Due to the feminization of the Church and the arbitrary actions of the dechristianization campaign under the Terror, women became increasingly active in religious riots during the Directory. According to Olwen Hufton, "...by mid-1795 a religious revival was underway, and in many, if not all regions, this revival was female orchestrated."[56] Women became increasingly involved in protecting non-juring clergy and demanding the return of Church land and rights after 1795.[57] This feminization of the Church would continue well into the nineteenth century. Revolutionary legislation, including that on divorce, had gone too far and too fast for the average French person living outside of the cosmopolitan influence of Paris.

Statistical interpretation of divorce under the Revolution

Criticism of divorce and rates of usage coincided with changes in French politics, and by 1797, divorce rates had sharply declined. As noted by Dominique Dessertine:

> *La revendication de l'autonomie féminine que traduit massivement le divorce est directement liée à l'euphorie révolutionnaire. La flambée est de courte durée et se marque particulièrement sous la Convention où l'on enregistre, de 1793 à l'an III, le plus fort taux de demandes féminines de toute la période (55.9%). Le Directoire*

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[55]See Tackett and Langlois "Ecclesiastical Stuctures," *French Historical Studies*, vol 11, (Spring 1980), 369 and Olwen Hufton, "The reconstruction of a church 1796-1801," in Beyond the Terror eds. Gwynne Lewis and Colin Lucas, Cambridge, 21.

[56]Hufton, Women and the Limits of Citizenship, 122.

[57]Suzanne Desan, "The Role of Women in Religious Riots during the French Revolution," *18th Century Studies*, vol 22 (Spring 1989), 451.

connaît déjà un ralentissement marqué (50.7%)...[58]

Nevertheless, the divorce amendments managed once more to outlast legislation permitting women's participation in the public sphere. In May of 1795, the Convention decreed that women would no longer be able to watch its meetings. Due to popular uprisings and women's involvement in them, the Convention restricted women to the private sphere in no uncertain terms: "All women are to return to their domiciles until otherwise ordered. Those found on the streets in groups of more than five one hour after the posting of this order will be dispersed by force and then held under arrest until public tranquility is restored in Paris."[59] The success of this decree was not measured, but it clearly indicated that the individual liberties lauded by the liberal phase of the Revolution were being questioned in a time when order was desired more than freedom. The family was once more lauded for its inherent function of maintaining order by a government tired of chaos.

In the first years after divorce's legalization, rates were comparatively very high,[60] led by women who had had no legal recourse to end unhappy or abusive marriages before 1792. After the initial impetus to convert *séparations de corps* to divorces,[61] women were predominantly responsible for the continued use of divorce. In consequence, numbers of divorces were highest for the first three years that the law was in place, and tapered off quite drastically after 1797 to less than half the initial numbers - from 4,296 in 1794 to 1,891 in 1797 in a compilation of 43 cities. The statistics for Paris are even more

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[58]Dessertine, 166.

[59]Abray, "Women and Revolution," 58, from meeting of May 23, 1795, in *Proces-verbal de la convention nationale.*

[60]In Lyon 1,049 divorces took place under the Revolution, while numbers tapered to 84 under the Empire. Dessertine, 160.

[61]According to Jean Lhote, (1981) in Metz 64% of Revolutionary divorces between 1792 and 1804 were requested by women and 13% by mutual consent (p. 11 and appendix). In Lyons during the same period 51% of divorces were requested by women as opposed to 27% by men. (taken from Dessertine, 161) Ronsin, Le Contrat Sentimental, 271 provides figures for a number of cities, for example 63.5% in Montpellier, 65% in Lyon, 71% in Rouen.

dramatic (2400 to 1043).[62] Moreover, the fluctuations in divorce rates are attributed both to political and social considerations.

Nevertheless, there is little information available on the people who divorced and their individual reasons for doing so. Published studies have largely taken the statistical data and used it to construct a picture of divorce which assumes a feminine impetus to elude bad marriages.[63] Unfortunately, these statistical analyses are comprehensive for urban areas only; statistics are much harder to obtain in rural areas, since divorce was little used by more religious and socially conservative rural populations. Class and occupation were also considered in these studies; for instance, Dessertine found that women seeking divorce in Lyon were most likely to list themselves as artisans (under the Revolution 225 out of a total of 536 divorces were requested by artisanal women).[64] This correlation implies that women were more likely to seek divorce if their economic opportunities would allow them to maintain their standard of living and their position within society. Noble and bourgeois women had the lowest numbers (10 and 14 respectively), suggesting that divorce was not a socially acceptable option for them. Class, therefore, did play a role in women's likelihood of seeking divorce. Even under the Empire, artisans still sought divorce more often than any other economic category, albeit in far smaller numbers (23 out of 42 divorces).

Conclusion

The legalization of divorce was integral to a broader process of secularization, which would weaken significantly the influence of the Catholic Church in French society and government. This unprecedented step towards liberalization of marriage and family law was demanded and used predominantly by urban populations, with substantially less effect on rural areas and those regions more firmly entrenched within Catholic orthodoxy. Nevertheless, legislation affecting the Church was demanded by the Revolution's need for financial security. It would initiate a cycle of mistrust that would

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[62]Ronsin, *Le Contrat Sentimental*, 258-9 and Dessertine, 167.

[63]For examples of statistical studies of divorce in various regions see: Dessertine, Phillips, Traer, Lhote and Martin.

[64]Dessertine, 160.

harm the Church far more than the mere physical removal of her lands. The nationalization of Church lands and introduction of the Civil Constitution of the Clergy pushed many clergymen into counter-revolution, which, in turn, enhanced the anticlericalism of the Revolutionary agenda. Battle lines were drawn within France and active revolts occurred in staunch Catholic regions such as the Vendée and Midi. This destabilized the nation and led to further attempts by the government to stamp out counterrevolution and, by association, the Catholic faith. Thus, while divorce and the laicization of birth, death, and marriage records reflected individual liberties and a benign secularization for Revolutionaries, they would come to symbolize anarchy, irreligion, and extremism for those who had not supported the Revolution. Counter-revolutionary attitudes increased under the Directory, which signalled an even larger shift towards reaction and a return to community involvement, as centralization decreased. Moreover, reaction became more prevalent as many people, especially women, returned to the Catholic Church. Napoleon Bonaparte would capitalize on this mistrust and attempt to compromise between revolution and counterrevolution after 1799. Under the Empire and Restoration the patterns of debate and the symbolic link of divorce to the Revolution illustrated above would reoccur; however, the tables were turned, and conservative reaction rather than individual liberty dominated.

Chapter 3 - The Civil Code under the Consulate and Empire - a compromise with the Revolution

The revolutionary Terror, subsequent political fluctuations, and the use of unconstitutional means by the Directory had diminished the faith of the French population in participatory politics.[1] More opportunist than ideologue, Napoleon used public opinion, force, and guile to consolidate his power after the *coup* of *Brumaire*. His willingness to compromise between the achievements of the Revolution and the desires of the conservative elements within the French population, especially with regards to the Catholic Church, was the true basis of his power. Moreover, he utilized his military victories to further his political goals, such as his promotion of the Concordat with Rome after the Peace of Amiens was signed. The Civil Code was also an integral part of Napoleon's compromise, including as it did the moderated divorce law and strengthening of the father within the family.

Once in power, Bonaparte used authoritarian centralization and developed the Civil Code to strengthen patriarchal control over the family and nation. In seeking to restore order, he welcomed the Catholic Church as an arbiter of social norms, along with the family as a means of ensuring structure in society. Napoleon Bonaparte had recognized within the French nation a need for compromise between the extremes of Revolution and counterrevolution, to blend elements of new and old to meet the requirements of the general, more moderate, population.[2] He followed this path to end conflicts based on the religious divisions instilled by the Revolutionary nationalization of Church lands and dechristianization campaigns. The Concordat and Civil Code would be the lasting result of Napoleon's compromise -- the moderated divorce law of 1804 represented the balance that Napoleon attempted to create.

Nevertheless, force and repression were used under the Consulate and Empire to ensure that public opinion favoured Bonaparte, censoring dissident opinions to maintain this impression. Although

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[1]Lynn Hunt, David Lansky, et al. "The Failure of the Liberal Republic in France, 1795-1799: The Road to Brumaire," *Journal of Modern History* vol 51 (December 1979), 756-758.

[2]Louis Bergeron, France under Napoleon, trans. by R. R. Palmer, (Princeton: Princeton University Press, 1981), 15.

Bonaparte began his public life as a republican, once in power, his love for some liberties proved to be fleeting, for instance freedom of the press.[3] In politics, it seems safe to surmise that he was an opportunist. He understood the importance of the public and the private spheres of politics, and the role of public opinion and the press within these arenas. Bonaparte maintained his power by giving in to these pressures when his position was less strong, going his own way as he gained in personal popularity, and using his military position to strengthen his place within the Consulate. As historian John McManners states:

> There was, as it were, a hidden coup after Brumaire by which the general established his domination. A conspiracy to end fear, Brumaire in a sense merely created a new insecurity. 'The God of Fortune and the God of War' - without the support of these two deities, there was no future for the new order.[4]

As Bonaparte grasped the reins of power ever tighter, the balances toppled and the checks failed to halt his rise. He quickly distanced himself from the Jacobins and downplayed his republican origins. Bonaparte's legislation illustrates his preference for an authoritarian and conservative style of governing. His stress on order and stability coincided with his attempted realignment with monarchists and conservatives, as he tried to create a bridge between the republican virtues of merit in which he believed and his need for greater authority. His recognition of the power within the private sphere of the family will be discussed below -- in light of his personal involvement with the Civil Code.

The Directory had signalled a return to community involvement, as centralization decreased. Under the Directory, people had returned to practices never fully expunged by the dechrisitianization campaign, and reaction had become an acceptable community response as people returned to the Catholic Church, despite remaining anticlerical state policies. Bonaparte capitalized on his recognition of these factors, seeking to centralize France under one authority. According to Olwen Hufton, the Napoleonic Concordat was to be a "*fait accompli*. The people had wanted, and had taken measures to secure for

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[3]His methods were not so un-republican, however, as the Committee of Public Safety under the Jacobins had been equally opposed to press which put *le patrie* in danger.

[4]John McManners, Lectures on European History 1789-1914, (Oxford: Basil Blackwell, 1966), 56.

themselves, a church of a particular kind and it would have been foolhardy for the Napoleonic state to persist in refusing to recognise that fact."[5] The Concordat was a compromise between the Revolution and those elements of the Catholic Church willing to allow change and thereby retain influence within France. The Civil Constitution of the Clergy and the Oath had created a schism within France and the Church. While Bonaparte was not willing to return the Church to her former place of power, he admired the abilities of religion to maintain social order and, therefore, sought out *détente* with Rome.

Steps towards the Concordat were initiated by Bonaparte after his victory at Marengo in June of 1800. He recognised the need to end French internal strife, which had built to huge proportions under the Directory - the *chouannerie*, trouble in the Vendée, and banditry in the South. Overtures towards the Catholic Church would help to eliminate some of the popular support for the counterrevolution. According to Doyle, "the stakes were high. If the altars of France could be restored, the chief source of popular discontent with the new order would be eliminated."[6] Bonaparte's willingness to affiliate with the historic ally of the *Ancien Régime*, the Catholic Church, encapsulated his desire to create greater stability. Stuart Woolf agrees that "for both Napoleon and Pius VII the Concordat was essential in order to restore order and authority."[7] This ability to create order out of the chaos of the Directory increased Bonaparte's support from those whose opinion most counted - the notables and landowners who had created the Revolution and whose continued support would make or break the new Consulate. Religion played a part in France's internal troubles, as it was alleged that bandit priests were attacking government agents in the South, while the *Chouans* made it clear that their counterrevolution was inspired by the irreligion of the Revolution. In seeking to mend fences with the Vatican, Bonaparte's motivation was highly political.

The Concordat settled the emotional and personal battles in the West, while martial law ended the active uprising. It was one thing to defeat the soldiers and weaponry of the *Chouan*, but the even

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[5]Hufton, Women and the Limits of French Citizenship, 26.

[6]Doyle, Oxford History of the French Revolution, 386.

[7]Stuart Woolf, Napoleon's Integration of Europe, (London: Routledge, 1991), 207.

more important step was to erode the moral high ground on which they had fought. As Martyn Lyons states: "The rebels were now forced to pray for the Republic, and the bishops encouraged obedience to the government. The forces of royalism and counter-revolution were weakened by the agreement, and many of their supporters disarmed by it."[8] This is not to say that all Catholics and Monarchists supported Bonaparte after the signing of the Concordat; however, Bonaparte's willingness to compromise in this area, and his conservative approach to governing offered far more in appeasing the Catholic Right than had been possible under the Directory.

There is little question that Bonaparte believed in the common person's need to follow the Church, which maintained belief in order and hierarchy within the nation. His comments on the subject support this belief -

> Society cannot exist without religion. When one man is dying of hunger next to another who is glutted, it is impossible to make him accept this difference if there is no authority there to tell him: "It is God's will that there be both poor and rich in this world...[9]

The uprisings under the Directory in rural areas all over France, often led by women within the parish, illustrate that it was not just monarchists or counterrevolutionaries who wanted to see the Catholic Church returned to a place of importance. The Church was not only a place of worship in most towns; it was a meeting place and venue for social interaction, which the republican *décadi* and festivals did not fully replace,[10] making average people willing to create trouble in order to uphold it. A priest on the side of the government was able to maintain the social structure of a village, controlling marriages, conscription, and the like; a part of the town rather than just a government official, the priest could possess a far greater influence, as witnessed by the harbouring of refractories during the Revolution and Directory. Donald Sutherland states that "some officials in the closing years of the Directory and newly appointed prefects had also come to appreciate the sociological and political importance of popular

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[8]Lyons, Napoleon Bonaparte, 91.

[9]Godechot, The Napoleonic Era, 50.

[10]Hufton, Women and the Limits of Citizenship, 110-11 and Desan, "Women in Religious Riots," 466.

religion."[11] Attempts at dechristianization had failed; therefore, Bonaparte tried the other alternative, which was to coopt the Catholic Church and Pius VII into supporting the Republic.

Moreover, the Concordat favoured Bonaparte's ideal of order over the reintroduction of a Catholic state apparatus. The Catholic Church had been badly hurt by its loss of lands and authority under the Revolution - always allied with the *Ancien Régime*, she had fallen hard with the Bourbons. To regain a foothold in France was of primary importance to Rome, and in order to do so she was forced to make some major concessions. The Catholic Church would no longer be the religion of state; the Revolution had allowed other faiths to establish their legality in France, and Bonaparte was not in a position to change this. Nevertheless, Catholicism was recognized as "the religion of the great majority of the French."[12] The constitutional and Gallican Church was hurt most by the institution of the Concordat. Once the government removed the restrictions on the refractory priests, *émigrés* quickly moved back into their parishes, where people welcomed them with open arms. This warm welcome was not offered to many constitutional priests, especially those who had married and were no longer viewed as 'real' priests.[13] The interpretation of men such as the Catholic legist and writer of the Civil Code, Portalis, whose "administration was, if anything, benevolent to the Catholic Church,"[14] made the Church's position easier. In the new climate of the Concordat, repressive measures against the clergy were less acceptable. Nevertheless, the upper echelons of the refractory Church did not receive the same welcome; Bonaparte forced Pius VII to agree to dismiss those bishops who had clung most tenaciously to their faith in exile, and who had set themselves against the French Republic. Imposing Ultramontaine values, Pius VII dismissed any bishops not in support of the Concordat, and Bonaparte demanded the

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[11]Sutherland, France 1789-1815, 355.

[12]Adolphe Thiers, The Consulate and Empire, (1893), 150.

[13]"The people would have nothing to do with the constitutional Church and the State was to destroy it, just as it had created it." Dansette, Religious History, vol. 1, 119.

[14]Lyons, Napoleon Bonaparte, 91.

right to reissue the positions.[15]

The Concordat represented a compromise between the refractory Catholic Church and the landowners and notables on whose support Bonaparte and the Consulate relied. One of the most important elements of the Concordat was the recognition by the Vatican of the legality of sales of Church lands under the Revolution. There would be no return of the *biens nationaux* as a sign of good will; Bonaparte wanted the support of Rome, but on his terms not hers.[16] Moreover, the secularisation of the State and her distance from the Catholic religion would be addressed but not bridged. Although, the clergy would remain within communities without the problems of dechristianization and a hostile state, their actions would be watched and controlled by that State, which paid their salaries.

The Concordat's popularity was not universal, but Bonaparte's own popularity after the Treaty of Amiens forced its passage. Not all of the French population was quick to return to the religious fold. Many remaining Jacobins in government were appalled at the *dénouement* with the Catholic Church, but the timing was such that little could be done. Bonaparte's conciliation with the Vatican paralleled his victories on the battlefields of Europe: "after the signature of the Peace of Amiens, which marked the zenith of the First Consul's popularity, the concordat was brought before the assemblies..."[17] His personal stamp was on the Concordat, and his popularity was strong enough to push the agreement past the complaints of the ineffectual parliament. Until it was purged in 1802, the Tribunate, always more vocal than powerful, maintained opposition to the Concordat.[18] Bonaparte was not deaf to complaints, however, and he developed the Organic Articles to strengthen France's position in implementing the Concordat. The Organic Articles outlined the hierarchy of the French Church which, in practice, had the State as its head rather than Rome. Papal bulls and announcements were directed through the State

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[15]Lyons, Napoleon Bonaparte, 86 and Sutherland, France 1789-1815, 356.

[16]This point is stressed in all analyses of the Concordat, ie. in Sutherland, Lyons, and Dansette, etc.

[17]Dansette, Religious History, vol. 1, 134.

[18]Lyons, Napoleon Bonaparte, 88.

apparatus rather than directly through the bishops, and while the bishops had power to dismiss and appoint parish priests, they in turn were bound to the State.[19] Despite leftist apprehension, the Concordat was signed by Bonaparte in October, 1801 and the agreement including the Organic Articles was passed through the French parliament in April, 1802. It was a major contribution to the bettering of relations in the West and South and decreased support for the counterrevolution within and without France.

Bonaparte rode his popularity to even greater power and influence in 1802. In August, the plebiscite on the consul for life was passed by a pleased, yet apathetic majority of voters, just after the March Peace of Amiens and the April Concordat decisively proclaimed Bonaparte's military and social successes. Bonaparte had proven that an authoritarian regime could gain for France those elements which had been lacking under the 'freedoms' of the Revolution - peace, stability, and order. Bonaparte's popularity was at its height, and his power would be entrenched by the Life Consulate and Empire.

A second element in Bonaparte's search for order was the Civil Code, which he began developing early in the Consulate, but which waited for approval until 1804. The Civil Code would provide France with an overarching structure from which order would flow through legal means. Bonaparte's name and status would be linked with a firm tradition, leaving his mark on the French legal system. He believed that a codified national set of laws would eliminate the parochialism of French society and create an identity based on a more universal ideal of conduct. The passage of the Civil Code heralded Bonaparte's acme of popularity and was quickly followed by the creation of the Empire in May, 1804.

Bonaparte's personal involvement in the debates over the Civil Code was considerable, as was his influence on the structural basis of the Code regarding the family, marriage, and women's place within these institutions. As Sutherland notes

> ...The intention of Bonaparte, who presided over half the sessions of the commission which drew up the Code, and its drafters to impose a comparable subordination and hierarchy over the family as they were trying to impose on the nation as a whole [was] clear enough.[20]

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[19]Dansette, Religious History, vol. 1, 135-6.

[20]Sutherland, France 1789-1815, 375.

The family, defined through the authority of husband and father over dependent women and children, was an obvious priority for Bonaparte, in his attempt to recreate order out of the perceived chaos created by revolutionary reforms. Bonaparte saw the family as the breeding ground for solid citizens, strengthened by the Church which, constrained by the Civil Code and the Concordat, would continue to civilize the masses.

The compromise between the left and right, the Revolution and the counter-revolution would continue within the Civil Code. It would reinforce the authority of the father within the family, despite its maintenance of some liberal reforms such as divorce. Even the rights of the father were not paramount, however. Bonaparte and the new regime wanted to maintain societal order and stability; the family was a component of that stability, and if the whims of the father were to run counter to the good of the family and society then his individual rights were overridden by the need for social order:

> *Le contrat de mariage doit au moins avoir autant de solidité que les autres contrats. Tout père de famille tremblerait si le divorce était rendu trop facile, et si la durée du mariage dépendait du libre arbitre de chacun des époux. A la vérité, dans le système proposé, quelques individus seront malheureux: mais le mariage n'est pas seulement institué pour les époux; l'époux n'est là que le ministre de la nature pour perpétuer la société.*[21]

This restriction of individual liberty ran counter to the Revolutionary attitude towards marriage and family, which espoused the individual freedoms of the partners within a marriage and rarely mentioned the offspring of those partnerships or those affected by the dissolution of a marriage. The committee of men who designed the Civil Code attempted to preempt the right of individuals in favour of the stability of family life.

It seems surprising given this attitude that divorce was retained in the Code, but the Civil Code's authors recognized the benefits of divorce over separation. While Napoleon sought compromise he was not willing to reintroduce clerical policies fully. Divorce allowed innocent spouses to remarry and create new families and offspring to strengthen the nation. As well, there was fear on the part of some that:

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[21] *Procès verbal de Conseil d'Etat*, 8 octobre 1801, 299-300.

> *... une femme déhontée continuait de déshonorer le nom de son mari, parce qu'elle le conservait. Le respecte pour les cultes obligera d'admettre la séparation de corps; mais il ne serait pas convenant de restreindre tellement le divorce par les difficultés qu'on y apporterait, que les époux fussent tous réduits a n'user que de la séparation.*[22]

From the preliminary discussions of the articles on marriage and divorce, judicial separation was not enough if the family had been irretrievably damaged by the actions of one spouse through *causes determinées*[23] or both through mutual consent. If these could not be proved, maintenance of the family structure would be considered paramount; the responsibilities of spouses were to each other, their children and their parents.[24]

Moreover, the creators of the Civil Code sought to create a new codified legal system that would maintain order and stability; they wanted facts and proof of irreconcilable differences, and the contention that a couple was no longer 'compatible' was not reason enough to break up the family unit. For this reason, discussions regarding divorce for other than provable reasons such as adultery or imprisonment, were heated. Most discussion reflected negatively on the prospect of maintaining divorce for mutual incompatibility or consent within the Code, both of which had been available under Revolutionary law. Some felt that these articles had made divorce too readily accessible, that it was a sign of repudiation, that once divorced on these grounds one should not be able to marry again, and yet another that it should be flatly inadmissible.[25] Nevertheless, one voice was raised in favour of retaining mutual consent - that of Bonaparte. He was in favour of mutual incompatibility as a means to avoid the embarrassment of airing dirty laundry in public: "*...mais quel malheur ne serait-ce pas que de se voir forcé à les exposer, et à révéler jusqu'aux détails les plus minutieux et les plus secrets de l'intérieur de son ménage! Le*

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[22]*Procès verbal*, 8 octobre 1801, 299.

[23]See Appendix of Civil Code, 1804 for the full list of *cause déterminée*, 145-149.

[24]*Procès verbal*, 1 mars 1801, 251.

[25]*Procès verbal*, 8 octobre 1801, 301.

système mitigé de l'incompatibilité prévient, à la vérité, ces inconvénients...".[26] His vehement tone may have coincided with his need to hide the smallest and most intimate details of his own marriage. Josephine was known to carry on affairs while Bonaparte was campaigning; it is not surprising, therefore, that he would wish to save himself from the future embarrassment of declaring himself a cuckold.[27]

An additional and more compassionate view of Bonaparte's motives is that he also wished to save Josephine the embarrassment of publicly being declared an adulteress. The Civil Code would go on to demand that wives accused and found guilty of adultery be incarcerated for not less than two and not more than three years, at the court's and her husband's discretion. Those men discussing the body of the divorce legislation were adamant that women be made to pay for their infidelities. Moreover, women's infidelity was seen as far graver because of the possible consequences of such an action. As mentioned early in the debates over divorce in the Civil Code:

> *La première de ces causes est l'adultère: c'est sans doute la plus forte, la plus légitime de toutes, puisqu'elle attaque dans son essence et dissout le lien de mariage, qui consiste dans la fidélité que se sont promise les époux; et que d'ailleurs elle entraine des conséquences aussi fatales à l'integrité des familles qu'à leur honneur et à leur tranquillité. Cependant on ne doit pas rendre cette cause aussi facile à la femme qu'au mari, parce que les suites n'en sont pas aussi dangereuses d'un côté que de l'autre...*[28]

Call for the punishment of women's adultery only became stronger as discussion of the Civil Code progressed. Bonaparte shared in the desire to create a penalty for adulterous women. His argument against allowing separation on the basis of adultery was that adulterous wives would then be able to

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[26]*Procès verbal*, 8 octobre 1801, 302.

[27]Copley, History of Sexual Moralities, 209. "The First Consul anticipated divorce from Josephine but rather than do so on the embarrassing grounds of her adultery, preferred the screen of mutual consent." Francis Ronsin also outlines Bonaparte's personal stake in the outcome - pour "*divorcer d'une femme adultère sans s'exposer ni au ridicule ni au scandale.*"

[28]*Procès verbal*, 16 octobre 1801, 309.

retain their husband's name and remain untouched by the scandal that they had caused.[29] Although it is difficult to discern exactly what role Bonaparte's own marital problems played in his views on divorce, it seems certain that his influence maintained the legality of divorce by mutual consent.

The Napoleonic regime also restricted divorce in response to women's declining usage of the law, possibly reflecting increased religiosity. The Directorial period had witnessed the resurgence of the Catholic faith, especially in rural areas. Moreover, the drafters of the Civil Code were aware of the largely urban usage of divorce. It would not be missed in many areas outside of the major towns and cities of France:

> *Les Français sont légers, mais ils ont des vertus: c'est dans les départéments, c'est dans les campagnes qu'il faut aller chercher les moeurs françaises. Là, le scandale du divorce a été réjete avec mépris, là, on n'a point usé du divorce; les tribunaux l'attestent: voilà la voeu de la nation.*[30]

Rural disuse made limiting the means to divorce a wise political move, coinciding as it did with 'the view of the nation.' Yet the republican heritage which also retained some influence over the Consulate helped to shelter the divorce laws from the abolition which would occur with the Restoration.

The rhetoric of compromise was strong during the presentation of the final draft of the Civil Code. Between the Revolution and the *Ancien Régime* lay a gulf that could be spanned by the new Consular regime - some of the legislation of the Revolution was considered valuable, but the incidental spread of chaos was not. Therefore, Bonaparte's new government must restrain the Revolutionary legislation so that abuses would not be repeated. As discussed in the *Procès verbal* over the Civil Code:

> *Un des premiers bienfaits de la Révolution a été la liberté des cultes; et l'admission du divorce a été une des premières conséquences de cette liberté. Mais une législation trop facile ouvrit la porte à de nouveaux abus, et cette institution, demandée par la philosophie, ne fut que trop souvent, surtout à sa naissance,*

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[29]*Procès verbal*, 18 octobre 1801, 318

[30]*Procès verbal*, 8 octobre 1801, 298.

un instrument d'immoralité et un moyen de dêpravation.[31]

The importance of Bonaparte's use of compromise should not be dismissed. It was through this willingess to compromise that Bonaparte managed to attain the initial order and stability upon which his power was based. The Civil Code, including the divorce legislation and mutual consent clause which Bonaparte fought for, was presented in March of 1804. Restrictions were, however, placed on divorce by mutual consent, now requiring that parental consent be obtained before a couple could divorce. As well, divorce was no longer permitted for reasons of personal incompatibility, insanity, or desertion.[32]

Despite retention of the mutual consent clause, divorce in France waned under the Consulate and Empire. Whether this decline was due entirely to the change in availability -- or was partially attributal to a shift in social mores under the more authoritarian structure of the Napoleonic era -- is difficult to ascertain. The difficulties of divorce, marriage, and the search for personal happiness under the auspices of French elite society were discussed at length in Germaine de Staël's novel, Delphine, published in 1802. The liberal viewpoints presented within the novel, and its possible political implications were appreciated by Napoleon, who quickly censored the work and banished its author from France. While the characters within the novel were certainly not in unanimous support of liberal divorce law, its discussion of liberal mores and Enlightenment precepts was unwelcome in a period when Bonaparte was striving to create a compromise between the old aristocracy and the Revolution. De Staël pointedly ascribes the manipulations and sorrows of Delphine's main characters, for the most part society women, to the despotism inherent in a society which lacks freedom. As she states in her Considerations:

> ... marriage is far more respected since the Revolution, than it was under the old system. Now, marriage is the support of morals and of liberty. How should women have confined themselves to domestic life under an arbitrary government, and not have employed all their seductive means to influence power?[33]

This opinion is well illustrated by the women described within de Staël's earlier novel - marriage is

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[31]*Procès verbal*, le 8 avril 1803, 580.

[32]William Fortescue, "Divorce Debated and Deferred," *French History* vol. 7, no. 2, 140.

[33]Germaine de Staël, Considerations on France, 365.

valued highly by the majority of the characters; it is their attitude towards divorce which is more varied. The Protestant revolutionary M. de Lebensei is married to a divorcée, and he exhorts his friends to make use of the incoming legislation on divorce, quoting the philosophical and Enlightened proponents for personal happiness in his attempt to justify the merits of divorce. His own wife, however, has been set apart from Parisian society due to her divorce, illustrating that while divorce may be legal, it is not yet considered moral. The strongly Catholic Matilde will not even be in the same room with her cousin Mme. de Lebensei; her respect for Matilde's happiness along with her recognition of her aristocratic love's need for society's good opinion causes Delphine to reject the idea of divorce completely, despite her own more enlightened opinions. In the various attitudes and discussions amongst these characters it is obvious that de Stael herself is not in favour of 'the eternal circle of domestic pain formed by an incompatible and indissoluble union'[34] which she herself would not have been beholden to under the formal strictures of Protestantism. Delphine illustrates the slower changes that occur within society, regardless of revolutionary legislation. Divorce was never sought by great numbers, even at the height of the Revolution; however, given the social stigma attached to divorce, the numbers of divorces available to historians represent a shift in mores, towards the Enlightenment and a view of marriage as legal contract rather than indissoluble sacrament.

Nevertheless, the numbers clearly speak for themselves in establishing the further decline of divorce for the period before its abolition in 1816. As noted by Rod Phillips: "In Rouen, the annual average fell from sixty-seven divorces in the period 1795-1803, to six divorces under the Napoleonic divorce law. In Lyon, divorces averaged eighty-seven annually in the revolutionary period, but only seven during the empire."[35] Moreover, the restrictions on means of obtaining divorce affected usage. Rates of divorce for mutual consent rose in Lyon from 12% under the Convention to 32% under the

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[34]Germaine de Staël, Delphine, trans. by Avriel H. Goldberger. (DeKalb: Northern Illinois University Press, 1995), 307. For the letters between Delphine and M. de Lebensei discussing the merits of divorce see pp. 303-11.

[35]Phillips, Putting Asunder, 275.

Consulate.[36] Clearly, couples who wished to divorce were affected by the legislation, and those who still dared to divorce presented their cases according to the guidelines set out in the Civil Code. Divorces for adultery declined greatly in number, especially those requested by women; however, Napoleon's own divorce from Josephine in 1809 exemplified people's preference to cloak their marital troubles in the more acceptable reason of mutual consent.

The increasing need of Napoleon for an heir had prompted a split in his marriage. Neither partner was without indiscretions; adultery was common to them both, but Napoleon chose not to use this justification in divorcing Josephine. Napoleon, seeking "acceptance by the royal families of Europe", wanted to marry the Austrian princess, Marie-Louise.[37] To do so, he had to betray his own legal code. Divorce was not permitted under the new code after a wife had reached the age of forty-five; Josephine was forty-six. Napoleon also bent his own rules in order to annul their secret religious marriage. Napoleon and Josephine were divorced on December 15, 1809 by reason of mutual consent. Napoleon lauded his wife's decision to end the marriage as a great sacrifice for the good of the French nation despite the tremendous personal pain it gave him: "God alone knows what this resolve has cost my heart," he said after announcing his decision. "I have found courage for it only in the conviction that it serves the best interests of France."[38] His own arguments expounded during the discussions over the Civil Code were overlooked when Napoleon needed to expedite his own divorce quickly. As noted by the historian, E.A. Rheinhardt:

> The ever available senate allowed itself to be turned into a court of justice, in which - the Code Napoleon being totally left out of consideration - the civil marriage was dissolved.... And, lacking the Pope, who, because of Napoleon, could not officiate, the French clergy was willing to annul the religious contract, on grounds of an

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[36]Dessertine, *Divorcer à Lyon*, 171.

[37]Lyons, Napoleon Bonaparte, 213.

[38]Frances Mossiker, Napoleon and Josephine The Biography of a Marriage (New York, Simon & Schuster, 1964), 338.

alleged technical error.[39]

Josephine was permitted to keep her "rank of queen and empress, 'crowned and anointed'"[40] and some lands. Three and a half months later Napoleon was married to the eighteen-year-old Marie-Louise.

In December of 1804, Napoleon had crowned himself emperor and the range of his victories increased the size of the empire outside of the boundaries of France. The Empire that Napoleon created would include many strongly Catholic nations, such as Italy and Spain. Nevertheless, as Martyn Lyons suggests, "The new Napoleonic law codes were transplanted into conquered territory, together with all the social upheavals they registered."[41] This implementation ignored the fact that the concepts within the Civil Code, such as divorce and civil marriage, were "shocking innovations" in the Catholic nations on which they were imposed. However, Napoleon maintained "the determination to export the entire corpus of [his] reforms,"[42] insisting on full and immediate implementation of the Civil Code which he felt "possessed universal value."[43] The Civil Code was arbitrarily imposed by Napoleon's ministers despite their own trepidations about the wisdom of making so many social changes at one time. The rejection of full implementation is notable in Holland where Napoleon's brother Louis allied himself with his new nation over France's interests, and therefore failed to support fully the unwelcome changes heralded by the Civil Code. As Simon Schama illustrates: "... the report it produced in 1809 was much castigated by Napoleon himself for maintaining a decorous indifference to matters of matrimonial and divorce law, topics still very sensitive in the God fearing Netherlands."[44] Local resistance to the Code

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[39]E.A. Rheinhardt, Josephine Wife of Napoleon, (New York: Alfred A. Knopf, 1932), trans, Caroline Frederick, 338.

[40]Mossiker, Napoleon and Josephine, 337.

[41]Lyons, Napoleon Bonaparte, 236.

[42]Woolf, Napoleon's Integration, 102.

[43]Woolf, Napoleon's Integration, 106.

[44]Simon Schama, Patriots and Liberators, 543.

was felt in a variety of forms as the Code exemplified French mores which did not always coincide with those of the nation to which it was applied. Napoleon stressed the importance of the Civil Code for exactly this purpose, to realign the European nations and force them into a mold of his own creation. His insistence on French authority increased, reaching its height in 1810. At this juncture, the nations within the Empire became more resistant and pressures caused by the scope of French military ventures began to build.[45] Nevertheless, the Empire, supported by Napoleon's military victories, continued to hold sway until 1812.

The need to conserve the Empire and retain her hold on the rest of Europe entailed continual warfare for France. Moreover, French predominance was easier to maintain in some areas than others. For instance, France's presence in Spain caused increased strife due to the concerted effort by Spanish guerrillas to eject the French invader; this, with the aid of Britain, drained French resources in money and manpower. Meanwhile, an economic war was being waged between Napoleon and Great Britain, beginning in 1806 and escalating with every French victory.[46] Napoleon's attempts to cut Britain off by closing trade routes across continental Europe exacerbated tensions, not only internationally, but within the Empire as well. The French economy did not gain by this protectionist policy, and the French consumer was disadvantaged on many levels. These policies represented the increasing authoritarianism of the government.

Napoleon's need for support on the Left had diminished over time. Instead, his policies solicited those former enemies of the Revolution self-interested enough to allow themselves to be enlisted. Napoleon was an elitist and therefore more than willing to welcome back those of the old elite who were amenable to compromise with his interests, and reward those of the new bourgeois, bureaucratic, and military elite who had made his reign possible. As Bergeron states:

> To create a new nobility seemed to Napoleon "the only means of wholly uprooting the old," as Cambacères said in 1807, and at the same time to assimilate returning ex-nobles to the new order... In

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[45]For a more detailed discussion see Woolf, Naploleon's Integration, 118-122.

[46]Lyons, Napoleon Bonaparte, 216-7.

> 1808, it was necessary to adorn a newly raised throne with a prestige equal to that of other European monarchies.[47]

Clearly, this means of 'combatting' and identifying with the old regime was a slap in the face to republicans who had supported Napoleon early in his career. Republicans were angered by this betrayal, however, they were not the only ones opposed to the regime.

Only the divided nature of the opposition against Napoleon allowed him the level of success that he attained. His initial attempts to ally with powers such as Russia were successful, but Napoleon overplayed his hand. Depending on his marriage to Marie-Louise to keep the Austrians out of alternate alliances, he failed to recognize the dangers around him. By 1812, Napoleon had overstretched his resources and was entering into a descending spiral towards defeat. Moreover, during the conflict with Russia in 1812, Napoleon sacrificed great numbers of men for no reward, which pushed his popularity in France to its nadir. Again, Bergeron illustrates that

> ... the dominant notes of the regime in its decline were indifference and resignation, distaste for a war whose bulletins and uniforms no longer aroused heartfelt joy, and of whose economic and human consequences everyone had become weary.[48]

This weariness was compounded in 1813 by the alliance of Great Britain, Russia, Prussia, Austria and Sweden, which sought to evict Napoleon from the French throne.

Added to the combined might of the Allies were Napoleon's internal enemies. Elements within France had been preparing for the end of the Napoleonic regime from its instigation. The focus of this dissatisfaction on the part of the Ultraroyalists was the lack of legitimacy in the Napoleonic government. Although they recognized the merits of the authoritarian structure, including the patriarchal family, Napoleon's failure to recognize *émigré* land claims and the position of the Church made true loyalty impossible. Napoleon had legitimated many old regime titles, but those who staunchly remained with the Bourbons were unlikely to claim position or place from the 'usurper'. After the intial repressive

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[47]Bergeron, France under Napoleon, 69-70.

[48]Bergeron, France under Napoleon, 106.

years, with the dispersal of *émigrés* and royalists in 1804, Napoleon had relaxed his scrutiny. Men such as le comte Ferdinand de Bertier were prepared to take illicit rather than public action, combining forces and plotting for power without making any grand displays which would have brought their actions to the attention of Napoleon.

The *Chevaliers de la foi* were organized on a model familiar to religious military orders and freemasons, both of which organizations de Bertier studied before originating his own order. The men involved in the *Chevaliers* were Ultraroyalists who were dissatisfied with the Napoleonic regime but wished to remain in France, rather than following the other *émigrés* into exile. Some of the men involved had themselves emigrated during the Revolution but returned under the quieter conditions of the Directory and Consulate. As early as 1808, de Bertier began to develop his organization:

> *Dès lors nous nous distribuâmes les rôles à l'étranger, à l'intérieur, dans le clergé et dans l'armée. Une contre-police fort restreinte fut organisée dans Paris. Cette organisation, ce travail, furent continués jusqu'à la première et la seconde Restauration.*[49]

De Bertier actively recruited amongst the old regime nobles remaining in France, travelling around France to gain a general consensus of opinion regarding the Napoleonic government and the willingness of people to support a Restoration. Hoping that the indignation of the religious population could be used to fan the residual flames of royalism in the countryside, he tried to increase the hostility of Catholics against the regime by printing the papal bull of excommunication against Napoleon in 1809. Catholic counterrevolution was solicited more successfully in the Midi, which had always been more actively Royalist, welcoming the idea of a Bourbon restoration and rejecting much of the Revolution at such times as the White Terror in 1795.

These feelings increased as Napoleon's 'promises' of peace, order, and prosperity were overcome by military and economic defeats. As Bertier stated: "*Mais ces mots assez! assez! se disent en secrète: les peuples se fatiguent, la crainte les retient; le succès couvre tout. Mais un revers déchire le voile;*

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[49]Ferdinand de Bertier, Souvenirs inédits d'un conspirateur: Révolution, Empire et première Restauration. (Paris: Tallandier, 1990), 130.

un grand cri de désespoir et d'indignation se fait entendre."[50] Nevertheless, the Royalists could not gain victory based on their own machinations and subplots. Instead, they rode the coattails of the foreign army in 1814, leaving the British general, Wellington, with more authority than the French as to which flag would fly in Toulouse - the *tricolore* or the *drapeau blanc*. De Bertier was publicly reprimanded for taking this decision into his own hands and flying the white flag of the Bourbons without permission. Wellington stated that: *"Je crains toutefois que leur manifestation n'ait été prématurée; les puissances n'ont pas encore reconnu Louis XVIII comme roi de France."*[51] Soon after, the Allies did decide to support the Bourbon claim to the throne, due in part to the actions of men such as de Bertier, to the quick return of the Bourbons to French soil to stake their claim, and finally, to the speed of Napoleon's abdication, and the flight of his wife and son out of Paris. Napoleon's defeat was due to the overextension of his talents and the limits to the endurance of the French nation. The period of compromise between the Revolution and counterrevolution which Napoleon had attained, could go no farther under an Emperor who had forgotten how to compromise his own desires for the good of the nation.

Conservative elements, upon whose support Napoleon depended, fell by the wayside as Napoleon's desire for empire overpowered his earlier social compromises. His *denouement* with the Catholic Church, which included the Concordat and restriction of the Revolutionary divorce law, failed to maintain the acquiescence of Catholic Royalists as news of Napoleon's attack on the Papal State and subsequent excommunication spread. The renewed vigour given to the patriarchal family was not enough to maintain order, when conscription had taken obedient sons away from those same homes. Moreover, the moderation of the Civil Code was only relevant in the wake of Revolutionary liberalism, and was not viewed in the same light in conservative territories irate over the imposition of any divorce law, regardless of its moderation. In fact, once Royalist reaction returned to prominence in France in 1816, divorce would be abolished. Nevertheless, Napoleon's lasting impact would reside in the

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[50]Bertier, *Souvenirs*, 140.

[51]Bertier, *Souvenirs*, 199.

Concordat and Civil Code, which represented his ability to compromise and understanding of the basically conservative nature of the French people. The Empire was brought down by the combination of the Allied states rather than a forceful political or military push on the part of its internal enemies. Moreover, the Royalists' lack of unity remained a problem during the First Restoration. The failure of the Bourbons to keep their promises concerning the abolition of indirect taxes and their own feeling of powerlessness after riding in on the coattails of the foreign Allies, allowed Bonapartists to reinstate the legend of the Empire, leading in turn to the Hundred Days. The stability, order, and peace that the French nation once again longed for did not come quickly enough with the return of the Bourbons. Certainly, France failed to find peace with victory.

Chapter 4 - The First Restoration and the impact of Ultraroyalist ideology

This chapter will discuss the events of the First Restoration and Hundred Days that strengthened animosities between Ultraroyalists and their political opponents and, thus, led to a period of revenge on Republicans, Bonapartists, and Protestants during the early Second Restoration, known as the White Terror. Moreover, Ultraroyalist ideology will be investigated further, especially the ideas of Bonald and Maistre, whose work most influenced the Ultras in 1816 and prompted the abolition of divorce, which Bonald himself would introduce. The betrayal of the Bourbons by Bonapartists left in power under the First Restoration increased the Ultras' fury, and led to more extreme legislation under the Second Restoration. The abolition of divorce was only a small part of this larger agenda, and was tied into the Ultras' desire for greater Catholic influence.

The First Bourbon Restoration (March 1814 - February 1815) represented a compromise demanded by the circumstances of Napoleon's fall and by the events occurring in France since the Revolution. The Allied armies remained entrenched on French soil, and their leaders held doubts about returning the Bourbons to the French throne after Napoleon's abdication. The Allies wished to avert a renewal of revolution by supporting a constitutional monarchy while avoiding the trappings of the *Ancien Régime*. The First Restoration was to be a disappointment, therefore, for extreme Royalists who desired a complete return to the practices of, and their positions within, the *Ancien Régime*. The practical applications of the compromise entailed a policy of forgiving and forgetting which was difficult to uphold. As well, because of the need for compromise and gradual change, there was no purge of Napoleonic personnel from the administration and infrastructure, leaving some loyal Royalists out in the cold. The Hundred Days (March-July 1815), when Napoleon escaped from exile on Elba and briefly renewed his rule, complicated matters further by increasing polarisation. In the chaos following Napoleon's second fall, Ultraroyalists were able to secure advantages which would enable them to secure an agenda which included abolition of divorce.[1]

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[1]Many men who had kept their positions under the First Restoration aligned themselves with Napoleon upon his return. These men would be purged under the Second Restoration.

The Bourbons had not been the unquestioned choice of the Allies or the French populace to replace Napoleon. The Bourbons needed to re-establish themselves within the affections of the French nation. The Ultraroyalists had promoted the Bourbons since 1810, bringing their name back into circulation. Many younger people in France had not even heard the names of the former royal family in the years since the Revolution, and thus name recognition was sought by the *Chevaliers de la Foi*. The Ultraroyalist organization, although incapable of gaining enough support to overthrow the Empire, was very astute in using opportunities presented by Napoleon's defeats, including his excommunication by Rome in 1809, to promote the Bourbons as defenders of the Church and rulers of France.[2]

The Bourbons sought to impress the Allies by demonstrating their popularity in the south of France. For example, the Duc d'Angoulême, nephew of Louis XVIII, entered the city of Toulouse declaring that the Bourbons, once in power, would return peace to the nation and end the excise tax on liquor.[3] The latter point gained the Bourbons popularity, as the indirect taxes were hated by the majority of citizens as being arbitrary and unfair. By making these statements the Bourbon representative catered to the needs of the people for order and stability, for a peace that would return prosperity. The *Chevaliers* worked to make the Bourbons the obvious choice for the Allied Powers and brought people out to support them. They promoted the white cocade, the display of which often better indicated their abilities to foster a good impression for the Allies, rather than a genuine show of emotion on the part of the French people. Such displays were largely restricted to areas in the South, such as Bordeaux.[4]

The Allies, partly influenced by the propaganda arranged by the *Chevaliers*, supported the Bourbon claim to the throne; however there were restrictions placed on the nature of the Restoration.[5] These restrictions were laid out in the Charter of 1814. The latter represented the compromise of the

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[2]Sauvigny, The Bourbon Restoration, 16.

[3]Bertier, *Souvenirs*, 205.

[4]Sutherland, France 1789-1815, 426.

[5]Lewis, The Second Vendée, 162. "Louis XVIII had resigned himself to the idea of constitutional monarchy, he had, in fact, very little choice , since it was the Allied Powers who had taken his throne and dusted it down for him."

Restoration, including a balance between parliamentary liberties and the executive powers of the monarch. The Charter created a Chamber of Peers and a Chamber of Deputies, but this bicameral legislature was to be curbed by the sovereign's executive powers. The Charter also guaranteed religious toleration (although Catholicism was now the religion of the state) and the inviolability of property including *biens nationaux*. Recognition of the *biens nationaux* was a very important point for those who had gained in wealth and prestige through their purchase of former Church lands. Moreover, recognition of the more secular practices of the Revolution, such as contractual marriage and government registries of births, deaths, and marriages, signalled the willingness of the Catholic monarch to make peace with the events of 1789.

The Allied Powers removed their troops from France once the Charter had been agreed upon, and as a whole the nation seemed pleased by the compromise enacted for her benefit.[6] However, the preamble to the document, which alluded strongly to divine right, suggested the difficulties inherent in the compromises of the First Restoration and the Charter. Although he was willing to recognize the liberties won by the Revolution, Louis XVIII was unwilling to give up on the formal niceties of his position; for instance he insisted that this was the "nineteenth year of our reign."[7]

Individuals on the political left and right who remained unsure as to the viability of so great a compromise remained quiet as the First Restoration initially unfolded. The need for order and an end to war were paramount in the majority of people's minds, and the Restoration was greeted with relief. Increasingly, however, the compromises that needed to be made, and the retention of the Napoleonic administration, were maddening to those who had been most loyal to the Bourbons. The question of the *biens nationaux* and the unsold Church lands remained a point of contention between returned royalist *émigrés* and individuals and families who had gained by their sale under the Revolution.[8] The *émigrés*

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[6]For a thorough discussion of the Charter, see Sauvigny, The Bourbon Restoration, 66-71; Sutherland, France 1789-1815, 427.

[7]Artz, France,13 and Sauvigny, The Bourbon Restoration, 71.

[8]Lewis, The Second Vendée, 197 and Plamenatz, The Revolutionary Movement in France 1815-71, (Oxford: Longmans, 1952), 21.

supported the Church's rights, and their own, to regain lands lost due to the Revolutionary nationalization of property. Needless to say, people who had bought the lands were fearful that this demand would be supported by the returned Bourbons, despite the Charter's guarantee. These fears would increase the number of Napoleon's supporters during the Hundred Days.

Although royalists greeted the return of the Bourbon Monarchy with happy anticipation, it did not take long for this joy to be tarnished for individuals unrewarded by the Restoration. There was an element of

> ... frustration and bitterness [among] those *émigrés* who had given their lives to the Bourbon monarchy only to find, in 1814, that their most cherished hopes were not to be fulfilled. It underlines the division between the ideas of the comte d'Artois and those of the comte de Provence, the divide which separates the reign of Charles X from Louis XVIII.[9]

The extreme wing of the Royalists was composed of disgruntled *émigrés* who turned away from Louis XVIII in favour of his brother. The Ultraroyalists, headed by the comte d'Artois and provided with structure by the *Chevaliers de la Foi*, were angered by the compromises made by Louis XVIII. The key players in the organization were loyal Royalists who felt forsaken by the Restoration that had failed to reward their fidelity. They had fought for the Royalist cause since 1790, but were still being governed by men of the Empire. There was "no great royalist upsurge,"[10] no administrative purge favouring the conquering royalist heroes. As conservative traditionalists, they wanted a return to decentralized government, disliking the centralization of the Napoleonic infrastructure retained by Louis XVIII. Louis XVIII's moderation was alien to his brother and those Royalists who supported Artois. In turn, they created fear and resentment through their attempts to assert their authority and beliefs, despite the government's official stance of "Forget and Forgive." The Ultras did neither of these things; they were not only Royalists but also counterrevolutionaries.[11]

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[9]Lewis, The Second Vendée, 168.

[10]Sutherland, France 1789-1815, 429.

[11]According to Soltau, the Ultraroyalists were inevitably drawn into Revolutionary methods: "What has been set up by force can be, must be, overthrown by force; and those parties that are theoretically most

The Ultras based their beliefs on hundreds of years of divine right theory, renewed for the present day by theocrats such as Bonald and Maistre, as well as the more liberal traditionalism of Chateaubriand. They also clung tenaciously to the interests of the Catholic Church and sought to renew her secular power within the State. Louis XVIII himself, had come out against the secularizing tendencies of the Concordat, but appeared moderate when compared to the religious fervour of the Ultras and comte d'Artois. The theoretical basis of the Ultras' beliefs and actions was theocracy. Religion, the Catholic religion, deserved a place of primacy in the State. Government was not created by man; certainly there was no "social contract" that made men into a society as suggested by Rousseau. Instead God had ordained that some men ruled, while others carried out the orders of the ruler; the rest of the people were subjects of both the ruler and his ministers. There was no question that women were 'designed' to be subjects. Bonald based his theories on tradition - anything created, such as the Charter, lacked validity because it failed to take into account the historical context and governmental experience of the nation. Taking matters to an even further extreme, Maistre felt that constitutions could not be created, as only God could give men guidance; men could not themselves create a document by which to live. For instance, the British model could not work for a French legislature because it represented a different historical reality.[12] Bonald presented an alternative to constitutional monarchy, that of traditional theocracy. As historian Nora Hudson remarks:

> Bonald and de Maistre, in their attempt to substitute the rights of God for the rights of man, in the role they attributed to the monarch, furnished doctrine that was essential to a party anxious for the rehabilitation of throne and altar.[13]

Unfortunately for the Ultras, the restored monarch was not of the same mind.

Bonald and Maistre helped to shape Ultra theory, but Bonald had a more direct effect through

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alive to violent change become infected with revolutionary methods. The Ultras believed in violence and repression..." Roger Henry Soltau, French Political Thought in the 19th Century, (New York: Russell & Russell, 1959), 29-30.

[12]Hudson, UltraRoyalism, 20.

[13]Hudson, UltraRoyalism, 19.

his place within the Ultra ranks of the Chamber of Deputies. Bonald's traditionalism did not allow for a compromise with the Revolution.[14] According to Bonald, the Revolution was not integral within historical process, but a violent aberration which must be overcome. The Revolution, especially the dechristianization campaign, represented chaos and destruction; therfore, the events of the Revolution could only be explained as God's punishment for France's sins as a nation. For a man who believed in theocracy, what could be more horrifying than the idea of a secular state? The Revolution was an attack on the Christian religion, France's most Christian king, and the family all in one blow. By attacking the State and the Catholic faith, the Revolution automatically waged war against French society. In turn, Bonald argued, she attacked an even more fundamental pillar of the orderly state -- the family.

Bonald tied the trinity of Church, state, and family together. Moreover, his theories concerning the indissolubility of marriage and the evils of divorce were intrinsic to his other more directly political theses, as this quote illustrates:

> The law of marriage is a domestic law; the law of succession to the throne is a political law; the law of established religion is a religious law. All these laws are natural, but of a different nature; for the family is natural to man; the political state is natural to families; and religion is natural to men, families, and States.[15]

For Bonald, the family was a microcosm of society as a whole. If the one could be dissoluble, so too could the other. He maintained that divorce was rooted in chaos and sin, and would destroy the natural order demanded by God and the Catholic religion:

> [T]hey, [Protestants,] brought confusion into society, by setting plurality or democracy in the place of unity everywhere: democracy in the family, by the faculty of divorce accorded to women; democracy in the state by the sovereign power attributed to the people...[16]

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[14]Hudson, UltraRoyalism, 5 and Higgs, Royalism in Toulouse, 138 also presents this sentiment. "Intransigent rejection of the Revolution was a moral imperative; the Revolution was pure evil. One could not meet it halfway, for it destroyed all social certainty and was, in a communal sense, patricidal."

[15]Louis de Bonald, On Divorce. trans. Nicholas Davidson. (New Brunswick: Rutgers, 1992), 175.

[16]Bonald, On Divorce, 101.

The Revolution had taken this idea of popular sovereignty and extended it beyond governmental control.

Bonald saw the Revolution as a destroyer of 'natural' law, with divorce the destroyer of the natural state of the family and paternal authority.[17] Monarchy and indissolubility of marriage were the answers to this chaotic state. His discussion revolved around his patriarchal concept of society; he felt that divorce directly affected society by breaking up the 'trinity' of a good society: the head or father, the minister or wife, and the subjects or children.[18] This trinity could not be destroyed without dire consequences for the family, society, and the state. To Bonald, the balance necessary for a healthy state was maintained only through strength at the top; in allowing women to divorce their husbands and ministers to topple the King, France was destined to fail in its destructive Revolutionary endeavour: "[T]he state has power over the family only to strengthen its ties, not to dissolve them; and ... if the state destroys the family, the family in turn avenges itself and quietly undermines the state."[19] These were the bases of Bonald's thought, and it was his influence that directed the ideology of the Ultras. Small wonder that those who believed with Bonald in theocracy and Ultraroyalism were unable to embrace the Restoration's compromises.

The willingness of Bonald and the Ultraroyalists to accept clerical domination runs contrary to Enlightenment thought and the evolution of government under the Revolution and Empire. The secularisation of the State in France probably was inevitable, but these men wished to annihilate the memory of the Revolution and reinstate the will of God as a basis for governmental policies. As Maistre states:

> There is a satanic quality to the French Revolution ... Institutions are strong and durable to the degree that they are, so to speak, *deified*. Not only is human reason, or what is ignorantly called *philosophy*, incapable of supplying these foundations, which with equal ignorance

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[17]Bonald made these arguments initially in On Divorce, a pamphlet printed in 1804; however, he maintained his ideas and restated them almost verbatim in his speech to the Chamber of Deputies in December 1815. There was no discussion of divorce under the Chamber of 1814.

[18]Hudson, UltraRoyalism, 20-21.

[19]Bonald, On Divorce, 148.

> are called *superstitious*, but philosophy is, on the contrary, an essentially disruptive force.[20]

Inherent in Maistre's castigation of philosophy was the rejection of individual rights as the basis for society; personal happiness was to be subsumed within familial duty. The conservatism present within Napoleon's Civil Code in defining the family and its boundaries is continued and increased within the philosophy of the Ultras who followed. Moreover, the Civil Code's earlier promotion of the patriarchal family as a pillar of order within society may explain why there was little furor over the greater conservatism of the Ultras.

The theocratic theories of Maistre strongly favoured increased clerical influence in France. He felt that where problems existed within the nation, the Pope should possess the power to make changes, as he was the most direct representative of God's will.[21] Examples of Ultra willingness to follow clerical over secular policies were evident in the mandate of the *Chevaliers de la Foi* to uphold the Restoration of the Throne and Altar. The main players were highly religious men; the organization's creator, Ferdinand de Bertier, was 'inspired' by God to attempt to regain the throne of France for the Bourbons and the Catholic religion. They did not separate the two goals; "... *des dévouements sincères à la cause de l'autel de du trône que l'on ne séparait point alors*."[22] Yet, the religious nature of their arguments offended the anticlerical sensibilities of those who had rejected Catholicism during the Revolution. And as the furor from the Ultra camp became more pronounced, people, especially Protestants and moderates in the South, began to fear that the time for compromise had ended. As the historian, Brian Fitzpatrick notes, "by the spring of 1815, according to one observer, the Protestants of the Gard were in no doubt of what awaited them if the extreme royalists, or ultra-royalists as they were known, gained power."[23] Resentments were more muted in other areas, but still present.

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[20]Maistre, Considerations on France, 79-80.

[21]Hudson, UltraRoyalism, 23-4.

[22]Bertier, *Souvenirs*, 136.

[23]Fitzpatrick, Catholic royalism in the Gard, 31.

The problems of the Restoration government were not limited to the compromises which so infuriated the Ultras. The resentment of the Ultraroyalists frightened the public, especially the owners of *biens nationaux* mentioned above. People were worried that the Catholic Bourbons would side with the Catholic Church and turn back the secularizing measures of the preceding twenty years. Moreover, the claims of *émigrés* frightened the new landowners, making them especially suspicious of any conservative measures put forward by the new regime. Worse still, the Bourbons were unable to keep their few promises to the French people.[24] The *droits réunis*, so hated by the people, were maintained by a government that recognized the needs of maintaining their foreign fiscal relationships over the needs of the people.[25] Even the Ultra de Bertier recognized the fears of the people:

> *... le gouvernement des Bourbons qui ne craindraient pas plus de manquer à leurs promesses à cet égard qu'ils l'avaient craint de les violer pour la suppression des droits réunis et de la conscription. Ces deux promesses imprudemment faîtes, puis restées sans execution avaient d'ailleurs singulièrement refroidi les dispositions favorables des masses populaires...*[26]

In the long term, maintaining the taxes may have been a wise fiscal decision, but in the short term it frayed newly formed and fragile loyalties to the Bourbon regime.

Louis XVIII failed to maintain a successful balance between assuaging the fears of the nation and retaining control over the resentments of the Ultras. His efforts to appease and moderate the Ultraroyalists were noted by the rest of the population, who feared that they meant a turn hard to the right. The common person remained ambivalent and failed to rally in support of the Restoration. While sold *biens nationaux* were maintained as property legally bought under the Revolution, those that were as yet unsold were returned to their former owners, increasing fears and positioning the Restoration on the side of the old nobility. People feared the reprisals of the Ultraroyalists, who were making threatening gestures and questioning "the legality of the confiscation of Church lands." Rumours were

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[24]For a full discussion of the errors of the Bourbons, including their handling of the French military and tricolour flag, see Hudson, UltraRoyalism, 52.

[25]Bertier, *Souvenirs*, 205, 231 and Sauvigny, The Bourbon Restoration, 83.

[26]Bertier, *Souvenirs*, 231.

also circulating that there would soon be a full return of feudal dues, including the *dîme*. The expiatory ceremonies held on an enormous scale throughout France also influenced the common person's fears of a full return to the *Ancien Régime*. Moreover, the returned Catholic clergy treated the Revolution as a sin committed by the French people, which required universal atonement -- an opinion shared by Ultras such as Bonald. The government would have done better to condemn officially these Catholic festivals rather than to discourage them quietly. The logic of the people seems to have followed these lines: since the Bourbons had failed to keep their promises regarding issues such as the *droits réunis*, why then should they be trusted to keep their promises regarding the *biens nationaux* if pressure from the Ultras became too great?[27]

The people mistrusted a Bourbon regime which they had not chosen and which failed to show proper sensitivity to the changes which had occurred since the Revolution. Many felt that the regime had been thrust upon them by foreign intervention. The Bourbons had not inspired the confidence of the people, especially those who had been in a better position under the Empire, such as the Protestant population in the South.[28] The regime was to pay for this lack of confidence when the return of Napoleon forced an end to the First Restoration.

Outside interests toppled the finely held balance against the Bourbons. Napoleon, opportunist that he was, had returned to profit from the fears produced by the Ultras, threatening to hang priests and nobles 'from the lamp-posts'. In his new guise as defender of the Revolution, Bonaparte appealed to liberals and republicans, and renewed his support with Bonapartists. Finally, recognizing his earlier errors, Louis XVIII agreed that the Charter was a contract between himself and the French nation, which had transferred its sovereignty to him, when he "asked the session to unite around him for the defence of the Charter."[29] Unfortunately this call to the people came too late to maintain the Restoration and

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[27]The taxes were not dropped as people had hoped they would be with the onset of peace in France. The government agreed to honour all of the Napoleonic debts and therefore, all moneys needed to be collected in order to pay them and balance the following year's budget. For more discussion see Bertier, Souvenirs, 148 and Sauvigny, The Bourbon Restoration, 80.

[28]Lewis, The Second Vendée, 180-1.

[29]Sauvigny, The Bourbon Restoration, 97.

Louis XVIII fled Paris just ahead of Bonaparte's arrival. The Ultras fell back more gradually, admitting defeat and returning to exile after the rout of Angoulême's attempted defense in the South. Their exile forced them just across the border into Spain, where many Ultras continued to plan a new victory and revenge against the more liberal elements within France, especially those who rallied to Bonaparte.

The federations of 1815 were a prime example of a new wave of united Bonapartism, republicanism, and liberalism. The reliance of the Bourbons upon the Allied Powers only added fuel to the fire of the *fédérés*:

> The circumstances of the Hundred Days gave the various factions common goals. The experience of occupation cannot be over-stressed as a motivating factor.... The primary concern of the *fédérés* was to unite against an external enemy and the king who rode in the baggage train of the Allies.[30]

The federations were a paramilitary organization which helped the Imperial regime by imposing order on royalists who wished to resist, thereby renewing the fears of even moderate Royalists that yet another Revolutionary Terror would occur. The Napoleonic administrators and officials still in place, and able, in some cases, to take up the cause once more, worried moderates and property owners who saw the return of Napoleon as a return to war.

And war was the outcome of the Hundred Days. The Allies refused to accept Napoleon's return and put forward their armies against the French. The peaceful return of the Emperor within France was countered by the military response of the Allied nations who mistrusted his agenda. The Battle of Waterloo quickly sent Napoleon back into exile and the Bourbons returned once more under the auspices of the Allies, rather than being reinstated by the plots and machinations of the Ultras in Spain.

The quick end to the Hundred Days left a vacuum of power which the organized Ultras intended to fill. The Ultras under Artois felt that the Hundred Days was proof enough of the failure of "constitutional government"[31] and put their feelings to the test before Louis XVIII's emissaries were able to implement his more moderate policies, creating a struggle for power outside of Paris. Louis XVIII

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[30]Robert Alexander, "The Fédérés of Dijon in 1815," *The Historical Journal*, 30, 2 (1987), 380.

[31]Sauvigny, The Bourbon Restoration, 102.

was unable to move quickly enough to avoid the fight for authority between Bonapartists and Ultras in the South. The 'White Terror' began at this juncture. There was an "absence of any recognized authority"[32] generally, and because of this lack of clarity regarding who was in charge, "the south found itself handed over to the arbitrary anarchical rule of royalist committees and gang leaders."[33] Chaos reigned and tempers ran high from Waterloo until July 15, when orders began to filter down from Paris. Elections for a new Chamber of Deputies were held quickly in August of 1815, but it was the Ultras who would gain from the necessity of a speedy change in power. Their organization was the only one in place to reap the benefits.

The Second Restoration began under a cloud generated by Allied intervention, French defeat, and disorder on a grand scale. Those dispossessed by the successive turns of government reacted as fortune turned their way, and there was little compassion or understanding on either side. Bonald's theories linking the Revolution and disorder were the theoretical underpinnings of the initial counterrevolutionary disorder of the White Terror. Order would come with the further entrenchment of the Ultraroyalist power structure in the South, but order did not bring an end to conflict. Moreover, the Chamber elected in August reflected the plans for revenge within the Ultra camp. It would be this Chamber of Deputies that would influence the beginning of the Second Restoration, attempting to impose the Ultra religious and political order on a defeated, occupied, and polarized nation. The abolition of divorce in 1816 was only a small element of the greater Ultra agenda, which the new Chamber of Deputies largely favoured.

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[32]Lewis, The Second Vendée, 180.

[33]Sauvigny, The Bourbon Restoration, 118.

Chapter 5 - The chambre introuvable and the reaction against the Revolution

This chapter will describe the political climate under which the Ultraroyalist agenda came to the fore -- spurred by the legal gains of, and fears instilled by, the White Terror following the end of the Hundred Days. The governmental collapse after Waterloo presented the Ultras with the opportunity to revenge themselves upon those who had betrayed royalist ideals during the Revolution, Empire, and more dramatically during the Hundred Days. The introduction of the new Chamber of Deputies in September, 1815, supported by an Ultra majority, led to new legislation, through which the Ultras hoped to return France to its Royalist Catholic roots. The Ultras sought to return the secular powers of the Church through a wide-ranging political agenda. Although this agenda largely was unattainable, the abolition of divorce in 1816 represented an easy conciliation made towards the Ultras' religious agenda by the very Catholic Louis XVIII. The Ultras put forward the legislation to abolish divorce, but the government happily complied as the abolition fell in with the conservative trend already begun under the Civil Code. Moreover, the diminished number of divorces and the climate of fear engendered by the White Terror ensured that there would be little outcry against divorce's abolition. In situating divorce within its political context within the Ultraroyalist agenda, it is possible to identify the further compromises that were required by the Bourbon Restoration between its Ultraroyalist 'supporters' and the more moderate majority as represented by the Cabinet. Ideas of the Revolution regarding individual happiness and liberty were being cast aside in favour of 'family values' and traditionalism under the Bourbon Restoration.

Louis XVIII called for new elections in August, 1815. This step was necessitated by the problems inherent in recalling the Chamber of the First Restoration, which contained a large number of Bonapartists who had retained their positions under Louis' policy of 'Forgive and Forget.' These men were no longer acceptable after many, although not all, had exhibited their continued loyalty to Bonaparte during the Hundred Days. Equally inappropriate would have been maintenance of the liberal Chamber elected during the Hundred Days. Yet the call for new elections was initiated despite the disorder resultant from the flight of Napoleonic administrators following Waterloo, and the inability of Louis XVIII's appointed administrators to gain control of the situation in a timely fashion. Central

government control was further reduced by widescale changes after Waterloo. Not only had many Bonapartist appointees fled, but those who remained were quickly dismissed in the course of administrative purges which saw a turnover of 300,000 civil servants over the course of the year. The situation was especially acute in the South, enhanced as it was by religious tensions. The actions of the Ultras under the First Restoration had frightened Protestants, who then came to power during the Hundred Days and attempted to reassert their power over Catholic Royalists whom they feared. After Waterloo, Protestant officials who had not immediately abandoned their posts were quickly removed by Ultraroyalists or popular Royalist risings. The first stage of the White Terror was a spontaneous reaction against Protestants and Bonapartists, arising from tensions intensified by the Hundred Days.

Tensions were also heightened by the presence of the Allies' occupying armies (predominantly Austrian, Russian, and British), which covered most of the nation. The terms of the peace settlement were not the generous ones of 1814; 150,000 Allied troops were to remain in France until reparations of 700 million francs were paid. Inevitably, the common French person was more involved in maintaining foreign troops than local elections and politics, salvaging what could be saved from troops who took a proprietary air regarding crops, wine, and women. As historian, Robert Tombs notes,

> After Waterloo, 1.2 million foreign soldiers descended on two-thirds of the country and the sufferings of the 1814 invasion were redoubled. Many Allied commanders and soldiers were more than ever convinced that the French, by their renewed support for Napoleon, had forfeited all sympathy.[1]

The administrators in the provinces were also focused on the problems incurred by the presence of occupying troops at a time when local issues would seem to have deserved a greater part of their energies. Peace with dignity was not achieved in France until the payment of reparations was completed in 1818.

The above circumstances ensured that the only functioning administration in the South was controlled by militant Ultras under the leadership of the duc d'Angoulême, who had been given special powers during the Hundred Days. Due to the strength of Ultra forces in the area and his unwillingness

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[1]Tombs, France 1814-1914, 337. These numbers concur with those of Resnick, The White Terror, 118.

to return power, there was no immediate or easy handover of power from Angoulême's Ultra administrators to more moderate Royalists appointed by Louis in Paris[2]. It was early August before Angoulême acknowledged the order from Paris, stripping him of his extraordinary powers, and it was not until the 15th that Louis XVIII's appointees began to replace Angoulême's followers.[3] People did not immediately recognize the leadership of the Parisian appointees, however, and violence continued until September.

Adding to the power of the Ultras' position, Liberals and Bonapartists who had rallied to Napoleon during the Hundred Days were lying low at the beginning of the Second Restoration. Their leaders were being sought by both legal and illegal groups of Royalists looking to find the instigators of the Hundred Days, seeking retribution from those who had betrayed the Bourbons. Historian, Daniel Resnick cites an official in Marseilles: 'The rallying cry is to massacre the Bonapartists and pillage their homes.'[4] Protestant notables and communities were targeted by bands of lower-class Royalists -- headed by well known brigands such as Quatretaillons.[5] Consequently, the only candidates who were willing to stand were the Ultras, who also possessed organized support systems for their campaigns in the form of local *Chevaliers* banners, which managed to direct the elections by their own means of bribery and intimidation.[6] Moreover, the Ultras were supported by grassroots Catholic militants who were more than happy to intimidate local liberals and Protestants in a reprise of the earlier White Terror of 1795. For these reasons, people were afraid to vote in any way that would be perceived as disloyal, and therefore, Royalists were the only candidates who could make electoral gains. Statistics of those killed or in hiding during the White Terror are varied; however, a few facts are commonly agreed upon:

> In Toulouse, Marseilles, Nîmes, Lyons, Perpignon, Albi, Toulon, Avignon, and in rural districts, these royalist bands - the '*Verdets*',

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[2]Resnick, The White Terror, 24.

[3]Robert Alexander, Bonapartism and the Revolutionary Tradition in France, 230.

[4]Resnick, The White Terror, 24. For the ins and outs of the White Terror and the actions of Royalists against any and all dissenters see pp. 1-40.

[5]Fitzpatrick, Catholic royalism in the Gard, 38.

[6]Sauvigny, *Le comte Ferdinand*,185.

> from their green cockades, colour of the Comte d'Artois - made hundreds of arrests, pillaged houses, and massacred prisoners, most notoriously Marshal Brune in Avignon and General Ramel in Toulouse. Two or three hundred were killed and thousands fled.[7]

Due to this type of intimidation and fear of both Allied and local paramilitary troops, the Ultra organization succeeded in making great gains in the elections of August 1815, especially in the South. The Ultraroyalists gained a huge majority, amounting to 78% of the seats in the new Chamber of Deputies.[8] Those elected included men such as Charles-Francois Trinquelague, a vehement Ultra from the Gard who became involved in the abolition of divorce.[9] The resulting *'chambre introuvable'* promoted the Ultra agenda until its dissolution in September of 1816.

After 1789, Catholicism had become a link to the *Ancien Régime* life and status which the *émigrés* wished to repossess, bringing them closer to the Church.[10] Works such as Chateaubriand's *Le Génie de Christianisme* guided this return to religious faith. Turning away from the Enlightenment towards Romanticism, Chateaubriand exemplified the *émigrés*' desire to return home to a France they recognized, rather than the one created by the trials of the Revolution. Ultraroyalists combined their desire for a Bourbon on the throne of France with a desire for a new primacy for Ultramontaine Catholicism, heralded by theocrats such as Maistre and Bonald. The theocratic ideals held out to them included a 'natural' order and structure handed down by God, which would increase the secular authority of the Church and distance France from the 'imposed' philosophies of the 'chaotic' Revolutionary system. In addition to the ideals of theocracy, renewed traditionalism guaranteed the *émigrés* and notables a return to their place of power. The Ultras wanted to "*...établir solidement en France une aristocratie puissante, assise sur ses propriétés, disposant de pouvoirs fortement décentralisés, relayée par un*

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[7]Tombs, France 1814-1914, 336.

[8]Mansel, Louis XVIII, 323.

[9]Fitzpatrick, Catholic royalism in the Gard, 41 On the influence of the White Terror on the elections also see Gwynne Lewis, The Second Vendée, 210 and Sauvigny, *Le comte Ferdinand*, 185.

[10]Hudson, UltraRoyalism, 7.

clergé indépendant et socialement bien implanté."[11]

The religious nature of the Ultra organization, with its ties to the *Chevaliers* and the affiliated *Congrégation*, inevitably affected their political agenda. Because "*...si presque tous les Congrégationistes deviendront les ultras, on ne peut dire s'ils sont ultra-royalistes parce que ultra-catholiques ou ultra-catholiques parce que ultra-royalistes*"; regardless, the religious fervour of the *Chevaliers* in the Chamber cannot be denied. Relying as they did on the theories of Maistre and Bonald, it was easy for the Ultras to believe that they had God on their side. In truly believing that they were reinstating a political system ordained by God, they limited their ability to compromise -- compromise would hurt their mission and betray God's orders. Royalists willing to compromise were excluded from membership in the *Chevaliers'* banner; men such as Vitrolles, while Royalist, were not permitted in the organization due to their 'lack of constancy'. Vitrolles was eliminated from their society because of his relationship with Fouché, former Minister of Police under Napoleon and a regicide during the Revolution, during the Hundred Days.[12] Despite their intransigence, the Ultras held the majority in the Chamber of Deputies and were therefore a necessary link to legislation -- a fact recognized by Louis XVIII and his ministers. Thus, the government permitted concessions to the Ultras's religious agenda. Their political policy, however, was less successful, as exemplified by their failure to achieve a victory over the electoral law discussed below.

Shortly after the newly-elected representatives had arrived in Paris for the first sitting of the Chamber, Parisian salons divided on political lines, accomodating the attendance of likeminded individuals. Policy and agenda were decided at salon meetings, and political allegiance was quickly recognized according to which salon a Deputy frequented. No parties were officially recognized, but this method of alignment was effective, and by mid-October members had stopped sitting by region, and begun to sit according to political affiliation.[13] In this way, the Ultras were able to set their agenda and follow it through with practical support. They could drown out the more moderate voices, and ensure

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[11]Waresquiel, "*Un paradoxe politique*," 411.

[12]Sauvigny, Le comte Ferdinand, 189.

[13]Waresquiel, "*Un paradoxe politique*," 412.

their dominance in the Chamber. Many alternative opinions were silenced by the reactionary atmosphere of the White Terror; those few deputies elected from the Left were quiet during the 1815-16 session, relying on the moderating influence of the Richelieu Cabinet to halt the worst extremes of the Ultras.

The *Chevaliers de la Foi* aided the Ultra organization in the *chambre introuvable*. According to creator and long-time conspirator Ferdinand de Bertier, there was a banner[14] of the *Chevaliers* within the Chamber of Deputies itself, as well as the presence of prominent *Chevaliers* in the Chamber of Peers. The leaders of the *Chevalier* banner met on their own before attending the political salons to arrange the agenda for the meetings:

> *...les chevaliers s'y confondant avec les autres députés, s'y trouvant très probablement en majorité, pouvaient y faire adopter les mots d'ordre arrêtés auparavant en comité secret.... Du moins, peut-on essayer de situer à cet égard les principaux leaders du parti: Villèle, Bonald, La Bourdonnaye, Vitrolles.*[15]

Truly, the *Chevaliers* came into their own under the *chambre introuvable*. The presence of the banner within the Chamber of Deputies created opportunities for the *Chevaliers* to have one of their number on each of the committees or bureaux investigating legislation. They promoted their agenda, both political and religious, by this means. The Ultras used the wording of the Charter to gain more than their theoretically allotted power. Moreover, Ultra representatives brought forward their own legislation, as in the case of Bonald with the abolition of divorce. In addition, the Ultras gained administrative positions in the departments and control of the National Guard, which gave them power to enforce any legislated measures of the White Terror.

The Ministry formed under the Duc de Richelieu represented a more mixed approach, and although it was not extreme enough to satisfy the Ultras, there was no question that the Ministry was Royalist. Louis XVIII was initially pleased with the outcome of the 'unexpected' election, which saw such large numbers of nobles and Royalists elected despite the attempts of Fouché to fix a liberal result through his selection of electoral officials. However, Louis soon realized that this Chamber of Deputies

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[14]The 'banner' of the *Chevaliers* was similar in design to a terrorist 'cell' or a Masonic lodge, somewhat independent in its actions, but still a part of the organization's whole.

[15]Sauvigny, *Le comte Ferdinand*, 188

was not his to direct, and that to maintain balance and keep moderates and the Allies happy he must support his Ministers and direct legislation along a more even path. The fact remains that Louis and his Ultra Chamber of Deputies worked at cross purposes throughout the year. Louis XVIII had never sought a parliamentary government and must have deeply resented the actions of Ultras, who attempted to use their majority to enforce ministeral responsibility -- a far more parliamentary approach than Louis was comfortable with. Also, the Ultra link to the King's brother and rival, Artois, engendered little pleasure from Louis, who was annoyed with his brother's rejection of compromise and failure to support him.

Under the auspices of the *chambre introuvable*, the second stage of the White Terror was directed through legislation. The implementation of the 'legal White Terror' meant a continuation of the repressive measures of the summer against Bonapartists and Republicans missed in the initial sweep. Richelieu and his cabinet attempted to temper these measures, but they were amended in many cases into a stricter form by the Ultra Chamber of Deputies. According to Resnick,

> Royalists in the Chamber used their authority to amend legislation that seemed too mild to them and abstained from altering bills that pleased them. An analysis of the opposition between deputies and Ministers on the principal pieces of repressive legislation indicates the process by which the legal channels for the reaction were created.[16]

These 'principal pieces of repressive legislation' included: vigorous sedition laws, censorship of the press, creation of the *prevotal* courts, which avoided the necessity of a jury trial, and the outlawing of certain suspicious activities, for instance the wearing of tricolour ribbons. Moreover, the press laws changed several times and became more repressive than those envisioned in the Charter. The centralized administrative structure of the Empire remained[17] and supported the enforcement of the government's will. The extremism of the Ultras in attempting to strengthen and implement these laws became an annoyance to the Richelieu Cabinet and the Allies, who felt that a more moderate course was needed to avoid future risings. Nevertheless, the press and sedition laws did succeed in curtailing public discussion of much legislation that might otherwise have incurred public displeasure.

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[16]Resnick, The White Terror, 66.

[17]Lewis, The Second Vendée, 227.

The Ultras were also adamant in their attempt to wrest control from Louis' ministers; in doing so, they annoyed the King and achieved less than they desired. The militancy of the Ultras on a proposed new election law only increased bad feelings between the Chamber of Deputies and the government:

> *Il faut reconnaître ensuite que les chefs de la majorité de la Chambre ne surent pas profiter de leur avantage momentané: au lieu de se hâter de mettre sur pied une loi électorale qui eût assuré leur domination dans les assemblées à venir, ils perdirent un temps précieux à discuter des mesures de représailles et réaction.*[18]

This battle became deadlocked by the Ultras' refusal to pass a proposed budget that included the sale of nationalized Church lands. This obstinacy on their part forced the government to bargain, and the Ultras forestalled the sale of Church lands and obtained the abolition of divorce. However, once the budget was passed, the ministers and Allies began to demand the dissolution of the Chamber, despite Louis XVIII's previous agreement not to do so. The amended budget passed, and while the electoral law was postponed, the losers in the end were the Ultras. The refusal of the Ultras to compromise aggravated their monarch greatly, and the Ultras' attitude also made an enemy of the King's favourite, Decazes. It would be his influence, along with the Allies', that finally convinced Louis XVIII to dissolve the Chamber of Deputies in September 1816.

Nevertheless, the Ultras made real gains for their religious agenda, mainly because this agenda coincided with the personal attitudes of Louis XVIII. Louis also wished to reinstate the Catholic Church's primary position in French life, making government compromise possible. The Ultraroyalists wished to aid the Church "*à raffermir les religieux fondements de la société.*"[19] The month of January, 1816 was dedicated to this religious agenda: on 8 January, the civil register on births, deaths, and marriages was returned to the Church; on 22 January religious donations and allowance for the Church to make acquisitions of land were approved; on 1 February pensions for married priests were suppressed; and so on.[20] There seems little question that the Ultras were attempting to enforce their religious beliefs

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[18]Sauvigny, *Le comte Ferdinand*, 216.

[19]M. de Cardonnel, *Archives parlementaires*, le 22 janvier 1816, 42.

[20]*Archives parlementaires*, same dates as above, pp. 3, 42, 51, and 71.

on the nation regardless of the liberties outlined in the Charter. They fought to exchange individual liberties for the rights of the clergy as a group. Moreover, this fight was unequal as the Ultras held a large majority, and the few members of the Left were unwilling to challenge the King and his government Ministers, who approved the measures. The Ultras wanted to reverse the secularization achieved under the Concordat and to renew the religious fervour of the nation, to set France back on the traditional path of order and stability. The government, following the Catholic Louis, did not counter this religious agenda.

The abolition of divorce was an integral part of the religious agenda. Bonald's personal vision of the sins of the Revolution included divorce, and he renewed his attack on it in the Chamber of Deputies on 14 December 1815.[21] Bonald basically read verbatim the text of his work published in 1804, *Du Divorce consideré*. He stressed the need to maintain the family for the good of society; he argued that divorce attacked the family by legalizing adultery and polygamy. Bonald felt that marriage was a religious sacrament, not a civil contract; therefore, any marriage of divorced persons was polygamous because they were still married to their first spouse in the eyes of God. Moreover, he wanted this religious truth to be translated into the Civil Code - "*faire d'un premier lien, contracté par deux personnes actuellement vivantes, un empêchement formel et dirimant à un second mariage.*"[22] Reversing the arguments of the National Assembly, he claimed that individual liberty was better served by abolishing divorce than by permitting it. The major claim of the Revolutionary legalization of divorce was that marriage was a civil contract, entered into with the consent of the two people involved; therefore, if one of those people wished to end the union it would infringe on their individual liberty not to permit the dissolution of the marriage. Bonald demanded that consideration be taken of the partner who did not want the marriage to end "*au nom de la liberté individuelle*". He felt that society must allow his/her wishes to be taken into account, and make impermissible divorce which "*forcée [elle] ainsi de vivre dans un état qui blesse également les moeurs publiques et sa propre conscience.*"[23]

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[21]The preliminary speech was not made until 26 decembre 1815.

[22]Louis de Bonald, *Archives parlementaires*, 26 decembre 1815, 611.

[23]*Archives parlementaires*, 26 decembre 1815, 610.

Bonald also argued that women were far more aversely affected by divorce than men. Women went into marriage with their youth, beauty, and virginity; once divorced they were tarnished, misused, and unable to find fulfilling lives. This was in fact belied by the number of women who had sought divorce themselves under the Revolutionary legislation - whose numbers were, in fact, larger than those of men.[24] Yet, according to Bonald, people's desire to divorce was irrelevant. The point of marriage was not happiness or personal fulfillment; instead it was the production and proper rearing of children. It was conservation that best embodied the traditional ideal of Bonald. Children needed care and attentive moral instruction from parents in order to become productive citizens. Therefore, the population arguments of Revolutionaries and men such as du Hennet were also irrelevant. As Bonald states: "*La fin du mariage est donc la perpétuité du genre humain, qui se compose, non des enfants produits, mais des enfants conservés.*"[25]

Bonald's arguments mirrored those in his publication, *Du Divorce*. Published during the discussions on the Civil Code, *Du Divorce* provided Bonald's proposal to the Chamber in 1815. He also used some of the arguments of the conservative Catholic Portalis, who had been part of the Civil Code discussions and was himself against retaining divorce within the Civil Code. The arguments of Portalis and Bonald held the needs of the child over that of the parents. Marriage was not a contract between two consenting adults, but a covenant between two people and the child which was the presumed result of the marriage; therefore, because more than the two people were involved in establishing the contract, it could not be broken by the will of one or both of them:

> *L'engagement formé entre trois, ne peut donc être rompu par deux, au prejudice du tiers, puisque cette troisième personne est, sinon la première, du moins la plus importante; que c'est à elle seule que tout se rapporte, et qu'elle est la raison de l'union sociale des deux*

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[24]As mentioned in the Revolutionary chapter above, the number of women seeking divorce was proportionately higher than men. As Ronsin states in Le Contrat Sentimental, 271 "*...Lorsqu'un divorce est demandé par un seul époux, celui-ci est, dans l'ensemble des villes pour lesquelles nous disposons d'informations, une femme dans les deux tiers voire les trois-quart des cas. ie 63.5% Montpellier, 65% à Lyon, 71% à Rouen...*".

[25]*Archives parlementaires*, 26 septembre 1815, 611.

autres.[26]

The largely Catholic Chamber of Deputies, supported by the Richelieu ministry, readily accepted Bonald's arguments, and it appears that Bonald pre-arranged the compliance of other Ultras regarding his proposed legislation. It is not clear whether Bonald presented his idea at the Ultraroyalist Piet salon or in a more private meeting amongst the banner of the *Chevalier*s themselves. However Villèle, who was himself a member of the banner, recalls in a letter to his father dated 3 December 1815 (almost three weeks before Bonald's presentation to the Chamber), that "*M. de Bonald nous a lu une proposition tendant à abolir le divorce.*"[27] Bonald was successful in getting his proposed legislation to the committee stage, despite the fact that the intial impetus did not come from the ministry.

The question of divorce was not returned to the Chamber floor until 16 February 1816. The Deputies' time had been taken up with more pressing matters, such as the Amnesty law and the Budget. The abolition of divorce had been in committee during that time, but was consistently put off for debate on the floor. Once time was found to discuss the abolition, there was little debate. Trinquelague presented the findings of the bureaux, continuing the same themes found in Bonald's speech from December, with few new revelations and certainly no questioning of the abolition's merits. According to these findings, divorce was wholly evil, contrary to the law of God passed down from Adam and Eve. The state and religion were meant to maintain, not harm, one another; therefore, the law of divorce was contrary to the law of nature. As he notes, "*La France vivait depuis dix siècles sous l'empire de ce dogme protecteur de la famille. Les lois et la religion s'unissaient pour le maintenir, et la possibilité d'y porter atteinte ne se présentaient pas même à la pensée.*"[28] The Revolution broke the ties ordering society throughout the ages; therefore, to return order the Revolution must be fully rejected.

The question of religious toleration entered into the discussion at this point. The Charter guaranteed the toleration of all religions, but Catholicism was the religion of the French state and the majority of Frenchmen. Could both of these tenets be supported at the same time? Of course, for the

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[26]*Archives parlementaires*, 26 decembre 1815, 612.

[27]Villèle, Memoires et correspondance, 395.

[28]*Archives parlementaires*, le 16 fevrier 1816, 193.

Ultras and their religious agenda there was no question that the "majority" should rule:

> *Si ce dogme n'est pas reconnue par toutes les Eglises chrétiennes, il l'est incontestablement par l'Eglise catholique: et la religion de cette Eglise est celle de l'Etat; elle est celle de l'immense majorité des Français. La loi civile qui permet le divorce y est donc en opposition avec la loi religieuse.*[29]

The desire to empower the Catholic Church is undeniable both in this quote and in the general tone of the argument itself. The Ultras wished to return the Church to its former glory, and the toleration of other religions within the Charter was dismissed by them as irrelevant when compared to the desires of the Catholic majority. This argument also appears in later 'debates' by Cardonnel and Chifflet, who mirror Bonald and Trinquelague in their discussion of the religious and societal need for abolition. There was little difference between speakers except for which rhetorical flourish they preferred to stress.

The only member of the Chambers who spoke against the legislation was Fournier de Saint-Lary. During the discussions -- it seems pointless to call them debates -- of 2 March 1816, Saint-Lary made some more moderate statements regarding the reality of the divorce legislation within French society. He acknowledged the passion of the earlier speakers and their desire to reinstate Catholic values; however, he also recognized the problems of abolishing divorce now that it had been available for twenty-five years. He requested more clear debate on the issue, rather than the violent rhetoric of Bonald and Trinquelague: "... *le génie et le talent, dans leur vol élevé et rapide, négligent ou dépassent des difficultés et des obstacles qui gênent et arrêtent ceux qui les suivent de loin, en marchant obscurément sur leurs traces.*"[30] He wished to retain divorce for adultery, and stated that since divorce had already been instated it could not rationally be ignored now.

Although he seemed unable to support the divorce law as it was written in the Civil Code, given the timing of the debates during the *chambre introuvable* and White Terror, his wording implied some sympathy for the Napoleonic if not the Revolutionary reading of marriage and divorce:

> *...C'est de ce voeu de la nature pour la propagation et la conservation de l'espèce dont la société a fait un contrat civil et la*

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[29]*Archives parlementaires*, 16 fevrier 1816, 194.

[30]*Archives parlementaires*, le 2 mars 1816, 358.

> *religion catholique un sacrement. Ainsi, dans l'ordre social, le mariage est une institution que la religion peut consacrer, mais dont la loi et l'intérêt public doivent régler les effets extérieures, et dont le consentment mutuel forme l'essence.*[31]

This was the only discussion of the relevancy of mutual consent and the civil contract within the debates over abolition. All other speakers stressed the detrimental impact on family and society and the irreparable harm to religion. But none calmly illustrated the need for government to be involved in the process - all other speakers veered towards the legitimacy of Catholic marriage as an indissoluble sacrament. Saint-Lary wished to separate the sacramental marriage made between Catholics, which was indissoluble, from the solely civil marriage, which was a contract and therefore dissoluble. Saint-Lary seemed to feel that divorce, although unfortunately a product of the Revolution, was a genuine law and one which could not be abolished out of hand, because "people no longer dare to defend it".

Nevertheless, Saint-Lary did not wish to return to the liberal Revolutionary divorce legislation or even to the parameters of the Civil Code. He believed that divorce should only be permissible in the case of adultery within civil marriages. For Saint-Lary, divorce was not the culprit behind all disruption of family and state; it was adultery which he found violently abhorrent. He stated "*...le véritable auteur des désordres de la société, l'éffet et la cause toujours renaissante de la corruption, c'est la adultère; **le divorce est un droit partout où l'adultère n'est pas un crime***."(his emphasis)[32] Moreover, he followed in the Napoleonic footsteps of those authors of the Civil Code who pointed the finger at the adulterous woman, whose lax morals might bring another man's child into the family home "*comme une des chances probables de la lotérie de l'hymen.*"[33] Again, as under the Civil Code debates, the concern was that by disallowing divorce, adulterous wives could continue to dishonour their husband's name. Moreover, adultery broke the civil contract between a married couple, because it destroyed the basis for that contract, the promise of fidelity.[34]

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[31]*Archives parlementaire*, 2 mars 1816, 358.

[32]*Archives parlementaires*, 2 mars 1816, 359.

[33]*Archives parlementaires*, 2 mars 1816, 359.

[34]*Archives parlementaires*, 2 mars 1816, 360.

This argument only applied to those married under the civil authority, not in the Catholic Church. Catholics were to be ruled by the precepts of their own faith, and to dignify the rights of those who did not practice that faith, he argued that the Chamber, under the Charter, must uphold the right to divorce. The abolition of divorce failed to uphold all of the elements of French religion, law, and constitution. Saint Lary sought to rectify this problem with one amendment to the proposed abolition: "*Que le divorce soit conservé pour les mariages qui n'auront pas été bénis par un prêtre catholique, et pour cause d'adultère seulement.*" This amendment was not carried forward to the Chamber of Deputies, nor was Saint-Lary's part in the discussion published in the account in *Le Moniteur*. M. d'Aubers, who spoke after Saint-Lary, followed Bonald's lead in proclaiming the initiators of the divorce legislation as "*infatiguables déstructeurs.*"[35] He also maintained the Ultra line that any one who was not for the abolition of divorce was against the monarchy, "*leur masque est arraché, ils ont changé de système sans changer de principes.*"[36] This was a grave threat, given the Ultra extremism which reigned under the *chambre introuvable*. Needless to say, the motion to abolish divorce was passed by a large majority, at which point it continued to the Chamber of Peers.

The proposed legislation arrived in the Chamber of Peers on March 12, 1816. Discussion of the proposed end to pensions for married priests, which also carried the Ultra stamp of approval, and the news that the changes to the electoral law had been rejected superceded the reading of the proposed abolition.[37] Bonald's proposition was delayed again on the 16th because the Chamber of Peers remained more concerned with the electoral law. The abolition of divorce was proposed at a very busy time for the Chambers, as the Ultras attempted to change both the political and religious structure of the state all at once.

Unlike the private meetings of the Chamber of Deputies, the abolition was not brought forward for debate in the Chamber of Peers until March 19. Discussion in the Chamber of Peers followed the same lines as amongst the Deputies. Two Catholic bishops led in condemning the disruptive nature of

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[35]*Archives parlementaires*, 2 mars 1816, 361.

[36]M. Blondel d'Aubers, *Archives parlementaires*, 2 mars 1816, 364.

[37]*Archives parlementaires*, 12 mars 1816, 490.

the divorce law and the horrors of the Revolution which it symbolized. The first, M. de La Luzerne, the bishop of Langres, mentioned the restriction of divorce under the Civil Code in response to the demands of righteous men throughout the nation; however, Bonaparte's selfishness countered them and divorce remained legal. Certainly, the bishop did not commend the Napoleonic legislation in glowing terms - "*...ses flatteurs le louerent d'avoir rétabli l'empire de la vertu, parce qu'il avait un peu diminué les facilités du crime...*"[38]. He explained the need for a trinity of virtue - state, religion, and family, and as with the other speakers, beginning with Bonald, he detailed the need for familial stability as the cornerstone of society. Moreover, he stressed the importance of separation as a bandage for marital woes, which permitted time for wounds to heal, passions to relent and couples to return to one another "to comfort each other in their old age." The absolute nature of divorce did not allow this chance. The next speaker, M. de Clermont-Tonnerre, bishop of Chalons, presented the same arguments, detailing the impossibility of a Charter that maintained Catholicism as the religion of the state while also keeping laws contrary to the teachings of that religion: "*...Une loi de l'Etat serait subversive de la religion de l'Etat, elle l'attaquerait dans sa base et dans l'attribut qui la distingue, ce qui serait une absurdité et une contradiction intolérable.*"[39] The Chamber of Peers agreed that divorce should be abolished; they returned the legislation to the Chamber of Deputies, who were to present the proposal to the King.

The proposal was well received by Louis XVIII and his ministers. Le comte Dubouchage, an Ultra member of the ministry, returned the proposal to the Chamber of Peers with these words: "*à faire disparaître de notre Code une loi également contraire à la politique et la morale.*"[40] The law had already transited the debate process and therefore was restored to the *bureaux* for further analysis and quickly returned to the Chamber. A committee was chosen to do this, consisting of M. de Lamoignon, MM. les comtes de Maleville, de Pastoret et de Lally-Tollendal, and the Bishop of Langres. The committee returned on April 25, and M. de Lamoignon read the report outlining the finer points of the earlier debates. The committee suggested some minor amendments to clarify the law and the Chamber

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[38]*Archives parlementaires*, 19 mars 1816, 621.

[39]*Archives parlementaires*, 19 mars 1816, 625.

[40]*Archives parlementaires*, 22 avril 1816, 388.

of Peers passed the law with 97 votes out of a possible 109.[41]

The following day the legislation returned to the Chamber of Deputies, where the King's approval was again given by Minister of the Marine, Dubouchage. He too outlined the chaotic nature of the Revolutionary divorce law. After the projected law was read, some demanded its immediate passage, as the Chamber had initiated and debated the legislation in March, making further discussion unnecessary. Some dissented against this demand for a speedy turnover, however, and after much discussion of the rule of parliamentary discipline, the legislation was returned to the *bureaux* once again. The commission discussing the project - MM. de Trinquelague, Jossé Beauvoir, Cardonnel, de Bonald, Chifflet, Favart de Langlade, Piet, Royer, et de Corbière[42] - consisted entirely of those in favour of abolition; discussion thus centred upon strategy rather than the viability of abolition. The one previous speaker not invited to the committee was M. de Saint-Lary, who had argued against outright abolition.

The committee returned to the Chamber, outlining problems with the law's lack of definition, as the legislation failed to outline a replacement law. Some members wanted time to think about the proposition, while the committee desired a vote that day:

> *Nous avions adopté une disposition qui n'était pas la déclaration d'un principe; et ce n'est que la continuation du même principe qu'on nous représente; et nous espérions qu'on nous présenterait un projet de loi complet sur la matière. Mais on ne reproduit que l'objet que nous avions délibéré.*[43]

This argument was quite valid, but it would not be until the following year that a new Chamber would seek to outline a law replacing divorce with the *separation de corps*. The Deputies intended from the outset to reinstate marital separation, but the abolition of divorce was accomplished only in the last week before the closure of the *chambre introuvable*. The closure of the Chamber on 29 April made a law on separation unwarrantable at the time, leaving in limbo those failing marriages within the divorce process in 1816. The Chamber felt it best to remove the further possibility of divorce, and determine the details

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[41] *Archives parlementaires*, 25 avril 1816, 434.

[42] *Archives parlementaires*, 27 avril 1816, 467.

[43] M. Voysin de Gartempe, *Archives parlementaires*, 27 avril 1816, 468.

of its replacement at a future date, as this quote illustrates: "*La loi proposée atteint donc le but moral, c'est tout ce qu'il est possible de faire en ce moment. Le mal s'opère promptement; on le réparé lentement.*"[44] This argument turned the tide, and the vote was taken on April 27, 1816 to abolish divorce in France succeeded by 225 to 11. The members of the *chambre introuvable* were not to know until the following September that this had been their last decision. It would fall to a new Chamber of Deputies to decide on the details of the separation law.

The question remains -- why was there so little support for maintaining divorce? Discussion of the proposed abolition of divorce was not substantial in journals of the period. However, given the censorship of the press at this time, and the suspicions and fears still alive after the White Terror, this lack of response is not surprising.[45] The French Royalist papers *La Quotidienne* and *Journal de Paris* made mention of the discussions, occasionally outlining the debates, but commentary was severely lacking. Across the Channel, comment on the French debates was lacking also; for instance, in the *London Times* the only mention of the abolition of divorce was the announcement of its final promulgation. On both sides of the water the budget and electoral laws took up all the available commentary and editorial space. Another reason behind this dearth of response may have been the lack of general use of divorce in both France and Britain. Certainly, divorce in France had been a solely urban phenomenon, which, after the introduction of the Civil Code, was also restricted by the expense of the procedure. During the period of debate from 15 December 1815 to 27 April 1816, the only commentary on the social and religious ramifications of divorce were found in two forms: letters to the editor and the salacious details of ongoing court cases involving citizens of rank.

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[44]M. le conseiller d'Etat de Blaire, *Archives parlementaires*, 27 avril 1816, 468.

[45]The exception to this rule is the liberal journal *Le Censeur*, which published an article lambasting a judicial decision disallowing the divorce of Catholics by citing the Charter's recognition of Catholicism as the religion of the state. The journal article used this example to ridicule the Second Restoration's turn towards reaction, and once again placed divorce within the greater agenda of secularizing and liberalizing measures of the Revolutionary period. As this quote demonstrates: "*...il serait même facile de démontrer que tous les raisonnemens que ce tribunal a faits pour prouver l'abolition du divorce et des lois relatives au mariage, prouvent encore mieux le rétablissement de la dîme, des rentes seigneuriales et de la féodalités.*" Although this article is dated only by year, 1815, it was clearly written in the late Summer or early Fall of 1815 before the legal White Terror was enacted, and also before the abolition of divorce was brought forward by Bonald in December. See *Le Censeur*, 261.

The overall tone of articles within both *La Quotidienne* and *Journal de Paris* was favourable to the renewed Restoration and the *chambre introuvable's* work towards improving the status of the Church. In looking at these sources, one must also consider the repressive press legislation in place, and factor in that any journals disagreeing with the government would have been shut down. Nevertheless, the glories of the Catholic Church and evils of the Revolution were expounded in the *Journal de Paris* on 22 December 1815:

> *Des hommes plus dangereux dans leur demi-savoir qu'ils ne l'auraient été dans un entière ignorance destruisirent une religion que leur coeur n'était pas fait pour sentir, au nom d'une philosophie que leur raison n'était pas un état de comprendre.*[46]

The articles regarding the discussions in the Chamber were more matter of fact, but this indicates the Royalist sympathies of the journals.[47] Meanwhile the presentation of trial details took on a less religious tone, favouring the spread of gossip and intrigue. The cases discussed within the period of the debates took place in the department of the Seine. One described the proceedings by a man, Revel, against his former wife. The others involved nobility - the division of property between Mme. la princesse and M. le prince d'Aremberg, and the separation of M. le comte and Mme la comtesse de Normont. The passage of the abolition law occurred during the slate of these cases, yet all of the accounts shared opinions which are surprising given the moral attitudes of earlier articles regarding the legislation itself. All three accounts in some way upheld the need for a divorce law.

The first case was brought forward by M. Revel, who wished to contest the legality of the divorce procured by his wife in 1806. She had since then gained greatly in wealth and stature, and it appears that Revel wished to benefit from her change in circumstance. Moreover, he had published an account of her alledged infidelities, for which she had brought a counter suit against him. Both the court and the papers upheld the wife's right to remain divorced from Revel, who it appears was rather a shady

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[46]*Journal de Paris*, December 22, 1815.

[47]Irene Collins, The Government and the Newspaper Press in France 1814-1881, (Oxford: Oxford University Press, 1959), 10-14.

character and a Bonapartist as well.[48] Nevertheless, the proceedings in the Chamber of Deputies appear to have made some impact by the middle of January, given the changed attitude toward the proceedings of the d'Arembergs. The vicious battle between this couple was waged over the details of a settlement rather than a desire by either participant to maintain the marital state. The princess was the niece of Josephine Bonaparte, fallen on hard times, but it was she who sought to divorce her husband. The reaction of the court was not favourable:

> *...attendu que la princesse d'Aremberg est démanderesse, en nullité de mariage; que dans un état où elle s'est voluntairement placée elle même et le mariage subsistant toujours, elle a droit seulement a des alimens proportionnés à l'état de retraite auquel doit se condamner une femme qui sollicite des tribunaux l'annulation de son mariage.*[49]

Clearly, attitudes towards divorce were then stiffening as it became apparent that the Civil Code was under question in the Chamber of Deputies. Moreover, while the courts were willing to uphold existing divorces -- which ran contrary to the Chamber of Deputies' demand for a retroactive abolition of divorce -- they were not prepared to allow new divorces to be sanctioned.

The *Journal de Paris* later recognized that some marriages were not meant to be indissoluble, as one case in May left in no doubt. The Normonts sought a separation and there was no question that their marriage was no longer viable. The *Journal*'s final commentary sums up the feelings that this case inspired:

> *Réfléchissions, réfléchissions avec maturité sur les tristes résultats de ces procès pénibles; c'est ici surtout que les moeurs doivent seconder l'action des lois; et puisque le voeu de législateur, désormais d'accord avec le voeu de la religion, va proclamer l'indissolubilité du lien conjugal, puissions-nous n'avoir pas souvent à gémir de ces demandes en separation de corps, aussi scandaleuses dans leurs détails que les procès en divorce, et qui condamnent chacun des époux à porter un nom qu'il s'est efforcé de dèshonorer.*[50]

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[48]*Journal de Paris*, 30 December, 1815 and 13 January 1816; *La Quotidienne*, 13 January 1816.

[49]*Journal de Paris*, 11 January, 1816.

[50]*Journal de Paris*, 5 May 1816, 3.

This sentiment was more the exception than the rule, however. Full accounts were given of Chamber speeches against divorce; for instance, the report of the *Quotidienne* of Trinquelague's speech gave all the highlights of his argument and praised his understanding of the issue.[51] Those who spoke against the abolition of divorce were not given the same opportunities: *"M. Fornier de Saint-Lary a présenté au projet quelques modifications."*[52] However, no explanation was given of what those modifications might be. The same unequal treatment was apparent in the *Journal de Paris*, where Trinquelague's full speech was given and Fournier de Saint Lary was not even mentioned by name.

The only space given to a real debate can be found in the *Journal de Paris*, where a running battle occurred between two anonymous letter writers. One writer supported abolition and utilized the usual arguments about the sanctity of marriage and the blasphemy inherent in viewing marriage solely as a contract -- society cannot be maintained without the stability of marriage. All men who have real morality, he argued *"applaudira donc au zèle de la chambre des députés, secondé par la sagesse de la chambre des pairs, et leur rendra grâces pour la proposition d'une loi eminemment sociale que religieuse."*[53] His adversary, surprisingly, received equal print space and made his point that Bonald, *et al*, were attacking the liberalities of the old Revolutionary law while failing to recognize the necessary compromises of the Civil Code. Separation retained marriage in name only which benefited neither the couple nor public morals.[54] His critique continued in April when he derided the idea of retroactive abolition, stating that *"le passé n'est jamais dans le domaine du législateur."*[55] These accounts were, however, the only detailed media attention given to the abolition; on the whole the debates were mentioned in four-line articles that stated the existence of the legislation and its progression through one or the other chambers. When the law passed no commentary was made; however, the full legislation was printed on 28 April 1816.

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[51] *La Quotidienne*, 20 February 1816.

[52] *La Quotidienne*, 3 March 1816.

[53] *Journal de Paris*, 20 March 1816.

[54] *Journal de Paris*, 31 March 1816.

[55] *Journal de Paris*, 17 April 1816.

Under the *chambre introuvable* the Ultras had the upper hand, as witnessed by their ability to reject the electoral laws. On main points the government could refuse to abide by the Chamber of Deputies' decision, but the need to obtain passage of the budget required concessions to the Ultras, in the form of their religious agenda, which came to the fore in the last two months of the Chamber's life. The two main areas were the abolition of divorce and the return to the clergy of the registers for births, marriages, and deaths. The parallel between this reactionary legislation, occurring as it did at the end of a fractious assembly, and that of the initial passage of the legislation secularizing divorce in the fall of 1792, is quite striking. Clearly, the equation of divorce as integral to clerical legislation had not diminished over time, and the Ultras were as firm as their Revolutionary predecessors in correlating political and social matters as two important parts of a wholesale change in France as a nation. The Revolutionary Assembly legalized divorce and the Ultra Counter-revolutionary Chamber of Deputies abolished it. For both, the personal represented the political. Under the Revolution, individual liberties were emphasized by the early Republic, which allowed people the freedom to make their own government, to be sovereign in their own right. The Restoration returned the Counter-revolutionaries to power, those who believed that society superceded the individual and that the good of the family superceded the happiness of any one person. Above all, the destruction of society and the family ran counter to the tenets of Catholicism that bound the two forever in religious ceremony -- the coronation of a king heralded by divine right and the sacrament of marriage which indissolubly bound a couple in marriage. Questions of authority and the symbolic link between marriage and the state were closely tied to both the instigation and the abolition of divorce. In between the two ran the lines of the Napoleonic Code, which sought to balance the two elements, making a compromise that allowed authority to rest in the father, without wholly removing the rights to happiness within marriage.

Chapter 6 - Separation de Corps debates and beyond

This chapter will illustrate the continuation of the pattern of debate established in 1792, which presented divorce within the larger scope of social and religious changes wrought by the Revolution. Although the periods in which divorce was discussed will be outlined, they will not be explored in detail as the real crux of this thesis lies in the period from divorce's introduction in 1792 to divorce's abolition in 1816. Repeatedly, divorce was debated not on its own merits, but within the larger agendas of both secularizers and Catholics. The successive regimes following the fall of the Bourbons in 1830 "discussed, debated, and deferred" the legalization of divorce in France until the introduction of the Naquet Law in 1884. Liberals in any given Chamber were active in asking for the reinstatement of divorce; however, divorce legislation was never a high priority and was frequently pushed aside in favour of more "important" legislation, such as budgets and electoral laws. It was not until the increased anticlericalism of the Third Republic that divorce and other secularizing legislation became a priority. The changes in French politics over these sixty-eight years affected the representation of divorce within the state and society. Instability was a constant problem for the successive regimes of the nineteenth century, providing a dichotomy between impulses for radical change and the subsequent reaction that these changes provoked. Changes in governments provided a window of opportunity for liberals and radicals to renew the call for divorce within a larger slate of anticlerical legislation, but these periods were too short lived, and the legislation failed to gain enough support to pass both Chambers successfully before the political tide changed.

This chapter will illustrate the strong tie that linked divorce with the Revolution, illustrated with each successive regime. Divorce was not an issue unto itself, but instead, was integral to the political battle between men who wished to grant the Catholic Church renewed primacy in France, and men who desired a complete separation of Church and State, including the last bastion of religious educators. The structure of Revolution and counter-revolution were played out within the debates over divorce. Men who supported Republican ideals were open to the legalization of divorce, while those who wished to put stops on political freedoms also wished to retain control on individual freedom, in most cases refusing to agree to the benefits of divorce. The language of the debates on the divorce act and its effect

on the family and society can aid in deciphering the politics of the day, especially attitudes towards the Catholic Church within the State. The debates on divorce from 1816 to 1884 continued, in each new regime, the pattern begun in the Enlightenment and Revolution.

Although, the dissolution of the *chambre introuvable* in September 1816 was a blow to the Ultraroyalists, it failed to save divorce from abolition. The ministry was still led by Richelieu, who was himself a Catholic and Royalist, and despite his willingness to make compromises unpopular with the Ultras, he remained sympathetic to them. The more centrist Chamber elected in October still contained a large number of Ultras[1], and there was no significant presence of deputies on the Left who might have supported the repeal of abolition. Moreover, no major outcry had arisen over divorce's abolition; despite the consternation it caused for the minority of people affected by it. These people remained in limbo after the dissolution and greatly needed a replacement law. The proposed form was that of the *separation de corps* which had been legal under the Civil Code. The new Chamber of Deputies continued the process of reinstating the Catholic ideal of separation and defining its ramifications for those in civil marriages.[2] These discussions were more complex than those over the abolition in May 1816. The new Chamber appeared more liberal, which, with the relaxation of the repression of the White Terror, allowed some proponents of divorce to express alternate opinions regarding the effect of divorce's abolition and the substitution of legal separation.

Discussion renewed in December of 1816. The government wanted an end to divorce, but it also acknowledged that an outlet for marital failure was needed. Thus Richelieu himself first brought the proposal to the Chamber of Peers on December 7. Louis XVIII's promulgation of the abolition in May 1816 demonstrated his support, even without a firm replacement law in place. The terms of that abolition and the fate of people already in the process of divorcing or formally divorced remained in the

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[1]The Ultras had a representation of between 90 - 100 out of a total of 258 deputies, which gave them a considerable influence. They also retained their organizational structure under the leadership of Villèle and Corbière. See Waresquiel, *Histoire de la Restauration*, 228

[2]The separation de corps was the judicial separation of a married couple that divided belongings and domicile, leaving the marriage intact. Remarriage was not possible as it was contrary to the Catholic canon law which situated marriage as a sacrament indissoluble by man.

balance. Richelieu asked the Peers to consider allowing the remarriage of those people divorced under earlier legislation, but only to each other. This was in direct contrast to the Civil Code, which had not permitted the remarriage of divorced spouses to one another, to avoid frivolous or offhand divorce requests. Richelieu and Louis XVIII wished to allow these people a chance to renew their marital ties, as behind the abolition of divorce lay a desire to create a greater respect for the indissoluble tie of marriage. Those divorced under the previous law who had not yet remarried, could no longer do so. It was felt that this might influence divorced spouses to renew their ties to one another, as they were otherwise subjected to a life of celibacy or social ostracism. Nevertheless, retroactive abolition was a complex issue due to the new relationships formed by some divorcées. The State did not wish to break up marriages, when their whole endeavour was to create stronger marital bonds. Therefore, those divorcées who had formed new marriages were to be permitted to remain within them, but those who were still single could return to their prior marriage or remain alone until the death of their spouse. As Richelieu stated:

> *Le droit actuel des divorcés de contracter mariage n'est pour eux un droit acquis qu'autant qu'ils l'ont excercé. Tous ceux qui ont usé de la liberté que le Code civil leur avait donnée sont valablement unis aux yeux de la loi qui maintient et doit maintenir leurs unions; mais une loi postérieure peut en prohiber de semblables à l'avenir.*[3]

All divorces which had not been followed by new marriages were to be converted into judicial separations, which did not permit marriage to a new partner.

Richelieu then outlined the need for the *separation de corps* to replace the divorce law: "*...règler la separation de corps, qui est le remède ancien des unions mal assorties, et le seul que la religion catholique et les principes de l'indissolubilité du mariage puissent tolérer.*"[4] Louis XVIII's respect for the Catholic Church, in this instance, clearly outweighed his respect for the Charter, which supported religious toleration. The Ministry's views on the Catholic faith, although more moderate than those of the Ultras, were still favourable to Rome. Richelieu, recognizing that separation could be almost

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[3]*Archives parlementaires*, 7 decembre 1816, Richelieu's speech to the Chamber of Peers, 605.

[4]*Archives parlementaires*, 7 decembre 1816, 606.

as socially disastrous as divorce, made it as difficult to obtain as divorce had been under the Civil Code.[5]

Richelieu identified the importance of continued fidelity once a couple obtained a separation. Fidelity had been a concern throughout earlier debates on divorce, especially under Napoleon. The debate centred not so much around separation for adultery, but what the consequences would be if adultery continued after the separation. Should the husband be forced to recognize his wife's child as his own? The debates over the Civil Code had frequently returned to the idea that separation allowed an adulterous wife to retain, and continue to tarnish, the name of her spouse. Richelieu also considered this possibility, but felt the risks were less than those engendered by divorce. Instead, the husband would no longer be forced to recognize his estranged wife's child as his own:[6]

> *...autant par tendresse pour son mari que par respect pour elle-même, elle ne s'abandonnera pas à une réunion furtive, tout à fait passagère et clandestine. On a donc pensé devoir établir que la separation de corps fait cesser la présomption de paternité résultant du mariage, et que dans ce cas le preuve de paternité peut être exigée.*[7]

At the same time, to avoid such confusion, wives should not permit their estranged husbands illicit conjugal access, which could place them in an awkward position. The proposed separation law followed the Napoleonic Code almost exactly, except that separation for reasons of mutual consent was no longer permissible. The new legislation also maintained the right of husbands to jail their wives for adulterous affairs, a right implemented under the Civil Code. The reciprocal right was not extended to wives of adulterous husbands.

Renewed discussion of the separation law on 19 December did not echo the religious tone of the *chambre introuvable* in 1816, although it continued to support abolition. M. le comte Abrial spoke for the committee which had studied the proposal. Instead of decrying the irreligion of divorce and the indissolubility of marriage, Abrial used the more secular language of social order: "*La base de la société*

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[5]*Archives parlementaires*, 7 decembre 1816, 607

[6]Under French law, which regarded the marriage bed as private space, the husband was obligated to accept his wife's children; the strained and strange relationship of judicial separation would not maintain the same rules of behaviour.

[7]*Archives parlementaires*, 7 decembre 1816, 608.

est la famille, et le principe de la famille est le mariage. Il est donc évident que les lois qui régissent le mariage et la famille, sont l'ordre public..."[8] Nevertheless, the language of those supporting the separation law was not one of civil liberties and Rousseauian social contracts. Instead, discussion centred on "*le puissance legislative*" to change laws and create *impêchements* to marriage to increase public order, rather than the imposition of Catholic laws regarding marriage on the French people. Abrial also denied the evident retroactivity of the law despite its denial of divorced spouses' right to remarry new partners.[9]

According to Abrial, the decisions of the Revolutionary Assembly and the Empire to recognize marriage as a civil contract were incorrect, and therefore, those who had used these laws to break their contracts before the abolition of divorce were not considered free to marry. As he states:

> *Si le mariage était, comme les autres contrats, un acte purement civil, l'objection serait fondée... Mais le mariage, le premier des contrats, n'est pas, dans l'opinion, un acte simplement civil. Il remplit dans la société un rôle plus auguste; il tient d'une main à l'honnêteté publique, et de l'autre à la religion, qui le couvrent de leurs livrées.*[10]

The discussion continued, debating the results of adultery as perpetrated by husbands and wives. Again, the Napoleonic logic was brought forth; the wife's adultery might produce uncertain offspring, while the man's only caused concern and pain to the wife: "*...Quoique bien injurieux pour la femme, bien offensant pour son amour-propre, bien affligeant aussi pour son coeur, ne pouvait pas être recherché par elle ni puni par la loi, précisement parce qu'il n'a pas le mêmes suites que l'adultère commis par la femme.*"[11] Man's adultery was socially acceptable when compared with the wanton destruction that woman's adultery could inflict upon that cornerstone of society, the family.

Lanjuinais was the only member to speak against the outright abolition of divorce, stating that it would increase unhappiness and the number of illegitimate children, which would in turn adversely

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[8]le comte d'Abrial, *Archives parlementaires*, 19 decembre 1816, 635.

[9]*Archives parlementaires*, 19 decembre 1816, 636.

[10]*Archives parlementaires*, 19 decembre 1816, 637-8.

[11]*Archives parlementaires*, 19 decembre 1816, 639

affect the stability of society. His language is that of the first *divorcaires*, those under the *Ancien Regime*, who dared not use the Revolutionary language of individual liberty, but instead emphasized the historical usage of divorce and its presence in the Churches of Greece and Poland: "*La tolérance exterièure et légale du divorce vient de Dieu même par Moise...*". [12] Lanjuinais had been an early proponent of divorce and active in French politics since the Revolution. He attacked the strength of the Ultra Chamber which had obtained legislation on such an important topic, despite the lack of impetus from the King or public opinion.[13] He attacked at length the proposed retroactivity of the law, demanding that the Peers look carefully at the possible results of the proposal. He was willing to accept the abolition of divorce, but not its retroactive imposition on those already legally divorced. As this quote illustrates:

> *L'article 2 est également vicieux, par retroactivité et par attentat au droit de la nature: en ce qu'il prive du deuxième mariage les divorcés, pour les forcer généralement au celibat, fussent-ils même juifs ou catholiques, tandis que leur divorce, non annule, non annulable, a fixé leur état de personnes qui peuvent se marier.*[14]

Relegating one spouse to celibacy due to timing was arbitrary and unequal, he argued; all men and women divorced at the time of the abolition should be considered free. The retroactivity of the proposed law could only cause chaos and disorder, as one overturned judgement could set a new and unwelcome precedent: "*...Il est retroactif contraire au droit de la nature, aux principes du droit et d'une saine politique.*"[15] The speaker following Lanjuinais countered his arguments, stating that it was not a retroactive law because the one spouse had remarried when it was legal to do so, under the Empire, the other had not, and could no longer do so because that right was removed by new legislation. Only a few minor amendments were considered, while Lanjuinais' protest was ignored completely, failing to receive

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[12]Lanjuinais to Chamber of Peers, *Archives parlementaires*, 24 decembre 1816, 664.

[13]Ronsin, Le Contrat Sentimental, 246-7.

[14]*Archives parlementaires*, 24 decembre 1816, 667

[15]*Archives parlementaires*, 24 decembre 1816, 668

mention in the *Moniteur*. The Chamber of Peers passed the separation law by 106 votes out of 144.[16]

Discussion was then adjourned until 28 December 1816, when the Chamber of Peers went through the proposal article by article and changed very little. The tone of these debates was very moderate when compared to that of the vituperative proponents of abolition the previous year. The debates centred on the articles' wording, creating less rhetoric and more legalities. The proposal was passed in the Chamber of Peers with only one minor amendment by 105 votes out of 110.[17] The proposal on the effects of divorce had been presented to the Chamber of Deputies on December 26 by Richelieu and immediately sent to the bureaux for discussion, followed on 7 January by the separation law. They were not to return from the bureaux. The separation law was never passed; in fact, the legislation never returned to be voted on by the Chamber of Deputies. On 20 January, petitions from the public reached the Chamber of Deputies asking for amendments to the proposed effects of divorce, especially article 2 - the article prohibiting the remarriage of divorced persons. The very small public response to the legislation was less against the abolition of divorce than against its effects on those already divorced under previous legislation.[18] Regardless of interest one way or the other, the results of the commissions were not brought back to the floor and both proposals were shelved. As historian Francis Ronsin notes, "*...Ils ne furent jamais retirés, mais, sans aucune explication, ne vinrent jamais en discussion.*"[19] *Separations de corps* were carried out afterwards, utilizing the legislative form outlined in the vote taken by the Chamber of Peers on 28 December 1816 and the basic form of the Civil Code on divorce without allowing remarriage or separation by mutual consent. Although divorce had been legally abolished, the failure of the Chambers to provide a replacement law left a certain leeway open to the courts, which could decide on their own the merits of separation cases. This situation would lead to later court cases, wherein some divorced persons were successfully married because the

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[16]*Archives parlementaires*, 24 decembre 1816, 669

[17]*Archives parlementaires*, 28 decembre 1816, 733. According to Francis Ronsin this was due to spite. After the first proposed amendment was accepted, the majority in the Chamber then refused all other attempts at amendment. See *Le Contrat Sentimental*, 251-52.

[18]*Archives parlementaires*, 20 janvier 1817, 211 various petitions.

[19]Ronsin, *Le Contrat Sentimental*, 254.

separation law of 1817 had never been passed.[20]

The disappearance of the separation law demonstrates the law's lack of importance on its own merits. The presence of some contention concerning the law was enough to have it postponed indefinitely, while more pressing legislation such as the electoral law was dealt with. The separation law was only mentioned once again during the Restoration, in the late 1820s, but nothing was done to rectify the fact that France was without a legislated means to deal with marital failure. The Ultraroyalists were not pleased with this outcome. The fury of Bonald was still apparent in 1819, which may also have been due to the reduced power held by the Ultras at this juncture:

> *Ainsi on prévenait le rapporteur que, même le divorce aboli, le gouvernement n'irait pas plus loin, et ne porterait aucune loi pour en régulariser les effets, ou ceux de la séparation que rétablissait l'abolition du divorce; que malgré les désirs de la majorité de la Chambre, la tenue des registres civils ne serait pas confiée aux minstres de la religion; et qu'enfin tôt ou tard le divorce serait rétabli...*[21]

The religious agenda promoted by the Ultras under the *chambre introuvable* had fallen with its political support. The more liberal Chamber of 1816/1817 appeared unwilling to finish what the Ultras had begun. Moreover, the new Chamber was less influenced by the Ultras; therefore its laws were muted, losing the clerical edge that had intially spurred them, and this liberal trend in the Chamber of Deputies continued until 1820. The abolition of divorce was not sacrosanct; it would be attacked by factions within each successive regime, just as Bonald predicted.

Successive governments under Louis XVIII had been more liberal, but the assasination of the Duc de Berry in 1820 caused a rollback to more extreme Royalism. With the death of Louis XVIII, it seemed that France was destined for a strong dose of Catholicism and Ultraroyalism. The reign of Charles X (1824-1830) forcefully reclaimed France's Catholic roots, causing consternation among liberals and many moderate Royalists as well. Charles X was crowned in a highly religious ceremony that failed to recognize the fears and resentments this display of piety could produce. As well, Charles

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[20]Ronsin, *Les Divorciaires*, 22-3.

[21]Quote from an article written by Bonald in *le Conservateur*, cited in Ronsin, *Le Contrat Sentimental*, 254.

supported the work of the religious missions, which toured France attempting to reimpose a strict version of Catholicism and demanded expiation from the people of France for the sins of the Revolution. Charles X favoured the Ultras and he would finally tip the scales against himself and the Bourbons with the introduction of an Ultra government under Polignac in 1829 - a man very unpopular with all but extreme Ultras. The result of his excesses and oversights would be an overthrow in July, 1830 which brought the more liberal Orleanist monarchy to the throne - in the person of Louis Philippe, Duc d'Orléans.

1830 July Monarchy

Louis Philippe's professed liberalism led to anticipation of substantial changes after the Revolution of July 1830. Moreover, his new Chamber of Deputies was ready and willing to liberalize and secularize the laws of France, rejecting Charles X's clerical policies. The new regime immediately removed the article of the Charter which declared Catholicism to be the religion of State and the majority of Frenchmen, indicating that the new regime would follow a more liberal path. Proponents of the Orleanist Monarchy supported the separation of Church and State, placing them squarely opposite the Legitimists, as the Ultraroyalists came to be known.[22] However, the Chamber of Peers, an appointed body under the July Monarchy, retained a more conservative character and vetoed many reforms. The Legitimists were unwilling to bend to Orleanist liberalism, just as they had failed to succumb to Louis XVIII's desire for increased moderation. The initial anticlericalism of the July Monarchy[23] did not reach the Chamber of Peers, and they were especially intransigent on religious issues, such as the renewal of divorce.

Divorce legislation was successfully passed in the Chamber of Deputies four times between 1830 and 1834. The deputies were eager to liberalize the divorce laws overturned under the Bourbons. Proponents of divorce held that the separation of Church and State demanded the removal of Catholic views from state policies, that the abolition of divorce had been symbolic of the wrongs of the Restoration, and on that basis alone divorce should be reinstated:

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[22]Ronsin, *Les Divorciaires*, 29.

[23]Alfred Cobban, A History of Modern France Vol. 2: 1799-1871. (London: Penguin Books, 1987), 101.

> *Ainsi, réinstituer le divorce en 1831 c'est adopter une mesure qui n'aura guère de conséquences mais dont la charge symbolique est immense. C'est exorciser l'humiliation de l'invasion étrangère, célébrer le triomphe du libéralisme sur le fanatisme et la tyrannie, de la ligne cadette Bourbon-Orléans sur la branche aînée des Bourbons, conforter l'ordre social et familial en ne faisant rien d'autre que rendre leur liberté à quelques malheureux.*[24]

These sentiments in the Chamber of Deputies were not shared by the other legislative body. The legislation made its way easily through the Chamber of Deputies,[25] but upon entering the Chamber of Peers, it failed to navigate successfully out of the committee process. The conservative Chamber of Peers repeatedly buried the divorce legislation. The first attempt at reinstatement resulted in a negative response from the Chamber of Peers more than a year after the proposal's introduction.[26] The proposition was rejected by the Peers by 78 to 43.[27] This dismissal infuriated the Chamber of Deputies, who renewed their call for divorce three times more with the same results. The journals of the period themselves recognized the inevitability of the Peers' rejection: "*...La loi du divorce ira mourir honteusement à la Chambre des pairs, et il restera à peine dans la mémoire des hommes un méprisant souvenir de cette faible réminiscence de notre première révolution.*"[28] Divorce was not reinstated despite the desire of the Chamber of Deputies, and the willingness of the Orleanist state to reject the former clericalism of the Bourbon Monarchy.

After 1834, the July Monarchy shifted away from the liberalism of its initial years, and moved into a more reactionary period. Attempted uprisings and assasination attempts against Louis Phillippe caused the introduction of repressive measures such as the September Laws, which put an end to the

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[24]Ronsin, Les Divorciaires, 31.

[25]The vote on divorce was 194 for the reinstatement out of a possible 265. See Ronsin, Les Divorciaires, 46.

[26]Portalis, son of the Catholic legist largely responsible for the creation of the Civil Code, expressed his concerns, and those of his father, regarding divorce. Those siding against him were also inheritors of their father's positions; Lanjuinais, son of the Bourbon Restoration Peer, involved himself in the discussions with results similar to those of his father a decade before.

[27]Ronsin, Les Divorciaires, 50-1.

[28]Ronsin, Les Divorciaires, 55.

hopes of liberals.[29] An end to discussions of a new divorce law necessarily followed this alteration in the regime's underlying ideology. Divorce was not discussed after the conclusion of the initial liberal period, except for the demands of a few extremists. Flora Tristan, writer and publicist, brought a petition to legalize divorce to the Chamber of Deputies in 1837. Although this plea was also unsuccessful, it succeeded in illustrating the continued interest of liberals in the reduction of clerical policies and the new voice of feminists against limitations on women's civil liberties.[30] The debate surrounding the reintroduction of divorce would become increasingly influenced by feminist values. As historian William Fortescue notes, "...between 1830 and 1848 the French debate on the role and position of women, and on the nature of marriage and the family, acquired important literary and social dimensions."[31] It was hoped that the debate would also spur discussion in the political and legislative domains, but after 1834 these concerns were debated outside of the parliamentary milieu. It would not be the desire for women's liberation that prompted divorce's reintroduction.

The July Monarchy became too entrenched in itself, an intransigence which would cause its demise. Economic hardships and political scandals rocked the government and brought the republican and legitimist oppositions into alignment against Louis Phillippe and his unpopular First Minister, Guizot. Refusal to grant electoral reforms only made matters worse and the government's hard line led to opposition in Paris. People took to the streets in February 1848 in an unplanned uprising that proved sufficient to topple the faltering monarchy. Louis Phillippe maintained his support of Guizot too long, just as Charles X had with Polignac in 1830. Both would follow their unpopular First Ministers out of office, leading France back into the hands of Republicans in 1848.[32]

1848 and the Second Republic

The Second Republic succeeded the July Monarchy in February of 1848. Inheriting the

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[29]Robert Tombs, France 1814-1914 (London: Longman, 1996), 363.

[30]Ronsin, *Les Divorciaires*, 104 and Maire Cross and Tim Gray, The Feminism of Flora Tristan (Oxford: Berg Publishers, 1992), 20.

[31]William Fortescue, "Divorce, Debated and Deferred: The French Debate on Divorce and the Failure of the Cremieux Divorce Bill in 1848," *French History*, vol. 7 no. 2, 142.

[32]Tombs, France, 375.

economic problems which had spurred the forces of change, the new Republic began its life at a severe disadvantage. People were miserable and an immediate response was needed in order to rectify the economic crisis. Unfortunately, the National Workshops, formed to address the unemployment problem, were popular only in urban areas, such as Paris, and angered or frightened the conservative majority in the other areas of France. This conservative majority made itself heard in the first election in June 1848, which returned a high number of conservative 'republicans' and very few radicals. Unemployed workers in Paris felt threatened by this, leading to the June Days of renewed revolts. These revolts were crushed by the Constituent Assembly which was dominated by the conservative 'Party of Order'. The Republic quickly followed the conservative lead of its majority in the Assembly and curtailed the social legislation introduced at the Republic's inception, including a proposed divorce law.

The Second Republic initially had promoted a more liberal philosophy than that of the July Monarchy, rapidly initiating social reforms. Adolphe Crémieux, a Republican who became Minister of Justice, favoured the reinstatement of divorce and introduced legislation as a ministerial initiative in May of 1848.[33] However, the Second Republic was not well enough entrenched to provide the stability needed to achieve its legislative goals. The instability of the economic, political, and social climate made many, who might otherwise have supported the divorce legislation, fearful of any legislation which might increase chaos in the State. Even feminist writers such as George Sand and Marie d'Agoult were wary of Crémieux's proposal due to its timing: "[One] cannot settle the destiny and ritual practices of the family at a time when society is in a state of complete moral disorder...".[34] The symbolic link of divorce legislation with the Revolution of 1789 caused many to reject its reinstitution. Those in support of divorce therefore moderated their arguments, emphasizing

> ... that it should be considered in social rather than in religious terms, and that the abolition of divorce in 1816 had been the work of religious reaction. The state did not have the right to impose an indissoluble marriage contract; and the reintroduction of divorce

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[33]Fortescue, "Divorce, Debated and Deferred," 147.

[34]Quote from George Sand cited in Whitney Walton, "Sailing a Fragile Bark: Rewriting the Family and the Individual in Nineteenth-Century France," *Journal of Family History*, vol. 22 no. 2, (April 1997), 164.

would end 'tristes scandales' and help families and marriages.[35]

The June Days of riots and repression interrupted the initial Republican agenda, replacing it with a far more authoritarian leadership that reflected the desire for societal order. The divorce law lost any support it had had in the newspapers of the period, as the crackdown on the press made it unprofitable to support such a contentious issue. Moreover, divorce's tie to the feminist cause also hurt its chances of being taken seriously.[36] Crémieux removed the divorce legislation from debate in September. It did not return to the forefront of public debate until 1870.[37]

Meanwhile the Second Republic heralded the election of a new President in 1849, Louis Napoleon, who would increase the turn toward conservatism, not under the banner of the Party of Order, but under his own. Social conservatism would continue to be linked in the minds of many with the Catholic religion, especially after the introduction of the Falloux Law in 1850 which increased the hold of the Church within primary education.[38] Twenty years were to pass under the leadership of Louis Napoleon and the Second Empire, and despite some increases in the liberalism of the regime after the introduction of the Empire, divorce was not debated in the public forum. An external conflict, rather than a true revolution, overthrew Louis Napoleon in 1870.

1870 and the Third Republic

Given the patterns apparent in the debates on divorce from 1789 to 1870, it seems inevitable that the creation of a new Republic would entail the reestablishment of divorce, but the initial instability and conservatism of the Republic caused long delays in this process. The Third Republic was tentative about making any radical changes, as its position after the Franco-Prussian War was not secure. Defeat by the Prussians at Sedan and capture of Louis Napoleon had led to a bloodless revolution, but it was

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[35]Fortescue, "Divorce Debated and Deferred," 148.

[36]Fortescue, "Divorce Debated and Deferred," 155.

[37]Despite Louis Napoleon's claim that he wished to reinstate the Civil Code in all its parameters, divorce was not introduced under the Second Empire. This may have been due to the fragile entente between Louis Napoleon and the Catholic Church. See Cobban, A History of Modern France, vol. 2, 187-91.

[38]Tombs, France, 388.

not guaranteed that this coup would lead to a Republic. The conservatism of the Government of National Defense was intrinsic to its initial success in dealing with the Prussian invaders and the repression of chaos, represented by the Paris Commune. The government planned no radical reforms as it was attempting to make as few waves as possible to avoid animosity from the rest of Europe.[39] Republican reforms were not possible until after 1877 when electoral victories heralded the acceptance in France of the once-fragile republic. At this point, more radical governments were elected under Jules Ferry who introduced a slate of anticlerical legislation: "There were symbolic and concrete attacks on Catholicism: Sunday work was legalized; divorce was introduced; cemeteries and hospitals were secularized; the crucifix was removed from law courts...".[40] Legalization of divorce came once again to the fore, within a larger slate of anticlerical legislation, rather than due to its own importance as an issue.

The Third Republic had been frequently buffeted by the attacks of a tenacious proponent of divorce, Alfred Naquet. He initiated the call for divorce in 1870, but was rebuffed by the conservative Government of National Defence. Naquet's approach was far more extreme than any *divorciaire* since the Revolutionary period of 1789 to 1793. He openly touted the links between the Revolution of 1789 and divorce:

> ...He often compared the freedom of individuals within the family to the political liberty proclaimed by the Revolution. In doing so, he turned Louis de Bonald's metaphor of the family upside down... One can see in Naquet's argument a direct response to Bonald: "Divorce will have the same effect on the family that political liberty has in the nation; it will be a factor for order in the family, as political liberty is the element of order in the nation."[41]

However, this approach was less successful than one might have expected in a Republic. The French were still unwilling fully to embrace the legacy of the Revolution and the chaos that was its perceived companion. The Third Republic's conservativism and instability made the road to a new divorce law a long one. Naquet would have to dampen the Revolutionary fervour of his arguments and reduce the

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[39]Tombs, France, 436.

[40]Tombs, France, 444.

[41]McBride, "Divorce after the Revolution," 755-6.

liberal attributes of the divorce law in order to obtain its passage.

The anticlericalism of the Third Republic after 1877, which would culminate in the formal separation of Church and State in 1905, was conducive to the return of divorce in a limited form. Naquet used against themselves the old arguments to combat divorce. The Divorce legislation's symbolism and history created a line in the sand between those who supported the Republic and those who supported a return to monarchism and the precepts of the Bourbon Restoration.[42] Thus, he initiated a compromise that accomodated those moderate Republicans afraid of a return to the extremism of the Revolution of 1789 but at the same time unwilling to defend the actions of the "undemocratic" legislature of 1816. The Chamber of Deputies passed the divorce law in June 1882; however, it would be another two years before it progressed through the Senate.

The divorce law of 1884 reinstated the Civil Code compromise. Changes were made to the Civil Code, reducing the misogyny inherent in its unequal treatment of husband and wife for adultery; however, the full recognition of marriage as a civil contract, breakable by the mutual consent of the parties involved, was not achieved by Naquet. The Third Republic was not prepared for a liberal divorce law; therefore, this victory was a muted one:

> *...l'abrogation de la loi de 1816 fut votée par 154 voix contre 114. Restait à rétablir la législation primitive du Code civil, sauf à la modifier sur certains points de détail; mais le principe était acquis, et le divorce allait enfin reparaître dans nos lois d'où la réaction religieuse de la Restauration l'avait si malencontreusement effacé.*[43]

The Naquet Law of 1884 succeeded due to the willingness of the Republican government to embrace a more "liberal and secular" tradition.[44] As Claire Moses notes, "...the Naquet Law on divorce, like the Camille Sée Law, was passed as part of the liberal republican government's extensive anticlerical legislative program."[45] Legislation was passed at the same time as the broadly based education reforms

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[42]McBride, "Divorce after the Revolution," 766.

[43]Andre Daniel, *L'Année Politique*, 1884 (Paris: G. Charpentier, 1885), 125.

[44]McBride, "Divorce after the Revolution," 758.

[45]Claire Moses, French Feminism in the 19th Century, 209.

under the Ferry laws which also emphasized the secularization of the French state.

Divorce's place within the anticlerical agenda paralleled the position it had held within the Ultraroyalist clerical agenda of 1816. While divorce failed to be reinstated on its own merits, it was an intrinsic part of the ongoing dialectic between French regimes and the Catholic Church; France in the nineteenth century presented a battlefield of sorts where the forces of secularization and christianization fought for supremacy. By 1884, the Catholic Church and its defenders had failed in their attempts to regain the position held by the Church under the *Ancien Regime*. The secularization of France, after the initial shock and reaction to the Revolution, was completed by 1905. The divorce legislation reinstated in 1884 was a far cry from the 1792 legislation, because it recognized middle-class Frenchmen's fear of disorder. Instead, it was closer to the Civil Code, which was the first legal compromise with the Revolution and the most lasting. The Third Republic recognized the need to cater to the conservative bourgeoisie that comprised its main support. Thus, the divorce law of 1884 was a compromise with this reality, although it was also welcomed by radicals and feminists as a step in the right direction.

Conclusion

In looking at divorce within its political context this thesis has illustrated its close ties to a wide range of secularizing measures in nineteenth-century France. Interpreting the political context of this social issue presents a quandary -- that divorce was legalized under the Revolution and subsequently abolished in 1816 for predominantly political reasons. This point has been largely missed by histories which have limited their investigation to the social changes wrought by the Revolution. Yet the political culture of the period is apparent in the language used by speakers for and against the legalization of divorce, and this remains the case from the Revolution to the reestablishment of divorce in 1884. The Naquet Law traversed the same forms of debate which took place under the Revolution and Consulate. Naquet found that the only means to regain legal divorce was to compromise, following the lines of the Civil Code of 1804. This less liberal divorce law was inevitable under the Third Republic, as it was a far more conservative regime than the First Republic; therefore, the legislation of the Civil Code provided an example of the compromise needed to gain the agreement of more conservative elements within society. This illustrated a recognition of the need to moderate between Revolution and counter-revolution, as divorce's symbolic links to the Revolution politicized an otherwise social issue.

Divorce legislation was not argued on its own merits, but always in relation to a larger slate of secularizing legislation. Due to its passage under the Revolution, divorce was inextricably linked in many minds to the diminished position of the Catholic Church under the First Republic. Where once the Catholic Church had been the keeper of registries of death, marriage, and birth, a landowner, and the educator of France's youth, after 1792 it no longer held any of these positions, and was instead a powerless dependent on the good auspices of an increasingly hostile state. Divorce was not integral to secularizing measures but was continually brought forward to placate those who sought greater changes -- a bone thrown to extremists on either side, and one that failed to stir public opinion either for or against it. Nevertheless, the acceptance of the contractual over the sacramental model of marriage was the substantive and lasting result of the Revolutionary divorce legislation and the Constitution of 1791. A product of Enlightenment views and questioning of Catholic traditionalism, it was this shift in viewpoint towards contract theory that Revolutionary divorce legislation demonstrated. Rousseau's

vision of government as the result of a 'Social Contract' was mirrored in the Revolutionary Assembly's decision to view marriage also as a contract rather than a religious and indissoluble sacrament. Divorce legislation, with its rhetoric of individual liberty and personal happiness, was the 'natural' extension of this logic.

Divorce, viewed today as elemental to the liberty of women to make individual life choices, was established for very different reasons in both Revolutionary and Third Republic France. While some proponents of divorce may have been feminists, the majority supported the measure for far different reasons. Women were incidental, a necessary part of marriage, allowed divorce and some civil liberties under the Revolution, but never seen as 'active' citizens able to contribute to French public life. Divorce was legalized less to free women from the bondage of an unhappy home life, than to flout the Catholic Church's power to create an indissoluble link where the State only perceived a civil contract, albeit one that increased stability within that state. Divorce was not a 'women's issue'.

Divorce was symbolic of more than civil liberties and personal freedom to counter-revolutionaries, however. Men such as Louis de Bonald condemned the legalization of divorce as representative of the Revolutionary desire to destroy the family, and the societal order resulting from strong family hierarchy. To traditionalists such as Bonald the family represented the ideal state, whose family structure of father, mother, and children mirrored the trinity of king, ministers, and subjects. The secular legislation of the Revolutionary period broke down these trinities of power, and thereby drove French Catholics and Royalists further into reaction, with the Civil Constitution of the Clergy as their prime grievance. Counter-revolutionary numbers were increased greatly after 1791, and tensions mounted ever higher as the summer of 1792 approached with French *émigrés* and foreign armies joined together against *la patrie*. It was in this climate of change and challenge that divorce gained legality, and these circumstances would forever link its fortunes with those of other liberal and secularizing measures. To many individuals divorce represented the 'chaos' of the early Revolution -- war, Terror, poverty, conscription, and disorder of religious and political beliefs -- changes, which occurred too quickly for the average person to accept. The rejection of the traditional family for individual happiness was intrinsic to the rhetoric of the divorce debates, and therefore, in conservative periods when that

family stucture was once again favoured over individual liberty, movement against divorce was inevitable.

As the Revolution moderated over time and decentralization allowed greater freedom within communities after the disruption of the Terror and dechristianization campaigns, individuals returned to their religious beliefs and the community feelings which they engendered. Women, especially, were drawn back to the Catholic Church as they prayed to Mary and other intermediary saints to return prosperity and family. In this segment of French life, divorce had never been acceptable, and it was practiced, therefore, overwhelmingly in urban areas, while neglected in the countryside. Divorce rates flourished after its initial introduction, as *separations de corps* were converted into full divorces, but it was not widely used after this period. A conservative reaction built after 1795, divorce rates quickly tapered off and diminished to half their numbers by 1797 (from 4,296 to 1,891); nevertheless, even then, overall numbers were small, as these numbers represent a compilation of 43 towns. Napoleon Bonaparte recognized this reality and the need of people for order, stability, and peace. He would compromise with this public desire for a return of the patriarchal family as the cornerstone of an ordered society by moderating the divorce law, although refusing to permit its outright abolition.

Bonaparte brought compromise over religious issues, over which the furor had not abated under Revolutionary regimes. The Concordat took the wind from the sails of Catholic counter-revolutionaries in the Breton and Vendée regions, as returning priests told people to pray for the government rather than to rally against it. Furthering this return to order, the Civil Code of 1804 retained a much modified divorce law, strengthened the power of the father within the family, and removed women's legal rights introduced under the Revolution. The Concordat and Civil Code provided the bases on which French order would stand -- the one would hold moral stricture over the people, the other legal. The language of the legislative debates no longer mentioned liberty and happiness, but instead revolved around order and the constraint of adultresses.

Availability of divorce was constrained as well; the authors of the Civil Code limited its availability and increased its expense. With these changes, Bonaparte made an easy offering to conservatives, surrendering a law that had not been widely used, and then only in urban areas. Bonaparte

saw the Civil Code as universal, and applied it across the conquered nations within the Empire, frequently to a less than warm reception. Under full implementation of the Civil Code, divorce was introduced in Italy and other Catholic states which had neither sought nor expected such liberal legislation -- contract theory had not gained the same credence in areas outside of France. Napoleon's desire for dominance would in the end force him to overstretch France's resources, allowing internal and external enemies to join against him, leaving France defeated and her emperor in exile in 1814.

Allied victory rather than counter-revolutionary fervour brought the Bourbons back to the throne in 1814, and Louis XVIII's policy of 'Forgive and Forget' failed to gain broad public support, while engendering resentment amongst his main supporters -- former *émigrés* and counter-revolutionaries. Napoleon's last government and administrators remained in place, leaving few positions available for loyal Royalists. These 'supporters' frightened many individuals who had profited from the Revolution and Empire; this fear, combined with the failure of the Bourbons to fulfill their promises, led to the rapid demise of the First Restoration. The Charter of 1814 guaranteed some Revolutionary liberties, but was seen as a piece of paper without force; the fears of the people gave an opening to Napoleon, who rushed from his exile waving the tricolour, declaring that aristos should be "hung from the lampposts." This reversal of fortunes was not to last however; barely four months were to pass before Napoleon's defeat at Waterloo and the reinstatement of Louis XVIII.

The Second Restoration began amidst near anarchy. In these circumstances Ultraroyalists were able to gain a 'landslide' victory in elections to the Chamber of Deputies. Much of their legislative agenda was directed towards removing and terrorizing their political rivals -- Bonapartists and former republicans. But they also set about passing a series of laws based on their counterrevolutionary values. Central to this was restoration of the former power and influence of the Catholic Church. Much of the legislation proposed by the Chamber of Deputies was too extreme for the more moderate Royalism found within the Ministry and favoured by Louis XVIII himself. Nevertheless, both King and Ministry could support the Ultra desire for divorce's abolition, which would be unlikely to raise public outcry, but still possessed benefits for the Catholic Church. This small concession gave the Ministry space to ignore the more extreme religious demands of the Ultras. The ties of the Bourbons to the Catholic Church were

much stronger than those found under the Consulate and Empire, a situation which ensured that any dissenting opinions were limited to very mild rebuttals. In addition, many individuals who might have spoken against the Chamber's activities were in hiding, following reprisals by Catholics and Royalists, especially in the South. Divorce was widely felt to represent the 'chaos' and disorder inherent in the Revolution, while under the Second Restoration the language of order, tradition, and above all family was back in vogue. Thus there were none willing to risk condemnation for supporting Revolutionary ideals.

Divorce would be discussed under the freer and less Catholic atmosphere of the July Monarchy, but it did not gain favour enough to be passed in the more conservative Chamber of Peers of the period. Linked as it was to Revolution and social change, calls for divorce rose in the 'honeymoon' periods of successive regimes, subsequently falling out of favour whenever disorder followed these changes in regime. For instance, divorce was brought under parliamentary discussion in the initial years of the July Monarchy, the Second Republic, and the Third Republic. However, disorder soon followed the introduction of these new regimes, and divorce as representative of liberal views and greater disorder was discarded in favour of less provocative legislation -- legislation which did not carry the taint of Revolution and widescale secularization. Divorce was not legalized until 1884, after the legislation was moderated and the greater slate of secularization regained prominence under a secure, republican regime. This wide space of time between divorce's abolition and reinstatement illustrates legislators' recognition that divorce had not been widely used or considered acceptable after the initial conversion of separations during the Revolutionary years. Proper, middle-class citizens looked aghast at the scandal that could be caused by divorce. By the time of the abolition of divorce in 1816, only the very wealthy could afford to divorce, and even then the scandal was considerable and widely publicized in titillating journal articles that gladly portrayed the battle scenes within the courts.

Nevertheless, the gradual secularization of the French state can be demonstrated by delving into the political ramifications of divorce legislation and the rhetoric employed to gains both its passage and abolition. The basic elements which identify the various regimes and their attitudes towards the Catholic Church can be found in the language of divorce debates. Divorce inevitably conjured images of larger

issues through the language used to describe it. For instance individuals on the Left utilized the language of rights and liberty: *le contrat de mariage, la liberté individuelle, l'égalité,* and *le lien civil.* These words drew on the Enlightenment support for individual rights to happiness and the freedom to make choices, equality before the law for men and women, where contracts, including the marriage contract, were dissoluble by the will of the parties involved. These are the words of Revolutionary legislators who banished the primacy of the Catholic Church, who set the 'Social Contract' ahead of religious belief, and who would seek eventually to dechristianize France. Needless to say these words were repugnant to the Right, which predominantly consisted of counter-revolutionaries who utilized the language of order and religion: *la famille, l'ordre public, le conservation,* and *le sacrament du mariage.* These words correlate to a desire to return the primacy of the Catholic Church 'stolen' by Revolutionary secularization, as surely as aristocratic and Church lands were 'stolen' by Revolutionary nationalization. The Catholic world view held by these individuals included the model of marriage as a sacrament, formed in the presence of God, and therefore unbreakable by the will of mere individuals. For these Catholic traditionalists and counter-revolutionaries, the Revolutionary divorce law represented the greater chaos of the Revolution, the replacement of the King with an elected body, the persecution of the Catholic religion, and the replacement of sacramental marriage with a civil contract.

Revolutionary arguments, revolving around the integral bond of individual liberties to civil society, contrasted against counter-revolutionary views, which held religion and family as integral to societal order. These arguments present the major dichotomies in discourse on divorce, and thus within society at large. Moreover, the importance of looking at divorce legislation in France relies on these excellent examples of the recurring animosities between secularizers and clericals, revolutionaries and counter-revolutionaries, and the inevitable opinions which reside within these broader political definitions. The very personal social decision to end a marriage, in the nineteenth century at least, was, in fact, one that held political connotations; support of divorce denoted one as a Republican, a Radical, a Revolutionary, occasionally a feminist, and if not an atheist than either a Protestant or a fallen Catholic. Arguments for or against divorce were not measured in terms of divorce's effect on people, but instead its parallels to other anticlerical legislation and its symbolic link to the Revolution, valuing individual

liberties over societal order. The abolition of divorce is therefore significant not so much as a removal of a popular and widely used law, but instead as an indicator of political shifts under the Bourbons, towards reaction, traditionalism, and conservatism, albeit to a lesser degree than that demanded by Ultras and counter-revolutionaries.

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Appendix

Law of Divorce 1792[1]

Qui détermine les causes, le mode & les effets du Divorce.

Du 20 Septembre 1792, l'an 4.e de la liberté.

L'Assemblée Nationale considérant combien il importe de faire jouir les Français de la faculté du divorce, qui résulte de la liberté individuelle dont un engagement indissoluble serait la perte; considérant que déjà plusieurs époux n'ont pas attendu, pour jouir des avantages de la disposition constitutionnelle suivant laquelle le mariage n'est qu'un contrat civil, que la loi eût réglé le mode et les effets du divorce, décrète qu'il y a urgence.

L'assembée nationale, après avoir décrété l'urgence, décrète sur les causes, le mode et les effets du divorce, ce qui suit:

I.er Causes du Divorce

Article Premier. Le mariage se dissout par le divorce.

II. Le divorce a lieu par le consentement mutuel des époux.

III. L'un des époux peut faire prononcer le divorce, sur la simple allégation d'incompatibilité d'humeur ou de caractère.

IV. Chacun des époux peut également faire prononcer le divorce sur des motifs déterminés; savoir, 1.sur la démence, la folie ou la fureur de l'un des époux; 2. sur la condamnation de l'un d'eux à des peines afflictives ou infamantes; 3. sur les crimes, sevices ou injures graves de l'un envers l'autre; 4. sur le déréglement de moeurs notoire; 5. sur l'abandon de la femme par le mari ou du mari par la femme, pendant deux ans au mins; 6. sur l'absence de l'un d'eux, sans nouvelles, au moins pendant cinq ans; 7. sur l'émigration dans les cas prévus par les loix, notamment par le décret du 8 avril 1792.

V. Les époux maintenant séparés de corps par jugement exécuté ou en dernier ressort, auront mutuellement la faculté de faire prononcer leur divorce.

VI. Toutes demandes & instances en séparation de corps non jugées, sont éteintes & abolies; chacune des parties payera ses frais. Les jugemens de séparation non exécutes, ou attaqués par appel ou par la voie de la cassation, demeurent comme non avenus, le tout sauf aux époux à recourir à la voie du divorce, aux termes de la présente loi.

VII. A l'avenir aucune séparation de corps ne pourra être prononcée; les époux ne pourront être

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[1]*Archives parlementaires*, 20 septembre 1792, 188-191.

désunis que par le divorce.

II. Modes du Divorce

Mode du Divorce par consentement mutuel.

Article Premier. Le mari & la femme qui demanderont conjointement le divorce seront tenus de convoquer une assemblée de six au moins des plus proches parens, ou d'amis à défaut de parens; trois des parens ou amis seront choisis par le mari, les trois autres seront choisis par la femme.

II. L'assemblée sera convoquée à jour fixe & lieu convenu avec les parens ou amis; il y aura au moins un mois d'intervalle entre le jour le la convocation & celui le l'assemblée. L'acte de convocation sera signifié par un huissier, aux parens ou amis convoqués.

III. Si, au jour de la convocation, un ou plusieurs des parens ou amis convoqués, ne peuvent se trouver à l'assemblée, les époux les seront remplacer par d'autres parens ou amis.

IV. Les deux époux se présenteront en personne à l'assemblée; ils y exposeront qu'ils demandent le divorce. Les parens ou amis assemblés leur feront les observations & representations qu'ils jugeront convenables. Si les époux persistent dans leur dessein, il sera dresse par un officier municipal requis à cet effet, un acte contenant simplement que les parens ou amis ont entendu les époux en assemblée duement convoquée, & qu'ils n'ont pu les concilier. La minute de cet acte, signée des membres de l'assemblée, des deux époux & de l'officier municipal, avec mention de ceux qui n'auront su ou pu signer, sera déposée au greffe de la municipalité: il en sera délivré expédition aux époux, gratuitement & sans droit d'enregistrement.

V. Un mois au moins, & six mois au plus après la date de l'acte énoncé dans l'article précédent, les époux pourront se présenter devant l'officier public charge de recevoir les actes de mariage dans la municipalité où le mari a son domicile; & sur leur demande, cet officier public sera tenu de prononcer leur divorce sans entrer en connoissance de cause. Les parties & l'officier public se conformeront aux formes prescrites à ce sujet, dans la loi sur les actes de naissance, mariage & décès.

VI. Après le délai de six mois, mentionné dans le précedent article, les époux ne pourront être admis au divorce par consentment mutuel, qu'en observant de nouveau les mêmes formalités & les mêmes délais.

VII. En cas de minorité des époux ou de l'un d'eux, ou s'ils ont des enfans nés de leur mariage, les délais ci-dessus indiqués, d'un mois pour la convocation de l'assemblée de famille, & d'un mois au moins après l'acte de non-concilation pour faire le divorce, seront doubles; mais le délai fatal de

six mois après l'acte de non-concilation, pour faire prononcer le divorce, restera le même.

Mode du Divorce sur la demande d'un des Conjoints pour simple cause d'incompatibilité.

VIII. Dans le cas où le divorce sera demandé par l'un des époux contre l'autre, pour cause d'incompatibilité d'humeur ou de caractère, sans autre indication de motifs, il convoquera une première assemblée de parens, ou d'amis à défaut de parens, laquelle ne pourra avoir lieu qu'un mois après la convocation.

IX. La convocation sera faite devant l'un des officiers municipaux du domicile du mari, en la maison commune du lieu, aux jour & heure indiqués par cet officier. L'acte en sera signifié à l'époux défendeur, avec déclaration des noms & demeures des parens ou amis au nombre de trois au moins, que l'époux demandeur entend faire trouver à l'assemblée, & invitation à l'époux défendeur de comparoître à l'assemblée, & d'y faire trouver de sa part également trois au moins, de ses parens.

X. L'époux demandeur en divorce sera tenu de se présenter en personne à l'assemblée; il entendra, ainsi que l'époux défendeur s'il comparoît, les représentations des parens ou amis l'effet de les concilier. Si la conciliation n'a pas lieu, l'assemblée se prorogera à deux mois, & les époux y demeureront ajournés. L'officier municipal sera tenu de se retirer pendant ces explications & les débats de famille; en cas de non-conciliation, il sera rappelé dans l'assemblée pour en dresser l'acte, ainsi que de la prorogation dans la forme prescrite par l'article IV ci-dessus: expédition de cet acte sera délivrée à l'époux demandeur, qui sera tenu de le faire signifier à l'époux défendeur, si celui-ci n'a pas comparu à l'assemblée.

XI. A l'expiration des deux mois, l'époux demandeur sera tenu de comparoître de nouveau en personne. Si les représentations qui lui seront faites, ainsi qu'à son époux s'il comparoît, ne peuvent encore les concilier, l'assemblée se prorogera à trois mois, & les époux y demeureront ajournés: il en sera dressé acte, & la signification en sera faite, s'il y a lieu, comme au cas de l'article précédent.

XII. Si, à la troisième séance de l'assemblée à laquelle le provoquant sera également tenu de comparoître en personne, il ne peut être concilié, & persiste définitivement dans sa demande, acte en sera dressé, il lui en sera délivré expédition qu'il sera signifier à l'époux défendeur.

XIII. Si aux première, seconde ou troisième assemblées, les parens ou amis indiqués par le demandeur en divorce ne peuvent s'y trouver, il pourra les faire remplacer par d'autres à son choix. L'époux défendeur pourra aussi faire remplacer à son choix les parens ou amis qu'il aura fait présenter aux premières assemblées; & enfin l'officier municpal lui-même, chargé de la rédaction des actes de ces assemblées, pourra en cas d'empêchement, être remplacé par un de ses collègues.

XIV. Huitaine au moins, ou au plus dans les six mois après la date du dernier acte de non-conciliation, l'époux provoquant pourra se présenter pour faire prononcer le divorce, devant l'officier public chargé de recevoir les actes de naissance, mariage & décès. Après les six mois, il ne pourra y être admis qu'en observant de nouveau les mêmes formalités & les mêmes délais.

Mode du Divorce sur la demande d'un des Époux, pour cause déterminée.

XV. En cas de divorce demandé par l'un des époux pour l'un des sept motifs déterminés, indiqués dans l'article IV de I.er ci-dessus, ou pour cause de séparation de corps, aux termes de l'article V, il n'y aura lieu à aucun délai d'épreuve.

XVI. Si les motifs déterminés sont établis par des jugemens, comme dans les cas de séparation de corps ou de condamnation a des peines afflictives ou infamantes, l'époux qui demandera le divorce, pourra se pourvoir directement pour le faire prononcer devant l'officier public chargé de recevoir les actes de mariage dans la municipalité du domicile du mari. L'officier public ne pourra entrer en aucune connoissance de cause. S'il s'élève devant lui des contestations sur la nature ou la validité des jugemens représentés, il renverra les parties devant le tribunal de destrict, qui statuera en dernier ressort, & prononcera si ces jugemens suffisent pour autoriser le divorce.

XVII. Dans le cas de divorce pour absence de cinq ans sans nouvelles, l'époux qui le demandera pourra également se pourvoir directement devant l'officier public de son domicile, lequel prononcera le divorce sur la présentation qui lui sera faite d'un acte de notoriété, constatant cette longue absence.

XVIII. A l'égard du divorce fondé sur les autres motifs déterminés, indiqués dans l'article IV du paragraphe I.er ci-dessus, le demandeur sera tenu de se pourvoir devant des arbitres de famille, en la forme prescrite dans le code de l'ordre judiciaire pour les contestations entre mari & femme.

XIX. Si d'après la vérification des faits, les arbitres jugent la demande fondée, ils renverront le demandeur en divorce devant l'officier du domicile du mari, pour faire prononcer le divorce.

XX. L'appel du jugement arbitral en suspendra l'exécution; cet appel sera instruit sommairement, & jugé dans le mois.

III. Effets du Divorce par rapport aux Époux.

Article Premier. Les effets du divorce par rapport à la personne des époux, sont de rendre au mari & à la femme leur entière indépendance avec la faculté de contracter un nouveau mariage.

II. Les époux divorcés peuvent se remarier ensemble. Ils ne pourront contracter avec d'autres un nouveau mariage qu'un an après le divorce, lorsqu'il a été prononcé sur consentement mutuel, ou

pour simple cause d'incompatibilité d'humeur & de caractère.

III. Dans le cas où le divorce a été prononcé pour cause déterminée, la femme ne peut également contracter un nouveau mariage avec un autre que son permier mari, qu'un an après le divorce, si ce n'est qu'il soit fondé sur l'absence du mari depuis cinq ans sans nouvelles.

IV. De quelque manière que le divorce ait lieu, les époux divorcés seront réglés part raport à la communauté de biens, ou à la société d'acquêts qui a existé entre eux, soit par la loi, soit par la convention, si l'un d'eux étoit décédé.

V. Il sera fait exception à l'article précédent, pour le cas où le divorce aura été obtenu par le mari contre la femme, pour l'un des motifs déterminés, énoncés dans l'article IV du Ier ci-dessus, autre que la démence, la folie ou la fureur; la femme en ce cas sera privée de tous droits & bénéfice dans la communauté de biens ou société d'acquêts; mais elle reprendra les biens qui sont entrés de son côté.

VI. A l'égard des droits matrimoniaux emportant gain de survie, tels que douaire, augment de dot ou agencement, droit de viduité, droit de part dans les biens meubles ou immeubles du prédécédé, ils seront dans tous les cas de divorce, éteints & sans effet. Il en sera de même des dons ou avantages pour cause de mariage, que les époux ont pu se faire réciproquement, ou l'un a l'autre, ou qui ont pu être faits à l'un d'eux par les père, mère, ou autres parens de l'autre. Les dons mutuels faits depuis le mariage & avant le divorce, resterons aussi comme non avenus & sans effet, le tout sauf les indeminités ou pensions énoncées dans les articles qui suivent.

VII. Dans le cas de divorce pour l'un des motifs déterminés énoncés dans l'article IV, Ier ci-dessus, celui qui aura obtenu le divorce sera indeminifé de la perte des effets du mariage dissous, & de ses gains de survie, dons & avantages, par une pension viagère sur les biens d l'un & de l'autre époux, laquelle sera réglée par des arbitres de famille, & courra du jour de la prononciation du divorce.

VIII. Il sera également alloué par des arbitres de famille, dans tous les cas de divorce, une pension alimentaire à l'époux divorcé qui se trouvera dans le besoin, autant néanmois que les biens de l'autre époux pourront la supporter, déduction faite de ses propres besoins.

IX. Les pensions d'indemnité ou alimentaires énoncés dans les articles précedens, seront éteintes si l'époux divorcé qui en jouit, contracte un nouveau mariage.

X. En cas de divorce pour cause de séparation de corps, les droits & intérêts des époux divorcés resteront réglés, comme ils l'ont été par les jugemens de séparation, & selon les loix existant lors de ces jugemens, ou par les actes & transactions passés entre les parties.

XI. Tout acte de divorce sera sujet aux mêmes formalités d'enregistrement & publication, que

l'étoient les jugemens de séparation; & le divorce ne produira à l'égard des créanciers des époux, que les mêmes effets que produisoient ces separations de corps ou de biens.

IV. Effets du Divorce par rapport aux Enfans.

Article Premier. Dans les cas du divorce par consentement mutuel, ou sur le demande de l'un des époux, pour simple cause d'incompatibilité d'humeur ou de caractère, sans autre indication de motifs, les enfans nés du mariage dissous seront confiés, savoir, les filles à la mère, les garçons âgés de moins sept ans également à la mère: au-dessus de cet âge ils seront remis & confiés au père, & néanmois le père & la mère pourront faire à ce sujet tel autre arrangement que bon leur semblera.

II. Dans tous les cas de divorce pour cause déterminée, il sera réglé en assemblée de famille auquel des époux les enfans seront confiés.

III. En cas de divorce pour cause de séparation de corps, les enfans resteront à ceux auxquels ils ont été confiés par jugement ou transaction, ou qui les ont à leur garde & confiance depuis plus d'un an. S'il n'y a ni jugement ou transaction, ni possession annale, il sera réglé en assemblée de famille auquel du père ou de la mère séparés, les enfans seront confiés.

IV. Si le mari ou la femme divorcés contractent un nouveau mariage, il sera également réglé en assemblée de famille si les enfans qui leur étoient confiés leur seront retirés, & à qui ils seront remis.

V. Soit que les enfans, garçons ou filles, soient confiés au père seul, ou à la mère seul, soit à l'un & l'autre, soit à des tierces personnes, le père & la mère ne seront pas moins obligés de contribuer aux frais de leur education & entretien; ils y contribueront en proportion des facultés & revenus réels & industriels de chacun d'eux.

VI. La dissolution du mariage par divorce, ne privera dans aucun cas les enfans nés de ce mariage, des avantages qui leur étoient assurés par les loix ou par les conventions matrimoniales; mais le droit n'en sera ouvert à leur profit, que comme il le seroit si leurs père & mère n'avoient pas fait divorce.

VII. Les enfans conserveront leur droit de successibilité à leur père & à leur mère divorcés. S'il survient à ces derniers d'autres enfans de mariages subséquens, les enfans des différens lits succéderont en concurrence, & par égales portions.

VIII. Les époux divorcés ayant enfans, ne pourront en se remariant faire de plus grands avantages, pour cause de mariage, que ne le peuvent, selon les loix, les époux veufs qui se remarient ayant enfans.

IX. Les contestations relatives au droit des époux d'avoir un ou plusieurs de leurs enfans à leur

charge & confiance, celles relatives à l'éducation, aux droits & intérêts de ces enfans seront portées devant des arbitres de famille: & les jugemens rendus en cette manière seront, en cas d'appel, exécutés par provision.

Law of Divorce, Civil Code, 1804[2]

Loi sur le Divorce. Du 30 Ventôse, an XI de la République une et indivisible.

Au nom du peuple Français, Bonaparte, premier Consul, proclame loi de la République le décret suivant, rendu par le Corps legislatif le 30 ventôse an XI, conformément à la proposition faite par le Gouvernment le 18 du même mois, communiquée au Tribunat le lendemain.

Décret - Titre VI. Du Divorce

Chapitre Premier. Des Causes du Divorce

Art. CCXXIII. Le mari pourra demander le divorce pour cause d'adultère de sa femme.

CCXXIV. La femme pourra demander le divorce pour cause d'adultère de son mari, lorsqu'il aura tenu sa concubine dans la maison commune.

CCXXV. Les époux pourront réciproquement demander le divorce pour excès ou injures graves, de l'un d'eux envers l'autre.

CCXXVI. La condamnation de l'un des époux à une peine infamante, sera pour l'autre époux une cause de divorce.

CCXXVII. Le consentement mutuel et persévérant des époux, exprimé de la manière prescrite par la loi, sous les conditions et après les épreuves qu'elle détermine, prouvera suffisamment que la vie commune leur est insupportable, et qu'il existe, par rapport à eux, une cause péremptoire de divorce.

Chapitre II. Du Divorce pour cause déterminée.

Section Première. Dues Formes du Divorce pour cause déterminée.

CCXXVIII. Quelle que soit la nature des faits ou des delits qui donneront lieu à la demande en divorce pour cause déterminée, cette demande ne pourra être formée qu'au tribunal de l'arrondissement dans lequel les époux auront leur domicile.

CCXXIX. Si quelques-uns des faits allégues par l'époux demandeur donnent lieu à une poursuite criminelle de la part du ministère public, l'action en divorce restera suspendue jusqu'après

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[2]Ronsin, Le Contrat Sentimental, 219-234.

le jugement du tribunal criminel; alors elle pourra être reprise, sans qu'il soit permis d'inférer du jugement criminel aucune fin de non-recevoir ou exception préjudicielle contre l'époux demandeur.

CCXXX. Toute demande en divorce détaillera les faits: elle sera remise, avec les pièces à l'appui, s'il y en a, au président du tribunal ou au juge qui en fera les conctions, par l'époux demandeur en personne, à moins qu'il n'en soit empêché par maladie; auquel cas, sur sa réquisition et le certificat de deux docteurs en médecine ou en chirurgie, ou de deux officiers de santé, le magistrat se transportera au domicile du demandeur pour y recevoir sa demande.

CCXXXI. Le juge, après avoir entendu le demandeur, et lui avoir fait les observations qu'il croira convenables, parphera la demande et les pièces, et dressera procès-verbal de la remise du tout en ses mains. Ce procès-verbal sera signé par le juge, et par le demandeur, à moins que celui-ci ne sache ou ne puisse signer; auquel cas il en sera fait mention.

CCXXXII. Le juge ordonnera, au bas de son procès-verbal, que les parties comparaîtront en personne devant lui, au jour et à l'heure qu'il indiquera; et qu'à cet effet, copie de son ordonnance sera par lui adressée à la partie contre laquelle le divorce est demandé.

CCXXXIII. Au jour indiqué, le juge fera aux deux époux, s'ils se présentent, ou au demandeur, s'il est seul comparant, les représentations qu'il croira propres à opérer un rapprochement: s'il ne peut y parvenir, il en dressera procès-verbal, et ordonnera la communication de la demande et des pièces au commissaire du Gouvernement, et le référé du tout au tribunal.

CCXXXIV. Dans les trois jours qui suivront, le tribunal, sur le rapport du président ou du juge qui en aura fait les fonctions, et sur les conclusions du commissaire du Gouvernement, accordera ou suspendra la permission de citer. La suspension ne pourra excéder le terme de vingt jours.

CCXXXV. Le demandeur, en vertu de la permission du tribunal, fera citer le défendeur, dans la forme ordinaire, à comparaître en personne à l'audience, à huis clos, dans le délai de la loi; il fera donner copie, en tête de la citation, de la demande en divorce et les pièces produites à l'appui.

CCXXXVI. A l'échéance du délai, soit que le défendeur comparaisse ou non, le demandeur en personne, assisté d'un conseil s'il le juge à propos, exposera ou fera exposer les motifs de sa demande; il représentera les pièces qui l'appuient, et nommera les témoins qu'il se propose de faire entendre.

CCXXXVII. Si le défendeur comparaît en personne ou par un fondé de pouvoir, il pourra proposer ou faire proposer ses observations, tant sur les motifs de la demande que sur les pièces produites par le demandeur et sur les témoins par lui nommés. Le défendeur nommera, de son côté, les témoins qu'il se propose de faire entendre, et sur lesquels le demandeur fera réciproquement ses

observations.

CCXXXVIII. Il sera dressé procès-verbal des comparutions, dires et observations des parties, ainsi que des aveux que l'une ou l'autre pourra faire. Lecture de ce procès-verbal sera donnée auxdites parties, qui seront requises de le signer; et il sera fait mention expresse de leur signature, ou de leur déclaration de ne pouvoir ou ne vouloir signer.

CCXXXIX. Le tribunal renverra les parties à l'audience publique, dont il fixera le jour et l'heure; il ordonnera la communication de la procédure au commissaire du Gouvernement, et commettra un rapporteur. Dans le cas où le défendeur n'aurait pas comparu, le demandeur sera tenu de lui faire signifier l'ordonnance du tribunal, dans le délai qu'elle aura déterminé.

CCXL. Au jour et à l'heure indiqués, sur le rapport du juge commis, le commissaire du Gouvernement entendu, le tribunal statuera d'abord sur les fins de non-recevoir, s'il en a été proposé. En cas qu'elles soient trouvées concluantes, la demande en divorce sera rejetée: dans le cas contraire, ou s'il n'a pas été proposé de fins de non-recevoir, la demande en divorce sera admise.

CCXLI. Immédiatement après l'admission de la demande en divorce, sur le rapport du juge commis, le commissaire du Gouvernement entendu, le tribunal statuera au fond. Il fera droit à la demande, si elle lui paraît en état d'être jugée; sinon, il admettra le demandeur à la preuve des faits pertinens par lui allégués, et le défendeur à la preuve contraire.

CCXLII. A chaque acte de la cause, les parties pourront, après le rapport du juge, et avant que le commissaire du Gouvernement ait pris la parole, proposer ou faire proposer leurs moyens respectifs, d'abord sur les fins de non-recevoir, et ensuite sur le fond; mais en aucun cas le conseil du demandeur ne sera admis, si le demandeur n'est pas comparant en personne.

CCXLIII. Aussitôt après la prononciation du jugement qui ordonnera les enquêtes, le greffier du tribunal donnera lecture de la partie du procès-verbal qui contient la nomination déjà faite des témoins que les parties se proposent de faire entendre. Elles seront averties par le président, qu'elles peuvent encore en désigner d'autres, mais qu'après ce moment elles n'y seront plus reçues.

CCXLIV. Les parties proposeront de suite leurs reproches respectifs contre les témoins qu'elles voudront écarter. Le tribunal statuera sur ces reproches, après avoir entendu le commissaire du Gouvernement.

CCXLV. Les parens des parties, à l'exception de leurs enfans et descendans, ne sont pas reprochables du chef de la parenté, non plus que les domestiques des époux, en raison de cette qualité; mais le tribunal aura tel égard que de raison aux dépositions des parens et des domestiques.

CCXLVI. Tout jugement qui admettra une preuve testimoniale, dénommera les témoins qui

seront entendus, et déterminera le jour et l'heure auxquels les parties devront les présenter.

CCXLVII. Les dépositions des témoins seront reçues par le tribunal séant à huis clos, en présence du commissaire du Gouvernement, des parties, et de leurs conseils ou amis jusqu'au nombre de trois de chaque côté.

CCXLVIII. Les parties, par elles ou par leurs conseils, pourront faire aux témoins telles observations et interpellations qu'elles jugeront à propos, sans pouvoir néanmois les interrompre dans le cours de leurs dépositions.

CCXLIX. Chaque déposition sera rédigée par écrit, ainsi que les dires et observations auxquels elle aura donné lieu. Le procès-verbal d'enquête sera lu tant aux témoins qu'aux parties: les uns et les autres seront requis de le signer; et il sera fait mention de leur signature, ou de leur declaration qu'ils ne peuvent ou ne veulent signer.

CCL. Après la clôture des deux enquêtes, ou de celle du demandeur, si le défendeur n'a pas produit de témoins, le tribunal renverra les parties à l'audience publique, dont il indiquera le jour et l'heure; il ordonnera la communication de la procédure au commissaire du Gouvernement, et commettra un rapporteur. Cette ordonnance sera signifiée au défendeur, à la requête du demandeur, dans le délai qu'elle aura déterminé.

CCLI. Au jour fixé pour le jugement définitif, le rapport sera fait par le juge commis: les parties pourront ensuite faire, par elles-mêmes ou par l'organe de leurs conseils, telles observations qu'elles jugeront utiles à leur cause; après quoi le commissaire du Gouvernement donnera ses conclusions.

CCLII. Le jugement définitif sera prononcé publiquement: lorsqu'il admettra le divorce, le demandeur sera autorisé à se retirer devant l'officier de l'état civil pour le faire prononcer.

CCLIII. Lorsque la demande en divorce aura été formée pour cause d'excès, sévices ou d'injures graves, encore qu'elle soit bien établie, les juges pourront ne pas admettre immédiatement le divorce; et alors, avant de faire droit, ils autoriseront la femme à quitter la compagnie de son mari, sans être tenue de le recevoir, si elle ne le juge à propos; et ils condamneront le mari à lui payer une pension alimentaire proportionnée à ses facultés, si la femme n'a pas elle-même des revenus suffisans pour fournir à ses besoins.

CCLIV. Après une année d'épreuve, si les parties ne se sont pas réunies, l'époux demandeur pourra faire citer l'autre époux à comparaître au tribunal, dans les délais de la loi, pour y entendre prononcer le jugement définitif, qui pour lors admettra le divorce.

CCLV. Lorsque le divorce sera demandé par la raison qu'un des époux est condamné à peine

infamante, les seules formalités à observer consisteront à présenter au tribunal civil une expédition en bonne formé du jugement de condamnation, avec un certificat du tribunal criminel, portant que ce même jugement n'est plus susceptible d'être réformé par aucune voie légale.

CCLVI. En cas d'appel du jugement d'admission ou du jugement définitif, rendu par le tribunal de première instance en matière de divorce, la cause sera instruite et jugée par le tribunal d'appel, comme affaire urgente.

CCLVII. L'appel ne sera recevable qu'autant qu'il aura été interjeté dans les trois mois à compter du jour de la signification du jugement rendu contradictoirement ou par défaut. Le délai pour se pourvoir au tribunal de cassation contre un jugement en dernier ressort, sera aussi de trois mois à compter de la signification. Le pourvoi sera suspensif.

CCLVIII. En vertu de tout jugement rendu en dernier ressort ou passé en force de chose jugée, qui autorisera le divorce, l'époux qui l'aura obtenu, sera obligé de se présenter, dans le délai de deux mois, devant l'officier de l'état civil, l'autre partie dûment appelée, pour faire prononcer le divorce.

CCLIX. Ces deux mois ne commenceront à courir, à l'égard des jugemens de première instance, qu'après l'expiration du délai d'appel; à l'égard des jugemens rendus par défaut en cause d'appel, qu'après l'expiration du délai d'opposition; et à l'égard des jugemens contradictoires en dernier ressort, qu'après l'expiration du délai du pourvoi en cassation.

CCLX. L'époux demandeur qui aura laissé passer le délai de deux mois ci-dessus déterminé sans appeler l'autre époux devant l'officier de l'état civil, sera déchu du bénéfice du jugement qu'il avait obtenu, et ne pourra reprendre son action en divorce, sinon pour cause nouvelle; auquel cas il pourra néanmois faire valoir les anciennes.

Section II

Des Mesures provisoires auxquelles peut donner lieu la Demande en divorce pour cause déterminée.

CCLXI. L'administration provisoire des enfans restera au mari demandeur ou défendeur en divorce, à moins qu'il n'en soit autrement ordonné par le tribunal, sur la demande soit de la mère, soit de la famille, ou du commissaire du Gouvernement, pour le plus grand avantage des enfans.

CCLXII. La femme demanderesse ou défenderesse en divorce pourra quitter le domicile du mari pendant la poursuite, et demander une pension alimentaire proportionée aux facultés du mari. Le tribunal indiquera la maison dans laquelle la femme sera tenue de résider, et fixera, s'il y a lieu, la provision alimentaire que le mari sera obligé de lui payer.

CCLXIII. La femme sera tenue de justifier de sa résidence dans la maison indiquée, toutes les

fois qu'elle en sera requise: à défaut de cette justification, le mari pourra refuser la provision alimentaire, et, si la femme est demanderesse en divorce, la faire déclarer non-recevable à continuer ses poursuites.

CCLXIV. La femme commune en biens, demanderesse ou défenderesse en divorce, pourra, en tout état de cause, à partir de la date de l'ordonnance dont il est fait mention en l'article CCXXXII, requérir, pour la conservation de ses droits, l'apposition des scellés sur les effets mobiliers de la communauté. Ces scellés ne seront levés qu'en faisant inventaire avec prisée, et à la charge par le mari de représenter les choses inventoriées, ou de répondre de leur valeur comme gardien judiciaire.

CCLXV. Toute obligation contractée par le mari à la charge de la communauté, toute aliénation par lui faite des immeubles qui en dépendent, postérieurement à la date de l'ordonnance dont il est fait mention en l'art. CCXXXII, sera déclarée nulle, s'il est prouvé d'ailleurs qu'elle ait été faite ou contractée en fraude des droits de la femme.

Section III.

Des Fins de non-recevoir contre l'Action en divorce pour cause déterminée.

CCLXVI. L'action en divorce sera éteinte par la réconciliation des époux, survenue soit depuis les faits qui auraient pu autoriser cette action, soit depuis la demande en divorce.

CCLXVII. Dans l'un et l'autre cas, le demandeur sera déclaré non-recevable dans son action; il pourra néanmois en intenter une nouvelle pour cause survenue depuis la réconciliation, et alors faire usage des anciennes causes pour appuyer sa nouvelle demande.

CCLXVIII. Si le demandeur en divorce nie qu'il y ait eu réconciliation, le défendeur en fera preuve, soit par écrit, soit par témoins, dans la forme prescrite en la première section du présent chapitre.

Chapitre III.

Du Divorce par Consentement mutuel.

CCLXIX. Le consentement mutuel des époux ne sera point admis, si le mari a moins de vingt-cinq ans, ou si la femme est mineure de vingt-ans.

CCLXX. Le consentement mutuel ne sera admis qu'après deux ans de mariage.

CCLXXI. Il ne pourra plus l'être après vingt ans de mariage, ni lorsque la femme aura quarante-cinq ans.

CCLXXII. Dans aucun cas le consentement mutuel des époux ne suffira, s'il n'est autorisé par leurs pères et mères, ou par leurs autres ascendans vivans, suivant les règles prescrites par l'art. CL, chap. I.er du titre Du Mariage.

CCLXXIII. Les époux déterminés à opérer le divorce par consentement mutuel, seront tenus de faire préalablement inventaire et estimation de tous leurs biens meubles et immeubles, et de régler leurs droits respectifs, sur lesquels il leur sera néanmois libre de transiger.

CCLXXIV. Ils seront pareillement tenus de constater par écrit leur convention sur les trois points qui suivent:

1. A qui les enfans nés de leur union seront confiés, soit pendant le temps des épreuves, soit après le divorce prononcé;

2. Dans quelle maison la femme devra se retirer et résider pendant le temps des épreuves;

3. Quelles sommes le mari devra payer à sa femme pendant le même temps, si elle n'a pas des revenus suffisans pour fournir à ses besoins.

CCLXXV. Les époux se présenteront ensemble, et en personne, devant le président du tribunal civil de leur arrondissement, ou devant le juge qui en fera la fonction, et lui feront la déclaration de leur volonté, en présence de deux notaires amenés par eux.

CCLXXVI. Le juge fera aux deux époux réunis, et à chacun d'eux en particulier, en présence des deux notaires, telles représentations et exhortations qu'il croira convenables; il leur donnera lecture du chapitre IV du présent titre, qui règle les Effets du Divorce, et leur développera toutes les conséquence de leur démarche.

CCLXXVII. Si les époux persistent dans leur résolution, il leur sera donné acte, par le juge, de ce qu'ils demandent et consentement mutuellement au divorce; et ils seront tenus de produire et déposer à l'instant, entre les mains des notaires, outre les actes mentionnés aux articles CCLXXIII et CCLXXIV,

1. Les actes de leur naissance, et celui de leur mariage;

2. Les actes de naissance et de décès de tous les enfans nés de leur union;

3. La déclaration authentique de leurs père et mère ou autres ascendans vivans, portant que, pour les causes à eux connues, ils autorisent tel ou telle, leur fils ou fille, petit-fils ou petite-fille, marié ou mariée, à tel ou telle, à demander le divorce et à y consentir. Les pères, mères, aïeuls et aïeules des époux seront présumés vivans jusqu'à la représentation des actes constatant leur décès.

CCLXXVIII. Les notaires dresseront procès-verbal détaillé de tout ce qui aura été dit et fait en exécution des article précédens; la minute en restera au plus âgé des deux notaires, ainsi que les pièces produites, qui demeureront annexées au procès-verbal, dans lequel il sera fait mention de l'avertissement qui sera donné à la femme de se retirer, dans les vingt-quatre heures, dans la maison convenue entre elle et son mari, et d'y résider jusqu'au divorce prononcé.

CCLXXIX. La déclaration ainsi faite sera renouvelée dans la première quinzaine de chacun des quatrième, septième, et dixième mois qui suivront, en observant les mêmes formalités. Les parties seront obligées à rapporter chaque fois la preuve, par acte public, que leurs pères, mères, ou autres ascendans vivans, persistent dans leur première détermination; mais elles ne seront tenues à répéter la production d'aucun autre acte.

CCLXXX. Dans la quinzaine du jour où sera révolue l'année, à compter de la première déclaration, les époux, assités chacun de deux amis, personnes notables dans l'arrondissement, âgés de cinquante ans au moins, se président du tribunal ou le juge qui en fera les fonctions; ils lui remettront les expéditions en bonne forme des quatre procès-verbaux contenant leur consentement mutuel, et de tous les actes qui y auront été annexés, et requerront du magistrat, chacun séparément, en présence néanmois l'un de l'autre et des quatre notables, l'admission du divorce.

CCLXXXI. Après que le juge et les assistans auront fait leurs observations aux époux, s'ils persévèrent, il leur sera donné acte de leur réquisition,et de la remise par eux faite des pièces à l'appui; le greffier du tribunal dressera procès-verbal, qui sera signé tant par les parties (à moins qu'elles ne déclarent ne savoir ou ne pouvoir signer, auquel cas il en sera fait mention), que par les quatre assistans, le juge et le greffier.

CCLXXXII. Le juge mettra de suite, au bas de ce procès-verbal, son ordonnance portant que, dans les trois jours, il sera par lui référé du tout au tribunal en la chambre du conseil, sur les conclusions par écrit du commissaire du Gouvernement, auquel les pièces seront, à cet effet, communiquées par le greffier.

CCLXXXIII. Si le commissaire du Gouvernement trouve dans les pièces la preuve que les deux époux étaient âgés, le mari de vingt-cinq ans, la femme de vingt-un ans, lorsqu'ils ont fait leur première déclaration; qu'à cette époque ils étaient mariés depuis deux ans, que le mariage ne remontait pas à plus de vingt, que la femme avait moins de quarante-cinq ans, que le consentement mutuel a été exprimé quatre fois dans le cours de l'année, après les préalables ci-dessus prescrits et avec toutes les formalités requises par le présent chapitre, notamment avec l'autorisation des pères et mères des époux, ou avec celle de leurs autres ascendans vivans en cas de prédécés des pères et mères, il donnera ses conclusions en ces termes, 'La loi permet': dans le cas contraire, ses conclusions seront en ces termes, 'La loi empêche.'

CCLXXXIV. Le tribunal, sur le référé, ne pourra faire d'autres vérifications que celles indiquées par l'article précédent. S'il en résulte que, dans l'opinion du tribunal, les parties ont satisfait aux conditions et rempli les formalités déterminées par la loi, il admettra le divorce, et renverra les

parties devant l'officier de l'état civil, pour le faire prononcer: dans le cas contraire, le tribunal déclarera qu'il n'y a pas lieu à admettre le divorce, et déduira les motifs de la décision.

CCLXXXV. L'appel du jugement qui aurait déclaré ne pas y avoir lieu à admettre le divorce, ne sera recevable qu'autant qu'il sera interjeté par les deux parties, et néanmois par actes séparés, dans les dix jours au plutôt, et au plus tard dans les vingt jours de la date du jugement de première instance.

CCLXXXVI. Les actes d'appel seront réciproquement signifiés tant à l'autre époux qu'au commissaire du Gouvernement près du tribunal de première instance.

CCLXXXVII. Dans les dix jours à compter de la signification qui lui aura été faite du second acte d'appel, le commissaire du Gouvernement près du tribunal de première instance fera passer au commissaire du Gouvernement près du tribunal d'appel, l'expédition du jugement, et les pièces sur lesquelles il est intervenu. Le commissaire près du tribunal d'appel donnera ses conclusions par écrit, dans les dix jours qui suivront la réception des pièces; le président, ou le juge qui le suppléera, fera son rapport au tribunal d'appel, en la chambre du conseil, et il sera statué définitivement dans les dix jours qui suivront la remise des conclusions du commissaire.

CCLXXXVIII. En vertu du jugement qui admettra le divorce, et dans les vingt jours de sa date, les parties se présenteront ensemble et en personne devant l'officier de l'état civil, pour faire prononcer le divorce. Ce délai passé, le jugement demeurera comme non avenu.

Chapitre IV.

Des Effets du Divorce.

CCLXXXIX. Les époux qui divorceront pour quelque cause que soit, ne pourront plus se réunir.

CCXC. Dans le cas de divorce prononcé pour cause déterminée, la femme divorcée ne pourra se remarier que dix mois après le divorce prononcé.

CCXCI. Dans le cas de divorce par consentement mutuel, aucun des deux époux ne pourra contracter un nouveau mariage que trois ans après la prononciation du divorce.

CCXCII. Dans le cas de divorce admis en justice pour cause d'adultère, l'époux coupable ne pourra jamais se marier avec son complice. La femme adultère sera condamnée, par le même jugement et sur la réquisition du ministère public, à la reclusion dans une maison de correction, pour un temps déterminé, qui ne pourra être moindre de trois mois, ni excéder deux années.

CCXCIII. Pour quelque cause que le divorce ait lieu, hors le cas du consentement mutuel, l'époux contre lequel le divorce aura été admis, perdra tous les avantages que l'autre époux lui avait faits, soit par leur contrat de mariage, soit depuis le mariage contracté.

CCXCIV. L'époux qui aura obtenu le divorce, conservera les avantages à lui faits par l'autre époux, encore qu'ils aient été stipulés réciproques et que la réciprocité n'ait pas lieu.

CCXCV. Si les époux ne s'étaient fait aucun avantage, ou si ceux stipulés ne paraissaient pas suffisans pour assurer la subsistance de l'époux qui a obtenu le divorce, le tribunal pourra lui accorder, sur les biens de l'autre époux, une pension alimentaire, qui ne pourra excéder le tiers des revenus de cet autre époux. Cette pension sera revocable dans le cas où elle cesserait d'être nécessaire.

CCXCVI. Les enfans seront confiés à l'époux qui a obtenu le divorce, à moins que le tribunal; sur la demande de la famille, ou du commissaire du Gouvernement, n'ordonne, pour le plus grand avantage des enfans, que tous ou quelques-uns d'eux seront confiés aux soins, soit de l'autre époux, soit d'une tierce personne.

CCXVII. Quelle que soit la personne à laquelle les enfans seront confiés, les père et mère conserveront respectivement le droit de surveiller l'entretien et l'éducation de leurs enfans, et seront tenus d'y contribuer à proportion de leurs facultés.

CCXVIII. La dissolution du mariage par le divorce admis en justice, ne privera les enfans nés de ce mariage, d'aucun des avantages qui leur étaient assurés par les lois, ou par les conventions matrimoniales de leurs père et mère; mais il n'y aura d'ouverture aux droits des enfans que de la même manière et dans les même circonstances où ils se seraient ouverts s'il n'y avait pas eu de divorce.

CCXCIX. Dans le cas de divorce par consentement mutuel, la propriété de la moitié des biens de chacun des deux époux sera acquise de plein droit, du jour de leur première déclaration, aux enfans nés de leur mariage: les père et mère conserveront néanmois la jouissance de cette moitié jusqu'à la majorité de leurs enfans, à la charge de pourvoir à leur nourriture, entretien et éducation, conformément à leur fortune et à leur état; le tout sans préjudice des autres avantages qui pourraient avoir été assurés auxdits enfans par les conventions matrimoniales de leurs père et mère.

Chapitre V.

De la Séparation de corps.

CCC. Dans le cas où il y a lieu à la demande en divorce pour cause déterminée, il sera libre aux époux de former demande en séparation de corps.

CCCI. Elle sera intentée, instruite et jugée de la même manière que toute autre action civile: elle ne pourra avoir lieu par le consentement mutuel des époux.

CCCII. La femme contre laquelle la séparation de corps sera prononcée pour cause

d'adultère, sera condamnée par le même jugement, et sur la réquisition du ministère public, à la reclusion dans une maison de correction pendant un temps déterminé, qui ne pourra être moindre de trois mois ni excéder deux années.

CCCIII. Le mari restera le maître d'arrêter l'effet de cette condamnation, en consentant à reprendre sa femme.

CCCIV. Lorsque la séparation de corps prononcée pour toute autre cause que l'adultère de la femme, aura duré trois ans, l'époux qui était originairement défendeur, pourra demander le divorce au tribunal, qui l'admettra, si le demandeur originaire, présent ou dûment appelé, ne consent pas immédiatement à faire cesser la séparation.

CCCV. La séparation de corps emportera toujours séparation de biens.

Collationné à l'original, par nous président et secrétaires du Corps législatif. A Paris, le 30 Ventôse, an XI de la République française. Signé Méric, président; Lejeas, Sauret (Etienne), Ricour, secrétaires.

Soit la présente loi revêtue du sceau de l'Etat, insérée au Bulletin des lois, inscrite dans les registres des autorités judiciaires et administratives, et le grand-juge, ministre de la justice, chargé d'en surveiller la publication. A Paris, le 10 Germinal, an XI de la République.

Naquet Law, 1884[3]

Loi de 27 juillet 1884 sur le divorce

Article Premier *La loi du 8 mai 1816 est abrogée.*

Les dispositions du Code civil abrogées par cette loi sont rétablies, à l'exception de celles qui sont relatives au divorce par consentement mutuel, et avec les modifications suivantes, apportées aux articles 230, 232, 234, 235, 261, 263, 295, 296, 298, 299, 306, 307, et 310:

Art. 230 - La femme pourra demander le divorce pour cause d'adultère de son mari.

Art. 232 - La condamnation de l'un des époux à une peine afflictive et infamante sera, pour l'autre époux, une cause de divorce.

Chapitre II. ***De la procédure du divorce.***

Section Ire. *Des formes du divorce.*

Art. 234 *La demande en divorce ne pourra être formée qu'au tribunal de l'arrondissement dans lequel les époux auront leur domicile.*

Art. 235. *Si quelques-uns des faits allégués par l'époux demandeur donnent lieu à une poursuite criminelle de la part du ministère public, l'action en divorce restera suspendue jusque après la décision de la juridiction répressive; alors elle pourra être reprise sans qu'il soit permis d'inférer de cette décision aucune fin de non-recevoir ou exception préjudicielle contre l'époux demandeur.*

Art. 261 *Lorsque le divorce sera demandé par la raison qu'un des époux est condamné à une peine afflictive et infamante, les seules formalités à observer consisteront à présenter au tribunal de première instance une expédition en bonne forme de la décision portant condamnation, avec un certificat du greffier constatent que cette décision n'est plus susceptible d'être réformée par les voies légales ordinaires. Le certificat du greffier devra être visé par le procureur général ou par le procureur de la République.*

Art. 263. *L'appel ne sera recevable qu'autant qu'il aura été interjeté dans les deux mois à compter du jour de la signification du jugement rendu contrdictoirement ou par défaut. Le délai pour se pourvoir à la Cour de cassation contre un jugement en dernier ressort sera aussi de deux mois à compter de la signification. Le pourvoi sera suspensif.*

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[3]André Daniel, L'Année Politique. (Paris: G. Charpentier, 1885): 365-368.

Section II. *Des mesures provisoires auxquelles peut donner lieu la demande en divorce.*

Section III. *Des fins de non-recevoir contre l'action en divorce.*

Chapitre III. ***Des effets du divorce.***

Art. 295. *Les époux divorcées ne pourront plus se réunir, si l'un ou l'autre a, postérieurement au divorce, contracté un nouveau mariage suivi d'un second divorce. Au cas de réunion des époux, une nouvelle célébration du marige sera nécessaire.*

Les époux ne pourront adopter un régime matrimonial autre que celui qui réglait orignairement leur union.

Après la réunion des époux, il ne sera reçu de leur part aucune nouvelle demande de divorce pour quelque cause que ce soit, autre que celle d'une condamnation à peine afflictive et infamante prononcée contre l'un d'eux depuis leur réunion.

Art. 296. *La femme divorcée ne pourra se remarier que dix mois après que le divorce sera devenu définitif.*

Art. 298. *Dans le cas de divorce admis en justice pour cause d'adultère, l'époux coupable ne pourra jamais se marier avec son complice.*

Art. 299. *L'époux contre lequel le divorce aura été prononcé perdra tous les avantages que l'autre époux lui avait faits, soit par contrat de mariage, soit depuis le mariage.*

Art. 306. *Dans le cas où il y a lieu à demand en divorce, il sera libre aux époux de formuler une demande en séparation de corps.*

Art. 307 *Elle sera intentée, instruite et jugée de la même manière que toute autre action civile.*

Art. 310 *Lorsque la séparation de corps aura duré trois ans, le jugement pourra être converti en jugement de divorce sur la demande formée par l'un des époux.*

Cette nouvelle demande sera introduite par assignation, à huit jours francs, en vertu d'une ordonnance rendue par le président.

Elle sera débattue en chambre de conseil.

L'ordonnance nommera un juge rapporteur, ordonnera la communication au ministère public et fixera le jour de la comparution.

Le jugement sera rendu en audience publique.

Sont abrogés les articles 233, 275 à 294, 297, 305, 308 et 309 du Code civil.

Art. 2 *Le paragraphe ajouté à l'article 312 du Code civil par la loi du 6 décembre 1850 est modifié comme il suit:*

'En cas de jugement ou même de demande, soit de divorce, soit de séparation de corps, le

mari pourra désavouer l'enfant qui sera né trois cents jours après la décision qui aura autorisé la femme à avoir un domicile séparé, et moins de cent quatre-vingts jours depuis le rejet définitif de la demande, ou depuis la réconciliation. L'action en désaveu ne sera pas admise s'il y a eu réunion de fait entre les époux.'

Art. 3 La reproduction des débats sur les instances en divorce ou en séparation de corps est interdite sous peine de l'amende de 100 à 2,000 francs édictée par l'article 39 de la loi du 30 juillet 1881.

Disposition transitoire.

Art. 4. Les instances en séparation de corps pendantes au moment de la promulgation de la présente loi pourront être converties par les demandeurs en instances de divorce. Cette conversion pourra être demandée même en Cour d'appel.

La procédure spéciale au divorce sera suivie à partir du dernier acte valable de la procédure en séparation de corps.

Pourront être convertis en jugements de divorce, comme il est dit à l'article 310, tous jugements de séparation de corps devenus définitifs avant ladite promulgation.

Art. 5. La présente loi est applicable à l'Algérie et aux colonies de la Martinique, de la Guadeloupe et de la Réunion.

VITA

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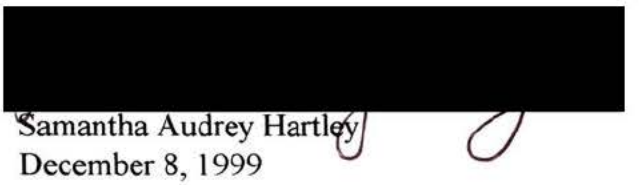

Samantha Audrey Hartley
December 8, 1999