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Divorce and Civil Society during the French Revolution, 1789-1802.

Submitted for the degree of doctor of philosophy.

2002.

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Department of Modern History.

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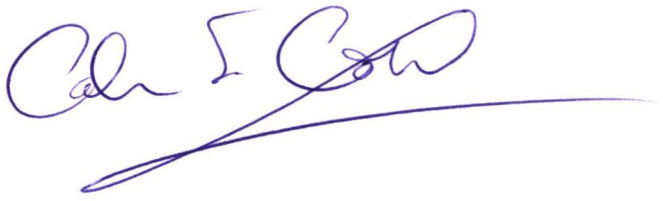

Summary.

The aim of this thesis is to examine the complex interplay between revolutionary society, culture, and politics through an analysis of the revolutionary divorce law introduced in September 1792. The thesis shall examine the conceptual basis of the argument for the introduction of a no-fault divorce law accessible to husband and wife, and furthermore shall situate the later debate on divorce in its proper context, that of revolutionary society. It shall examine the dialogue between civil society in the form of pamphlets written to the National Assemblies, and the discussions of divorce in the Legislative Assembly, National Convention, and Council of Five Hundred.

Following on this the thesis shall investigate the specific relevance of the secular divorce law for women in revolutionary society. The social reality of divorce shall be investigated through an analysis of divorce in three regional towns: Toulouse, Troyes, and Epinal. These towns have been chosen for their geographical and physical contrast. Toulouse was a large administrative city, distant from Paris in the south-west of France, Troyes was much closer to Paris, of medium size and with a significant industrial population, and Epinal was a small town situated near the eastern frontier in Lorraine. The findings from this examination shall serve to illustrate whether divorce followed patterns predicted by revolutionary and later commentators and shall also highlight the social groups who used the legislation.

The thesis aims to illuminate the relationship between the cultural discourse on divorce, the political reality of legislation, and the social matter of action in an urban, revolutionary context. By examining statistical case studies of the three regional centres and comparing these findings with the legislative innovation and evolving

discourses on divorce in revolutionary society I hope to give meaning to the relevance of revolutionary divorce legislation to French society during the revolutionary period.

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Special thanks go to Valerie, my wife, whose moral and intellectual support helped me to complete this task.

I dedicate this thesis to my father, Liam, and the memory of my mother, Mary (R.I.P.).

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Introduction.

The central argument proposed in this thesis is that divorce was an aspect of revolutionary law and culture through which individuals could achieve a form of participation in the new world of envisaged by the revolutionaries. The divorce law, and the French Revolution, promised a secular, pragmatic, liberal and egalitarian world. The potential and difficulties of such an ambitious project may be observed through the development and evolution of divorce as a legal mechanism and an instrumental device for both revolutionary theorists and the new citizens of the French Republic. I further argue that, although the instrumental and structural arguments for the introduction and use of divorce among the French population cannot be underestimated, the cultural and ideological nature of the law should not be ignored. This is further born out by an examination of the social groups who used the legislation, who were for the most part from the sections of society that consistently supported the republican regime. Divorcees were overwhelmingly urban-dwellers and from the commercial and artisanal classes. Despite a consistently stronger religious devotion than men, women overwhelmingly initiated divorce proceedings. Through revolutionary divorce legislation, individuals who were otherwise unable to formally express their citizenship could establish a form of revolutionary participation. Women (and men) could use a law conceived out of a desire to facilitate liberal and egalitarian relations between citizens and then activate the legislation in the often-unhappy circumstances of family breakdown.

Previous work on divorce in revolutionary France comes mainly in two forms: general analysis of divorce and the evolution of the legislation from 1792 to 1815; and regional work concentrating on divorce in regional French towns. The regional work concentrates on detailed analysis of divorce in the various areas that were examined. Generally, they did connect the experience of the individuals who divorced with the overall philosophical goals of the revolutionaries, pamphleteers and *philosophes* who debated the issue before and after the advent of divorce legislation in September 1792.[1]

Examples of regional work on divorce include that of Simone Maraval and the Sicards on Toulouse. Their work differs from this project in many regards. The authors seek to explore the conditions of divorce in the specific context of Toulouse alone, and are more concerned with examining divorce in this area from the introduction of the divorce law until the abolition of divorce in 1816. This thesis restricts its investigation of divorce and French society to the revolutionary period up to the year X, or two years after the Napoleonic coup of *brumaire*, year VIII. This time frame has been chosen in order to highlight the conditions under which the 1792 divorce law was introduced in revolutionary and republican France. Following this, there is an analysis of the development of the divorce law and attitudes to this law.

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[1] See Dominique Dessertine, *Divorcer à Lyon sous la Révolution et l'Empire*, (Lyon, 1981); Jean Lhote, *Le Divorce à Metz et en Moselle sous la Révolution et l'Empire*, (Metz, 1981); Jean Lhote, *Les Divorces Messins sous la Régime de la Loi du 20 septembre 1792*, (Sarreguemines, 1996); Simone Maraval, *L'Introduction du Divorce en Haute-Garonne 1792-1816; étude de mœurs révolutionnaires*, (Toulouse, 1951); Germain & Mireille Sicard, "Le Divorce à Toulouse durant la Révolution Française." In *Mélanges dédiés à Gabriel Marty*, (Toulouse, 1975); Roderick Phillips, *Family Breakdown in Late Eighteenth-Century France, Divorces in Rouen*, (Oxford, 1980).

Maraval and the Sicards both support earlier suggestions that the rhythm of divorce in Toulouse was dictated by revolutionary fervour and the radicalism of political circumstances during the period under examination.[2] This served to shape their analysis of divorce statistics. Thus, they analysed divorce figures according to the different regimes of the Convention, Directory and Consulate, drawing the conclusion, in the case of the Sicards, that divorce rates had a close relationship with the nature of the political regime in place at any given time. The analysis of divorce statistics and practice offered here follows a different pattern and concentrates on the rhythm of divorce over ten years and the social groups who used the legislation. The Sicards analysed divorce by motive and pointed to the high rate of divorce during the years II and III as indicative of the umbilical connection between divorce and political radicalism, describing a period of calm in the aftermath of *thermidor*, during the Directory and Consulate.[3] They did not seek alternative explanations for the high level of divorce during this period. Maraval's argument is more nuanced, attributing the increase in divorce during the years II and III to the instability of the period, caused by the proximity of the war with Spain, political and social instability, all leading to a "*crise des mœurs*". She also admits to the possibility that this period experienced a high number of divorces as a result of the termination of many marriages that were in fact over before the introduction of the 1792 divorce law.[4]

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[2]G. & M. Sicard, *op. cit.*, p.1075. Maraval, *op. cit.*, ch.1 and 3. Earlier works on divorce during the revolutionary period had insisted on the link between high divorce rates and the political radicalism of the years II and III. See Olivier Martin, *La Crise du Mariage dans la Législation Intermédiaire*, (Paris, 1901); Marcel Cruppi, *Le Divorce pendant la Révolution Française (1792-1804)*, (Paris, 1909), G. Thibault-Laurent, *La Première Introduction du Divorce en France sous la Révolution Française et l'Empire (1792-1816)*, (Clermont-Ferrand, 1938).

[3] G. & M. Sicard, *op. cit.*, p.1075.

[4] Maraval, *op. cit.*, p.52-54.

This leads one to consider the arguments of Roderick Phillips.[5] Phillips argues that divorce was an urban phenomenon, normally initiated by women. He sought to explain divorce patterns in the material circumstances of those involved in the divorce process, rather than by ascribing divorce patterns to political circumstances or beliefs. He discounts Marcel Cruppi's thesis that divorce, as a revolutionary phenomenon, was a purely political device.[6] Phillips ascribes the high rate of divorce during the first three years of the law, which coincided with the Terror, to the fact that many couples regularised a situation of actual marital breakdown.[7]

He emphasises structural and social reasons for the introduction and take-up of divorce during the French Revolution. Phillips underlines two key aspects of revolutionary practice, namely that divorce was overwhelmingly an urban phenomenon, and that women initiated divorce proceedings in the majority of cases.[8] Reflecting Edward Shorter, he argues that divorce was made possible by a process of growing individualism in France.[9] Women were in a situation of legal inferiority to men, they used divorce to

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[5] Roderick Phillips, "Le Divorce en France à la Fin du Dix-huitième Siècle", in *Annales, Economies, Sociétés, Civilisations*, no.2, February-March, 1979. Phillips has also written extensively on divorce in western society in the following works: R. Phillips, *Family Breakdown in Late Eighteenth-Century France*, (Oxford, 1980); R. Phillips, *Putting Asunder*, (Cambridge, 1988); R. Phillips, *Untying the Knot*, (Cambridge, 1991).

[6] Marcel Cruppi, *Le Divorce pendant la Révolution Française (1792-1804)*, (Paris, 1909)

[7] Roderick Phillips, "Le Divorce en France à la fin du Dix-huitième Siècle", *Annales,* no.2, February-March, 1979, p.393.

[8] *Ibid.,* p.391-392.
Roderick Phillips, *Family Breakdown in Late Eighteenth-Century France. Divorces in Rouen 1793-1803*, (Oxford, 1980). P.92-95.

[9] Edward Shorter believes that the upheavals generated by the growth in capitalism led to a shift in emphasis society away from the community and towards the individual. He stresses that early capitalism led to the mass participation of young single people in the wage economy. This especially affected young women, who became separated for the family economy and the controlling influence of family and village community. Shorter claimed that young women therefore experienced the freedom of economic independence away from a controlling environment. This gave them the opportunity to choose their own sexual partners, and ultimately, to divorce them given the legislative framework if they were not satisfied. Edward Shorter, *The Making of the Modern Family*, (London, 1976).

free themselves from this position, and divorce was an urban phenomenon. Only in towns could women gain work and lodgings away from the family environment. I believe Phillips is correct in his social and structural analysis of divorce but I will argue that divorce must be situated in the cultural context of revolutionary France if we are to gain a more complete understanding of revolutionary divorce.

It is with these arguments in mind that an analysis of divorce advances. I argue that the simplicity of divorce legislation, allied to the desire of couples to regularise situations of marital breakdown by using the new law resulted in the high number of divorces during the early period. However, political and cultural factors must not be completely ignored. The will of those who found themselves in a situation of marital breakdown to avail of a law that was explicitly secular and formulated to coincide with revolutionary ideas of freedom and individual happiness must also be taken into account. Not only was divorce used primarily in a urban context, as Phillips states, but it was principally used by the *sans culottes* urban groups, artisans and small businesspeople, who consistently supported the republican regime.

The analysis of the relationship between divorce and revolutionary culture is shaped into three main parts. The first section introduces the subject and highlights the importance of the evolution in concepts of marriage and family in the period preceding the French Revolution. Work on family history emphasises growing individualism, particularly in urban areas, and also examines the increasing importance of affection over interest in

marital relationships.[10] The tension between the needs of free rational individuals and the importance invested in the family erupted during the French Revolution and remains a problem for contemporary society. Feminist authors have also developed a powerful critique of older interpretation of the family, particularly with regard to the importance of patriarchy and the position of women in the modern family unit.[11] These tensions and a new vision of what the family should constitute - a haven of security and of liberty - led many to question the indissolubility of marriage. They asked whether individuals should be forced to remain together if one or either spouse could not find happiness in the union.

The second part of the thesis deals with these issues. Although the period directly before the revolution was not characterised by an intense debate on divorce, a number of works were published criticising contemporary marriage legislation. This trend continued in the early years of the Revolution (1789-1792) when there was further, more explicit criticism of marriage law, in the form of pamphlets and petitions that called for the introduction of a divorce law. These calls were finally heeded in September 1792 when a divorce law was introduced.[12] The *philosophes* who wrote about divorce and the family desired to point the way toward a society where happiness could reign in harmony with nature. Their desire for emotional happiness was characterised by a questioning of the structure

[10] Philippe Ariès, (trans. Robert Baldick), *Centuries of Childhood*, (London, 1962); Jean-Louis Flandrin, *Families in Former Times*, (Cambridge, 1979); Edward Shorter, *op. cit.*

[11] See Joan Scott, "The Woman Worker," in Geneviève Fraisse and Michelle Perrot (eds.), *A History of Women in the West, Emerging Feminism from Revolution to World War*, volume iv, (Cambridge Mass., London, 1993); J. B. Elshtain (ed.), *The Family in Political Thought*, (Brighton, 1982); E. Jacobs, W. H. Barber, J. H. Bloch, F.W. Leaky, E. le Breton (eds.), *Women and Society in Eighteenth Century France*, (London, 1979); S. Spencer (ed.), *French Women and the Age of Enlightenment*, (Bloomington Indiana, 1984); Kathleen Jones, *Compassionate Authority*, (New York, London, 1993); Jennifer Birkett, "'A Mere Matter of Business'; Marriage, Divorce – The French Revolution," in Elizabeth M. Craik (ed.), *Marriage and Property*, (Aberdeen, 1984); Marilyn Boxer and J. H. Quataert (eds.), *Connecting Spheres*, (New York, Oxford, 1987); Carole Pateman, *The Sexual Contract*, (Cambridge, 1988).

[12] The divorce law was based on the provisions suggested by the most influential divorce text of the time, Albert Hennet's *Du Divorce*, (Paris, 1789).

and function of marriage. They suggested that divorce, by dissolving unhappy and unproductive marriages, could allow individuals to pursue happiness in new unions based on mutual affection and not on financial or dynastic interest.[13] The thesis attempts to explain why divorce was introduced to revolutionary France in a secular and liberal manner. Proponents of divorce did not justify divorce on religious grounds. Instead, they sought to tie divorce to the revolutionary idea of liberty. I contend that, although secular Enlightenment thinking heavily influenced arguments for divorce, a particular political context was necessary for the introduction of divorce in 1792. Philosophy and politics provided the context for the introduction of the law, but a number of petitioners to the Legislative Assembly provided the direction and forced the thinkers and politicians to take action. The thesis then analyses the evolution of the attitudes towards the law and actual changes in the law.

The final section of the thesis contains case studies of divorce in three urban centres - Toulouse, Troyes, Epinal. These areas have been chosen for their contrasting geographic and demographic characteristics. They differ in size and political activity, and offer a contrast with the political and social circumstances of the capital, Paris. Toulouse, former capital of the Languedoc and *chef-lieu de département* falls under the category of a large city. Its geographical position in the south west of France meant that Toulouse, although a major urban centre and the eighth largest city in France, was relatively isolated.[14] It

[13] Montaigne, Locke, and Milton all advocated divorce before the eighteenth century. Montesquieu, Diderot, Voltaire, and Boucher d'Argis were among the most prominent *philosophes* to criticise French marriage law, while Cerfvol, Philbert, and Linguet were among the less renowned writers to advocate the introduction of a divorce law.

[14] This is according to Lepetit's figures for 1794. Bernard Lepetit, *Les Villes dans la France Moderne (1740-1840)*, (Paris, 1988), p.450.

took a week for news from Paris to arrive. However, its situation as centre of operations for the two armies of the Pyrenees made it strategically significant and the *représentants en mission* sent from Paris kept a close eye on the political loyalty of the city. Despite the strength of Catholicism in pre-revolutionary Toulouse and the power of the *Parlement*, Toulouse remained loyal to the revolutionaries in Paris throughout the revolutionary decade.

In contrast to Toulouse, Troyes was a medium-size town, situated on the road from Auxerre to Paris and only 152 kilometres from the capital.[15] Unlike Toulouse, political activity was quick to take off in 1789 when the townspeople established a municipal committee to challenge the *Ancien Régime* town council.[16] Epinal was a small town, 351 kilometres from Paris and close to the eastern frontier.[17] It was renowned for its peaceful and moderate embrace of the French Revolution. The town did not experience the violent upheaval suffered by Troyes, nor did it share Toulouse's flirtation with federalism.[18] The three towns were *chefs-lieux départementals.*[19] Rural areas have not been considered as divorce was rare in rural France and the divorce figures for rural France are difficult to ascertain. They are generally unreliable because the *Etat Civil* of *actes de divorce* for

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[15] In 1794, Troyes was the twenty-third largest town in France. *Ibid.*, p.450.
[16] Lynn Avery Hunt, *Revolution and Urban Politics in Provincial France*, (Stanford, 1978), p.4.
[17] The categorisation of towns, large, medium and small, is taken from Jacques Dupâquier. Towns with a population of over 50,000 people are considered large, those with a population between 10,000 and 50,000 are deemed medium-sized, and those with populations under 10,000 are considered small.
Jacques Dupâquier, "Vers une Statistique Nationale des Divorces sous la Première République", in *Etudes en l'Honneur de François Lebrun. Populations et Cultures*, (Rennes, 1989), p.31-37. In the year 1794, the respective populations of Toulouse, Troyes, and Epinal were 53,000, 27,000, and 6,500. See Serge Bonin and Claude Langlois (dir.), *Atlas de la Révolution Française 8, Population*, (Paris, 1995), p.74.
[18] Michel Bur (ed.), *Epinal*, (Paris, 1991), p.97.
See Martyn Lyons, *Revolution in Toulouse*, (Berne, 1978), p.41-55.
[19] Bernard Lepetit, *op. cit.*, p.204.

rural France is often incomplete.[20] For example, while there were over 370 divorces in the municipality of Toulouse under the 1792 divorce legislation, the districts of Revel and Murat just outside Toulouse recorded only two divorces for the same period. Roderick Phillips reveals a similar pattern for the Moselle and Seine-Inférieure.[21] With regard to divorce, while I argue that the revolutionary institution of divorce allowed individuals, and women in particular, to engage in revolutionary citizenship through engagement with a revolutionary law that guaranteed civil equality to all citizens while also couched in an explicit language of universal rights. This occurred in these provincial towns, especially for women, despite the influence of the Catholic Church. In rural France, the figures are not available, but the lack of revolutionary institutions such as the municipal councils, and revolutionary clubs, along with the persistent strength of the Church, lends credence to Dupâquier's view that divorce rates in rural France were negligible. Structural factors pointed out by Phillips reinforce this idea. He indicates that while towns held both the possibility of casual employment and lodgings in *auberges*, this was not available outside the family in rural France.[22]

For the first two section of the thesis, the sources used include pro- and anti-divorce pamphlets published during the revolutionary period, especially those published before the promulgation of the 1792 law on divorce. These have been supplemented with and

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[20] See J. Dupâquier, *op. cit.*, p.34. Simone Maraval makes the same point for the countryside around Toulouse. In Simone Maraval, *op. cit.*, p.20.

[21] Phillips gives a figure of 374 divorces in Metz, which had a population of 35,000 for the duration of the revolutionary divorce legislation. This contrasts with 80 divorces in all the other large towns in the department of the Moselle. These towns had a cumulative population of 25,000. For the Seine-Inférieure, Phillips records 953 divorces in Rouen (population 85,000), and 31 divorces for the neighbouring canton of Mont-aux-Malades (population 12,584). In Roderick Phillips, "Le Divorce en France à la Fin du Dix-huitième Siècle", *Annales, Economies, Sociétés, Civilisations*, no.2, January-March 1979, p.392.

[22] J. Dupâquier, *ibid.*, p. 37
R. Phillips, *ibid.*, p. 392-393

compared to articles on divorce in the various journals of the period. Petitions to the Legislative Assembly, Convention and Council of Five Hundred have also been examined. In addition, I have contrasted the extra-parliamentary writings with the responses of the deputies in the various assemblies (Legislative Assembly, Convention, Council of 500). For divorce in provincial France, I have used the *actes de divorce* found in the *Etat Civil* for three different reasons. In the first instance, the records are complete in the *Archives Départementales* of the three relevant departments. Secondly, they are recorded in a uniform fashion and allow for comparison between the three sample cities. Thirdly, the information gathered from the *actes de divorce* can be considered as reliable, as it had to be ratified by the communal *officier public* charged with compiling the civil record of births, marriages, divorces, and deaths. In contrast to the simplicity with which one can use the *actes de divorce*, the records of the *tribunaux de famille* are more troublesome. There was no uniform method for recording the *tribunaux*, and no stipulation was made that the local municipality keep the record. Therefore, these records are scattered, inconsistent and consequently, difficult to interpret.

Ch.1 Divorce and the Construction of the Modern Family.

1. Concepts of Marriage: An Evolution.

(i) Developments in the history of the family.

> "In marriage there is more than the marriage of name and property. Ought the legislator to admit that these are the chief reasons of marriage, and not the outward personality, moral qualities and all those things which excite sentiment and animal affection?...You must not treat marriage as a mere matter of business. After all the dowry is only an accessory; the union of husband and wife is the essential point."[1]

The above citation, attributed to Napoleon, illustrates the complexity of marriage and family relations for late eighteenth-century and early nineteenth-century society. By the time of the French Revolution, marriage was understood as the consensual union of two individuals. It was also a union founded on the complex interplay of affection and interest. Accordingly, the regulation of marriage and its possible breakdown was of consequence to private individuals and the revolutionary public alike. This was the case because marriage was of importance in the private sphere as the legal foundation of the family, but was also politically important, as it was the arena in which revolutionary morals were first to be forged.

Any attempt to reconstruct the evolution of the family through history is fraught with conceptual and methodological problems. If we accept Robert Darnton's view that whatever understanding individuals had of society in the past, our contemporary vision of that same past will always be different, then the problem of understanding

[1] Napoleon Bonaparte, cited in A.C. Thibaudeau (trans. G. K. Fortescue), *Bonaparte and the Consulate*, (London, 1908), p.181, 183. In Jennifer Birkett, *op. cit.*, p.119.

marriage and the family reveals itself as one of great difficulty.[2] However, one must endeavour to show how people understood the institution of marriage and the family in order to understand why divorce was of social, cultural and political importance in the late eighteenth century. The central problem here lies in establishing the importance of affection and sentiment for marriage in revolutionary and pre-revolutionary France.

The idea that sentiment and mutual affection between husband and wife was generally perceived as central to marriage in the eighteenth century is generally accepted among historians of the family. However, the causes for the growth of the importance of sentiment in marriage are still disputed. Before the late eighteenth century, the idea that the family was constituted solely of mother, father, and children was not widely held. Flandrin wrote that the family was often understood as all those who lived in the same household, including parents, children, grandparents, and servants.[3] The first reference to the family as constituted of the father, mother, and children appears in French dictionaries in 1680. In the *Encyclopédie,* the Chevalier de Jaucourt declared that not only was the family composed of parents and children, but that it was also the basis of all society:

> "Indeed, the family is a civil society established by Nature: this society is the most natural and the most ancient of all societies; it serves as a foundation for the national society."[4]

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[2] Robert Darnton, *The Great Cat Massacre and other Episodes in French Cultural History*, (London, 1984), p.12. Darnton said that other people (from the past or different cultures) are essentially different, and they did not think the way we do. Eighteenth century individuals neither perceived marriage in the same way as we do today, nor did they practice it in the same fashion. One must also remember that eighteenth century France was not one homogeneous cultural and social block. Different regions and different social groups treated and understood marriage in various ways, even if the civil and ecclesiastical guidelines did not vary throughout France.

[3] Jean-Louis Flandrin (trans. Richard Southern), *Families in Former Times. Kinship, household and sexuality* (1976), (Cambridge, 1979), p.5.

[4] *Ibid.*, p.8.

Two fundamental changes to perceptions of family had occurred by the end of the eighteenth century. First, the idea of the family narrowed to parents and offspring; secondly, sentiment was perceived as an important bonding factor in family and marriage. Up until this time, sentiment and passion were understood as potentially corrosive to marriage.[5]

Edward Shorter saw the upheavals engendered by capitalism and the shift of emphasis towards the individual (rather than community) in modern society as key elements in the development of sentiment as a basis for marriage.[6] Shorter pointed to the economic and social dislocation of early capitalism, and mass participation in the wage economy of single young people, especially young women. Due to their participation in the wage economy, they became separated from the family economy and the controlling influence of village community and family.[7] Shorter argued that, through the necessary egoism learned in the capitalist marketplace (as opposed to the communal relations of pre-capitalist society), and the freedom from the constraints of small communities, young individuals chose to satisfy their sexual and emotional desires, rather than think of the general good of their extended family or obey the commands of the village elders. This engagement in the wage economy was particularly potent for young women, as it gave them the economic independence to follow their own desires, instead of obeying the will of their parents. Marriage was still a complicated mixture of affection and interest, but the interest would be dictated by the individuals contracting marriage, not by their parents or the community. The

[5] *Ibid.*, p.164-165.
[6] Philippe Ariès, *op. cit.* Edward Shorter, *op. cit.*, chapter seven, "The Reason Why."
[7] *Ibid.*, p.258-259.

potency of this argument becomes clearer when we examine the social pattern of divorce in revolutionary France.[8]

(ii) Protestant teaching on divorce.

Reformation teaching on marriage and divorce differed radically from secular enlightenment and revolutionary legal and cultural understanding of the same institutions. However, the Reformers' acceptance of divorce illustrated how a new understanding of marriage could allow for the possibility of the introduction of divorce and make such a law acceptable.[9] Before and after the Reformation, Catholic teaching did not permit divorce, although separation and annulment were allowed, even if the Church was reluctant to grant such measures.[10] The Catholic Church based its opposition to divorce on the importance it placed on celibacy, and its interpretation of the Bible. It used the Gospel of St. John to justify marital indissolubility as this version of the Bible indicated that Jesus forbade divorce:

> "Let no man cast aside his wife."[11]

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[8] See chapters 5 and 6.

[9] The Protestant understanding of the function and nature of marriage differed from the dogmatic Catholic view that understood marriage as an indissoluble sacrament.

[10] Pro-divorce authors insisted that the early Church had allowed divorce and Hennet claimed that marital indissolubility was only proclaimed a doctrine of faith at the Council of Florence in 1439, although the Church had begun to extend its power over marriage law as early as AD 886, when the marriage blessing, became compulsory. Until then, it had been optional. Hennet claimed that the popes never actually prohibited divorce, but substituted annulment for it in order to control marriage. See Hennet, *op. cit.*, book I, ch. 6 & 7. Roderick Phillips states that the Catholic Church was reluctant to grant separations and annulments, citing the example of the Bishops' Court in Paris between 1384 and 1387. The court heard five hundred appeals during this period, but only granted ten annulments. The ecclesiastical courts demanded proof and the evidence of more than one witness to establish a case for annulment. The grounds for annulment were as follows: consanguinity and affinity; illegitimate affinity; spiritual affinity; prior matrimonial arrangements; impotence; the absence of consent of either party; clandestine marriage (witnesses were required for legitimate Catholic marriages); other impediments (such as the murder of one's first spouse with the intention of marrying the person with whom the murderer was having an adulterous affair). The Church permitted separation *a mensa et a thoro* in cases of adultery, extreme cruelty, and heresy. In the absence of either form of separation, the Church considered it a sin for married couples to live apart.
See Roderick Phillips, *Untying the Knot*, (Cambridge, 1991), p.6-7.

[11] Quoted in Hennet, *op. cit*, p.17-18. St. Mathew's version of the Bible is different and was used by pro-divorce writers to claim that the Bible allowed divorce in certain circumstances, for example if one party was guilty of "une faute grave contre le marriage." See Pierre-Paul-Alexandre Bouchotte, *Observations sur l'Accord de la Raison et de la Religion pour le Rétablissement du Divorce,*

In Catholic doctrine marriage was the only area in which sexual relations could be conducted without sin as long as the goal of such relations was procreation. With the advent of the Reformation the Church found its teaching on marital law questioned, but the Catholic Church reaffirmed its teaching on marriage in the Council of Trent. Virginity and celibacy were still deemed preferable to sexual activity, even within marriage, and the indissolubility of marriage was confirmed.[12]

The Protestant Reformers rejected the Catholic view of marriage and consequently Protestant teaching insisted that the state of marriage was not inferior to celibacy. In fact, Protestant teaching was critical of enforced celibacy, which reformers believed could lead to fornication due to the weakness and sinful nature of man.[13] In contrast to this negative view of celibacy, marriage was cherished and deemed extremely important for society and religion. It would no longer be a sacrament, nor would it be inferior to celibacy. This different idea of marriage allowed the Protestant Reformers to accept the possibility of marital dissolution in a limited form, just as a revised view of the nature and function of marriage in the late eighteenth century precipitated calls for a divorce law with the advent of the French Revolution. However, while the later authors used secular arguments to call for a secular divorce law, the Protestant Reformers used biblical justification for the introduction of divorce.

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l'Anéantissement des Séparations entre Epoux, et la Réformation des Lois relatives à l'Adultère, (Paris, 1790).

[12] Marital indissolubility did not go unchallenged in the Catholic Church. The doctrine of indissolubility was only generally accepted in the twelfth century, and it only entered law as an article of doctrine in the final session of the Council of Trent (1563). Three prominent Catholics to question the legitimacy of, and precedent for marital indissolubility were Erasmus of Rotterdam, Thomas More, and Michel de Montaigne.
See Roderick Phillips, *Putting Asunder*, (Cambridge, 1988), p.34-39.

[13] Roderick Phillips, *Untying the Knot*, (Cambridge, 1991), p.13-14.

Martin Luther was initially opposed to divorce and declared bigamy preferable to it, although later he would change his opinion and accept the necessity of divorce in certain, limited circumstances.[14] He listed three grounds for divorce in the *Estates of Marriage* (1522). These were sexual impotence, adultery, and the refusal to fulfil one's conjugal duties.[15] In addition, Luther also allowed divorce based on the desertion of one spouse by the other, although this desertion had to be wilful or malicious. He also stated that the abandoning spouse should be threatened with banishment if they refused to return. If a spouse left the conjugal home for valid reasons (trade, for example) and did not return, divorce was not allowed. Luther viewed divorce as an action of last resort, and he believed that in cases of marital dispute, the spouse accused of impotence, adultery, or refusal to fulfil conjugal duties, should ask forgiveness of the other party, and that party should forgive the sins of the other. Luther's acceptance of divorce was very limited in scope, but it does illustrate a difference in the concept of marriage between Lutherans and Catholics. Reluctant as he was to allow divorce, Luther accepted it in cases where procreation was impossible, as this was one of the primary goals of marriage, without which no marriage would be complete.

Jean Calvin's teaching on divorce influenced family legislation in Switzerland, the Netherlands and in Scotland. He believed that man and woman came freely to marry each other, but that God then bound them in an indissoluble knot, from which they could not be disentangled. However, Calvin accepted divorce on grounds of adultery,

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[14] Martin Luther, *The Babylonian Captivity of the Church*, in *Luther's Works*, (Philadelphia, St. Louis, 1959), XXXVI, p.105-106. Quoted in Phillips, *Putting Asunder*, (Cambridge, 1988), p.45.
[15] Martin Luther, *The Estates of Marriage* (1522), in *Luther's Works*, (Philadelphia, St. Louis, 1959), XLV. In Phillips, *op. cit.*, p.46.

as the Old Testament said that an adulterous wife should be put to death.[16] For Calvin, divorce would act as a substitute for the death penalty, and either husband or wife could divorce if the other party was found guilty of adultery:

> "Today it is the perverted indulgence of magistrates that makes it necessary for men to divorce their impure wives, insomuch as there is no punishment for adultery."[17]

Although procreation was also important to Calvin's idea of marriage, he ruled out impotence as a reason for divorce and advised those who were deprived of sexual fulfilment to be guided by the Lord, who would give them strength to maintain their sexual continence.[18] Despite the fact that Calvin believed adultery to be the only valid grounds for divorce, he allowed divorce for reasons of religious difference and desertion. Calvin believed that desertion would inevitably lead to adultery due to the weakness of humans. Calvin, like Luther, ruled out the possibility of divorce for reasons of emotional incompatibility. According to Calvin, such unhappiness (ensuing from this incompatibility) was the result of Original Sin and was divinely ordained.[19] The emphasis on the importance of procreation and sexual fidelity in marriage characterised Luther and Calvin's teaching on marriage and also led them to accept a limited form of divorce if the conditions of marriage were not fulfilled through impotence, infidelity, or desertion. However, they saw no reason why divorce should be accorded to those who were emotionally incompatible, as although companionship and affection may have had their place in marriage they were not deemed sufficiently important that their absence might occasion a divorce.

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[16] Jean Calvin, *A Harmony of the Gospels Matthew, Mark and Luke*, (Edinburgh, 1972), volume I, p.190. In Phillips, *op. cit.*, p.53.
[17] Calvin, *Ibid.*, II, p.247. In Phillips, *op. cit.*, p.53.
[18] *Ibid.*, II, p.246-247. In *Ibid.*, p.54.
[19] Jean Calvin, *Sermon on the Epistle to the Ephesians*, (Edinburgh, 1973), sermon 39, p. 568. In Phillips, *op. cit.*, p.54.

Martin Bucer, the reformer of Strasbourg, was exceptional among Protestant reformers, as he allowed divorce for a number of reasons that were not all connected with sexual fidelity or the ability to procreate. This was due to his understanding of the meaning and function of marriage. Calvin and Luther may have stressed the importance of sexual fidelity and procreation in marriage but Bucer went further. He set out four criteria as essential for the constitution of a legitimate marriage: a married couple should reside in the same home; they should love one another with benevolence and charity; the husband should preside over the family with his wife acting as an able assistant; the couple should remain sexually faithful to one another. If any of these conditions were not fulfilled then the marriage could be questioned. By broadening the idea of marriage to insist on the presence of such subjective quantities as love and affection, Bucer opened up the possibility of divorce on wider grounds than adultery or desertion.[20] By thinking of marriage as an institution where love, affection, and procreation occur, Bucer made marriage more fragile as he placed higher demands upon it. It was not sufficient to have children and remain faithful, the couple should also share love for one another. In order to remedy marriages where this was not the case, Bucer went beyond the mainstream Protestant concept of divorce as a consequence of matrimonial fault, and allowed it for cases of emotional incompatibility. He allowed divorce for adultery, desertion, mutual consent and simple repudiation of one spouse by another. This attitude was remarkable for the time. Instead of allowing the community to judge marriages by deciding whether there was matrimonial fault or not, Bucer allowed each individual the freedom to decide whether or not they were happy in a marriage, and also gave them the opportunity to dissolve that marriage, the disapproval of the community

[20] Martin Bucer, *De Regno Christi*, ch. XXXIX, p.209. In Phillips, *op. cit.*, p.45.

notwithstanding. Bucer is remarkable in this respect because he was alone in proposing such a radical reshaping of marriage. Later, those who advocated a divorce law during the French Revolution would share his insistence on the ability of the individual to decide whether they should remain in a marriage. As Bucer emphasised the importance of emotional compatibility in marriage, so did revolutionary proponents of divorce. Both concluded that a no-fault form of divorce was necessary to allow emotionally incompatible couples to separate.

(iii) Early secular proponents of divorce.

All French commentators on divorce referred to precedent in their criticisms of marital indissolubility. They referred to the divorce laws of the Ancients and of Protestant countries. They also cited more recent, secular authors who favoured the introduction of a divorce law. Grotius, Pufendorf, Montaigne, Milton, and Locke all opposed the indissolubility of marriage as set out in Catholic doctrine. Although Montaigne's attitude to marriage was different to that of Hennet, Hennet cited him as an early advocate of divorce.[21] Montaigne's attitude to marriage was cynical and did not accept that passionate love could survive between man and woman in marriage. He mockingly compared the relationship between humans and marriage to the relationship between birds and cages; those on the exterior wanted to enter, and those on the inside wanted to escape. The pro-divorce authors were more optimistic about

[21] Albert Hennet, *Pétition à l'Assemblée Nationale par Montaigne, Charron, Montesquieu, et Voltaire, suivi d'une Consultation en Pologne et en Suisse*, (Paris, 1791). Whereas Hennet held the modern view that marriage was an institution where consenting individuals should come together to share mutual affection and have children for their own personal benefit as well as for the good of the community, Montaigne held a rather different view. He believed that while love and passion were normal outside of marriage, love had no place within marriage as it was an uncontrollable and selfish emotion, while marriage was an institution designed for the benefit of the community, not for the individual pleasure of the spouses. See "On some verses of Virgil," *Essais,* book III. In Michel de Montaigne (trans. Donald M. Frame), *The Complete Works of Montaigne*, (London, 1957), p.645-646.

marriage, but they often cited Montaigne's argument that marriages succeeded in Ancient Rome because of the existence of a divorce law. He held that the possibility of marital dissolution made couples careful not to give offence to one another, and thus paradoxically strengthened marriage bonds:

> "We have thought to tie the knot of our marriages more firmly by taking away all means of dissolving them; but the knot of will and affection has become loosened and undone as much as that of constraint has been tightened. And on the contrary, what kept marriages in Rome so long in honour and security was everyone's freedom to break them off at will. They loved their wives better because they might lose them; and with full liberty of divorce, five hundred years and more passed before anyone took advantage of it. 'What is allowed we scorn; what's not allowed we burn for.' (Ovid)"[22]

Montaigne's concept of marriage was different from that of the later Enlightenment and revolutionary writers, but he gave them an important secular argument with which to advocate divorce, that marriages would be strengthened by the existence of a divorce law as it would encourage couples to behave affectionately and honestly to each other in order to avoid the possibility of rejection and divorce.

Milton, although an English writer, gave another example of secular divorce to later French critics of marital indissolubility. Like Bucer, who influenced his writings on divorce, Milton claimed that marriage was more than a forum for legitimate sexual relations and the provision of children for the community. He believed that marriage should also provide the individuals concerned (particularly the men) with companionship, conversation, and comfort.[23] Following Bucer, Milton favoured

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[22] *Essays*, book II. "That our Desire is increased by Difficulty." In Michel de Montaigne, *op. cit.*, p.466. In the article "Divorce" Boucher d'Argis disagreed with Montaigne and Montesquieu, who both claimed that divorces were rare in Ancient Rome. See Denis Diderot & Jean d'Alembert, *Encyclopédie ou Dictionnaire Raisonné des Sciences, des Arts, et des Métiers. Nouvelle Impression en facsimile de la première édition de 1751 à 1780*, (Stuttgart, 1988), volume IV, p.1083-1085.

[23] Milton wrote four pro-divorce tracts between 1643 and 1645. John Milton, *The Doctrine and Discipline of Divorce: restor'd to the good of both Sexes, From the bondage of Canon Law, and other*

divorce for reasons other than adultery or desertion as his understanding of marriage embraced more than legitimate procreation. For Milton, as for later advocates of divorce, individual happiness in the form of companionship and comfort were important components of any marriage, and in the absence of these components, divorce should be allowed.[24]

James F. Traer states that John Locke, and the natural law theorists Samuel Pufendorf and Hugo Grotius, saw no reason why marriages should be indissoluble.[25] Hugo Grotius, while admitting that God probably favoured the indissolubility of marriage, indicated that divorce had been allowed under the Hebrews, Egyptians, Romans, Greeks, and Persians.[26] Samuel von Pufendorf highlighted the contractual nature of marriage. He stated that if the terms of marriage were not fulfilled through breaches of the marriage agreement, then divorce was justified.[27] Although these works were known in France, the contractual argument did not drive the main arguments for divorce. Arguments for divorce were driven by a new understanding of the nature of marriage and the place of the individual within society. Those who advocated divorce during the Revolution believed that the individual had the right to choose his or her

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mistakes, to the true meaning of Scripture, in the Law and Gospel compar'd, (London, 1643). John Milton, *The Judgement of Martin Bucer, concerning Divorce*, (London, 1644). John Milton, *Colasterion*, (London, 1645). John Milton, *Tetrachordon*, (London, 1645).

[24] For a more complete treatment of Milton's opinions on divorce see Roderick Phillips, *Putting Asunder*, (Cambridge, 1988), p.119-126, and John Halkett, *Milton and the Idea of Matrimony: A Study of the Divorce Tracts and "Paradise Lost,"* (New Haven, 1970).

[25] Locke, in the *Two Treatises of Government* stated that there was no necessity for any couple to remain perpetually bound together as the marriage contract was voluntary, and could be dissolved either by mutual consent or in accordance with certain conditions. See John Locke, *Two Treatises of Government* (1690), (London, 1984), p.156-157.
See James F. Traer, *Marriage and the Family in Eighteenth Century France*, (London, 1980).

[26] Hugo Grotius (trans. Francis W, Kelsey et. al.), *The Law of War and Peace*, (Oxford, 1925), p.234-238. Traer indicates that this work circulated freely in France, as the catalogue of the *Bibliothèque Nationale* lists sixteen Latin editions, four French editions, and many extracts and summaries in French published between 1625 and 1773. In James F. Traer, *op. cit.*, p.50.

[27] The conditions given to justify divorce were adultery by a wife, desertion, or refusal to cohabit. Samuel Pufendorf (trans. C.H. Oldfather & W.A. Oldfather), *The Law of Nature and Nations*, (Oxford,

happiness, even if this resulted in the break-up of marriage. Thus, the fundamental arguments for divorce were secular, and centred around the importance of individual happiness as a basis for social and cultural progress.

2. The Enlightenment Critique of Marital Indissolubility.

(i) Exotic criticism of marital indissolubility.

The European Enlightenment was characterised by a general critique of social *mœurs*.[28] In France, part of this critique focussed on marital law and the seeming disparity between Catholic teaching, which stressed the importance of celibacy before marriage, consent and sexual fidelity in marriage, and the actual practice of individuals in the eighteenth century. Critics said this was characterised by libertinism and marital infidelity. The *philosophes* who criticised *Ancien Régime mœurs* may be roughly divided into two groups: those who chose exotic settings to attack European *mœurs*, and those who used historical examples to criticise Catholic marriage doctrine.

Montesquieu's *Persian Letters* (1721) and Diderot's *Supplément au Voyage de Bougainville* (1796) appeared at opposite ends of the eighteenth century. Both works use the device of an exotic setting or exotic voices to criticise European culture of the time.[29] Letter 116 of the *Persian Letters* ("Usbek to Rhédi. The Christian Ban on

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1934), volume II, p.389-877. According to Traer, seven editions of this work appeared in France during the eighteenth century, the most influential being that of Jean Babeyrac. In Traer, *op. cit.*, p.50.

[28] See Peter Gay, *The Enlightenment: an interpretation; the science of freedom*, (New York, London; Norton, 1977).

[29] Although first published as the *Supplément* in 1796, Diderot's work had originally been published in Grimm's *Correspondance Littéraire* in four instalments during the months of September, October 1773, and March and April 1774. The text was revised in 1778 or 1779, and finally published as a

Divorce as a Cause of Depopulation") raised all the criticisms of marital law that were later used by the *divorçaires*. Usbek generated a natalist argument for divorce and ascribed low population growth to its absence. He reminded the reader that divorce had been allowed by pagan religions, but also claimed that marital indissolubility denuded marriage of pleasure and discouraged young people from marrying for fear that they would be perpetually bound together in an unhappy union.[30] He stated that marriage entailed freedom of choice and emotional attachment; therefore one had to accept the possibility of a change of heart as, according to Usbek, the heart is inconsistent and always liable to change:

> "No account was taken of distaste, personal whims, and temperamental incompatibility; an effort was made to control the human heart, the most variable and inconsistent thing in nature; people were coupled together irrevocably and hopelessly, a mutual burden, almost always ill-assorted."[31]

Montesquieu, through the voice of Usbek, then praised the institution of divorce, claiming that the possibility of divorce would focus the minds of young couples. Echoing Montaigne, he said that given the knowledge that one spouse could escape the other and remarry, they would both take care to treat each other well for fear of abandonment:

> "Nothing had made a greater contribution to mutual attachment than the possibility of divorce. A husband and wife were inclined to put up with domestic troubles patiently, because they knew that it was in their power to bring them to an end, and often they had this power at their disposal all their lives without using it, for the unique reason that they were free to do so."[32]

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single work in 1796. See Peter Jimack, *Diderot. Supplément au Voyage de Bougainville*, (London; Grant and Cutler, 1988), p.11.

[30] Montesquieu (trans. C.J. Betts), *Lettres Persanes*, (London, 1973), letter 116, p.209. P. Barrière, in the *Revue d'Histoire Littéraire de France* (1951) suggested that Montesquieu favoured the introduction of divorce because of his unhappiness with his own domestic situation after marrying in 1715. He claimed that Usbek's life was based on that of Montesquieu. See Montesquieu, *op. cit.*, p. 304 (letter 8, note 1), and p.326 (note to letter 116).

[31] *Ibid.*, p.210.

This perception of marriage as the private affair of two individuals, rather than an arrangement decided on by parents or community for the perpetuation of a family and the consolidation of wealth is the form of union described by Shorter as the modern marriage.[33] This form of secular marriage, which prioritised individual subjective emotions over community interest, was the one also envisaged by the pro-divorce revolutionaries (although many also saw marriage as the backbone of society). They also believed that a divorce law was necessary, as the happiness of individual within the relationship was a crucial component of such marriage.

Diderot's work used a similar device to criticise European society. Through a stark portrayal of the sexual behaviour of the Tahitians, he provided a critique of the theory of Christian fidelity in Europe. He changed the reality of life in Tahiti to heighten his critique, but was more concerned with highlighting the hypocrisy of European sexual morality and behaviour, than with an accurate portrayal of the Polynesian island.[34] While not openly advocating divorce, Diderot criticised the marital regulations that made women little more than the property of their husbands, and he believed that Catholic doctrine, which celebrated celibacy and condemned all forms of extra-marital sexual behaviour, went against nature.[35] Diderot argued, through the voice of the Tahitians, that European moral theory was depraved as people were led to believe that their natural inclinations were wrong, resulting in feelings of guilt for those who

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[32] *Ibid.*, p.210.

[33] Edward Shorter, *op. cit.*

[34] Although Diderot painted a picture of sexual freedom and equality between the Tahitians, the reality was quite different. Women were subject to their menfolk, the Tahitians punished crimes of theft severely, and there was a strict caste system on the island. A striking example of Diderot's manipulation of the facts in order to idealise Tahiti and denounce the corruption and decadence of Europe was when he stated that the French sailors had infected the local women with syphilis, when the opposite was the case. However, the inaccuracy is not entirely relevant as Diderot's intention was to create an idyllic depiction of sexual mores in order to heighten the contrast with the conventions of European culture. See Peter Jimack, *Diderot. Supplément au Voyage de Bougainville*, (London; Grant and Cutler, 1988), p.25, 31-35.

followed their natural inclinations. Through the Tahitian Orou, he stated that compulsory fidelity could not work and would only lead to unhappiness and deceitful behaviour of otherwise honourable individuals.[36]

Diderot and Montesquieu shared the idea that individual happiness and freedom to chose and change one's sexual partner were characteristics of human nature. Although the pro-divorce writers did not advocate the abandonment of marriage, they did see divorce as a practical solution to certain problems within society, such as the failure of marriage, individual unhappiness in a union, and the desire to have children if one was married to a sterile partner. They also insisted that laws should reflect morals and believed that a divorce law would encourage the cultivation of happy marriages and stable society as a result of happy individuals in these felicitous marriages.

(ii) The historical precedent argument.

The most common method of criticising contemporary marriage legislation was to show historical precedent for divorce in the distant and near past. This style of argument did not simply point to the availability of divorce in distant and alien cultures but told the eighteenth century public that divorce was neither strange nor foreign, rather that it had merely fallen into disuse in Western Europe. The writers did not openly argue for the introduction of divorce legislation, instead they indicated the many ways in which the Ancients divorced, thus displaying possible examples for the re-introduction of divorce. The exception to this discreet approach was Voltaire, who openly mocked Catholic marriage convention and practice. This model of historical justification would later be used by the revolutionary proponents of divorce to show

[35] *Ibid.*, pp.39-40.

precedent for divorce. It allowed them to argue that divorce was not a novel concept or unique to foreign cultures, and it gave them examples for possible divorce legislation. While the pre-revolutionary writers did not openly call for divorce, the political and cultural climate in which they wrote must be recalled; an *Ancien Régime* monarchy with Catholic marriage doctrine enshrined in law.[37] Both cultural and political circumstances had changed radically by the years 1789 to 1792, when most of the explicitely pro-divorce pamphlets were written and the law introduced.

David Hume (1742) and Boucher d'Argis in the *Encyclopédie* (1754) both wrote about the historical precedent for divorce in western culture.[38] Hume began his essay by taking a Lockean stance, emphasising the mutually consensual nature of marriage, stating the mutual obligation of the parents to bear children and to take responsibility for their rearing and education. After these essential tasks had been accomplished, the rules and regulations governing marriage could vary according to the jurisdiction and inclination of different peoples. Hume insisted that it was only natural that marriage laws were different from place to place, and that uniformity of marital law was ridiculous:

> "And as the terms of his engagement, as well as the methods of subsisting his offspring, may be various, it is mere superstition to imagine, that marriage can be

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[36] Denis Diderot, *Supplément au Voyage de Bougainville, Pensées Philosophiques, Lettres sur les Aveugles*, (Paris; Garnier Flammarion, 1972), p.157-159, and P. Jimack, *op. cit.*, p.40.

[37] Other exceptions to this discretion were Cerfvol and Philbert, who wrote a number of works openly calling for the introduction of divorce. Cerfvol, *Mémoire sur la Population*, (London, 1768); *Législation sur le Divorce*, (London, 1770); *Le Parloir de l'Abbé de *** ou Entretien sur le Divorce par M. de *** Suivi de son Utilité Civile et Politique*, (Geneva, 1770); *La Gamologie, ou de l'Education des Jeunes Filles Destinées au Mariage*, (Paris, 1772). Philbert, *Cri d'un Honnête Homme*, (n.p., 1768); *Législation du divorce, précédé du Cri d'un honnête homme qui se croit fondé en droit naturel et divin à répudier sa femme*, (London, 1769).

[38] David Hume (ed. Eugene F. Millar), "Of Polygamy and Divorce," in *Essays Moral, Political, and Literary*, (Indianapolis, 1985). The essay first appeared as essay ten in the second edition of the *Essays Moral and Political*, (Edinburgh, 1742).

entirely uniform, and will admit only one mode or form."[39]

Here Hume denied the possibility of only one uniform vision of marriage, and while not advocating divorce, the essay implied that monogamous, indissoluble marriage was not the only valid marital structure. He then gave various examples of different cultures where polygamous marriages occurred.[40]

Having rejected polygamy for western culture, Hume then considered the question of divorce in a western context. He acknowledged that divorce had been practiced among the Greeks and Romans, and then outlined the potential advantages of divorce for individuals and society. The first advantage was one that Montesquieu had already mentioned in the *Lettres Persanes*. This was the idea that although subjective emotional love formed an important component of the marriage bond, it was liable to change or fade away over time or through the emotional incompatibility of the couple:

> "How often does disgust and aversion arise after marriage, from the most trivial accidents or from an incompatibility of humour; where time, instead of curing wounds, proceeding from mutual injuries, festers them every day the more, by new quarrels and reproaches? Let us separate hearts, which were not made to associate together."[41]

In this passage, Hume proposed divorce on the grounds of mutual incompatibility, foreshadowing the arguments of pro-divorce authors during the period 1789-1792. He argued that divorce by mutual consent was necessary in order to allow couples that no longer loved one another to separate. He also reasoned that the human heart loved liberty and needed at least the possibility of freedom in order to be happy. This desire

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[39] *Ibid.*, p.182.
[40] He gave examples of different forms of polygamy in Tonquin, the republic of Athens, among the Sevarambians, and the ancient Britons. See Hume, *op. cit.*, p.181-183.
[41] *Ibid.*, p.187.

for liberty coincided with man's desire for variety, which could also be accommodated by a divorce law.[42]

In the final paragraphs of the essay, Hume considered three arguments against divorce. The first objection was that divorce would harm children, the second that although man enjoys liberty, he also accepts constraint and would be able to discipline himself in order to accept marital indissolubility. In addition to these arguments, Hume forwarded a third opinion shared by Montaigne, the idea that passionate love had no place in marriage. Both writers believed that passionate love wished only for liberty and could not be constrained by the ties of marriage; instead friendship which would prosper under constraint, should be the abiding emotion in marriage:

> "We need not therefore, be afraid of drawing the marriage-knot, which chiefly subsists by friendship, the closest possible. The amity between the persons, when it is solid and sincere, will rather gain by it: And where it is wavering and uncertain, this is the best expedient for fixing it."[43]

Finally, Hume stated that it would be foolhardy to unite a man and woman together without making the tie permanent, as the possibility of separation would cause anxiety and strain to both parties to the union. Although the essay "Of Polygamy and Divorce" is ambiguous as to the author's opinions on divorce, Hume's ultimate opinion as to the utility or otherwise of divorce is not the relevant point. The relevance of the essay is that it provided concrete examples of precedent and argument for divorce that would later be deployed under different political and cultural circumstances.

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[42] *Ibid.*, p.187-188.
[43] *Ibid.*, p.189.

Boucher d'Argis' historical essay in the 1754 edition of the *Encyclopédie* stated the orthodox Catholic view that marriage was an indissoluble bond. The author then described the various provisions for divorce among the Hebrews and the Ancient Romans. The Ancient Jews could repudiate their wives if they caused offence, while divorce was practiced in Ancient Rome under different emperors and with a variety of divorce regulations.[44] Although the essay superficially supports the Catholic doctrine of marital indissolubility, the author admitted that divorce was used even when the Romans became Christians. Furthermore, Boucher d'Argis claimed that the Romans introduced divorce to Gaul, and that Charlemagne divorced his first wife because she was not a Christian.[45] In addition, the essay contains a divorce law supposedly used by the Romans, a document that shows striking similarities to the divorce law later proposed by Hennet.[46] This style of essay, tracing the history of divorce was adopted by pro-divorce writers in the early revolutionary period who used such arguments to establish an historical basis for divorce, before introducing justifications for divorce based on the ideals of liberty and human happiness.

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[44] "Divorce" in the *Encyclopédie Raisonnée des Sciences, des Arts, et des Métiers. Nouvelle impression en facsimile de la première édition de 1751 à 1780*, (Stuttgart, 1988), volume IV, p.1083, 1084. According to the author, only men were allowed to divorce until the emperor Julien introduced a law permitting women to divorce. However, if women divorced, they were obliged to return to their parents and give the keys of the marital home to the husband.

[45] *Ibid.*, p.1084.

[46] The reciprocal causes for divorce outlined in the essay were the mutual consent of husband and wife (or the consent of one spouse and that of the parents of the other spouse); adultery by either party; violence by one spouse towards the other, or the attempted murder of one spouse by the other; impotence manifested over two or three years; theft or larceny by one spouse; crimes or sacrilege; the violation of a burial ground; attempted poisoning; treason; the profession of a vow of chastity; long absence; the discovery that one's spouse was a slave; the capture of one's husband by an enemy army and his imprisonment for over five years. Husbands could also divorce their wives for the following reasons: premeditated abortion; if one's wife sought another husband while already married; if a wife dined with other men despite being forbidden to do so by one's husband; if one's wife went to the communal baths with other men; if a wife falsely accused her husband of wrongdoing; if one's wife spent the night outside the marital home or if she went to the public games without permission. The person responsible for the divorce had to provide for the children of the marriage. If they were unable to do so, then the spouse's former partner would have to provide for them. Divorcees were free to remarry.

In *The Spirit of the Laws* (1748), Montesquieu discussed divorce in ancient societies.[47] In book sixteen, chapter fifteen, Montesquieu stated that women should have the right to repudiate their husbands. He argued that this provision would not be necessary for husbands as they had adequate authority at their disposal due to their legal superiority. Women, Montesquieu argued, needed the protection of repudiation due to their inferior status in marriage. In addition, he claimed that women would be loath to use this provision, as it would be more difficult for women to remarry than for men:

> "It is always a great misfortune for her to go in search of a second husband, when she has lost the most part of her attractions with another."[48]

In the subsequent chapter, Montesquieu, like Boucher d'Argis after him, outlined the conditions of divorce in Ancient Rome. While not an open call for divorce, Montesquieu illustrated that divorce could serve to protect the happiness of individuals even if it were potentially harmful to children, and therefore not necessarily beneficial to society.[49]

Voltaire also wrote in favour of divorce, although his style was more combative than that of other authors. In common with the writers previously mentioned, he used historical precedent to show that divorce was not a novel idea for Europe, but he openly attacked the Catholic Church and its authority in French society as manifested by its influence on marriage law. Voltaire stated that divorce was permitted in the

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In *Ibid.*, p.1084. Hennet adopted many of these motives in his plan for a divorce law. See Albert Hennet, *op. cit.*, chapter 2, book III.

[47] Charles de Secondat, Baron de Montesquieu (trans. Thomas Nugent), *The Spirit of the Laws* (Geneva, 1748). In Mortimer Adler (ed.), *Great Books of the Western World. Montesquieu, Rousseau*, (Chicago, 1990). See book XVI, ch. 15 & 16.

[48] *Ibid.*, book XVI, ch.15, "Of Divorce and Repudiation," p.120. Montesquieu differentiated between divorce and repudiation, stating that the former was arrived at by the mutual consent of both parties, while the latter was formed by the will of one spouse.

[49] Montesquieu, *op. cit.*, book XVI, ch.16, "Of Repudiation and Divorce among the Romans," p.120-121.

Protestant and Greek churches, as well as in the early Christian Church. He mocked the defenders of marital indissolubility by alleging that marriage and divorce went hand in hand:

> "Le divorce est probablement de la même date à peu près que le mariage. Je crois pourtant que le mariage est de quelques semaines plus ancien; c'est à dire qu'on se querella avec sa femme au bout de quinze jours, qu'on la battit au bout d'un mois, et qu'on s'en sépara après six semaines de cohabitation."[50]

The article "Adultery" used the fictitious example of an unfortunate magistrate who was unjustly punished by the behaviour of his wife and the hypocrisy of the law. Voltaire spared no mercy for the Catholic Church as he claimed that the wife of the magistrate had engaged in public scandals after they married as a consequence of having been debauched by a priest before her marriage. The husband had no choice but to separate from his wife but found himself in an impossible position, as he still desired the company of a woman but could not remarry, and did not wish to take a concubine or a prostitute. Voltaire painted an image of a man wronged by foolish laws, shamed by his wife, and punished for her crimes by enforced celibacy. The law offered no solace, as he would be obliged to fornicate if he wished to satisfy his natural desires. Voltaire blamed the Church and its laws for placing this man, and others like him, in such a dilemma:

> "Mon épouse est criminelle et c'est moi qu'on punit...Les lois civiles d'aujourd'hui, malheureusement fondées sur le droit canon, me privent des droits de l'humanité. L'église me réduit à chercher ou des plaisirs qu'elle réprouve, ou des dédommagements honteux qu'elle condamne; elle veut me forcer d'être criminel."[51]

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[50] Article "Divorce" in *Dictionnaire Philosophique*. In Voltaire (Louis Molard ed.), *Œuvres Complètes*, (Paris; Garnier, 1870-1880). Also in "Extrait du *Dictionnaire Philosophique de Voltaire*," in Albert Hennet, *Pétition à l'Assemblée Nationale par Montaigne, Charron, Montesquieu, et Voltaire, suivi d'une Consultation en Pologne et en Suisse*, (Paris; Desenne, 1791), p.13.

[51] *Ibid.*, p.17.

Voltaire argued that sexual relations and the desire to marry were natural to humans, even if their first union did not last, and he explicitly identified Church interference in matters of civil law as the cause of great unhappiness, particularly for those who could not escape from a failed marriage. For Voltaire and the other critics of Catholic marriage law, the provision of separation only forced unfortunate individuals into a life of celibacy they had not chosen. This could only lead to unhappiness and possible immorality, even though the law was supposed to protect society and safeguard the morals of all citizens.[52]

(iii) The balance of affection and interest in marriage.

While the idea that affection had become an important component of marriage by the late eighteenth century is widely accepted by the principal commentators on the development of the family, much variation existed in actual marriage practice.[53] Lawrence Stone indicates that among the English propertied elite, the parents would normally select potential spouses for their children, agree on financial terms, and only then seek the consent of the couple. This contrasted with courtship lower down the social scale, where a spouse might decide to marry without even asking for the consent of their parents.[54] Stone agrees that emotional compatibility had become an important component of marriage by the eighteenth century, and this point is empirically illustrated in Margaret Darrow's study of marriage in eighteenth century Montauban, in southwestern France. Although far from conclusive, and narrow in its

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[52] See Etienne Lenglet, *Essai sur la Législation du Mariage*, (Paris, 1792), p.29-37, and P.P. Alexandre Bouchotte, *Observations sur l'Accord de la Raison et de la Religion pour le Rétablissement du Divorce, l'Anéantissement des Séparations entre Epoux, et la Réformation des Lois relatives à l'Adultère*, (Paris, 1790). Both works express similar sentiments to Voltaire.

[53] See Edward Shorter, *op. cit.*, Jean-Louis Flandrin, *op. cit.*, Denis de Rougemont (trans. Montgomery Belgion), *Love in the Western World* (1940), (Princeton, 1983).

[54] Lawrence Stone, *Road to Divorce. England 1530-1987*, (Oxford, 1992), p.57-61. He also indicates that the poor enjoyed the greatest freedom in choice of partner as their parents were often dead before

geographical scope, this study of petitions appealing for dispensations from Catholic Church impediments to marriage indicates a rise in the importance of emotional attachment as a prerequisite of marriage. Before 1770, only 9% of petitioners to the ecclesiastical court in Montauban cited emotional attachment as one of the reasons for marriage, while this figure increased to 41% of petitioners after 1770. The study also indicates that the importance of emotional ties cut across the social landscape, as all sectors of Montalbanaise society were included in this study.[55] However, despite the increased importance of emotional attachment for marriage, there was no inevitability about the introduction of a divorce law, nor was it by any means certain that it would be used, despite the *philosophes*' criticism of marital indissolubility.[56]

One socio-economic factor that made divorce or separation difficult in practical terms was the existence of the family economy. The typical example of the rural family economy was the farm, where the entire labour of the household (husband, wife, and children) was required to make the farm unit economically viable. Family members were outside the waged economy and were recompensed with food and shelter. This traditional structure made it economically impossible to divorce even if a divorce law

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courtship began many, or the children might have left home in order to find work, thus escaping the influence of parents and community.

[55] Margaret H. Darrow, "Popular Concepts of Marital Choice in Eighteenth century France," *Journal of Social History*, 18, (1985), p.261-272. Cited in Roderick Phillips, *Putting Asunder*, (Cambridge, 1988), p.358.

[56] Phillips signals that recourse to divorce in Protestant countries was very rare. See *ibid.*, p52. In eighteenth century France, the number of legal separations was also considerably lower than divorce figures for the revolutionary period. For the Officiality of Cambrai, Alain Lottin found 593 separation actions between 1710 and 1791. However these figures are probably incomplete according to Lottin and Ronsin. Ronsin does note an increase in demands for separation throughout the century (with the exception of the years 1774 to 1791 when the records are incomplete). There were 140 separations between 1710 and 1736 (5.4 per annum), 325 separations between 1737 and 1774 (8,7 per annum), 120 separations gleaned from incomplete records for the period 1774 to 1791, or 7 per annum. These figures were considerably lower than those for divorce during the revolutionary period (see footnote 63). However, the pattern of separations resembles that of the divorce trend between 1792 and 1802, with the majority of separations taking place in urban areas, and 73.7% of the actions initiated by women. See Alain Lottin, *La Désunion du couple sous l'Ancien Régime; l'exemple du nord*, (Lille, Paris, 1975), Francis Ronsin, *Le Contrat Sentimental*, (Paris, 1990), p.32-37.

existed, especially for the wife who was normally the person to initiate divorce proceedings during the French Revolution. If she chose to divorce or separate, she could find herself without food or lodgings. The rest of the community might also shun her.[57] Phillips highlights this fact in his investigation of divorce in Rouen during the French Revolution, when very few of those who divorced had occupations that were typical of the rural family economy. This does not indicate that the family economy structure had completely disappeared, but it does suggest that those involved in the family economy structure did not divorce.[58] Joan W. Scott notes that although the family economy still existed towards the end of the eighteenth century, many urban women had become engaged in the wage economy of large towns as hawkers, domestics, washerwomen, or other female-dominated occupations.[59] Theoretically, urban-dwelling wage earners had the opportunity to divorce or separate due to the availability of rental accommodation and waged employment. The contrast between the rate of divorce in large towns and the rate for rural France between 1792 and 1802 reinforces this theory.[60]

Other factors were necessary for the introduction and acceptance of a secular divorce law. While the *philosophes* criticised marital indissolubility as part of their general critique of *Ancien Régime* society, they assumed that the law would not change due to

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[57] Stone indicates that there were social problems of potential ostracisation as well as economic problems for those who lived alone in rural society. Roderick Phillips also makes the same point. Lawrence Stone, *op. cit.*, p.3, Roderick Phillips, *Untying the knot*, (Cambridge, 1991), p.110.

[58] Roderick Phillips, *Putting Asunder*, (Cambridge, 1988), p.372-373.

[59] Joan W. Scott, "The Woman Worker," in Geneviève Fraisse & Michelle Perrot (eds.), *A History of Women in the West. Emerging Feminism from Revolution to World War*, (Cambridge Mass., London, 1993), volume IV, p.402-405. See Dominique Godineau, *Citoyennes tricoteuses: Les femmes du people à Paris pendant la Révolution Française*, (Paris, 1988), p.67.

[60] Jacques Dupâquier calculated the rate of divorce (divorces per marriage) for the period 1792 to 1802 at 22.6% for Paris (12,948 divorces), 7.4% for towns with a population over 50,000 (4,977 divorces), 6% for towns with a population between 10,000 and 50,000 inhabitants (7,477 divorces), 2% for the 21 small towns (with a population under 10,000) observed (2,311 divorces). The rate of divorce outside the towns was negligible. See Jacques Dupâquier, "Vers une statistique nationale des divorces sous la première république," in Etudes en l'Honneur de François Lebrun, *op. cit.*

the influence of the Catholic Church on the state. With the advent of the French Revolution, the cultural and political landscape was radically altered. The *divorçaires* of 1789 to 1792 reshaped earlier secular criticisms of marital indissolubility, but they wrote with the expectation that their pamphlets and petitions would be heeded and acted upon as part of the overall revolutionary programme to perfect society. They did not initiate any new debate on divorce, but wrote in a completely new context. The following chapters shall demonstrate how divorce became an important social and cultural issue for revolutionary France. The *philosophes*s and *divorçaires* informed society of the potential societal benefits of divorce, politicians favourable to divorce delayed the introduction of divorce for fear of royalist and ecclesiastical opposition, but members of society continuously called for the introduction of divorce in 1791 and 1792. After its introduction and application some voices from French society called for the reform of the divorce law, others called for its abolition, while certain people called for the maintenance of the 1792 law. The important point to note is that the deputies of the various chambers did not act to introduce or change the divorce law until implored to do so by petitions from members of the public.

Ch.2 Was Divorce a Revolutionary and Republican Idea?

Introduction.

This chapter examines the relationship between the introduction of divorce and the proclamation of the republic in the months of August and September 1792. The introduction of divorce legislation was dependent upon the advent of the French Revolution as there had been ecclesiastical and state opposition to this measure during the *Ancien Régime*. Cerfvol and Philbert were exceptional in developing a systematic argument for the introduction of divorce in pre-revolutionary France.[1] Between the establishment of the *Assemblée Nationale* in 1789 and the introduction of divorce in September 1792, at least twenty pro-divorce texts were published.[2] Undoubtedly, by far the most influential and important of these texts was *Du Divorce* by Albert Hennet. His work drew on the influence of earlier critiques of marital indissolubility and would later influence the September 1792 divorce legislation. Why was there such sudden interest in this subject, and how did it fit into revolutionary experience? The first section of this chapter attempts to answer these questions. More light shall be thrown on this question by an examination of a particular revolutionary group; the individuals involved with the *Cercle Social* and their political allies. Was the issue of divorce an integral part of their social and political programme? Was the discourse enunciated by the writers of the divorce brochures compatible with that of the

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[1] Cerfvol, *La Gamologie, ou de l'Education des Jeunes Filles Destinées au Mariage,* (Paris, 1772). *Législation du Divorce,* (London, 1770). *Le Parloir de l'Abbé de ***, ou Entretien sur le Divorce par M. de ***. Suivi de son Utilité Civile et Politique,* (Geneva, 1770). *Mémoire sur la Population,* (London, 1778).
Philbert, *Cri d'un Honnête Homme,* n.p., 1768.
Voltaire, Montesquieu, Rousseau mention it briefly. See Albert-Joseph-Ulpien Hennet, *Pétition à l'Assemblée Nationale par Montagne, Charron, Montesquieu, et Voltaire, suivi d'une Consultation en Pologne et en Suisse,* (Paris, 1791). In this work, Hennet gathered together the pro-divorce writings of these authors.
[2] Francis Ronsin, *Le Contrat Sentimental,* 1990; p.54.

members of the *Cercle Social* group and their associates? Finally, an examination of the political circumstances surrounding the promulgation of the divorce law of September 1792 will clarify the reasons for the timing of the introduction of this divorce law. Why was this law introduced in the manner that it was? Was the law in accordance with the aspirations of the divorce writers and those involved with the *Cercle Social* group?

1. Social and Political Discourse: The Divorce Pamphlets.

(i) Freedom of the press and the publication of divorce pamphlets.

Prior to the introduction of press freedom with the Declaration of the Rights of Man in 1789, a comprehensive, if not completely effective system of censorship existed in the French publishing and print world:

> La libre communication des pensées et des opinions est un des droits les plus précieux de l'homme; tout citoyen peut donc parler, écrire, imprimer librement, sauf à répondre de l'abus de cette liberté dans les cas déterminés par la Loi.[3]

Publishers were controlled by a system of selective government privilege. Manuscripts were inspected before publication and those publishers who co-operated with the authorities enjoyed the advantages of monopoly and state approval. The authorities also policed the trade after publication.[4] Nonetheless, this system was not entirely successful in the late eighteenth century, and the demand for "philosophical" works (the title given to all banned books by publishers from pornography to

[3] "Déclaration des droits de l'homme et du citoyen". In Marcel Gauchet, *La Révolution des Droits de l'Homme,* (Paris, 1989), forward, p. i-ii.
[4] Daniel Roche, "Censorship and the Publishing Industry", in Daniel Roche & Robert Darnton (eds.), *Revolution in Print,* (London, 1989), p.3.

philosophy) ensured that many publishers contravened the law in order to publish such works.[5]

The authorities had power to prohibit illegal printed editions of books, as well as works that might cause offence. Works that caused offence were divided into three categories: those that undermined the authority of the king, the Catholic Church, or those that contravened conventional morality. Although Robert Darnton stresses that there was some confusion over the legality of certain works, and that there was much demand for so-called "philosophical" books among the reading public, those involved in the illegal book trade could be punished severely. Peddlers could be sent to the galleys, and publishers risked imprisonment in the Bastille.[6]

Works that criticised *Ancien Régime* marriage and separation laws could have caused offence by attempting to undermine the authority of the king, the Roman Catholic Church, and conventional morals. During the pre-revolutionary period, marriage was both a sacred and secular institution, and divorce was forbidden due to the ecclesiastical ruling on the indissolubility of marriage.[7] Therefore, such work would have been censored or published in a clandestine manner. Nevertheless much illegal work was published and circulated in eighteenth century France, so why did over twenty divorce brochures appear suddenly after the fall of the *Ancien Régime*? Let us look, first of all, at some of the pre-revolutionary works that advocated the introduction of divorce in France.

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[5] Robert Darnton, *The Forbidden Bestsellers of Pre-Revolutionary France*, (London, 1996), p.4.
[6] *Ibid.*, ch.1, p.3-22.

Albert Hennet referred to five pre-revolutionary documents that advocated divorce. All the writers cited criticised the Catholic rule of marital indissolubility and pointed to the potential moral benefit of a divorce law, but these works by the *philosophes* did not analyse the question of divorce in a systematic or detailed manner.[8] They usually treated the question of marriage and divorce in the context of a general critique of society. Roderick Phillips states that that famous Enlightenment figures wrote about divorce in a vague manner, while lesser writers dealt specifically with the subject.[9] The only writer who provided a comprehensive body of printed work on the subject of divorce in the pre-revolutionary period was M. de Cerfvol.[10] His *Mémoire sur la Population* advocated divorce as a means of increasing the French population and argued for divorce in a comparable manner to that of the post-1789 divorce brochures:

> "Comme mon principal objet est la pureté des *mœurs*, qui seule peut rendre à la population sa première vigueur..."[11]

He then stated that a law on divorce must be introduced. Like the pro-divorce writers that followed, Cerfvol wrote that divorce was not always illegal in France:

> "Or le divorce était préexistant à la Monarchie en France, il a existé avec elle, et encore concurremment avec la Religion Chrétienne, jusqu'au règne de Charlemagne inclusivement."[12]

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[7] Abbé Barruel, *Lettres sur le Divorce,* (Paris, 1789), seconde partie, troisième lettre.

[8] Extract from the article "Mariage", in Voltaire's *Dictionnaire Philosophique.* Cited in Albert-Joseph-Ulpien Hennet, *op. cit.*, p.13.
The other works referred to by Hennet are *Essais de Montaigne* (vol.2, ch.xlii); Charron, *Extrait de la Sagesse* (first book, ch.xlii); Montesquieu, *Lettres Persanes* (letter cxvi. Usbeck to Rhédi); Montesquieu, *De l'Esprit des Lois* (livre xvi, ch. xv &ch. xvi); Voltaire, *Dictionnaire Philosophique,* (articles on "Divorce" and "Adultère").

[9] The famous writers that Phillips cites are Montesquieu, Condorcet, Voltaire, Diderot, Helvétius, d'Holbach, and Morelly. The lesser writers mentioned are Cerfvol and Lavie. In Roderick Phillips, *Putting Asunder,* (Cambridge, 1988), ch.5.

[10] See footnote one.

[11] Cerfvol, *Mémoire sur la Population,* (London, 1768). Cerfvol was the pseudonym for an obscure writer of pro-divorce works in the latter half of the eighteenth century.

He also argued that the principal cause of immorality in France was the absence of divorce. Divorce would increase the population as happy couples had more children, according to Cerfvol, it would also encourage young people to marry as they would no longer be afraid that one youthful mistake would result in a lifetime of misery. Finally, divorce would act to protect women from malicious husbands. Divorce would be a weapon for women to use either as a tool of liberation or as a means of balancing the marital scales of power. It would protect women from their husbands:

> "Le divorce légal devient le gardien inflexible de l'honneur des femmes, sans leur faire violence."[13]

Although writers of contentious material faced difficulties in publishing their work before the Revolution (Cerfvol used a pseudonym and false place of imprint), it was possible to express views that were favourable to divorce. In his *Pétition à l'Assemblée Nationale,* Hennet cited twelve works published before the opening of the *Etats Généraux* that treated the subject of divorce. However he listed thirty-five works in favour of divorce and five works against the introduction of divorce, all published in three years between 1789 and 1791.[14] Why was there such an interest after 1789 in a subject that had only received sporadic attention in the public arena prior to this date? Only three petitions advocating the introduction of divorce were found in the Cahiers de Doléance of 1789.[15]

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[12] *Ibid.*, p.65.
[13] *Ibid.*, p.13, 24; p.97; p.98.
[14] Albert-Joseph-Ulpien Hennet, *Pétition à l'Assemblée Nationale,* (Paris, 1791), p.26-33. He also stated that while the anti-divorce works were widely available, the pamphlets and books favouring the introduction of a divorce law were more difficult to find as most were sold out due to their popularity.
[15] R. Szramkiewicz See M. Garaud, *La Révolution Française et la Famille,* (Paris, 1978); p.60. The Cahiers in favour of divorce were the *Cahier pour le Tiers du District de l'Eglise des Théatins à Paris*, the *Cahier du Tiers de Châteaudouble en Provence*, and the *Cahier du Tiers de la Prévôté de Fleury-Mérogis* (Oise). There were also two parish cahiers and two cahiers from the clergy that spoke

The advent of the French Revolution liberated the whole area of print debate. It achieved this by guaranteeing freedom of expression in the Declaration of the Rights of Man and the Citizen.[16] This created the opportunity for an open uncensored printed debate on the subject of divorce. The Catalogue de l'Histoire De France in the *Bibliothèque Nationale de France* lists more than 12,000 pamphlets published between 1789 and 1799, of which 9,635 were published between 1789 and 1792. According to Antoine de Baecque these figures are far greater than in any previous period, and Hugh Gough calculates that over 200 new journal titles were published in 1789, and over 300 new titles were published in 1790.[17] Thus, it became easier to publish works on all subjects, including divorce, but we must ask why did such output of work on divorce appear?

Keith Michael Baker defines a political revolution as:

> "...a transformation of the discursive practice of the community, a moment in which social relations are reconstituted and the discourse defining the political relations between individuals and groups is radically recast."[18]

If we accept this definition we can place the discussion and enactment of divorce in the proper revolutionary context. Although there was comparatively little print debate on the subject of divorce in the years before the Revolution, significant themes of the

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out against divorce: from the parish of Aulny-les-Bondis and Stains, and from the Principauté et Province d'Orange, and the Cahier du Vicomte de Soule.

[16] *"Déclaration des Droits de l'Homme et du Citoyen,"* article 11, 26 August 1789. In Marcel Gauchet, *op. cit.*, p. i-ii.

[17] Antoine de Baecque, "Pamphlets: Libel and Political Mythology", in R. Darnton & D. Roche, *Revolution and Print,* (London, 1989), p.165-166.
Hugh Gough, "The Radical Press in the French Revolution", in Patrick Corish (ed.), *Radicals, Rebels and Establishments,* (Belfast, 1985).

eighteenth century Enlightenment included the analysis and criticism of family and marriage laws, the role of religion, and paternal authority.[19] In the context of the French Revolution, some writers developed this polemical discourse into an appeal for divorce. Not only did they seek to justify divorce on moral and philosophical grounds, but they also exhorted the legislators to immediately enact legislation on the matter, as did newspapers favourable to the pamphlets advocating divorce. The final section of Hennet's important work, *Du Divorce,* described how a just law on divorce might be constructed. François Robert, writing in the *Mercure Nationale* supported the introduction of such a law:

> "On ne saurait trop s'empresser de lire cet ouvrage, on ne saurait le lire avec trop d'attention, et nous avons tous lieu d'espérer qu'il engagera nos sages Législateurs à décréter la dissolubilité du mariage, sans laquelle, répétons-le, il sera impossible de parvenir à l'organisation des *mœurs.*"[20]

(ii) Hennet's work and other liberal, secular divorce texts.

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[18] Keith Michael Baker, "On the Problems of the Ideological Origins of the French Revolution", in Dominick La Capra & Steven L. Kaplan (eds.), *Modern European Intellectual History,* (Ithaca, 1982), p.203-204.

[19] R Phillips, *op. cit.*; ch. 5.

[20] Albert Hennet, *Du Divorce,* (Paris, 1789), book 3, "Lois du Divorce".
Mercure Nationale, no. 10, 28 February 1790.
Hennet lists twenty-seven references to divorce in various journals in his *Pétition à l'Assemblée Nationale*, (Paris, 1791).
Pierre-François-Joseph Robert (1762-1826) was born in Brussels and served as a lawyer. He came to Paris just before the French Revolution, and established himself as a shopkeeper and trader in colonial goods. He married Louise Kéralio. With Kéralio and some friends they established *Le Journal d'Etat* on 13 August 1789. This newspaper became the *Mercure National* on 31 December 1789 and was one of the first to disseminate republican ideas in revolutionary Paris. A member of the *Jacobins* and the *Cordeliers* clubs, he was close to the Rolands, Brissot, and Danton. After the flight of the king, he distanced himself from the *Girondins* and in the Convention, he demanded the head of the king. After *thermidor*, he was sent as *depute en mission* to the army at Liege. After this spell, he consecrated his time to his business (he had become a supplier to the army), leaving France after the restoration of the monarchy. See François Robert, *Le Républicanisme adapté à la France* (Paris, 1790) (reprint Paris; EDHIS, 1991). See also Claude Manceron, *La Révolution Française. Dictionnaire biographique*, (Paris ; Renaudot, 1989), p.497-498.

With the fall of the *Ancien Régime* and the ensuing reforms that followed, the divorce writers and the journals supporting divorce saw an opportunity for real change in matrimonial law.[21] The Revolution promised the complete regeneration of society and politics. Divorce, for its advocates, was a combination of both social and political reform, or regeneration, that assured perfection in the private family sphere. Hennet combined the promise of matrimonial reform, with the end of fornication and adultery, the happiness of the individual, and the healthy education of children. The idea of *bonnes mœurs*, both for these writers and the revolutionaries in general, encompassed an idea of honesty and transparency in public life. They believed that marriage should be based on love and affection. Such unions would create individuals who would live happily in the private sphere while contributing to the felicity of the state in the public sphere. Hennet's ideal was:

> "...de rendre tous les ménages heureux, de favoriser les bonnes *mœurs* et de contribuer à la félicité publique."[22]

This would be achieved by the introduction of divorce in order to dissolve discordant marriages:

> "Je regarde l'indissolubilité d'un hymen mal assorti, comme la cause du désordre des *mœurs*."[23]

James Traer claims that the most important argument in favour of divorce was that it would enhance the possibility of freedom and happiness in marriage.[24] Hennet's work on divorce exemplified this particular strand of pro-divorce literature. His argument

[21] Reforms included the abolition of feudal rights on 4 August 1789 and the Declaration of the Rights of Man and the Citizen on 26 August 1789.
[22] Hennet, *op. cit.*, p.v
[23] *Ibid.*, p.85

was liberal in that he, and other writers like him, emphasised the liberty of the individual to dissolve marriages if they were deemed not to satisfy the fundamental requirements of marriage; happiness and the bearing of children:

> "C'est (mariage) un état dans lequel des époux doivent être heureux et avoir des enfants."[25]

The argument was secular as, although Hennet cited religious and historical precedent for divorce, his main justification for divorce was based on secular, rational thought:

> "...je ne lirai plus que dans le grand livre de la raison."[26]

Despite his insistence on the rational basis for divorce, Hennet showed precedent for divorce in Antiquity, early Christianity, the early Catholic Church, and in the Protestant countries.[27] Hennet, along with Pierre-Paul-Alexandre Bouchotte and Simon-Nicolas-Henri Linguet also contradicted contemporary Catholic teaching on Christ's position on divorce. The Catholic Church used the Gospel of Saint John to prove Jesus' opposition to divorce. John's gospel quotes Jesus thus:

> "Let no man cast aside his wife."[28]

Linguet, Bouchotte, and Hennet used the Gospel of Saint Matthew to contradict Catholic teaching:

> "Quiconque renvoie sa femme pour tout autre cas que l'adultère, et en épouse une autre, fornique."[29]

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[24] James F. Traer, *op. cit.* p.105.
[25] Hennet, *op. cit.*, p. 8
[26] *Ibid.*, book one, "Histoire du Divorce". Also p.60.
[27] *Ibid.*, book one.
[28] *Ibid.*; p.17-18.
[29] Simon-Nicolas-Henri Linguet, *Légitimité du Divorce,* (Bruxelles, 1790), p. 13.
Pierre-Paul-Alexandre Bouchotte, *Observations sur l'Accord de la Raison et de la Religion pour le Rétablissement du Divorce, l'Anéantissement des Séparations entre Epoux, et la Réformation des Lois relatives à l'Adultère,* (Paris, 1790); p.36.

The authors concluded not only that divorce was acceptable to Antiquity, the early Church, and Protestant countries, but that scripture also allowed divorce on the grounds of adultery. They did not wish for a divorce law based on biblical precedent, but they were concerned with disproving the Catholic Church view that no precedent for Catholic divorce existed. It was for this reason that Hennet was so concerned with establishing historical precedent for divorce in Christian countries.[30]

These writers advocated the reintroduction of divorce for a variety of reasons, it potential to reduce paternal abuses in the family, increase childbirth, liberate women in the household. They also hoped that divorce legislation would encourage the general happiness of society. One anonymous author stressed the importance of happiness for the success of a marriage and the potentially dire consequences of the indissolubility of marriage. Pro-divorce authors argued that legal separation was a poor substitution for divorce as it forced unnatural celibacy or immoral fornication upon the separated parties. Those in favour of divorce were usually vehemently opposed to legal separation. They believed that separation without the possibility of remarriage caused a dire threat to the well being of society as it led to adultery by those who could not remarry They argued that indissolubility of marriage and legal separation generated unhappiness in families and in society as individuals could not free themselves from the constraint of unhappy marriages. One anonymous author contrasted nature's love of happiness and freedom with man's imposition of

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[30] Linguet, *op. cit.*; p.5-6.
Bouchotte, *op. cit.*; ch.1.
Anon., *Le Divorce ou Art de Rendre les Ménages Heureux,* (Paris, 1790), p.5.
Etienne Lenglet, *Essai sur la Législation du Mariage,* (Paris, 1792); p.25.

indissolubility Integral to the attack on marital indissolubility was a belief that individuals should not be left to fester unhappily in failed marriages. They believed that such actions went against the desire of nature for freedom and happiness. This belief in the need for individual liberty to pursue one's goals (within an enlightened legislative framework) lay at the heart of the liberal pleas for divorce:

> "La nature, en donnant la femme à l'homme lui avait dit; voilà la compagne de tes jours, que je te donne pour ton bonheur, puisque lorsqu'elle ne le fera plus, je te permets de la quitter: le prêtre a dit; l'homme sera uni à la femme, même lorsque leurs cœurs n'étant plus, cette existence sera pour eux un tourment réciproque."[31]

With reference to the potential dissolution of society as a result of marital indissolubility, Hennet said:

> ...un mauvais époux, un mauvais père, un mauvais fils, sera un mauvais citoyen; et que les haines... gagnant des individus aux familles, des familles à toute la société, amèneront la dépravation universelle des *mœurs* publiques et privées.[32]

Hennet was convinced that the introduction of divorce would serve to benefit politics and society in general. He tied the importance of individual freedom and happiness to that of society in general. In order to do so, he examined marriage, an institution that tied individuals together, and one that most revolutionaries believed lay at the heart of the regenerated society. The issue of divorce was situated in the space between the public and the private sphere. Its promoters promised that it would resolve central

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All of these authors emphasised the legal and historical precedents for the reintroduction of divorce. However, they do not base their principle arguments for divorce on precedent. For these writers, divorce would help purify the *mœurs* of French society and contribute to the happiness of marriages.

[31] Anon., *Adresse à un Grand Prince qui s'est fait Homme,* (s.l., s.d.), p.4.

problems that faced the French Revolution. By purifying the *mœurs* of the family in the private sphere, the household would become a centre of patriotism and virtue.[33] This would begin with the education of children in order to free them from the darkness of the *Ancien Régime*. Therefore, the family would send out healthy citizens to function in the public sphere. According to these writers, divorce was also an element essential for the success of the Revolution. They claimed that it fostered a core value of the Revolution, liberty. Without liberty in marriage, that is liberty to marry the person one loves, to have children, and to be happy in marriage, they believed there could be no liberty in the political community. If the legislators introduced a divorce law, they would enshrine liberty at the heart of the marriage bond:

> "Abuse of liberty is a natural consequence of the oppressive regime of indissolubility of marriage..."[34]

(iii) Other divorce texts and anti-divorce writers.

The Comte d'Antraigues' treatise on divorce provides a more moderate pro-divorce argument to that of Hennet's. Their subsequent careers express their different attitudes towards the Revolution. While Hennet was a *commissaire* at the Ministry of Finance and a man of letters under the Revolution, who later became a *commissaire* for the cadastre at Mauberge under the Napoleonic Empire and the Restoration, Antraigues was from old noble stock in the south of France. He served in the royal army before the Revolution, emigrated in 1790, established a royalist espionage network from

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[32] Hennet, *op. cit.*, p.88.

[33] In this context, *mœurs* refers to the behaviour of the individual in private, the family, and subsequently, in the polity. A responsible upbringing and education in the family would ensure the development of enlightened citizens who would make a contribution to the life of the political community (or support it from the domestic sphere in the case of women).

continental Europe, and then from England, until he was assassinated under mysterious circumstances in 1812.[35]

Antraigues said that he was inspired to write on the subject of divorce by Hennet's work. Although he praised Hennet for pointing out that the Catholic Church had, in the past, accepted divorce and that there was no scriptural impediment to divorce, he wrote that he wanted to express his own different ideas on the subject.[36]Antraigues believed, like Hennet, that divorce was necessary because of the number of unhappy marriages in existence and the improbability of everybody finding the correct partner. He also asserted that divorce would encourage the production of good citizens, through the increased number of happy marriages:

> "Si la liberté publique est le fruit heureux de nos travaux, elle sera cimentée par d'heureux mariages, et des pères fortunés laisseront pour successeurs, de bons citoyens."[37]

There were, however, major differences in their proposed application of divorce law. Hennet and the other liberal divorce writers envisaged a law that would provide the maximum freedom to divorce; couples with children would be allowed to divorce, and divorce by mutual consent was also acceptable to Hennet.[38] Such a law was unthinkable for Antraigues who believed that couples with children should not be allowed to divorce. He argued that children would suffer if their parents were to

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[34] Etta Palm d'Ælders, "Plea to the Legislative Assembly, April 1792", in Levy, Applewhite, Johnson, *Women in Revolutionary Paris,* (Urbana, 1979); p.77.

[35] André Martin, Gérard Walter, *Catalogue de l'Histoire de la Révolution Française*, (Paris, 1943); volume 2, p.484.
Jacques Godechot, *Le Comte d'Antraigues. Un espion dans l'Europe des émigrés*, (Paris, 1986).

[36] Le Comte d'Antraigues, *Observations sur le Divorce,* (Paris, 1789). In Colette Michel (ed.), *Sur le Divorce en France*, (Geneva, 1989), p.13-14.

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divorce. In addition, Antraigues claimed that children might act as a bond between warring couples. Hennet believed that such children would be happier in a peaceful household free from warring parents.[39] Antraigues limited the application of divorce to three causes; adultery, incompatibility of character, and extreme disorder:

> "Cette loi est un malheur, quand elle est devenue nécessaire; et il faut user de tous les moyens possibles, pour rendre ce malheur infiniment rare."[40]

Hubert de Matigny supported Antraigues in this opinion. De Matigny also believed that divorce should be restricted in its application. He compared divorce with a medicine that must be administered prudently to a sick patient.[41] The correct dose would cure the patient but too much would be fatal. Such an attitude shows fundamental differences between the thought of the liberal divorce writers and their more conservative counterparts. The liberal group desired liberal laws that would give the maximum freedom to individuals to divorce if they had just cause, while Antraigues and de Matigny believed in the need for strict laws to police morals. Hennet believed that just laws would lead to the perfection of individuals and society. In time, he believed that divorce legislation would fall out of use as enlightened individuals made enlightened choices in marriage and all other areas of life. Therefore, the law did not need to be restrictive, but equitable:

> "Divorce...est moins l'art de détruire les mauvais mariages, que l'art

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[38] Hennet, *op.cit.*, book 3 "Lois du Divorce", ch. 2.
[39] Antraigues, *op. cit.*, p. 23.
Hennet, *ibid.*, 1789; p.88.
[40] Antraigues, *op. cit.*, p.30. Incompatibility differed from divorce by mutual consent as the former referred to a divorce requested by both spouses, while the latter was a request for divorce by one party for unspecified reasons.
[41] Hubert de Matigny, *Traité Philosophique, Théologique, et Politique de la Loi du Divorce, demandé aux Etats-Généraux par... Louis-Phillipe-Joseph d'Orléans...où l'on traite la question du célibat des deux sexes, et des causes morales de l'adultère,* (s. l., 1789); avertissement, p. x-xi.

de rendre tous les mariages heureux."[42]

Antraigues did not share Hennet's faith in the ability of the French people to regenerate their morals, and believed that too much liberty would lead to the destruction of *bonnes mœurs*. In short, Antraigues believed in the need for a divorce law to remedy bad marriages as they were harmful to society, while Hennet believed in the need for individual freedom and happiness, which extended to the right to divorce one's spouse no matter what the circumstances were. Antraigues' view was diametrically opposed to the liberal divorce writers' thought who believed in the progress of the Revolution, and that more liberty would eventually lead to human happiness. An example of this is Antraigues' criticism of Hennet's proposal for a domestic tribunal to decide on family and divorce matters because French people were too corrupt to properly administer such an institution:

> "Je crois, donc, qu'il ne faut pas établir chez nous le tribunal domestique;
> qu'il serait dangereux pour la liberté... qu'il détruirait les *mœurs*... ou
> plutôt qu'il ôterait le seul frein qui en tient lieu, la crainte de la publicité."[43]

Hennet's work also provoked opponents of divorce to react to his proposals. The *abbés* Augustin Barruel and Armand de Chapt de Rastignac were foremost among his opponents.[44] Barruel was the editor of the *Journal Ecclésiastique,* and a staunch opponent of the Revolution.[45] He emigrated in 1792, returned to France in 1802, and

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[42] Hennet, *op. cit.*, p. 115.
[43] Antraigues, *op. cit.*., p.34.
[44] Abbé Augustin Barruel, *Lettres sur le Divorce,* (Paris, 1789).
Abbé Armand de Chapt de Rastignac, *Accord de la Révélation et de la Raison contre le Divorce,* (Paris, 1790).
Chapt de Rastignac, *Questions envoyées de France en Pologne et réponses envoyées de Pologne en France, sur le Divorce en Pologne,* (Paris, 1792).
[45] He also wrote the *Histoire du Clergé pendant la Révolution Française*, (London, Antwerp, 1794) and the *Abrégé des Mémoires pour servir à l'Histoire du Jacobinisme*, (London, 1798).

became honorary canon of Notre Dame. Chapt de Rastignac was the vicar of Arles, sat in the Constitutional Assembly, and was killed in 1792.[46]

Both men had a very different philosophical outlook to that of Hennet and the other pro-divorce authors. Barruel believed in the authority of the Church and the sinful nature of mankind. For Barruel, the authority and discipline of the Catholic Church was indispensable to the functioning of state and society. Without such authority and direction, sinful man would fall into error and moral depravity. As an *abbé*, he believed in the need to correct man's inevitable failings through the guidance of the moral and spiritual authority of the Church. He did not believe that freedom of expression and the liberty to make one's own choices in a quest for happiness were absolutely necessary for the proper functioning of society. Barruel stated that such a path could only lead to error. He accused Hennet of dishonesty and attacked the *Assemblée Nationale* for allowing impiety by granting freedom of expression and religious tolerance. Barruel said the Assemblée thus sanctioned:

> "L'impiété par une liberté de penser et écrire."[47]

Barruel and Chapt de Rastignac were opposed to the liberties desired by the leaders of the French Revolution and applauded by the pro-divorce writers. Hennet hoped that the legislature would extend the principle of liberty to marital law by granting the freedom to divorce, in the belief that this would end marital unhappiness and encourage loving unions where children would be raised in enlightened, affectionate and patriotic households. Barruel and Chapt de Rastignac were opposed to divorce, as

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[46] G. Walter & A. Martin, *op. cit.*, vol. 1, p.111-112, p.420.
Barruel also wrote the *Histoire du Clergé pendant la Révolution Française*, (London, 1794), and the *Abrégé des mémoires pour servir à l'histoire du Jacobinisme*, (London, 1798).

they believed in the supremacy of Catholic dogma over legislative change in an area where the Catholic Church believed it had precedence. Finally, they were philosophically opposed to the principle of liberty upon which the divorce argument and the Revolution were based upon. The contrasting views of Barruel and Hennet on the matter of divorce reflects a deeper division in their underlying understanding of human nature. Barruel believed that man was naturally sinful, that authority and coercion were necessary to guide man away from his sinful nature. On the other hand, Hennet emphasised the perfectibility of man through the agency of the Revolution and enlightened legislation. In contrast to Barruel, he thought that liberty would guide man to happiness.

(iv) Press reactions to writings on divorce.

Hennet listed a number of journals that had reviewed works on divorce or had commented on the subject of divorce.[48] Nine out of the ten journals praised works promoting divorce, including Hennet's *Du Divorce*. Only one did not. It did not openly criticise divorce but it is probable that the author was opposed to divorce, as it paraphrased the work of the abbé Barruel, *Lettres sur le Divorce*.[49]

Four of the journals that favoured divorce insisted that the introduction of divorce was a logical development from the Declaration of the Rights of Man and the Citizen.[50]

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[47] Abbé Barruel, *op. cit.*, letter 1, p.5.
[48] Hennet, *Pétition...*, (Paris, 1791); p.33-34.
[49] *Journal Encyclopédique ou Universel*, 31 January 1790. Dedicated to the Duc de Bouillon. Price 25 livres, 4 francs in Paris, a bi-monthly journal.
[50] *Annales Universelles,* 1790; no.79. It also praises divorce in nos.41,44,53,56,121, and 124.
Le Moniteur, 25 June 1790. There is a favourable review of Hennet's work in 1 June 1790 edition.
Chronique de Paris, price 30 livres per year. 4 February 1790, no.35. This journal reviewed Hennet in no.8, 8 January 1790.
Révolutions de Paris, edited by Prudhomme. 19-26 February 1791.

They argued that the promise of liberty in the declaration had not been fulfilled, as one could not act as a free individual in the public world if the domestic household was corrupted by an absence of liberty:

> "Suffit-il d'ailleurs de rendre le Français libre dans la vie publique,
> s'il est esclave dans la vie privée?"
> "Sans *mœurs*, point de république, a dit Montesquieu: sans *mœurs*,
> point de constitution...Le divorce est d'ailleurs une conséquence naturelle
> de la déclaration des droits de l'homme."[51]

Five of the publications went further and highlighted the need to introduce divorce legislation. Three of these also claimed that divorce was implicit in the *Declaration of the Rights of Man:*[52]

> "...Je pense et je suis convaincue, au contraire, que nos législateurs
> actuels, avant de se séparer, consommeront leur ouvrage, et ne
> pourront pas se dispenser de porter la constitution à sa perfection."[53]

The authors in these journals also believed that liberty and happiness in public life could not be achieved without a divorce law that would facilitate freedom and happiness in marriage as well as in the household. Pro-revolutionary journalists and pro-divorce authors assumed the revolutionary discourse of liberty. They believed that such a reform should logically ensue from the Declaration of the Rights of Man and the Citizen. This discourse, which amalgamated calls for divorce with the principle of liberty, best exemplified in the work of Hennet, did not engage in a debate with other

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[51] L. Gallois, *Réimpression de l'Ancien Moniteur,* tome 3; 25 June 1790, p.708.
Annales Universelles, no.79, p.231.

[52] The three works that stressed the implications of the declaration and the need for legislation on divorce were the *Annales Universelles, Le Moniteur, & Révolutions de Paris.* See footnote 49.
Feuille du Jour, 30 livres per annum; no.168, 17 June 1791 & no.173, 22 June 1791.
Gazette de Paris, 30 livres per annum; 7 December 1789.The *Gazette* praised the work of Hennet in issues of the 3, 4, 5, and 6 of December 1789.

proponents of a different form of divorce, or even with opponents to divorce. Instead, the discourse developed in the years 1789 to 1792, without any systematic engagement with other discourses opposing the interface of liberty and a revolutionary divorce law. Antraigues, Barruel, and Chapt de Rastignac could not countenance a secular France, governed by laws of reason and abstract secular justice, and thus failed to engage in any great debate with the pro-divorce authors led by Hennet, as their fundamental conception of society was inimical to that of the pro-divorce writers. The pro-divorce authors tried to justify the introduction of a secular divorce law that would benefit public morals, while Antraigues tried to reconcile a restricted divorce law with Catholic doctrine, and the *abbés* Barruel and Chapt de Rastignac refuted any argument that was not founded on the teaching of the Catholic Church and the authority of a Catholic monarchy.

2. The *Cercle Social*. A Republican Group in Favour of Divorce?

(i) Structure of the Cercle Social.

The *Cercle Social* began as a small Parisian club led by the Abbé Fauchet and Nicolas Bonneville. In 1789, the group's principal political objective was the establishment of a new government for Paris. The group reflected at length on the nature of the new regime and on its institutions, which would lead to a consideration of the question of divorce and family legislation. Other key members of the group were Jacques-Pierre Brissot, the *Marquis de* Condorcet, and Jean-Pierre Garran-Coulon. Gary Kates' claims the main philosophical goal of this group was the unification of two truths; the

[53] *Feuille du Jour,* no. 173, p.715.

scientific truth of reason and enlightenment and the democratic truth of the sovereignty of the citizenry.[54] This initial group ceased to function when the communal assembly of Paris disbanded but a larger society, the *Confédération des Amis de la Vérité*, led by the same individuals, emerged in 1790.

The *Confédération* was conceived as a much larger, public forum, directed by a central committee upon which sat Brissot, Bancal, Garran-Coulon, Condorcet, and Godard. The first meeting occurred on the thirteenth of October 1790 in the Palais Royal and the *abbé* Fauchet proclaimed the ideals of the club in the following words:

> "...to banish hate from the earth and allow only love to reign.[55]

The club was organised to accommodate a group of *philosophes* that would deliberate on political principles. It did not attempt to ape the parliamentary style of the Jacobin club; rather it committed itself to an analysis of philosophical ideas, and the works of great writers such as Mably and Jean-Jacques Rousseau.

The *Confédération* met weekly, and for the first two meetings membership was open to the public. Thereafter, only those who subscribed to the organisation's journal, the *Bouche de Fer*, were accorded membership.[56] Deputies of the National Assembly and members of prestigious clubs who did not join the *Confédération* were invited to

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[54] Gary Kates, *The Cercle Social, the Girondins, and the French Revolution*, (Princeton, 1983); ch.2. Kates lists ten members that could be considered as the key members of the *Cercle Social*: Nicolas de Bonneville, an aspiring philosophe; the abbé Claude Fauchet, a bishop in the Constitutional Church; Jacques-Pierre Brissot, the most perceptive politician of the group according to Kates; Jean-Marie Roland, one-time minister of the Interior; the *Marquis de* Condorcet, a renowned Enlightenment philosophe; Henri Bancal, a thinker; François Lanthenas, a physician and expert on revolutionary clubs who also collaborated with Condorcet in the *Journal d'Instruction Social*; Jean-Philippe Garran-Coulon, a politician in revolutionary Paris; Jacques Godard, a local politician; and Jacques-Antoine Creuzé-Latouche, a member of the Constituent Assembly.

[55] *Ibid.*, p.5-6.

[56] *Ibid.*, p.79.

[56] EDHIS (republication), *La Bouche de Fer* (1790-91), (Paris, 1981). Edited by Nicolas Bonneville, printed by the Imprimerie du *Cercle Social*. The journal was published three times a week.

attend meetings. The cost of subscription, at twenty-seven *livres*, limited membership to the wealthier members of society. Doctors, lawyers, and academics were prominent in this new club. The club aspired to act as a focal point of all the diverse clubs, and sought affiliation with other groups. The Jacobin mother club, by forbidding sister associations from forming ties with the *Confédération*, damaged these aspirations.[57]

Although the *Confédération des Amis de la Vérité* and the *Bouche de Fer* ceased their activities after the National Guard, led by La Fayette, fired upon the demonstration at the Champs de Mars in 1791, Bonneville promised in the final edition of the *Bouche de Fer* that the presses of the *Cercle Social* would remain available to publish important information and opinions.[58] The *Cercle Social* then disseminated its ideas through its journals such as the *Chronique du Mois*, an intellectual journal edited by many of the most influential members of the *Confédération des Amis de la Vérité*.[59] Another publication of the Imprimerie du *Cercle Social* was the *Sentinelle*, edited by Jean-Baptiste Louvet. It attempted to influence the Parisian sans-culottes, rally support for the war effort, and boost the popularity of the *Girondin* government.[60]

(ii) The Cercle Social, a republican movement.

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[57] Kates, *op. cit.*, ch.3, "Club Principles and Politics".

[58] Demonstrators marched from the Bastille to the Champs de Mars on Sunday, 17 July 1791 to sign a petition calling for the abolition of the monarchy. The National Guard fired upon them and, subsequently, martial law was imposed in Paris; *Bouche de Fer,* no.96, 18 July 1791.
The final edition of the *Bouche de Fer*, no.104, is dated 28 July 1791.

[59] The *Chronique du Mois ou les Cahiers Patriotiques*, was edited by Etienne Clavière, the Marquis de Condorcet, Louis-Sébastien Mercier, M. E. Guadet, J. Oswald, N. Bonneville, J. Bidermann, A. Broussonet, A. Guy-Kersaint, J. P. Brissot, J.P. Garran de Coulon, J. Dusaulx, F. Lanthenas and Collot d'Herbois. It was published between November 1791 and the summer of 1793.

[60] Kates, *op. cit.*, ch.9, "Posters for the Sans-Culottes: Louvet and the Sentinelle."
Louvet also wrote a novel in favour of divorce, *Emile de Varmont ou le Divorce nécessaire et les Amours du Curé Sevin*, (Paris; Bailly, 1791). See Martin & Walter, *op. cit.*, vol. 3, p.244-246.

Members of the *Cercle Social* demanded the foundation of a republic after the flight of Louis XVI.[61] Leading actors in the group, including Nicolas Bonneville, the Marquis de Condorcet, Jacques-Pierre Brissot, Thomas Paine, and François Lanthenas, called for the abolition of the monarchy as the only way forward for the Revolution. They believed that the king, by fleeing Paris, had broken his bond with the people and abdicated his right to the throne.[62] Other groups called for the introduction of a republic and the *Cordeliers* club was notable among them. François Robert, a prominent member of this group, was one of the first to make his position public, and he published an article calling for the abolition of the monarchy even before the king fled.[63] The key question one must ask is what did the *Cercle Social* want when they demanded a republic?

The problem of calling for a republic was that not everybody agreed upon a coherent definition of a republic. Pierre Nora states that the word only became relevant after the flight of the king when many political actors felt that they could no longer support a constitutional monarchy. The king could not be trusted to defend the Revolution or the people; nor could his supporters in the National Assembly.[64] The word was associated with many forms of regime and thus necessitated some form of definition by those who called for it. The variety and vagueness of previous definitions of the

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[61] Louis XVI fled Paris on 21 June 1791.

[62] This was Condorcet's position, as outlined in the journal that he jointly authored with Thomas Paine, *Le Républicain, ou Défenseur du Gouvernement Représentatif,* published in July 1791. Only four issues were published. See Kates, *op. cit.* p.162.

[63] See Marcel Dorigny, "La République avant la République. Quels Modèles pour quelle République?" In M. Vovelle (dir.), *Révolution et République. L'Exception Française*, (Paris, 1994). Dorigny says that the author received much criticism for the publication of this work.
See also *"Décret proposé à l'Assemblée Nationale des 83 départements fédérés, portant l'abolition de la royauté."* Article signé "par un abonné", publié par le journal *Révolutions de Paris* (26 mars 1791). In EDHIS (pub.), *Aux Origines de la République 1789-1792*, Paris, 1991. Volume 5, "1791, Naissance du Parti Républicain."

word did not help those who called for a republic. Montesquieu stated that a republic existed when the people or some of the people had sovereign power, whereas in a monarchy one person governed, but by established and fixed laws.[65] Rousseau held that any state governed by laws was a republic and that any legitimate government was a republican government:

> "I therefore give the name 'Republic' to every State that is governed by laws, no matter what the form of its administration may be: for only in such a case does the public interest govern, and the *res publica* rank as a reality. Every legitimate government is republican."[66]

As early as October 1790, Bonneville had already criticised the vague definitions of a republic, while at the same time he implied that a republic defined in the proper terms was necessary for a free and happy people. He condemned the imprecise use of language and the use of "bizarre" terms that were given to ancient governments. He believed that Rousseau's definition of a republic as any legitimate government was too vague. Bonneville believed that a free and happy people constituted a republic, but warned against the use of confusing language and called his idea of a perfect government a national government. Terms were less important than the happiness of the people, he stated. Bonneville wrote that Rome was called a republic but it was a tyranny, and he believed that despotism had to be avoided at all costs:

> "Démocratie, aristocratie, monarchie royalisme; mots à proscrire. Franchise et loyauté, et vous verrez qu'il n'a jamais existé un gouvernement, où il ne soit même entré du despotisme comme il entre du poison dans les

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[64] Pierre Nora, "République". In François Furet & Mona Ozouf, *Dictionnaire Critique de la Révolution Française*, (Paris, 1988).
[65] Marcel Dorigny, in M. Vovelle, *op. cit.*, p.110.
[66] Jean-Jacques Rousseau (trans. G.D.H. Cole), *The Social Contract and Discourses*, (London, 1990); bk.2, ch.6, p.212.

remèdes."[67]

After the flight of the king, Bonneville's discourse immediately developed into a forthright attack on the institution of the monarchy and an unconditional demand for the abolition of this institution. He praised those who took up their pikes to defend the *Patrie* and told them not to be afraid during the current crisis. He declaimed all monarchs as tyrants and called for the immediate abolition of the monarchy. The replacement of Louis XVI with another king or a regent would not be sufficient for Bonneville. As a result of the flight of the king, Bonneville developed a more radical tone, and called for the abolition of the monarchy. He believed that the people had to govern themselves in order to be free and happy. He wrote that even the best of monarchs was still only a tyrant:

> "...mais en leur jugeant par leurs œuvres on voit bien que le meilleur monarche est, comme les anciens tyrans, un mangeur d'hommes."[68]

Bonneville then published a petition, drafted by the *Cordeliers* that called for the abolition of monarchy so the people might live free and without a king.

On 25 June 1791, Bonneville clarified his position on the institutions of government. He wrote:

> "Les amis de la liberté s'expliquent hautement et demandent à grands cris la république."[69]

Again, he criticised Rousseau for writing that a monarchy could be a republic, and Bonneville translated *res publica* as *la chose publique*, or the public thing. For

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[67] *La Bouche de Fer,* no.1, octobre 1790, p.7. From EDHIS, *op. cit.*, tome 1, nos.1-18, Paris, 1981.
[68] *Ibid.,* no.71, 23 June 1791; p.3.

Bonneville the republic was nothing other than national community, or the national government. He wrote that the best type of government was a republic, which he defined as a national government. This could only come about with an elected government, devoid of tyrants or monarchs. For a free people this was the only acceptable form of government, and a free people needed only to will it for the national government to come about. Therefore, Bonneville conceived the republic as nothing other than an elected representative government without a monarch. The Romans and the Venetians had abused the word republic in the past, as they were called republics although the form of government was not a real republic, according to Bonneville. He believed that France had the opportunity to create a genuine republic for a free people:

> "En définissant le mot ré-publique, et le traduisant littéralement dans notre langue, car c'est un mot latin, res-publica, toute obscurité va disparaître. La ré-publique n'est littéralement autre chose que la chose commune, la chose publique, la grande communauté nationale, LE GOUVERNEMENT NATIONAL...il nous faut un gouvernement national, et pour un peuple libre, vouloir est tout."[70]

In subsequent editions of the *Bouche de Fer* published throughout July of 1791, Bonneville attempted to rally other groups to the republican cause and continued his attacks on the monarchy. He praised the *Cordeliers* for their consistent republican proclamations.[71] In the edition of 4 July 1791, Bonneville expressed his frustration over the National Assembly's wishes to retain a monarchical constitution. He also exhorted the *Jacobins* to demand a republic. He accepted that, although they praised

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[69] *Ibid.*, no. 73, 25 June 1791; p.2.
[70] *Ibid.*, p.4-5.
[71] *Ibid.*, nos. 89,95,96; 11,17,18 July 1791.

the republicans of Antiquity, they were afraid of the experience of bad governments in Rome. Bonneville told them that no true republican government had yet existed on earth, and that in France there was an opportunity to create a true republic, or rather a national government as Bonneville preferred to call it.[72]

Condorcet's speech, *"Sur la république, ou la grande question de savoir si un roi est nécessaire à la conservation de la liberté"* was commented upon by Bonneville in the *Bouche de Fer.* Condorcet delivered the oration at the *Assemblée Fédérative des Amis de la Vérité* on the fourth of July, and it received much applause. Bonneville believed that Condorcet proved that the existence of the monarchy was not necessary for the preservation of liberty. Condorcet said that this would be the case particularly if the powers of the government were well organised and the liberty of press was guaranteed. He believed that the presence of privileged groups in Rome and Athens made the existence of a true republic impossible and that all privileges should be destroyed if the true republic were to be constructed.[73] In the *Patriote Français*, Brissot similarly praised Condorcet's speech.[74]

The development and expansion of printing was crucial for the existence of the republic, according to Condorcet. He argued that the press would create a forum for public debate in which citizens from one end of France to the next could share ideas simultaneously. Previously, a republic was only thought possible in a small state where all the citizens could assemble and debate matters of public interest. This would occur through the press in a large state, thus guaranteeing the existence of

[72] *Ibid.*, no. 82, 4 July 1791; p.4.
[73] *Ibid.*, no. 88, 10 July 1791;p.3-4.

transparent debate in the *res publica*, the 'public thing'. Such debate would have been impossible in the absence of such a forum:

> "The knowledge of printing makes it possible for modern constitutions to reach a perfection that they could not otherwise achieve. In this way a sparsely populated people in a large territory can now be as free as the residents of a small city...It is through the printing process alone that discussions among a great people can truly be one."[75]

In collaboration with Thomas Paine, Condorcet founded the *Société des Républicains* shortly after the king's flight to Varennes. The organisation's journal, *Le Républicain, ou Défenseur du Gouvernement Représentatif* outlined the group's republican ideas. Paine wrote that, by fleeing, the king had *de facto* abdicated his throne. The flight showed his counterrevolutionary character, it was illegal and therefore Louis XVI was a criminal. Furthermore, his attempted escape had severed the bond between the monarchy and the people. Paine argued that, by his actions, Louis had broken from the French people and, in consequence, the people were liberated from the monarch's authority:

> "Il est par conséquent libre de nous, comme nous sommes libres de lui. Il n'a plus d'autorité: nous ne lui devons plus d'obéissance. Nous ne le connaissons plus que comme un individu dans la foule, comme M. Louis Bourbon."[76]

Condorcet attacked the institution of the monarchy and its corruption. The *Chronique du Mois*, another *Cercle Social* publication, also published republican arguments following the flight of the king.[77]

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[74] Jacques-Pierre Brissot, *Le Patriote Français*, no.707, 17 July 1791.
[75] Condorcet, *Des Conventions Nationales,* (Paris, 1791). In Kates, *op. cit.*; p.180.
[76] Condorcet & T. Paine, *Le Républicain: 1791*, (Paris, 1991); p.4.

Although the concept of a republic was ill-defined and rarely advocated before 1791, the flight of the king helped members of the *Cercle Social* and the *Cordeliers* to decide in favour of the principle. Subsequently, they had to decide what exactly the republic would entail for France. Bonneville and Condorcet thought of a republic in essentially moral and democratic terms. The people would base the republic upon the principle of representative government for the people and by the people. Ideas would spread through the free press, acting as forums of discussion, and each individual would be equal due to the abolition of all privilege. The idea was moral as it was conceived of as a means of enlightening the population, and freeing them of the ignorance and corruption of the monarchy.

The conceptualisation of divorce among the members of the *Cercle Social* was also moral and democratic. It was moral because they believed it would sweep away the corruption and unhappiness of *Ancien Régime* marriages by encouraging unions based on affection, happiness, and free choice (as opposed to arranged marriages or marriages motivated by the possibility of financial gain). If these conditions were not fulfilled, unhappy, and therefore potentially destructive, marriages could be dissolved. Previously such unions were indissoluble and served to breed hatred and corruption at the heart of the state - the family. Divorce would be democratic as the legislation would enable either party to end the marriage either by mutual consent, incompatibility, or if causes for divorce were proven. They insisted that such

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[77] Articles defending the republic appear in the October and November editions of the *Chronique du Mois*. See October 1792: Brissot to Bonneville, "Sur les motifs de ceux qui défendent la monarchie et qui calomnient la république", p.14-21; appendix to October by Bonneville, "Que le seul gouvernement légitime est républicain, c'est à dire national", p.45: November, Bonneville, "De la souveraineté nationale", p.20.

legislation would free women from the subjugation they suffered in *Ancien Régime* households. Liberty would give them responsibility in the domestic sphere. Along with improved education, this freedom would enable them to raise happy and patriotic citizens for the republic. Thus, divorce fitted into the republican discourse and legislative plan.

(iii) The Cercle Social: A republican divorce programme.

Claude-Louis Rousseau delivered his *Essai sur l'Education et Existence Civile et Politique des Femmes* at the Waux-Hall *d'été* on 13 December 1790.[78] The work was dedicated to Mme. Bailly, wife of the mayor of Paris, and the author praised her establishment of charities for poor young women who might otherwise be led towards debauchery.[79] Rousseau insisted that women had been subjected to the violent domination of men for too long and only when both women and men enjoyed liberty and justice equally, could one hope for the perfection of society. Claude Rousseau believed that the foundation of the state rested on the reform of private and public morals. The duty of the state was:

> "...de conserver la pureté des *mœurs* dans toute son intégrité..."[80]

Although he believed that women were incapable of performing all the public functions that men were capable of, he believed they had an important role to play in the new regime. However, his believed women should occupy themselves with

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[78] Claude Louis Rousseau, *Essai sur l'Education et Existence Civile et Politique des Femmes*, (Paris; Girouard, 1790). Rousseau is identified as a member of the *Confédération des Amis de la Vérité* by Gary Kates, *op. cit.*; appendix A, p.281.
[79] C.L. Rousseau, *op. cit.*; p.3.
[80] *Ibid.*, p.7.

domestic duties. Rousseau stated that society could not reach perfection if women did not learn to breastfeed their children, or if they were too ignorant to enlighten their children. Claude Rousseau insisted on the importance of a loving education far from the confines of a convent school in order for women to achieve sufficient enlightenment. According to the essay, educated women would be allowed authority in the domestic sphere in order to educate their children and avoid the temptation of luxury or riches. He argued that women should seek a husband for love, not for greed; only then could they help preserve liberty and virtue in a free society:

> "Pour préserver l'Etat d'une décadence funeste, l'opinion des femmes sera sufffisante."[81]

In order to assure the enlightenment of women, Claude Rousseau wrote that they must also receive the same civil rights and responsibilities as men. His conception of the role of women was almost entirely passive as they received rights out of the generosity of spirit of wise men. This was most important in the area of conjugal law. Rousseau believed that women should be obliged to stay at home until they married, but that they should be able to choose their own partners. He believed that marriage should also be a civil contract, dissolvable if this contract was broken. Rousseau did not propose a liberal divorce law in the same vein as Hennet's. He believed that couples should have recourse to divorce only if a marriage was detrimental to society, if adultery occurred or if morals were offended:

> "Le mariage... doit être une convention civile... si les moindres abus s'introduisent dans ces pactes publics, elle serait dissoute. La fidélité des époux est nécessaire à leur bonheur commun, au repos général, et à l'ordre public."[82]

However, Rousseau agreed with Hennet that separations caused the corruption of morals as they encouraged debauchery by condemning people to an unrealistic celibacy, as well as depriving society of a useful growth in population through the offspring of subsequent marriages:

> "C'est aux séparations que nous sommes redevables de la corruption des *mœurs*."[83]

Rousseau had a different concept of divorce to Hennet and the liberal divorce writers. Rousseau believed that divorce should not be easier to obtain than a *séparation de corps*. He also wrote that divorce should punish the oppressor and liberate the oppressed for the benefit of the individual of the whole of society. It should not be granted for frivolous motives but only for the benefit of individual and collective morals. This differed for Hennet's understanding of divorce, which also embraced no fault divorce on grounds of the need for individual liberty.

In the editions of March, April, and May 1792, the *Chronique du Mois* carried three articles on the subject of divorce.[84] The March issue recommended the third edition of Hennet's *Du Divorce* but warned that the editors of the *Chronique du Mois* did not approve of all the ideas expressed in this work.[85] There followed a petition to the Assemblée Nationale from the wife of an *émigré* marquis. This piece was intended to illustrate the evils that some women would suffer in the absence of a divorce law. The

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[81] *Ibid.*, p.26.
[82] *Ibid.*, p.30-31.
[83] *Ibid.*, p.31.
[84] These articles may have appeared in reaction to petitions sent to the Legislative Assembly in the spring of 1792, all calling for the introduction of a divorce law. Petitions and letters calling for divorce were read out on 13 and 17 February, 16 and 19 March, and 1 April 1792. See Mavidal and Laurent, *Archives Parlementaires de 1787 à 1860, première série (1787-1799)*, (Paris; Kraus reprint, 1969), volumes 38, 39, 40, 41.

petition attacked the institutions and matrimonial culture of the *Ancien Régime*. She claimed that her parents gave her to her husband because of his title and not because she had any love for him. He then divested her of all her goods and had her locked up by a *"courtisanne de qualité"*. She pleaded with the *Assemblée Nationale* to defend women and purge society of the abuses of the *Ancien Régime*. This could be achieved if women had the right to divorce. After a critique of the institutions and morals of the *Ancien Régime*, she pleaded for legislation to enable individuals to marry for love and to allow divorces for those unhappy in their marriages. Otherwise, she claimed, that society would never be purified of abuses, nor would individuals truly be free:

> "Elle veut que mariage ne soit qu'un contrat civil, c'est à dire, un contrat libre, égal et qui pourra, à volonté se rompre, quand un être sensible, ignorant ses droits, ou ne pouvant encore les réclamer ou les défendre, aura été vendu dans son enfance par des parents dénaturés."[86]

The May edition of the *Chronique du Mois* celebrated the fact that people were already divorcing successfully before the legislators implemented the relevant legislation. They reported that a man from the Eure department, after successfully divorcing his first wife, attempted to marry another woman. However, this effort was opposed by a relation of his spouse. The case was called to a tribunal in Paris and the opposition to the new marriage was thrown out. In addition, the opposing party to the union was made pay three thousand *livres* in damages and costs. For the editors of the *Chronique*, this case highlighted the necessity of divorce legislation.[87]

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[85] *La Chronique du Mois*, March, 1792; appendix I, p.86.
[86] *Ibid.*; p.87.
[87] *Ibid.*, May, 1792; appendix III, p.93.

Le Nouveau Code Conjugal, the most comprehensive *Cercle Social* work on divorce, was publicised in the *Chronique du Mois.*[88] Nicolas Bonneville's work offered a comprehensive legislative plan for marriage and divorce.[89] The plan was based on a secular and patriotic concept of marriage and the *Code* emphasised the social nature of marriage. For Bonneville, it was not only a private commitment between two individuals, but also a public duty to the state. The author, although sympathetic to Hennet, took a practical of marriage and viewed it as matter for individuals rooted in society. Hennet had concentrated primarily on individual happiness for the success of marriage:

> "Le mariage est un lien social qui unit le citoyen à la Patrie, et la Patrie au citoyen. Il y a donc des devoirs réciproques entre les citoyens et la Patrie.[90]

Bonneville believed that unmarried and childless men could not properly exercise public functions as he claimed that marriage was a duty to the state. Thus, the institution of marriage was essential to the well-being of the state. Unhappy and unfruitful marriages should be dissolved in order to facilitate happy, fecund marriages as the basis of society. In doing so, he placed fatherhood and matrimony at the heart of society and civic duty. Being a father was not only a matter for one's individual conscience, it was also one's patriotic duty:

> "Conjugal law, which is the natural law, compensates those who obey it.
> Husbands and fathers are entitled to participate in any public function.
> Those who disobey the conjugal law are not allowed to work in any

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[88] *Ibid.*, April, 1792; "Considérations Générales sur les Mariages", by Nicolas Bonneville. This is the first section of *Le Nouveau Code Conjugal*, by the same author, also published by the *Cercle Social.*
[89] Nicolas Bonneville, *Le Nouveau Code Conjugal, établi sur les bases de la constitution, et d'après les principes et les considérations de la loi déjà faite et sanctionnée, qui a préparé et ordonné ce nouveau code,* (Paris; Imprimerie du Cercle Social, 1792).

public function."[91]

His plan for divorce legislation reflected these ideas and differed from the law on divorce proposed by Hennet. Whereas Hennet conceived of marriage as essentially a bond between two individuals, Bonneville wrote that not only was marriage a consensual bond between two individuals, but it was also the civic duty of each individual, as was the generation of children. This similar, but different concept of marriage can be evaluated by an examination of the two proposed divorce laws.

Bonneville made a distinction between two forms of marital dissolution, repudiation and divorce.[92] He described repudiation as the rejection of one spouse by another. Bonneville's code limits this to one specific case:

> "If, in the absence of the husband, a wife is found to have born another man's child, the husband can repudiate her and recover his independence.[93]

A wife could never repudiate her husband as he could not bring another woman's child into the household, but if the clauses of the marriage contract were not fulfilled:

> "...pour cause de démence, de désordre extrême, de maladies qui auraient mis obstacle à la génération ou qui en auraient infecté les sources."[94]

Under these circumstances, a woman could divorce her husband. Bonneville's conception of divorce and repudiation law relied heavily on the idea that individuals

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[90] *Ibid.*; Titre I, articles 1 & 2, p.14.
[91] *Ibid.*; Titre II, articles 4 & 5, p.15.
[92] Hennet made no distinction between consensual divorce or the repudiation of one spouse by another for particular reasons. For him, both were cases of divorce, as they were in the 1792 divorce legislation. Mathurin-Louis-Etienne Sédillez, a deputy in the Legislative Assembly spoke against the legislation, although he was in favour of divorce. He made a distinction between divorce and repudiation. For Sédillez, divorce was the dissolution of a marriage by the mutual consent of the two parties, while repudiation was the dissolution of marriage by one party for one of a specified set of conditions. This resembled Bonneville's definition of repudiation as a form of marital dissolution unilaterally provoked. See M.L.E. Sédillez, *Du Divorce et de la Répudiation. Opinion et Projet de Décret,* (Paris; Imprimerie Nationale, 1792).
[93] Bonneville, *Le Nouveau Code...*; titre VII, i, "De la Dissolution du Mariage", article 2, p.40-41.

had a duty to each other and to the state in their marriage arrangements. Actions detrimental to the state, like adultery, were legitimate reasons for the dissolution of a marriage as they threatened the happiness of the individual and compromised the health, education, and moral upbringing of children, who belonged both to the family and the state.

The *Code's* plan for divorce was quite simple. Whoever wanted to divorce could address the *juge de paix* and declare:

> "Juge de paix. Je ne peux trouver le bonheur dans les nœuds mal assortis."[95]

The *juge de paix* would convene the parties on two subsequent occasions, the second of which would be a family meal of reconciliation in the home of the spouse who did not wish to divorce. If the petitioner still wanted to divorce, they had to convoke a family tribunal to arrange the financial affairs of the couple and the future of their children.[96] The tribunal would accord the care of the female children to the mother and the father would care for the male children, if possible. However, if one of the parents was not morally fit to care for the children the other parent would have custody of all the children. This in no way relieved the unfit party of their financial obligations toward the upbringing and education of their children. If the tribunal decided that neither family could give a good example to the children it could confide the care of the children to a responsible citizen acting as a tutor, or an adoptive father until the children were old enough to decide their own fate.[97] One notices that the law on divorce was discreet as to the motives of divorce and that the care of the children was an essential component of the duties of the tribunal de famille. The law,

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[94] *Ibid.*; titre VII, ii, articles 1 &2.
[95] *Ibid.*; titre X, "Du Divorce", i, article 4, p.53.
[96] *Ibid.*; titre X, i, article 23, p.60.

according to Bonneville, had a duty to protect the rights of the innocent parties in a divorce case. By innocent, he meant the spouse who had done no wrong according to the divorce law and the offspring of the marriage.

Hennet's proposed divorce law made no distinction between repudiation and divorce. He advocated a divorce law that should be available equally to either spouse in three forms: divorce by mutual consent of both parties; divorce advocated by one party due to incompatibility of character (not unlike Bonneville's proposal for divorce); and divorce for twelve separate motives.[98] Like Bonneville, the modalities of divorce would be adjudicated by the family tribunal, confirmed by the *juge de paix*, and registered by a public official. Hennet also stressed the importance of the well being of the children and, like Bonneville, his proposal stated that the female children would stay with the mother, and the male children would remain with the father. An unfit parent would not be allowed custody of the children, and each party would be obliged to contribute, according to their means, to the education and upbringing of the children. Hennet's law was simpler and it placed stronger emphasis on personal liberty than Bonneville's, but both had the same aspirations for their projects. They desired the happiness of the family and particularly the children, the termination of abusive and sterile marriages, and the felicity of the state based on fecund affectionate unions. The crucial difference was that Bonneville saw marriage and the family as a

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[97] *Ibid.*; titre X, ii, articles 10, 12, 13, 14, 15.

[98] Hennet, *Du Divorce,* (Paris; Desenne, 1789); book three, "Lois du Divorce", ch.2. The motives for divorce proposed by Hennet were: la mort civile; la condamnation à une peine infamante; l'emprisonnement pour une longue durée; la captivité dont on prévoit pas la fin; l'expatriation forcée ou volontaire, ou la disparution d'un des conjoints, dont on n'a point de nouvelles; l'infécondité d'une himen; une maladie incurable qui met obstacle à la génération; la démence; un crime quelconque; l'adultère; le désordre extrême; l'incompatibilité des caractères.

duty to the state, while Hennet believed the happiness of the individual superseded the interest of the state.

3. September 1792. The Divorce Legislation.

(i) Appeals for divorce outside the National Assembly.

No debate took place on the question of divorce in the National or Legislative Assemblies until 30 August 1792, despite the fact that many pamphlets favourable to divorce were published in the early years of the French Revolution. Press reaction to the works proposing divorce was favourable and the constitutional and theoretical framework for the introduction of a law on divorce was in place by September 1791. As early as August 1790, during a debate on the reform of the tribunaux de famille, the deputy Gossin proposed the abolition of *séparations de corps et biens* and advocated the introduction of divorce so that individuals could remarry in the interest of happiness and *bonnes mœurs*.[99]

As we have seen, those in favour of the introduction of divorce believed that the Declaration of the Rights of Man and the Citizen (26 August 1789) provided the philosophical and constitutional background necessary for a divorce law. The Declaration established legal equality for all citizens, the liberty to pursue one's desires as long as they did not interfere with the rights of others, the freedom of opinion, and the freedom of religious expression.[100] Freedom of religious expression allowed Protestants and Jews to worship their faith openly, and, in theory, the state

[99] Dominique Dessertine, *op. cit.*, p.58.

could not deny members of these religions the opportunity to divorce under the terms prescribed by their faith. The Protestants of Alsace were allowed to divorce from 1790. In principle, Catholics had no constitutional right to deny those of a different faith the liberty to divorce according to their religious beliefs.

The preamble of the Declaration stated the aims of every political institution as the maintenance of the constitution, and the happiness of all.[101] This same idea of happiness for the individual and society was a central idea of *Cercle Social* thought, and was a major preoccupation of the pro-divorce writers. Article two of the Declaration stated the rights of each individual:

> "Le but de toute association politique est la conservation des droits naturels et imprescriptibles de l'homme. Ces droits sont la liberté, la propriété, la sûreté, et la résistance à l'oppression."[102]

The texts and petitions demanding the introduction of divorce legislation were also framed in this language. The idea that divorce was a natural right, that it was essential for the maintenance of liberty, and that it was necessary if women were to resist oppression in marriage, appeared in most of the pro-divorce texts and in the journals calling for divorce. The writer of the *Mémoire sur le Divorce* believed that women were kept in a state of slavery due to their entrapment in unhappy marriages:

> "...des lois barbares, qui retiennent dans un esclavage humiliant et ridicule, la moitié de l'espèce humaine... vu nos mauvaises lois, l'état de mariage (à quelques exceptions près) est un état continuel de guerre: point de société sans égalité et sans la liberté."[103]

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[100] Articles 1, 4, 10. "La Déclaration des Droits de l'Homme et du Citoyen". In Marcel Gauchet, *La Révolution des Droits de l'Homme*, (Paris; Gallimard, 1989); i-ii.
[101] Preamble to la Déclaration des Droits de l'Homme et du Citoyen. In *ibid.*, i.
[102] Article 2, Déclaration des Droits de l'Homme et du Citoyen. In *ibid.*, i-ii.

Another anonymous author wrote that the indissolubility of marriage attacked the principle of liberty enshrined in the Declaration:

> "Un vœu indissoluble est un attentat à la liberté de l'homme, et le système actuel est, et doit être celui de la liberté. L'indissolubilité d'un vœu... est... absolument contre nature.[104]

The pro-divorce writers framed their demands for divorce in the language of liberty and regeneration. In the Declaration of the Rights of Man and the Citizen, these authors saw the same aspirations that they expressed in their texts: the right to liberty, freedom from (marital) oppression, and the pursuit of happiness. They also pre-empted the actions of the National Assembly by not only appealing for the introduction of a divorce law, but also by suggesting the shape the legislation should take.[105]

From late 1789, newspapers and journals enthusiastically reviewed the pro-divorce work, particularly that of Hennet.[106] They also appealed directly for the introduction of divorce, stating that France would never enjoy liberty until the indissolubility of marriage was abolished and citizens could free themselves from unhappy marriages.[107] The December 1789 edition of the *Club des Observateurs* praised the *Plaintes et Doléances des Femmes Mal Mariées* and claimed that this work should

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[103] Anon., *Mémoire sur le Divorce*, s.l., s.d. In Colette Michel (ed.), *Sur le Divorce en France*, (Geneva; Editions Slatkine, 1989); p.39-40.
[104] Anon., *Griefs et Plaintes des Femmes Malmariées,* s.l., s.d. *Ibid.*, p.64.
[105] Propositions for divorce legislation were drafted by Hennet, *Du Divorce*, (Paris; Desenne, 1789); Le Comte d'Antraigues, *op. cit.*; E.G. Lenglet; *op. cit.*; Nicolas Bonneville, *Le Nouveau Code Conjugal*, (Paris, 1792).
[106] Marcel Garaud, in the text revised and completed by R. Szramkiewicz claims that nearly all of the press was favourable to the introduction of a divorce law. See M. Garaud/R. Szramkiewicz, *op. cit.*; ch.3, "Le Divorce", section one.
[107] See footnotes 49 & 51.

persuade the National Assembly to introduce a law on divorce. The journal stated that a divorce law was an essential component of the constitution of a free people.[108] The *Gazette de Paris* published a favourable review of Hennet's *Du Divorce* during the same month. On 7 December this journal implored the legislators to promulgate a law on divorce as it would encourage marriage, arrest moral disorder at the source, and abolish *séparations de corps*. The journal hoped that the National Assembly would introduce a divorce law similar to that suggested by Hennet.[109] In 1790, at least three other journals called on the Assembly to promulgate a divorce law.[110]

On 3 September 1791, the Constituent Assembly accepted the principle of the secularisation of marriage, and article seven of the constitution stated that the law would now consider marriage as a civil contract. The removal of marriage from the spiritual domain of the Catholic Church, along with the promise of liberty in the Declaration of the Rights of Man and the Citizen, and the pleas for divorce in revolutionary society, opened the path to the termination of a secular marriage contract like any other legal contract, although the deputies of the National Assembly had not pronounced a law on divorce. Subsequent to the definition of marriage as a civil contract members of civil society decided to regulate their own private affairs before the politicians could legislate for such procedures. The *Chronique du Mois* of May 1792 celebrated the fact that divorces were taking place in France. It recorded the case of a man, who, after obtaining a divorce from his first wife, published banns to announce his intention to marry another woman. A relation of this woman objected,

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[108] *Club des Observateurs*, no.3, December 1789.
[109] *Gazette de Paris*, 3-7 December 1789.
[110] *Spectateur National*; 1, 12, 16 January, 22 February, 6 May.
Le Moniteur Universel; 1 January, 25 June 1790.
Chronique de Paris; 8 January, 4 February 1790.

and the case went before a tribunal in Paris. The judge threw out the opposition to the second marriage and the *Chronique* celebrated the fact that divorces could take place in France:

> "On va passer sous quelques jours à la célébration du nouveau mariage."[111]

(ii) Petitions to the Legislative Assembly.

In the early months of 1792, the pressure on the Legislative Assembly to introduce divorce increased. Five petitions were sent to the legislature. The petitions reiterated the same themes expressed in the liberal divorce brochures and the journals advocating divorce. The first petition, sent by *"plusieurs citoyens et citoyennes du département de Paris'* asked the Assembly to introduce divorce, because without such a law a significant part of the French population would be deprived of liberty due to the existence of unhappy marriages and the abuse of parental power by tyrannical fathers:

> "Nous croyons utile de rendre une loi provisoire qui protège les femmes et les enfants contre la tyrannie des méchants pères et des méchants époux, une loi qui fasse disparaître de l'intérieur des maisons, le régime des prisons d'Etat, qui avertisse les pères et les maris, de respecter les droits de la nature et qui avertisse la femme de sa propre dignité."[112]

The letter, presented by Aubert-Dubayet on 13 February pleaded for divorce, using a language of liberty and rights, and emphasised the need to liberate women and children from potentially corrupting households, upon which the society of liberty and rights could never be built. The letter was sent to the legislative committee but no action was taken.

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[111] *La Chronique du Mois ou les Cahiers Patriotiques*, May 1792; appendix III, p.93.

Four days later, on 17 February, Albert Hennet offered the third edition of his work, *Du Divorce*, to the National Assembly. Some members asked for the *mention honorable* for the work, but some objected and requested that normal business resume. Roux-Fasillac, Ducos, and Dumolard all asked for the *mention honorable*. Dumolard asked that the work be sent to the legislative committee and the Assembly accepted this, although the question of divorce was not sent to the committee until 20 August.[113]

On 16 and 19 March the Legislative Assembly received two letters from authors advocating divorce. Démati offered a two-volume work, *Sur le Divorce et le Célibat* to the Assembly, and an English writer, Mr. William-William sent a letter to the deputies praising divorce.[114] Both letters received the *mention honorable*, and Lecointe-Puyraveau asked that William-William's letter be sent to the legislative committee. The Assembly accepted this request.[115]

Etta Palm d'Ælders led a delegation of French women to the Legislative Assembly 1 April 1792. Their demands were more far-reaching than a simple request for divorce. Ælders believed that a law on divorce should be part of a comprehensive reform programme that would give women the liberty and equality they deserved in French society. She claimed that women could never enjoy civic and political rights without a moral and national education for girls. She also demanded liberty and equality of

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[112] J. Mavidal & E. Laurent, *op. cit.*; 13 février, p.466.
[113] *Ibid.*, 17 février 1792.
[114] William-William is described as an English jurisconsulte by Dominique Dessertine in Dessertine, *Divorcer à Lyon*, (Lyon; Presses Universitaires de Lyon, 1987), p.59.
[115] *Archives Parlementaires*, série I, tome 40 (15 mars-30 mars); 16 mars & 19 mars.

rights for both sexes, in addition to the introduction of a divorce law. In this petition, she aligned the demand for political and civil liberty for women with the necessity for a programme of national education and a law on divorce. Ælders said that women could never enjoy the benefits of the Revolution without a basic education and the freedom to divorce. Like the other petitions, this was sent to the legislative committee.[116]

By spring 1792 divorces had already taken place in revolutionary France, and the appeals for divorce were framed in the language of revolutionary ideals. Why did the deputies wait until the summer of 1792 to seriously consider introducing divorce legislation? In order to answer this question, one must examine the political context in France during 1791 and 1792.

(iii) The Political Context.

Although claims for divorce were expressed in revolutionary language, deputies in favour of reforming society in terms similar to those suggested by advocates of divorce did not act. These deputies would include those close to the *Cercle Social*, including Brissot, Condorcet and the group that would later be known as the *Girondins*.[117] Advocates of further reform faced difficult problems if they wished to maintain a revolutionary consensus. In August 1790, when Gossin proposed that legal

[116] *Archives Parlementaires*, série I, tome 41 (30 mars-16 avril); 1 avril.

[117] See Kates, *op. cit.*; appendix A. This lists the membership of the *Confédération des Amis de la Vérité*. Kates considers anybody who attended one or more meetings as a member. The list includes Nicolas Bonneville, a member of the Paris Communal Assembly and editor of the *Bouche de Fer,* and *La Chronique du Mois*; Jacques-Pierre Brissot, deputy in the Legislative Assembly and the Convention. Editor of *Le Patriote Français*; Condorcet, deputy in the Paris Communal Assembly, the Legislative Assembly, and the Convention. Editor of the *Chronique du Mois* and *Le Républicain*. François Lanthenas, member of the Convention, specialist on revolutionary clubs, and co-author with Condorcet of the *Journal d'Instruction Public*; Louis-Sébastien Mercier, deputy in the Convention, and editor of the *Chronique du Mois*; Jean-Marie Roland, Minister of the Interior.

separations be replaced with divorce and the possibility of remarriage, his plea was rejected. At this time, one quarter of the deputies to the Constituent Assembly were ecclesiastics.[118] It is improbable that this group would support a law on divorce as the Catholic Church was opposed to divorce and the most vociferous attacks on divorce came from ecclesiastics.[119] The situation changed radically after the election of the Legislative Assembly in 1791. Deputies from the Constituent Assembly were not permitted to participate in this Assembly, the first not elected by the estates. The composition of the body was also more radical than that of the previous Assembly and the developing political circumstances served to radicalise them further.[120]

The Civil Constitution of the Clergy (12 July 1790) and the secular reorganisation of the *Etat Civil* provided an opportunity for the royalists to consolidate opposition to the Revolution. The need to swear an oath to the constitution split the Catholic Church. All but seven of the episcopate refused to take the oath, while approximately half of the ordinary clergy refused to swear the oath.[121] This led to confusion and clashes around the country as to who would perform religious ceremonies, and keep registers of births, deaths and marriages. The Assembly was also in a quandary as to what to do with refractory priests considering that freedom of religion was guaranteed in the Declaration of the Rights of Man and the Citizen. The problem was not solved by the decree in May 1791 that allowed refractory priests to perform mass. Refractory priests

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[118] D. Dessertine, *op. cit.*, ch. 6, p.58.

[119] Abbé Barruel, *op. cit.*
Abbé Armand Chapt de Rastignac, *op. cit.* Chapt de Rastignac sat in the Constituent Assembly.

[120] 50% of the deputies elected were under 30 years of age. Out of 745 deputies, 250 were members of the Feuillant club (who had split from the *Jacobins* in July 1791 due to their opposition to the abolition of the monarchy), 136 were *Jacobins* (among these were Brissot, Condorcet, Guadet, Vergniaud), and 3 were associated with the *Cordeliers*.
See M. Vovelle (tr. S. Burke), *The Fall of the French Monarchy*, (Cambridge, 1984); p.211.

[121] *Ibid.*, p.136.

were unsatisfied and local authorities in areas with these priests were unhappy with the provision. The religious split created a focus for counter-revolution, particularly in the rural France.[122]

On 21 January 1791, Mirabeau-Tonneau wrote to the Comte de Lamarck on the subject of divorce. He suggested that the royalists present as many projects on religion, the marriage of priests, the status of Jews, and divorce at the same time in order to provoke a coalition against the reformers in the National Assembly:

> "On ne pouvait pas trouver une occasion plus favorable de coaliser un grand nombre de mécontents, de mécontents d'une plus dangereuse espèce et d'augmenter la popularité du roi au dépens de celle de l'Assemblée Nationale..."[123]

Deputies in favour of divorce did not react to calls for the introduction of divorce, despite a report in the *Moniteur* claiming that divorce was a popular demand in French society:

> "On demande de tout part la loi sur le divorce."[124]

The pro-divorce deputies realised that the potential opposition to a divorce law in the Assembly, allied to the split over religious reforms could create further support for a counter-revolution. Therefore, they did not rush to introduce such legislation.

The flight and capture of Louis XVI on 21 June 1791 forced the deputies to decide whether or not they wished to retain the monarchy, even as a constitutional monarchy. Few believed the fiction that the king had been kidnapped, and members of the *Cercle*

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[122] *Ibid.*, p.137.
[123] Francis Ronsin, "Indissolubilité du Mariage ou Divorce". In Irène Thiéry & Christian Biet (eds.), *La Famille, la Loi, l'Etat,* (Paris; Imprimerie Nationale, 1989), p.324.
[124] *Le Moniteur Universel*, 21 March 1792. Quoted in *ibid.*, p.326.

Social and the *Cordeliers* immediately called for the abolition of the monarchy, while the Jacobin club split over the issue. On 16 July 1792, the royalists left the Jacobin club to form the *Feuillants*. Robespierre, Grégoire, and Buzot supported the idea of forming a republic, Laclos wanted to replace the king with the duc d'Orléans, while La Fayette and Lameth wished to reinstate the king after his flight.[125]

Others to oppose the monarchy after Louis' flight include Condorcet and Paine. They founded the *Société de Républicains*, and a journal, *Le Républicain*, a few days after the flight to Varennes. Its purpose was:

> "Son objet est d'éclairer les esprits sur ce républicanisme qu'on calomnie, parce qu'on ne le connaît pas, sur l'inutilité, les vices et les abus de la royauté que le préjugé s'obstine à défendre, quoiqu'ils soient connus."[126]

Bonneville, writing in the *Bouche de Fer,* called for the abolition of the monarchy and the establishment of a republic:

> "Point de chef, ni de société dominatrice. La vérité est le centre commun, le centre unique, et chaque société, chaque citoyen peut devenir centre universel et l'être... Vivez libre et sans roi... Demandez un gouvernement national..."[127]

Bonneville advertised the demonstration at the Champs de Mars in the *Bouche de Fer.* A petition drawn up by François Robert, a member of the *Cordeliers* club, received six thousand signatures. The demonstrators called for the abolition of the monarchy but the National Guard, led by La Fayette, fired upon the crowd. In subsequent editions of the journal, Bonneville attacked La Fayette, calling him a cowardly

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[125] 75% of the club left to join the *Feuillants*, but the remaining *Jacobins* retained control of the affiliated clubs.

[126] Condorcet et Thomas Paine, *Le Républicain* (1791), (Paris; EDHIS, 1991)

instrument of tyranny.[128] Bonneville then called for the creation of a new legislature, as he believed that the present one would conspire to restore the king to power. In the same edition, he praised Robespierre for pointing out the danger of:

> "...les conjurations des ci devant nobles et prêtres, qui viennent de se coaliser dans les comités de l'Assemblée Nationale."[129]

At this stage, the Legislative Assembly was not prepared to overthrow the king despite calls for such action. Instead, the king was restored to his powers after promising to support the constitution, and repression followed the Champs de Mars incident. Danton fled to England, Marat went into hiding and the *Bouche de Fer* ceased to print.

Throughout the latter stages of 1791 and 1792, participation in the local assemblies increased, partly fuelled by continuing fears of counter-revolution and invasion by the *émigrés* and European powers. Brissot, Condorcet, and Clavière justified their demands for war with the European powers by claiming that war would expose the counter-revolutionaries in French territories. They also stated that a war would help revive the economy by increasing demand. La Fayette also supported calls for war, as he believed that a successful war would strengthen his position with the court and the Legislative Assembly. Louis XVI and Marie-Antoinette hoped that a war would lead to the fall of the Revolution. Robespierre opposed the war on the grounds that the army was not fit to fight a war against the European powers, and that foreigners would not appreciate invading missionaries of the Revolution.[130] France declared war on the

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[127] N. Bonneville, *La Bouche de Fer*; no. 94, 16 juillet 1791, p.3-4.
[128] *La Bouche de Fer*; no.96, 18 juillet.
[129] *La Bouche de Fer;* no.98, 20 juillet, p.7.
[130] M. Vovelle, *op. cit.*, p.221-222.

king of Bohemia and Hungary on 20 April 1792. Only twelve members of the Legislative Assembly voted against war.

The war began badly for the French and operations were suspended in May. Fears of treason had not abated. La Fayette secretly proposed to the Austrian ambassador that fighting be suspended so he might turn his forces on Paris in order to disperse the *Jacobins*. In May and June 1792, the king found himself in dispute with the Assembly. He had vetoed decrees to deport refractory priests and to raise 20,000 *fédérés* to march to Paris in order to take part in the festival of the Federation. He also dismissed the *Girondin* ministry. Local assemblies again called for the removal of the king from his powers, and on 20 June 1792, the people of the *faubourgs* took up arms, invading the Tuileries and the Legislative Assembly. They forced the king to don the Phrygian cap and drink a toast to the nation, but he did not withdraw his vetoes, nor did he restore the *Girondin* ministry.[131]

On 22 July 1792, the Legislative Assembly declared *la Patrie en Danger*, allowing the Assembly to bypass vetoes from the king. The Parisian sections decided to sit in permanence on 25 July, and in the same month, the *Cordeliers* demanded the convocation of a convention to give France a new constitution. The *Mauconseil* section of Paris declared that it no longer recognised Louis XVI as king at the end of July, and on 3 August the mayor of Paris, Pétion, went to the Legislative Assembly to demand the removal of the king in the name of forty-seven out of the forty-eight sections of Paris. The Assembly rejected this petition

In the face of vacillation from the Assembly, popular demonstrations took place on 10 August. Crowds stormed the *Tuileries* and forced the Assembly to suspend the king, and vote for the establishment of a National Convention elected by universal male suffrage. The Convention would have the task of formulating a new constitution. The radically changed situation, with enemy forces invading France and the popular crowd acting, both physically and politically, led to the departure of the remaining royalist deputies. This changed the political complexion of the Legislative Assembly, a fact that would affect reactions to further appeals for divorce. Catholic and royalist opposition had left the Assembly, and it was dominated by republican deputies, led by Jacques-Pierre Brissot, an important figure in the *Cercle Social*. By August of 1792 the political right, particularly nobles and ecclesiastics, were no longer members of the Legislative Assembly and therefore could not oppose demands for the introduction of a liberal, secular divorce law.

(iv) The debate.

On 20 August 1792, the Legislative Assembly received a letter from a M. Grémion requesting a law on divorce. The request was sent to the legislative committee to make a report on the subject within three days. After this interval, any deputy could present a decree on divorce.[132]

No discussion on divorce took place until 30 August when Aubert-Dubayet praised the law on the civil contract of marriage. However, he demanded more. He said, that although this law would contribute to the regeneration of morals and the happiness of

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[131] *Ibid.*, p.227.

[132] *Archives Parlementaires*, série I, tome XLVIII (11 août-23 août 1792), 20 août 1792, p.400.

the people, the lawmakers had neglected the possibility of marital breakdown and the situation of women in French society. Using the language of Hennet and the other pro-divorce writers, Aubert-Dubayet stressed the importance of a divorce law for the liberty, happiness, and well being of all French society. Like Hennet, he claimed that legal separations encouraged adultery and the dissolution of morals, and insisted that men and women should be equal in marriage:

> "...et la femme ne doit point être l'esclave de l'homme."[133]

To the applause of the legislature, Aubert-Dubayet concluded his appeal for the introduction of a divorce law with the opinion that divorce would serve God, France, happiness and liberty. He stated that divorce would encourage people to work harder at their marriages, thus strengthening them.

Following this speech, other deputies spoke out in favour of divorce. M. Cambon, using a language of liberty and rights, insisted that no friend of liberty could justifiably oppose divorce, as it was implicit in the Declaration of the Rights of Man and the Citizen. Elie Guadet implored the Assembly to quickly promulgate a law on divorce as divorces were already taking place in French society. Then, to more applause, the Assembly declared that marriage could be dissolved by divorce. The legislative committee was charged with presenting a project of law that would regulate the situation of the children in the case of divorce, and formulate a procedure so that the public officials pronouncing divorce could be sure that the first marriage was dissolved before a second one was contracted.

[133] *Archives Parlementaires*, série I, tome XLIX (26 août-15 septembre 1792), 30 août 1792, p.117.

On 7 September, Leonard Robin, speaking for the legislative committee, proposed a law on divorce. The committee believed that the dissolubility of marriage was acceptable in the context of the liberty enshrined in the Declaration of the Rights of Man and the Citizen, and the secularisation of the marriage contract. The committee also accepted the need for the urgent promulgation of a law, as they were aware that divorces had occurred without the appropriate legislation and they wished to regularise the legal situation.[134]

The law on divorce followed the proposals made by Hennet in his *Du Divorce*. Similar to Hennet, the projected law made no distinction between repudiation and divorce (unlike Bonneville in *Le Nouveau Code Conjugal*), allowed divorce on the grounds of mutual consent, incompatibility of humour or character cited by one spouse, and for six specific causes cited by one spouse. The children of a divorced couple were to be shared by the parents. The mother would care for the girls and the father would raise the boys. However, if the divorce occurred for a specific cause, or if one parent was deemed unsuitable to raise their children, then the more suitable spouse would raise all the children. This did not free the other party from their financial responsibilities to their children.[135] No debate on divorce took place on this day.

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[134] *Ibid.*, 7 septembre, p.432.

[135] *Ibid.*, 7 septembre, p.432. The specific causes for divorce cited in the law were: insanity; the depravation of civil rights; a serious crime against the other; dissoluteness of morals; the abandonment of one's spouse for at least two years; absence from one's spouse for at least five years. Hennet also proposed divorce for the depravation of civil rights, dissoluteness of morals, and absence for a long period. He also proposed divorce for imprisonment for a long period, expatriation, the disappearance of one spouse without news, the sterility of one party, an incurable illness endangering the generation of children, and adultery.

The discussion of divorce did not resume until 13 September, when Sédillez outlined an alternative project on divorce. Although he criticised the legislative committee's project for its complexity, he agreed with the principle of introducing a divorce law to benefit French *mœurs*. He also believed that marriage should be dissolved when the two parties were no longer in accord as it was a civil contract founded by the will of two parties:

> "Le mariage est un contrat civil. Il est de la nature des contrats de se résoudre de la même manière dont ils ont été formés. Le mariage étant formé par la volonté de deux personnes, il est naturel qu'il puisse se dissoudre par une volonté contraire."[136]

Sédillez made a distinction between divorce and repudiation, unlike the legislative committee. He defined divorce as the dissolution of a marriage contract by mutual consent of the two parties who contracted the marriage.[137] He suggested that the law should not seek other reasons if the couple wished to divorce by mutual consent. The procedures for divorce should entail an interval between the request for divorce and its consummation. During this time, the couple should undergo a trial separation, then they should be obliged to live together for a short period so they might be certain of their mutual decision to divorce. Sédillez believed that a divorced couple should not be permitted to remarry; such a measure would ensure that people divorced only when it was absolutely necessary for their happiness. Both parents should be responsible for the upbringing of the children and all other provisions should be left to the discretion of the judge.[138]

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[136] M.L.E. Sédillez, *Du Divorce et de la Répudiation*, (Paris; Imprimerie Nationale, 1792), p.3.
[137] *Ibid.*, p.4.

Sédillez defined repudiation as the dissolution of marriage by one party alone. He admitted that the party demanding divorce must have sound justification for the dissolution of a marriage but refused to outline a series of defined causes. He claimed that any cause that removed the possibility of finding happiness in a marriage was acceptable; one should not limit the application of repudiation, as this would only cause an injustice as not every case for repudiation could be codified:

> "Je ne voudrais donc entrer dans aucun détail à cet égard, et je me contenterais de poser le principe, que la répudiation sera admise pour toute cause grave qui ôterait à celui qui réclame, toute espérance de trouver dans l'union qu'il a contractée, le bonheur qu'il devait naturellement y chercher."[139]

Repudiations were to be judged by a jury of repudiation, composed equally of members nominated by each party. A public official would also sit upon the jury. Sédillez suggested that the jury should be composed of women if the husband provoked the repudiation, and it should be composed of men if the wife initiated the repudiation. He believed that such an arrangement would ensure justice. Sédillez also stated that a couple that repudiated should be allowed to remarry, as unlike divorce, this was not the decision of two parties.

Sédillez's concept of divorce was different to that of Hennet and Robin, but it was based upon the same principles. He differentiated between divorce by mutual consent and "repudiation" by one party of another. He also believed that the law should be very simple and that there should be no specific causes for repudiation; the jury of

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[138] *Archives Parlementaires*, série I, tome XLIX, 13 septembre 1792, p.609.
[139] M.L.E. Sédillez, *op. cit.*, p.7.

repudiation would decide on the justice of a claim for repudiation. However, all three projects for divorce (or repudiation) were inspired by a quest for liberty in society, the happiness of marriages, and the dissolution of unhappy or dissolute marriages.

The deputies in the Legislative Assembly did not greet Sédillez's plan with great enthusiasm. Ducastel and Thuriot objected to the absence of any provision for divorce by incompatibility of character. Thuriot insisted that it would be immoral to force somebody to stay with a person they did not love; both emphasised the utility of such a clause in preventing the exposure of lurid details to public analysis. Léonard Robin, *rapporteur* for the legislative committee, supported the opinion of these deputies, and Delacroix pressed for the acceptance of the committee's divorce project, to the applause of the Legislative Assembly.[140]

Only two deputies, Henry-Larivière and Garreau, objected to the provision for divorce by the request of one party alone; Ducastel rejected this opinion, stating that a woman should be allowed to divorce her husband if he beat her every day even if he did not want to divorce. This defence of divorce by incompatibility of character received the applause of the Assembly. There were no other objections to the committee's divorce plan, and on 14 September, it presented the Legislative Assembly with the articles on divorce they had already decided upon.

The project allowed for the dissolution of marriage by the mutual consent of both parties; one spouse could divorce due to incompatibility of character (or the inability to live together); one party could also divorce by any one of the specific causes stated

on 7 September 1792; those legally separated for at least two years could immediately obtain a divorce; legal separations were abolished. Robin specified different procedures for divorce depending on the cause for divorce. If a couple wished to divorce by mutual consent, then they had to convene a family assembly composed of six members, three nominated by each party. Their task was to dissuade the couple from divorcing, but if they failed, they would have to assemble six months later. If the couple still wished to divorce, then they could ask for a divorce from the local public official.[141]

If one party wished to divorce by means of incompatibility of character, the family tribunal had to meet on three occasions, with the intention of reconciling the couple. The second meeting took place after an interval of two months and the final meeting was held three months after the second. If the spouse still wished to divorce, they had to obtain a certificate from a notary and could divorce six months later.[142] Divorce could be obtained for a specific cause immediately upon the provision of the necessary proofs and the convocation of a meeting to proclaim divorce by the local public official. The party being sued for divorce had to be informed of this meeting but did not have to appear at the hearing. On 18 and 19 September, Robin read the remaining articles of the divorce legislation, and on the evening of September 20th 1792, the Legislative Assembly accepted the legislative committee's divorce law.

Conclusion.

[140] *Archives Parlementaires*, série I, tome XLIX, 13 septembre 1792.
[141] *Ibid.*, 14 septembre, p.643. If either party was a legal minor, then the interval between the convening of the family assembly and divorce was twelve months.
[142] *Ibid.*, 15 septembre, p.678.

The Legislative Assembly did not pass legislation on divorce until 20 September 1792, despite demands for such a measure from the beginning of the French Revolution. The majority of claims for divorce were framed in a language of natural rights and the need to extend liberty to all sections of the community if the Revolution were to succeed. Liberal advocates of divorce believed that the correction or abolition of unhappy marriages was an essential measure in the programme of purification of France of the abuses of *Ancien Régime* society; specifically marriages based on greed rather than love, the maltreatment of children in an unhealthy domestic environment, and the subjugation of women to the authority of tyrannical husbands.

The family was an essential bridge between the public and private spheres. The main advocates of divorce wrote that liberty and happiness had to be enshrined in the family if they were to exist in the public sphere. This could not occur if divorce did not exist to act as a corrective for unhappy marriages. They argued that if individuals did not develop in a household imbued with the values of freedom, love, and education, they could never act virtuously in the public sphere, and would be ignorant of the values that stood at the heart of the republic. Bonneville even insisted that no man who was not a father could assume any public function in the state.[143]

The law on divorce was a revolutionary measure because it relied heavily on a revolutionary discourse of liberty and because its introduction was determined by political circumstances of the French Revolution, and the social, political, and cultural changes that ensued. Advocates of the law drew direct inspiration from the Declaration of the Rights of Man, and on the idea of liberty. They believed that

individuals should be free to marry of their own free will as responsible individuals in society. Nor should individuals be obliged to suffer deprivation of liberty in a loveless or violent marriage and they therefore merited the right to free themselves from any potentially corrupting union, just as the French people had chosen the liberty of the Revolution over the tyranny of the *Ancien Régime*. Cambon, in the debate on the divorce law, insisted that divorce was a natural consequence of the Declaration of the Rights of Man and the Citizen.[144]

The divorce law as promulgated on 20 September 1792, while not intrinsically a republican law, was favoured by those with republican sympathies, notably Nicolas de Bonneville. The law was inspired by the most liberal and secular of the pro-divorce texts, Hennet's *Du Divorce*. Unlike Antraigues' proposal, this was a no-fault divorce law that was not dependent on religious precedent. Hennet pointed out that the Gospel of Matthew quoted Jesus as allowing divorce for adultery, but did not make his proposed law dependent upon this, whereas Antraigues does. Antraigues was himself a royalist while Hennet served as an officer of the Republic and the Empire.

Bonneville, one of the most committed writers in favour of the establishment of a republic after the flight of the king, and an associate of Brissot and Condorcet in the *Chronique du Mois*, wrote in favour of divorce, stressing its importance for a republican society. His concept of marriage and marriage legislation (including divorce legislation) was based on a secular, patriotic, and republican concept of marriage. Marriage was not only a private contract between two consenting

[143] N. Bonneville, *Le Nouveau Code Conjugal,* (Paris, 1792), p.15.
[144] *Archives Parlementaires*, série I, tome XLIX (26 août -15 septembre 1792); 7 septembre, p.432.

individuals, but also a public duty to the state. Similarly, if one found oneself in an unsatisfactory marriage, it was one's right to divorce for the good of the individual, but also for the benefit of society and the republican state. As each individual had a duty to marry and produce children, if one could not do so, or if one could not live with one's spouse in harmony and instil republican and moral values in one's offspring, then each individual should have the right to divorce and remarry in hope of finding a harmonious union. The Republic could not succeed if at the root of society and the republic individuals did not live in happy unions.

The timing of the introduction of divorce legislation was heavily dependent on political circumstances. Advocates of such a law refused to act on petitions calling for the introduction of divorce, as they were aware of the potential opposition to such a law among royalists in the Assembly and the countryside. By September 1792, France was at war, the royalists had left the Assembly, and a republic was declared. Under these circumstances, in a republican dominated Assembly, the divorce law was accepted without opposition. Hence, a law inspired by the revolutionary principle of liberty of the individual, supported by deputies with republican sympathies and dependent on political circumstance, was passed on the eve of the declaration of the first French republic.

Ch.3 The Evolution of Divorce Legislation.

Introduction.

This chapter evaluates the evolution of attitudes to divorce in revolutionary society. It will examines the relationship between these attitudes as expressed in petitions to the Convention and the Council of 500 to actual changes in divorce legislation. The analysis falls into two categories: an examination of the liberal legislative changes to divorce before the establishment of the Directory and the apparent consensus driving these changes; this is followed by the more complex attitudes to divorce under the Directory when the debate on divorce widened to encapsulate the fears of individuals and legislators over the potentially damaging effects of divorce on the community.[1]

The dominant discourse on divorce argued that it would encourage the regeneration of society and the purification of morals. As seen in the previous chapter, most of the *divorçaires* (also referred to as pro-divorce writers) argued that it would liberate French men and women from the bonds of unhappy marriages. This would facilitate the ideal of domestic happiness, as citizens would henceforth marry for reasons of affection and mutual interest, in the knowledge that marriages based on the greed of one party, or marriages in which one spouse abused the other would be dissolved by the wronged party. They argued that divorce would be highly infrequent, as the existence of legislation would encourage unions based on love and equality, discouraging unions founded on greed and domination:

> "...le divorce...sera peu fréquent...il diminuera le nombre des célibataires;

[1] By liberal legislative changes to divorce, I mean that these changes were enacted in an effort to simplify the practice of divorce, thus making it quicker and easier to avail of for those who wished to do so. The apparent consensus referred to relates to the petitions sent to the National Convention

il rendra aux *mœurs* leur pureté."[2]

Hennet's influential work on divorce on divorce developed the same theme, that the elimination of the scourge of unhappy marriages would ensure the spread of domestic happiness. Furthermore, advocates of divorce claimed that the continuing existence of unhappy marriages would act as a cancer, leading to the corruption of French society and morals:

> "...un mauvais époux, un mauvais père, un mauvais fils, sera un mauvais *citoyen*; et que les haines...gagnant des individus aux familles, des familles à toute la société, amèneront la dépravation universelle des *mœurs* publiques et privées."[3]

This idealisation of divorce as a remedy for the ills of society and the family meant that the legal reality was open to much criticism by its opponents if it did not fulfil all the criteria advanced by apologists for divorce. As early as 1789, critics such as the *Abbé* Barruel were ready to argue that the depravity and immorality that divorce legislation would foster was indicative of the general evil of the entire revolutionary project. Authority would break down everywhere in French society, beginning at the level of the family:

> "Toute autorité cessera dans la maison, quand les caprices de l'épouse n'y verront plus que la tyrannie du plus fort...et la crainte du magistrat rendra nul le respect pour le chef de la famille."[4]

The dominant pro-divorce discourse advocated divorce legislation as a remedy for domestic ills. Domestic happiness was supposed to underpin *bonheur* and stability within society, one might assume that domestic instability would undermine this

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pertaining to divorce. They argued for the liberalisation of the divorce legislation or clarification of certain aspects of the legislation.

[2] Anon., *Griefs et Plaintes des Femmes Malmariés*, (s.l., s.d.). In Colette Michel, *op. cit.*, p.66.

[3] Albert Hennet, *op. cit.*, p.88.

order. Here lies the tension between the ideal of divorce discourse and the reality of revolutionary action and divorce practice. We must ask how the revolutionaries dealt with this tension between discourse and practice during the years following the introduction of divorce legislation.

1. The Convention: New Legislation and Loss of Idealism.

Introduction.

The key question this section addresses is whether legislative changes to divorce were driven from above, by the political actors, or whether private individuals responding to their particular circumstances in society instigated these changes. I shall treat this question by an examination of petitions sent to the National Convention and the response of the Convention. What was the nature of these petitions and did the members of the Convention act upon them? There were two significant changes to the September 1792 divorce law before the fall of Robespierre in thermidor of year II. Some commentators have argued that the liberal changes to the divorce law were a result of the radical revolutionary situation of the Terror.[5] James Traer wrote that

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[4] *Abbé* Barruel, *op. cit.*, p.28.

[5] Maurice d'Auteville was highly critical of Revolutionary divorce legislation, claiming that it encouraged infidelity, and the dissolution of morals, particularly during the period of the Convention. In Maurice d'Auteville, *Le Divorce pendant la Révolution Française*, (Nantes, 1884), p.16.
Sicard and Maraval also attributed the increase in divorce during the radical phase of the Revolution to the prevailing political situation.
Germain et Mireille Sicard, "Le Divorce à Toulouse durant la Révolution Française", In *Mélanges dédiés à Gabriel Marty*, 1975), p.1075.
Maraval argued that the high number of divorces during the Convention was due to the political circumstances of the time. She also stated that the instability of the time, with war at the Spanish frontier, power struggles between the military powers, civil authorities, and *représentants en mission* contributed to the instability of families and high divorce rates.
In Simone Maraval, *op. cit.*
The two most significant changes to the 1792 legislation took place with the laws of 8 *nivôse* year II, and 4 to 5 *floréal* year II. Other changes to the law took place on 22 and 25 *vendémiaire* year II, 14 *messidor* year II, and 24 *vendémiaire* year III. The laws of 8 *nivôse* and 4 *floréal* were suspended by decree on 15 *thermidor* year III. On this date, the legislative committee was charged with presenting a report to the Convention on possible revision of the divorce law. See appendices II and III for text of laws on divorce and suspension of the laws of 8 *nivôse* and 4 *floréal* year II.

while social practice tends to outstrip legislation and political action in normal times, the reverse is the case in a revolutionary situation.[6] However, the evidence suggests that the social policy of divorce was driven from below, with the state and legislative actors responding to demands and changes in society. Admittedly, the number of petitions the legislators responded to was small, but nevertheless, they reacted to these petitions rather than pre-empt them. Even before the introduction of divorce, individuals went to *notaires* and local mayors to seek and obtain divorces.

(i) Criticism of divorce legislation in the National Convention.

A number of petitions criticised the implementation of divorce legislation during this period.[7] For the purposes of this study, the analysis will centre on the relationship between six such petitions and the reaction of political actors to these demands from society up to the implementation of the laws of 4-5 *floréal* year II. One can divide these petitions into two thematic groups: petitions concerned with the procedural and technical regulation of divorce, and petitions that appealed to the revolutionaries to change the divorce law in order to make it more compatible with the ideals of the republic. Also examined will be the response of the Convention to the two different forms of petition.

The citizen Espinay insisted that the law declaring marriage a civil contract implicitly suggested the acceptance of the principle of divorce. In his petition, he explained that he and his wife were the first couple to resort to civil divorce.[8] As there was no

[6] James F. Traer, *op. cit.*, p.9

[7] For a list of petitions to the National Convention on the subject of divorce, see appendix V.

[8] Séance du 17 *pluviôse* an II. Pièce annexe VII. "Le *citoyen* Espinay à la Convention; s.d." In Mavidal & E. Laurent (dir.), *Archives Parlementaires de 1787 à 1860, première série (1787-1799)*, tome LXXXV, (Paris, 1909), p.742.

legislation for divorce, they made a declaration of divorce in the presence of a *notaire public* and witnesses on 25 September 1791. Espinay claimed that they subsequently sorted out their affairs amicably. He contracted a second marriage and had a child with his second wife. His first wife then petitioned for a second divorce as she claimed that the first divorce was invalid, as it had occurred before the introduction of the divorce law. Espinay refused this request for a second divorce, as he was afraid that such proceedings would compromise the validity of his second marriage and the legitimacy of his child. He asked the Convention for a ruling on the authenticity of divorces made by an authentic act before 20 September 1792.[9] Espinay was concerned that the legitimacy of his second marriage and his child might be questioned. He believed that his first wife had betrayed him by reneging on their first divorce.

It is interesting to note the rapidity with which the Convention reacted to this request for clarification of the status of divorces declared before the September 1792 law. This rapidity may have been coincidental as the deputy Oudot introduced a law that dealt with many criticisms of the divorce law as expressed in petitions to the Convention.[10] Article eight of the law of 4 floréal year II declared that:

> "Divorce effected according to the principle that marriage is a civil contract,
>
> and that has been confirmed by authentic declarations made before municipal

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[9] Espinay suggested that the law on divorce be amended in the following fashion:

> "Les divorces consentis par acte authentique, antérieure à la loi du 12 septembre 1792 sont déclarés bons et valables, sans qu'il soit besoin de les renouveler en la forme prescrite par la loi."

This petition was sent to legislative committee.
Ibid., p.742.

[10] Séance du 4 *floréal* an II; 52. Law on divorce.
In J. Mavidal and E. Laurent, *Archives Parlementaires* (Paris, 1909), p.200-202.
Charles-François Oudot (1755-1841) was born in Nuits in the department of the Côte d'Or. He became an *avocat* at the *Parlement* of Dijon in 1775, and was elected to the Legislative Assembly during the Revolution and was re-elected to the Convention. He voted for the death of the king without an *appel au peuple*. After *thermidor*, year II, he campaigned against excessive repression of those involved in the Terror and was elected to the Council of 500, and later to the Council of the Ancients.

officers, justices of the peace, or notaires, since the declaration of the above principle, and before the promulgation of the law of 20 September 1792, are confirmed."[11]

In this case, the legislators took their cue from specific grievances from a private individual and transferred this into a general principle of law. Espinay believed the law that decreed marriage a civil contract implied the acceptance of civil divorce. Oudot and the other members of the Convention took this at face value, stating that divorce was a natural consequence of the rights of man:

"Le divorce est une conséquence du premier des droits de l'homme...
Et qu'il suffit de la volonté d'un des époux pour rompre leurs liens;"[12]

It would be naïve to accept this principled reasoning as the only basis for the legislative change. Although the change was indeed in accordance with the principles of the Declaration of the Rights of Man and the aspirations of the original divorce law, article VIII of the law of 4 *floréal* year II also guarantees the property rights and legitimacy of marriages made subsequent to divorces enacted prior to the introduction of divorce legislation in September 1792. Espinay wanted the legitimacy of his second marriage confirmed, and desired to ensure the succession rights of his child. The law acceded to his demands. Although Oudot believed that divorce was a right guaranteed by the principles of the Revolution, the order and stability of society were equally important, and the deputies did not want divorces to not take place without a formal legal framework:

"...cependant le mariage est une institution trop importante au bonheur des familles et au maintien des *mœurs* pour que l'on puisse permettre de le dissoudre sans formalités, et en quelque sorte ipso facto par la seule

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See A. Kuscinski, *Dictionnaire des Conventionnels*, (Paris, 1916), p.471-472.

[11] Département de Seine et Marne, *Décret (no. 2329) de la Convention Nationale des 4è et 5è jours de floréal, an II de la République Française, une et indivisible*, (Melun, 1794), p.3. Article VIII.

[12] "Séance du 27 *germinal* an II." In Mavidal and Laurent, *Archives* Parlementaires, p.653.

séparation des époux."[13]

One discerns a different attitude to questions of succession and the legitimacy of marriages when the Convention made a judgement on the question of separations, legal and non-legal that took place during the *Ancien Régime*. Citizens wrote to the Convention demanding clarification of article VI, section I of the 1792 divorce law.[14] Under this provision, all legal separations that were incomplete, or that had been appealed against were deemed invalid unless the parties commenced a divorce action. The law of 5 *floréal*, year II, responded to several petitions requesting clarification on this matter. It declared that article VI, section I of the 1792 divorce law referred only to legally formulated separations. Furthermore, the appeals against these separations had to be legally formulated.[15] The provisions of the 1792 law stood and the

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[13] "Séance du 27 *germinal*, an II" Mavidal and E. Laurent, *Archives* Parlementaires, tome LXXXVIII, p.653.

[14] § I, article VI

> "Toutes demandes et instances en séparation de corps non jugées, sont éteintes et abolies; chacune des parties payera ses frais. Les jugements de séparation non exécutés, 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."

"Loi (no.2539) qui détermine les causes, le mode et les effets du Divorce, du 20 septembre 1792, l'an 4.è de la liberté."
In Francis Ronsin, *op. cit.*, p.490.

[15] "IIè Décret du 5 *floréal*."

> "Relatif aux jugements de séparation non exécutés, ou attaqués par voie d'appel ou de cassation.
>
> La Convention Nationale après avoir entendu le rapport de son comité de législation sur la lettre du ministre de la justice, en date du 17 *ventôse* dernier; et sur les pétitions et mémoires du *citoyen* Etienne Simon et Louise Belle sa femme, rapporte le décret du 13 *frimaire* dernier, rendu sur la pétition de Louise Belle.
> Et sur la question proposé par le tribunal du district de Romans, tendant à savoir si par ces termes de l'article VI du section I de la loi du divorce, 'les jugements de séparation non-exécutés, ou attaqué par appel ou par voie de cassation, demeurent comme non avenus.'
> La loi a voulu comprendre les jugements de séparation contre lesquels on s'est pourvu par requête civile.
> Considérant qu'il est évidemment dans l'esprit de cet article de comprendre les jugements Qui sont attaqués par des voies légales,
> 'Déclaré qu'il n'y a pas lieu á déliberer.'"

Département de Seine et Marne, *Décret (no.2329) de la Convention Nationale des 4è et 5è jour de Floréal, an II de la République Française, une et indivisible*, (Melun, 1794), p.4.

legislators confirmed their desire for formal legal methods to regulate the family environment. Formal divorce proceedings that took place between the declaration of marriage as a civil contract and the introduction of divorce legislation were accepted by the legislators. However, they would not accept the legality of incomplete separations. Nor would they accept the validity of separations that had been formally appealed against. The one exception to this was when incomplete separations had been transformed into legal divorces. Here we notice the discourse of the *divorçaires* transformed into legal reality; separation without recourse to remarriage was unproductive. It led to adultery, fornication, and unhappy, separated individuals who could not marry the people they love and could only have children outside the cocoon of the domestic family environment.

> "Un vœu indissoluble est un attentat á la liberté de l'homme, et le système actuel est, et doit être celui de la liberté. L'indissolubilité d'un vœu…est absolument contre nature…"[16]

An example of this legal formality and the rejection of legal separation was the reaction of the Convention to the petition sent by the *citoyen* Bouché.[17] While Bouché accepted that the law had made adequate provision for the succession rights of those who divorced, there were many cases of voluntary, informal separation for which

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[16] They considered indissolubility (implicit in the legal separation as practised under the *Ancien Régime*) as an attack on liberty, and unnatural to the human condition.
Anon., *Griefs et Plaintes des Femmes Malmariés*, (s.l., s.d.). In Colette Michel, *op. cit.*, p.64.
Also see Anon., *L'Ami des Enfants. Motion en Faveur du Divorce*, (s.l., s.d.). In *Ibid.*, p.6.
Cerfvol argued in 1768 that indissolubility and legal separation led to forced celibacy, fornication and depopulation. Divorce would allow separated couples to marry others, have children in the family, and boost the population of France.
Cerfvol, *Mémoire sur la Population*, (London, 1768), p.96.

[17] "Séance du 21 *germinal* an II. Le *Citoyen* Bouché à la Convention Nationale."
Mavidal and E. Laurent, *Archives Parlementaires de 1787 à 1860, première série (1787-1799)*, (Paris; Dupont, 1909), tome LXXXVIII (13-28 *germinal* an II), annexe III, p.422.

there was no legislation regarding the succession rights of the estranged spouses.[18] The author lamented the fact that, although a couple may have been voluntarily separated for years, the spouse of a dead partner could legitimately claim the inheritance due to them as stipulated in the marriage contract. Bouché believed that such claims were unjust, as the partner had relinquished their rights by the fact of voluntary separation. He implored the Convention to issue a law stating that any spouse separated voluntarily until the death of their estranged partner should not be allowed to claim inheritance from the estate of the deceased.

This petition was sent to the committee on legislation but no action was taken. The request was explicitly denied by the provisions of the second decree of 5 *floréal* year II. Such action exposes the curious mixture of legal formality and acceptance of the liberal divorce discourse by the legislators. They readily amended the law to legitimise the divorces of those who divorced in the legal vacuum between the declaration of marriage as a civil contract and the introduction of divorce legislation. The deputies accepted that the secularisation of marriage law paved the way for divorce. They even accepted the opinions expressed in petitions that divorce was implicit in the Declaration of the Rights of Man and the Citizen and the declaration of marriage as a civil contract. They acted to properly formalise the situation of those who had divorced without a legal framework.[19] On the other hand, the deputies would not accede to the request made by the *citoyen* Bouché. He wanted the exclusion of estranged spouses from inheritance, even though they had not formally separated or

[18] See divorce law, appendix II, ch.2. § IV *Effets du Divorce par rapport aux Enfants*. Article X states:
"En cas de divorce pour cause de séparation de corps, les droits et intérêts des époux divorcés resteront réglés, comme ils l'ont été par les jugements, ou par les actes et transactions passés entre les parties."

divorced on the basis that such people had relinquished any right to succession by such informal separations. He blamed the lack of such a provision on the *Ancien Régime* and argued that such a law would strengthen morals in French society:

> "Vous maintiendrez les bonnes *mœurs*, en ôtant aux époux séparés de fait l'espérance injuste de recueillir au décès du premier mourant, le fruit de son labeur et de son industrie quoiqu'il n'y aucunement contribué."[20]

The petitioner seemed to ignore the fact that divorce had been available since 22 September 1792 (the petition was written in germinal year II) for couples who had separated voluntarily, and that the divorce legislation provided for the inheritance of divorced spouses. On the death of one divorced spouse, their affairs would be regulated in accordance with the *communauté de biens* or the *société d'acquêts* (the marriage settlement) existing between them.[21] Therefore, the legislation stipulated that divorced spouses retained inheritance rights even after divorce, but the succession rights of individuals, divorced or otherwise were contingent on their compliance with the law.

Legislators were thus willing to reform laws if calls for reform were in accord with the dominant discourse on divorce. However, they were not willing to legislate for the disinheritance of spouses, whether they were divorced or not. Furthermore, the legislators in the Convention refused to recognise that an informal and voluntary

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[19] "Speech of M. Aubert-Dubayet to the Legislative Assembly, August 30, 1792." Also see speeches of Cambon and Guadet on the same day. In M.E. Laurent (dir.), *Archives Parlementaires,* tome 49, p.117.

[20] Séance du 21 *germinal* an II (10 avril 1794). "Le *citoyen* Bouché à la Convention Nationale, Paris, *germinal* an II." In *ibid.*, tome LXXXVIII, annexe III, p.422.

[21] "Loi qui détermine les causes, le mode et les effets du Divorce, du 20 septembre 1792, l'an 4.è de la libertè."
§ III. *Effets du Divorce par rapport aux Epoux.*
Article IV. De quelque manière le divorce ait lieu, les époux divorcés seront réglés par rapport á la communauté des biens, ou á la société d'acquêts qui a existé entre eux, soit par la loi, soit par la convention, si l'un d'eux étoit décédé.
In Francis Ronsin, *op. cit.,* p.117.

separation had any status whatsoever. In the eyes of the law, those couples who separated voluntarily and had not formalised their arrangements by divorce were still officially married. Therefore, any inheritance arrangements agreed prior to or during marriage remained valid. The legislators were evidently influenced by society in the matter of the regulation of divorce law, but they remained unwilling to act upon every petition that was sent to the Convention, particularly if such petitions ran counter to the divorce discourse of the liberal *divorçaires*. They still believed that a liberal divorce would help stabilise domestic arrangements, produce happily married individuals, and result in little recourse to divorce.

(ii) Petitions requesting further liberty and equality.

This section examines four petitions responded to by the legislation of 4 *floréal*, year II. The common themes developed by these pamphlets are those of liberty and equality.[22] The writers to the Convention generally praised the work of the legislators, but appealed to them to pursue their rhetoric and that of the liberal pro-divorce writers to its logical conclusion in legislation.[23] In other words, they wished that divorce legislation, founded on the idea of universal liberty and equality of opportunity for all, should be easily and quickly obtainable. The petitioners also desired that recourse to divorce be equal for both men and women insofar as was possible. The manner in which the legislators engaged with these demands provides an insight into the thinking of the deputies on the issue of divorce and its relationship to revolutionary ideals of liberty and equality of access to legislation for all members of civil society.

[22] Other pamphlets were submitted to the Convention on the subject. However, these petitions were either ignored or addressed particular grievances of the writers, and did not engage with the liberal discourse on divorce, neither to criticise it nor to praise it.

None of the petitioners criticised the intentions of the 1792 law. Rather, they viewed the law as incomplete and hoped that the legislators would remedy this problem by introducing additional laws to complete the liberty and equality promised by the original divorce legislation. The *rapporteur* for the committee on legislation on the question of divorce agreed with the petitioners when presenting his report and *projet de loi* on 27 germinal year II. He stated that the revolutionary government needed to reform certain laws in order to make them more just. Included in these laws was the "incomplete" divorce law.[24]

The first of these four petitions referred to the law of 8 nivôse year II. The petitioner, Jeanne Louise Gautier framed her demand by calling for more liberty in divorce law.[25] This echoed the rhetoric of earlier writers on divorce who stated that divorce would guarantee liberty at the base of society - in the family.[26] The law confirmed the authority of *tribunaux de famille* to adjudicate on certain disputes regarding divorce. It also accelerated the divorce process, obliging the *tribunaux* to rule on divorce disputes within a month. Otherwise, the disputes would automatically be referred to the local *tribunal de district*. Furthermore, the law allowed a divorced husband to remarry immediately after divorce was pronounced. A wife would have to wait ten months

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[23] The arguments and themes developed by the liberal divorce writers or *divorçaires* are examined in the previous chapter. Their discourse was accepted by the legislators who implemented the law on divorce on 20 September 1792.

[24] Séance du 27 *germinal* an II (16 avril 1794). "Le membre Oudot, au nom du comité de la législation, fait un rapport sur plusiers pétitions tendante à faire entreprêter différentes dispositions de la loi du 10 septembre 1792 sur le divorce et à y ajouter plusiers articles."
In Mavidal and E. Laurent, *Archives Parlementaires*, tome LXXXVIII, p.652-654. The title refers to the law of 10 September 1792 but should read 20 September 1792.

[25] "La *Citoyenne* Gautier à la Convention, Paris, 5 *pluviôse* an II."
In Mavidal and E. Laurent, *Archives Parlementaires*, tome LXXXIII, p.616.

[26] Claude Louis Rousseau, *op. cit.*, p.31.

before remarriage unless it could be proved that her husband had abandoned her for at least ten months before the divorce was declared. If this was the case, she could remarry immediately.[27] The petitioner did not use the call for more liberty simply as a rhetorical device. She wanted divorced people to have the liberty to remarry as soon as possible after the declaration of divorce. Furthermore, she believed that those applying for divorce should not expect to wait any longer than was strictly necessary for their divorce to be settled. According to the petitioner, this would liberate such couples to pursue their lives free from the unhappy marriages they wished to escape from. The *citoyenne* Gautier praised the law of 8 nivôse year II, as she believed it increased the liberty of all citizens affected by the need to divorce. Her only criticism was that this law has not yet been enacted:

> "Hâtez-vous, Législateurs de faire sortir cette loi, qui rend à l'homme usage de sa liberté, et d'abréger les délais des nombreuses et dégoûtantes comparutions; faites jouir de ce bienfait les époux qui ont formé leur demande en divorce..."[28]

The second petition also used the language of rights and equality. The *citoyenne* Girod begged the Convention to change some of the procedural measures in the 1792 divorce law. Although she believed the principle of the law to be sound, she argued that it nevertheless favoured the interests of the wealthy over the poor. She cited the particular difficulties women experienced in obtaining divorces as an example of practical problems that hampered the direct flow of justice and equality from legislation to all members of society, be they rich or poor, male or female. The

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Nicolas Bonneville, *Le Nouveau Code Conjugal, établi sur les bases de la constitution, et d'àprès les principes et les considérations de la loi déjà faite et sanctionnée, qui a préparé et ordonné ce nouveau code*, (Paris, 1792), p.14-15.

technique used by Girod is common among those writers who appealed to the legislators to change the divorce law. They began with general praise of the pillars of the Revolution, lauding the advances the deputies had made in legislating for more justice, equality, rights and liberty. After flattering the deputies, they proceeded to outline the imperfections of the divorce law, normally by explaining how certain aspects of the law ran counter to the ideals of liberty the law was designed to exemplify. In other words, while praising the conceptual foundations of the 1792 divorce law, they observed that the law required refinement to fulfil its lofty aspirations.[29] It is important to note that the deputies listened to the petitioners and engaged in a dialogue of sorts with them. The following paragraphs will show how the demands of the petitioners to be examined had a concrete effect on the formulation of the most significant change to the September 1792 divorce law.

Girod argued for a particular change to the law on the grounds of general revolutionary principle. She praised the deputies for implementing laws that facilitated greater equality between citizens and she claimed that the legislators had re-established:

> "...l'égalité qui exige que le *citoyen* pauvre obtienne justice aussi facilement
>
> que l'homme riche auquel les sacrifices ne coûtent point."[30]

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[27] Département de Seine et Marne, *Décret de la Convention nationale du 8 nivôse, an II de la République Française, une et indivisible*, (Melun, an II), articles III & IV, p.3.
[28] J. Mavidal and E. Laurent, *op. cit.*, tome LXXXIII, p.616.
[29] Pro-divorce writers and deputies in favour of divorce believed that divorce would facilitate the proliferation of happiness in French society. They believed the divorce law would liberate unhappy individuals from the prison of bad marriages. In addition, women would also have equal access to this law, thus enabling them to flee tyrannical husbands and restore equality to marital relations. Divorce would encourage individuals to work harder at their marriages as it allowed dissatisfied partners to dissolve the marriage.
See the speech of the deputy Aubert-Dubayet on August 30, 1792 in M. E. Mavidal (dir.), *Archives Parlementaires*, tome XLIX, p.117.
[30] Séance du 9 *pluviôse* an II. " La *citoyenne* Girod à la Convention, s.d."
In Mavidal and E. Laurent, *op. cit.*, tome LXXXV, p.741-742.

She nevertheless lamented the fact that the law on divorce had allowed inequality to persist between men and women and rich and poor, in relation to the execution of divorce proceedings. She told the deputies that the practice of petitioning for divorce at the place of domicile of the husband discriminated against all women, but especially against poor women. She gave the example of women who were forced to leave their husbands in difficult circumstances, often to go away in search of work; other women had been left by their husbands for the army, to emigrate or for commercial reasons. The writer claimed that women were often unaware of their husbands' last place of domicile, thus rendering it impossible to petition for divorce there. Other women might not have the financial means to undertake such a journey. Girod accepted that notification of a divorce action must be given, but found it unacceptable that such notification had to take place in the commune of the husband as this discriminated unfairly against women, thus rendering the divorce law inequitable. She asked the legislators to reflect on her comments and proposed the following changes to the divorce law:

> "La loi nouvelle pourrait autoriser les femmes qui auront acquis un domicile d'un an dans un lieu autre que le domicile de leur mari, ou celles dont leurs maris auraient depuis six mois abandonné de fait leur domicile, et l'auraient eux-mêmes fixés ailleurs en y prenant un état, à poursuivre leur divorce dans le lieu de leur domicile actuel."[31]

Girod asked that women be allowed to formulate divorce petitions in their own commune if they had been living apart from their husbands for over a year, or if their spouses had abandoned them for over six months. The deputy Oudot reacted

favourably to this and other petitions. Speaking for the committee on legislation, he presented his report on the petitions demanding changes to the divorce law in similar terms to those used by the petitioners. He stated that divorce was a consequence of the Declaration of the Rights of Man and the Citizen, and accepted that the required reform.[32]

Articles one to four of the law of 4 *floréal* year II dealt with the demands of *citoyenne* Girod. The legislators acceded to the requests of the petitioner and, informed by the liberal discourse of the *divorçaires*, they made divorce easier to obtain. Not only could the person (male or female) bringing the divorce action pursue divorce in their new commune of residence if they were separated and domiciled there for over six months, but they could also obtain divorce for separation of more than six months if this were proven by an *acte de notoriété public*. The other party would be notified by an *agent national* who would post the divorce notification at the town hall of the former shared commune of residence.[33] The second article of the law stated that if it could be proven that separation for over six months had taken place by the abandonment of one party by the other no notification of the other party was necessary. The only exception to these provisions was the case of wives of soldiers or functionaries serving the away from their domestic home. Wives of these men could only request divorce in the commune of the last common domicile, or in the place of residence of the husband

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[31] *Ibid.*, p.742.

[32] Séance du 27 *germinal* an II (16 avril 1794). "Le membre Oudot au nom du comité de la législation, fait un rapport sur plusieurs pétitions tendante à faire entreprêter différentes dispositions de la loi du 10 septembre 1793 sur le divorce et à y faire ajouter plusieurs articles."
In Mavidal & E. Laurent, *op. cit.*, tome LXXXVIII, p.653.

[33] Article I of the law of 4 *floréal* year II. In Département de Seine et Marne, *Décret (no.2329) de la Convention Nationale, des 4è, et 5è jour de Floréal, an II de la République Française, une et indivisible*, (Melun, 1794), p.1-2.
See appendix III.

serving the state.[34] Thus, on entering into a dialogue with the petitioners the deputies assessed the effectiveness of their legislation, analysed its accordance with revolutionary principles, and found their law imperfect. Not only did the lawmakers assent to the changes requested by Girod, they also made divorce easier to obtain for all by reducing the period of absence or abandonment to six months. There is no record that this was a measure demanded by any petitioner. The legislators acted upon the demands for change to divorce emanating from society but they also attempted to perfect the law on their own initiative. Oudot stated that the divorce law was a consequence of the first of the rights of man and that it was wrong to force any individual to live with another against their will.[35]

The *citoyenne* Dumas pursued the same theme as Gautier in deploring the inequality of the divorce law in France. She agreed with the principle of the law but lamented its imperfections. Dumas asked why women could only remarry immediately after divorce if their husbands had abandoned them for at least ten months. She believed that the law should be equal for both, that women who had abandoned (or been forced to abandon) their husbands for at least ten months should also be allowed to remarry immediately after divorce. The petitioner claimed that such an adjustment would

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[34] Article II and IV in *Ibid.*, p.2.
There was a fear that women would avail of the law to divorce husbands serving the state far from home in order to divorce them without informing their spouses. The property, alimony, and childcare settlements of divorces that took place under article IV of the law (as settled by the *tribunaux de famille*) would remain provisional until the return of the husband. This was to prevent the wife from gaining an unfair settlement without the knowledge of the husband.

[35] "Le membre Oudot, au nom du comité de la législation, fait un rapport sur plusiers pétitions tendante à faire entreprêter différentes dispositions de la loi du 10 septembre 1792 sur le divorce et à y faire ajouter plusiers articles." In Mavidal & E. Laurent, *op. cit.*, tome LXXXVIII, p.653.
The first article of the Declaration of the Rights of Man states the following:
"Men are born free and equal in rights; social distinctions may be based only upon general usefulness."
In John Hall Stewart, *A Documentary Survey of the French Revolution*, (New York, 1951), p.114.

further equality among individuals and would contribute to the greater happiness of the community:

> "Faites disparaître ce vice de rédaction et vous aurez fait encore un pas de plus vers le but que vous vous proposez et que vous atteindrez: celui du bonheur de tous les Français, S. et F."[36]

Dumas argued for this change to the law because she found herself in the situation she described, but argued for this particular change in the law on the grounds of general principle. Like Girod, she used the rhetorical devices of praising the deputies, and linked the idea of reforming the principally sound but procedurally imperfect divorce law. She did not call for any fundamental changes in the law, but desired its perfection. She told the deputies that by reforming this particular aspect of the 1792 law, they would not only improve the divorce law, but also contribute to the greater happiness of society. The petitioners argued in the same terms as the liberal divorce writers. The introduction of a liberal divorce law and its refinement through petition and reform would not only benefit individuals and families, it would also further the whole project of the Revolution by allowing individuals to pursue liberty and equality, and therefore happiness in their private and public lives. Oudot and the committee on legislation responded to this request in article seven of the law of 4 *floréal* year II. The law stipulated that divorced women would be allowed to remarry immediately after divorce if it had been proven by an *acte de notoriété public* that she had been separated from her husband for ten months or more.[37]

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[36] Séance du 6 *ventôse* an II. "La *citoyenne* Dumas, à la Convention Nationale, La Rochelle, 30 *pluviôse* an II".
In Mavidal & E. Laurent, *op. cit.*, tome LXXXV, p.437.
[37] Article VII of law of 4 *floréal*. In Département de Seine et Marne, *op. cit.*, p.3.

The *citoyen* Gaulier framed his petition to the Convention in similar terms to the three previous petitions under discussion (those of Gautier, Girod and Dumas). He praised the revolutionaries for their work in reforming laws to meet the ideals of the Revolution but accepted that the deputies might be too busy to reform the divorce law. Instead of commenting on the residual inequality in the divorce law, he insisted that the divorce law needed to introduce more liberty into divorce proceedings. Informed by the language of pamphleteers advocating the introduction of divorce between 1789-1792, he used the images of slavery for those trapped in unhappy marriages and stated that simple access to divorce would restore liberty to such unfortunate people:

> "Un jour d'esclavage est un jour de deuil pour la société et un jour de mort pour un patriote."[38]

Gaulier pleaded the case of those who had lived abroad or in a different department for a lengthy period of time. He asked that they be exempted from having to wait for six months before they could procure a divorce. Apparently, Gaulier was somewhat confused as he was referring to the delay of six months necessary for those who divorced for reasons of incompatibility of character. He asked that if it could be proved that a couple had been separated for a period of thirty years, they could be divorced without delay on the production of an *acte de notoriété public*.[39] Under the provisions of the 1792 law, one could divorce if it was proven by *acte de notoriété public* that one party had abandoned the other for a continuous period of two years, or if one spouse had been absent from the family home without any communication with

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[38] Séance du 28 *pluviôse* an II. "Le *citoyen* Gaulier, président du Comité révolutionnaire de la section de Guillaume Tell à la Convention nationale; s.d."
In Mavidal & E. Laurent, *op. cit.*, tome LXXXV, p.126.
The image of slavery for those trapped in loveless or oppressive marriages was used in earlier petitions calling for divorce. See "Lettres de plusiers *citoyens* et *citoyennes* du département de Paris" (12 February 1792), in M. E. Mavidal, *op. cit.*, tome 38, p. 466.

[39] Mavidal & E. Laurent, *op. cit.*, tome LXXXV, p.126.

the other party for over five years.[40] Although there was no need to change the law as requested by Gaulier, the petition was sent to the committee on legislation.

We can see from the changes made to the law and the tone of the petitions sent to the Convention that both petitioner and deputies spoke a common language of rights, justice, equality and liberty. Oudot accepted the criticisms of the petitioners and tried to produce a law that would fulfil the promises of the legislators who debated upon and drew up the original divorce law in September 1792.[41] Divorce legislation was almost nineteen months old and there was approval of the principles upon which the law was founded alongside an idealistic belief that divorce could liberate people from unhappy bonds of servitude in coercive or unhappy marriages. The petitioners framed the language of their complaints in the same language as that of pro-divorce writers of 1789 to 1792, and the deputies agreed with the majority of their demands.[42] As with the introduction of divorce in 1792, the demand for change in divorce initially came from society, it did not emanate from the political actors of the Revolution.[43] The

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[40] Absence without news for over five years and abandonment for over two years were stated as causes for divorce in article IV, paragraph I of the divorce law of 20 September 1792. Paragraph II of the law described the modalities of divorce. Article XV of this paragraph stated that:

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

Divorce law of 20 September 1792. In Francis Ronsin, *op. cit.*, p.115. Gaulier's appeal for the introduction of legislation to cater for those separated for a long time seems unnecessary.

[41] The deputy Aubert-Dubayet promised that divorce legislation would lead to a reduction in adultery, healthy public morality, and public happiness. It would also strengthen marriages by encouraging individuals to work at them. "Speech by Aubert-Dubayet of 30 August 1792", in M.E. Laurent (dir.), *op. cit.*, tome XLIX, p.117.

[42] Most of the writers in favour of a liberal divorce law claimed that divorce would serve to further the causes of the Revolution by encouraging liberty and equality in the domestic sphere. See chapter 2.

[43] There was one petition that counselled against divorce. The petition was dated 24 August 1792 but for some reason was heard in the Convention on the 2nd of *floréal*, year two (21 April, 1794). In this petition the *citoyen* Frotié asserted that divorce would result in the weakening of the kingdom. He wrote that if divorce was allowed women would become the slaves of men and husbands would leave their wives after their youth had waned. The petition was not sent to the committee on legislation, and it is unusual to find it here as divorce had already been legislated for.
See Séance du 2 *floréal* an II. "Le *citoyen* Frotié à la Convention; Versailles, 24 août 1792." In Mavidal & E. Laurent, *op. cit.*, tome LXXXIX, p.137.

petitioners addressed their specific grievances to the deputies while framing them in the language of social and political liberty and equality. Just as in 1792, the deputies responded positively to these demands. The optimism of the deputies went as far as to believe that the existence of a divorce law, by eradicating bad marriages, would make recourse to the law unnecessary. Linguet stated this in *Légitimité du Divorce*, and the deputy Oudot claimed that out of every hundred divorces, only one would have resulted from marriages formed since the promulgation of the divorce law.[44]

2. Challenges to the *Divorçaire* Discourse.

Introduction.

This section investigates the development of a critique of the dominant divorce discourse as advocated by the *divorçaires* during the early years of the French revolution. Writers and political actors could no longer maintain that divorce would sweep away unhappy marriages and yet be rarely utilised. Furthermore, Oudot's claim that almost all divorces declared during the Revolution were the result of bad marriages formed during the *Ancien Régime* was exposed as a myth. The rate of divorce fell after the first years for which the law was available but married couples nevertheless continued to divorce.[45]

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[44] Linguet, *Légitimité du Divorce*, (Bruxelles, 1789), p.31.
Séance du 27 *germinal* an II. "Le membre Oudot, au nom du comité de la législation, fait un rapport sur plusiers pétitions tendante à faire entreprêter différentes dispositions de la loi du 10 septembre 1792 sur le divorce et à y faire ajouter plusiers articles."
In Mavidal & E. Laurent, *op. cit.*, tome LXXXVIII, p.653.

[45] According Jacques Dupâquier, divorce figures for France during the years I to III were 5956, 6972, and 7484. For the years IV to X the number of divorces dropped significantly but did not fall below 2465 for any given year. Divorce figures for these years (IV to X) were 4057, 3541, 2558, 2788, 2527, 2465, and 3072.
See Jacques Dupâquier, *op. cit.*, p.34. Dupâquier points out that figures are approximate. He states that for Paris they are satisfactory, for the large towns they are very reliable, for medium-sized towns they are fairly reliable, for the small towns they are hypothetical, and for rural France they are unreliable.

While there was little public opposition to divorce from the time of its introduction to the end of the Terror, circumstances changed after the fall of Robespierre and the Committee of Public Safety on thermidor 9 year II. Greater press freedom and the reappearance of deputies who had laid low or remained silent during the Terror facilitated the development of a plurality of opinions towards divorce and the future direction of the republic. Many writers and deputies associated with the *Cercle Social* re-emerged after the period of Terror to reflect on the future of French society.[46] Of all the deputies that spoke on divorce during the Directory, six went into hiding, or were arrested between 31 May 1793 and 27 July 1794.[47] It is remarkable to note that some

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[46] See Marcel Dorigny, "La Gironde sous *Thermidor*". In Roger Dupuy & Marcel Morabito, *1795 Pour une République sans Révolution*, (Rennes, 1996), p.239-242.
Also Gary Kates, *op. cit.*
For the press during the Revolution see Hugh Gough, *The Newspaper Press and the French Revolution*, (Chicago, 1988); Jeremy D. Popkin, *The Revolutionary Press in France, 1789-1799*, (Durham, 1990); Daniel Roche & Robert Darnton (eds.), *op. cit.*

[47] Jean Mailhe and Cambacérès keep a low profile during the Terror, while working on the committee of legislation. Mailhe (1750-1834) was born at Guizerix in the Hautes-Pyrénées. He studied law at Toulouse and became an *avocat* at the parlement of Toulouse. He later became *procureur-général-syndic* of the department of the Haute-Garonne and was elected to the legislative Assembly in 1791. He was also elected to the Convention. He supported the declaration of war on Hungary and Bohemia, and became famous for his report on the judgement of Louis XVI. He asked two questions: could Louis be judged, and if so, by whom? He answered that yes, the king could be judged, and that the Convention should judge him. He voted for the execution of the king, but with suspension of the sentence. After *thermidor*, he moved to the right and argued that the tyranny of the Committee of Public Safety was as bad as that of the monarchy. After the *coup d'état* of 18 *fructidor* year V, Mailhe was thrown out of the Council of 500 for royalist sympathies and put on the list of deportees but he fled to Hamburg, where he was caught and imprisoned. He was released on 13 *nivôse*, year VIII.
See Claude Manceron, *La Révolution Française. Dictionnaire Biographique*, (Paris, 1989), p.407-408, and A. Kuscinski, *op. cit.*, p.423-425.
Jean-Jacques Régis de Cambacérès (1753-1824) was born in Montpellier. From the nobility of the robe, he studied law and became a *conseiller à la Cour des Comptes* in 1774. At the beginning of the Revolution he was president of the criminal tribunal of the department of the Hérault. He was elected to the Convention and sat in the Marais. During the king's trial he voted for the death penalty with suspension of the sentence. During the Terror, he sat on the legislative committee and occupied himself with the classification of the laws. During the Directory, he worked on the *Code Civil* and was later named second Consul by Napoleon.
See *ibid.*, p.101-102, and Claude Manceron, *op. cit.*, p.123-124.
Bancal des Issarts had been close to Brissot and was a member of the *Amis des Noirs*. He was kidnapped along with other deputies by enemy forces on foot of his betrayal by Dumouriez.
See A. Kuscinski, *op. cit.*, p.20.
The deputy Joseph-Jérome Siméon (1749-1842) had been outlawed in August 1793. See A. Martin & G. Walter, *op. cit.*, tome 3, p.361.
Lecointe-Puyraveau (1764-1827) avoided the proscription of 2 June 1793 while in the Vendée attempting to rally support against the rebels. A. Kuscinski, *op. cit.*, p.387-388.
The deputy Faulcon hid during the Terror. See Martin & Walter, *op. cit.*, tome 2, p.246.

of those who had been in favour of divorce on principle before 1792 sought to amend and restrict access to it as a consequence of their observations of divorce practice. Jean Mailhe had supported the introduction of divorce in 1792, but had changed his opinion by 1795, and supported the suspension of the laws of 8 nivôse and 4 *floréal* year II. These measures were suspended on 15 thermidor year III.[48] The myth that the liberal divorce law would help regenerate society by purifying it of unhappy and corrupt marriages was exploded by the reality of continuing marital breakdown. The challenge for the deputies was to respond to criticisms of divorce legislation and to adjust the divorce law they had created without undermining the principles of civil equality and liberty, while still encouraging the ideal of domestic happiness.

(i) Opposition to divorce.

The most striking development in the debate on divorce after 9 thermidor year II was the appearance of arguments against divorce that were grounded in the principles of the Revolution itself. The two main arguments against divorce during this period were essentially moral ones against the harmful effects of divorce upon society.[49] Madame Suzanne Churchod Necker argued, as did the *divorçaires*, that one of the fundamental

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[48] For Mailhe's support of the 1792 divorce law see Mavidal and E. Laurent, *Archives Parlementaires*, tome 53, p.463, 18 November 1792.
For the suspension of the laws of 8 *nivôse* and 4 *floréal* year II, see Département de Seine et Marne, *Extrait du Bulletin de la Convention Nationale, séance du 15 thermidor l'an IIIième de la République: Décret*, (Melun, an III). This decree suspended the above laws and charged the committee on legislation with revising all laws relevant to divorce. It was to present a report within ten days.
The introduction of this decree is described in Dominique Dessertine, *op. cit.*, p.72, and James F. Traer, *op. cit.*, p.126.

[49] Barruel and Chapt de Rastignac attacked divorce on religious grounds before the law was introduced.
Abbé Augustin Barruel, *op. cit.*
Abbé Armand Chapt de Rastignac, *op. cit.*
After 18 *brumaire* year VIII, Bonald and Maleville criticised divorce.
Çomte de Maleville, *Examen du Divorce*, (Paris, 1816). Maleville believed, like earlier critics of divorce, that the law led to the dissolution of morals and could only be justified on grounds of adultery.

aims of marriage was happiness. She structured her argument around the four goals of marriage outlined in the text.[50] Necker believed that God intended men and women to be happy in a state of marriage where their two souls and different talents would merge. She dismissed divorce on the grounds of incompatibility, stating that the household must contend with imperfection and faults. She argued that if a son left his family due to some perceived incompatibility, this would be a revolt against Nature. A spouse acting in a similar fashion would also be in revolt against Nature, therefore this provision in the law was in itself unnatural.[51] Using the same language and emphasis on Nature as Hennet, Necker rejected his belief that *bonheur* and the creation of children were the fundamental aims of marriage. Consequently, she did not believe that marriage could be dissolved if one spouse was sterile.[52] On the contrary, she contended that although children were important in marriage, fertility was only a secondary consideration in marriage when compared with the happiness of the spouses. Therefore, sterility could not be a valid justification for divorce:

> "...et si le premier but de mariage, ainsi que celui de la vie, est-le bonheur de l'individu, non la multiplication de l'espèce, l'on ne peut plus alléguer la stérilité en faveur du divorce."[53]

Louis de Bonald, *Du Divorce, considéré au dix-neuvième siècle relativement à l'état domestique et à l'état public de société*, (Paris; Le Clère, 1801).

[50] Mme. Suzanne Churchod Necker, *Réflections sur le Divorce*, (Paris; Lescure, libraire des bibliophiles, 1881).
She was born in 1737 at Crassy, pays de Vaud, and married Jacques Necker in 1764. She held a salon in Paris and her husband was a minister to Louis XVI. This work was written in 1793, the year before her death, and had not been published since 1802 (by Desenne and Aubin in Paris) according to the publishers of the 1881 imprint. The 1881 publishers claimed that her *chef d'œuvre* was to be found both in this work and in her conduct as a wife.
The four goals of marriage as outlined by Necker were the individual happiness of the spouses and of youth (*la jeunesse*), the duty of both parents to raise their children in a virtuous manner, the importance of the purity of *mœurs,* and the mutual consolation afforded to spouse by each other in their old age.

[51] *Ibid.*, p.45.

[52] Albert Hennet, *Du Divorce*, (Paris, 1789), p.8.

[53] Necker, *op. cit.*, p.47.

It is significant that Necker, using the same language of happiness, the importance of nature, and the family, concludes that the legislators should abolish divorce. Both the *divorçaires* and Necker desired happy stable families as the basis of society but their proposals for achieving this were fundamentally different.

Necker believed that the individual's liberty to divorce, and an excess of liberty in general was dangerous for the stability of society. This argument was in direct opposition to the beliefs of the *divorçaires* who based their arguments for a better society in general, and for better marriages in particular, on the belief that individual freedom for all citizens would lead to the moral purification of French society. Freedom to choose one's spouse and to liberate oneself from an unhappy marriage through the exercise of individual will would lead to happier marriages.[54] The deputies who debated the bill on divorce legislation in 1792 supported this idea.[55] Necker objected to the possibility of women exercising individual judgement in such a manner. She argued that as all human were imperfect beings, a surfeit of liberty could only harm society. Essential to her objection to divorce was Necker's understanding of the nature of women. Unlike Condorcet, Etta Palm d'Ælders and Olympe de Gouges, she did not believe that all individuals, men and women, were equal in reason and

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[54] Hennet, *op. cit.*, book two, chapters one and two. He argued that, although nature would prefer that husband and wife remain together, they must be accorded the liberty to separate and remarry if they could not find happiness together. He stated that women must have an equal right to divorce, as husbands were often the oppressors in marriages.
Anon., *Mémoire sur le Divorce,* s.l., n.d., p.39. In Colette Michel (ed.), *op. cit.* The author argued that liberty, equality, and justice could not exist when barbarous laws, such as the enslavement of women in unhappy marriages, were still in place.

[55] To the applause of the Legislative Assembly, the deputies Aubert-Dubayet and Cambon appealed for a divorce law. They argued that such a law would benefit liberty and serve to free unhappy women from slavery in marriage, an ignoble position in a land of freedom.
Mavidal & E. Laurent, *Archives Parlementaires*, tome 49 (26 août-15 septembre 1792), p.117.

will.[56] Mme Necker asserted that excess of liberty was dangerous for all, but especially for women, whose virtue lay in their dependence upon men, and their ability to influence society from the privileged (but restricted) zone of the domestic sphere:

> "Liberté, mot dangereux pour tous les âges, pour tous les sexes; mais surtout pour le nôtre, dont les vertus sont la dépendance; les sentiments, l'abandon de la volonté; les goûts, le désir de plaire, et les jouissances, des rapports avec le bonheur des autres."[57]

Necker accepted the dependent role assigned to women in the constitution of 1791. Furthermore, freedom to divorce would deprive women of security in the domestic sphere where they held a privileged position. Any threat to women's position in the domestic sphere (through its dissolution) would deprive women of happiness and the possibility of freedom and agency within the family.

Necker perceived divorce as a threat to the moral and cultural status of women in modern society. She held that women should act as the moral guardians of society. She also believed that their role as educators of children and companions for their husbands was of critical importance to the functioning of society:

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[56] Condorcet, *Sur l'Admission des Femmes au Droit de Cité* (July 30, 1790). In *Oeuvres de Condorcet*, tome 10, (Paris; A. Condorcet-O' Connor & F. Arago, 1847).
Etta Palm d'Ælders' petition demanding equal access to the law, education, and a divorce law. In Mavidal & E. Laurent, *Archives Parlementaires*, tome 41, (Paris; Kraus reprint, 1969), p.63.
Olympe de Gouges, *The Declaration of the Rights of Woman* (1791). In Levy, Applewhite and Johnson (eds.), *op. cit.*.
These writers appealed for the equality of rights for all citizens, men and women. However, this was not the dominant republican position on the status of women. Necker's ideas were more in tune with the predominant republican argument as regards the status of women in French society. This position held that women should stay at home, produce and educate good republican children. Their position in the family was held to be crucially important to the stability of the republic, but their influence was to be restricted to the domestic sphere. Lynn Hunt articulated this republican stance by saying that male virtue meant participation in the public world of politics and female virtue entailed withdrawal into the private world of the family.

"...le respect filial, la bonne éducation des parents, la vie patriarcale, l'ordre dans la société, la responsabilité des parents...sont la suite non interrompue des biens qui résulte de l'indissolubilité du mariage;"[58]

Indissolubility guaranteed the good education of children, respect in the family and stability in society, while divorce acted as a threat to this stability, and therefore to happiness. Marriage, the destiny of women, gave them a fundamentally important role in society, whereas the possibility of divorce could make women selfish, disregardful of the needs of their husbands, and of their children. Dissolution would prey on the imperfections in the human character and lead to societal instability, the abandonment of duty and general unhappiness:

"Mais si l'on laisse aux femmes la liberté de faire un choix, bientôt leurs regards erreront sur tous les hommes, et bientôt le seul privilège du parjure les distinguera des actrices, qui ont aussi le goût des changements."[59]

Divorce, instead of liberating women from the slavery of an unhappy marriage would undermine the position of women in society, stripping them of security and responsibility in the vitally important domestic sphere. Necker compared divorced women to amphibians. They existed in limbo; neither daughter, wife, nor mother, they could claim no position of responsibility or authority in society. Such women, without any function in society would lose all sense of happiness in a world that had no place for them. She believed that woman could only find happiness, and exercise a powerful and responsible role in the domestic sphere through the fulfilment of her duties to

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See Lynn Hunt, *The Family Romance of the French Revolution*, (Berkeley, 1992), p.121.
[57] Necker, *op. cit.*, p.58.
[58] *Ibid.*, p.65.
[59] *Ibid.*, p.84.

herself, her husband and her children. In this sphere, women could help with the creation of a stable and moral society, and any threat to the security of the domestic sphere was a threat to the important role women had to fulfil in this sphere.

Charles-Philippe-Toussaint Guiraudet pursued a similarly moral and secular argument against divorce in two works published during the Directory.[60] Guiraudet, like other critics of divorce, associated the introduction of the divorce law with the Terror. He claimed a close relationship between morality and laws:

> "Si ces affections, cette morale publique, est bonne vous aurez des Lois sages et pures comme leur source. Celles-ci à leur tour, influeront sur les bonnes *mœurs*, comme les bonnes *mœurs* ont influé sur les bonnes lois."[61]

Good public morality would lead to good laws, and these laws would in turn have a beneficial effect on public morality. By associating divorce legislation with the Terror Guiraudet condemned it. He claimed that the morality of the period was corrupted and that this morality led to barbarous laws. The duty of the new legislature of the Directory was to make new "moral" laws for the French people and it should also repeal laws of the terror deemed "barbarous" by Guiraudet. One of these barbarous laws was that of divorce. Divorce was barbarous for him not only because of its association with the Terror, but also because it threatened the stability of society.

Guiraudet condemned divorce because it threatened the dominant position of men in society and the family. For Guiraudet, women did not deserve equality before the law

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[60] Charles-Philippe-Toussaint Guiraudet, *De l'Influence de la Tyrannie sur la Morale Publique*, (Paris, an IV).
Charles-Philippe-Toussaint Guiraudet, *De la Famille Considérée comme l'Elément des Sociétés*, (Paris, an V).

in a moral republic. Their destiny was to please men.[62] He concurred with Necker's Rousseauian conception of the importance of women for the republic. Their participation in the republic was essential for its stability and moral well-being, but they should not exercise any public role as their essential nature made them unsuitable for such public tasks. Again, women were to exercise their influence on the republic from the privileged zone of the domestic sphere:

> "Laissez, laissez à l'homme des travaux qui ne furent que pour lui;
> laissez à votre époux et les dangers et le tumulte de la place."[63]

Women, as the weaker sex, should therefore not be allowed to participate in the public sphere. Their involvement in the public arena had lead to moral discord, both in the public and private world, as their nature did not make them fit for full participation in the laws. In France, this led to the corruption of *mœurs*, and the introduction of a divorce law became necessary to separate couples whose *mœurs* were no longer compatible due to the unnatural participation of women in public life (and their subsequent corruption). Women's neglect of their domestic duties through their participation in public life had led to the necessity of a divorce law:

> "Il fallut donc permettre à la loi de séparer ceux que les *mœurs* ne pouvaient plus tenir unis, et comme par autant d'issues tous les maux pénétrèrent le corps social par les licencieuses facilités du divorce. Ce sont les abus qui présente cette Loi, qui ont fait du plus sacré des liens un commerce de libertinage et de débauche; qui ont transformé le plus saint des contrats en un trafic honteux, en une prostitution juridique."[64]

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[61] Toussaint Guiraudet, *De l'Influence de la Tyrannie sur la Morale Publique*, (Paris, an IV), p.3.
[62] *Ibid.*, p.18.
[63] *Ibid.*, p.20.
[64] *Ibid.*, p.21.

Guiraudet claimed that the Revolution, by allowing women participation in public life, denatured women, and created the necessary conditions of debauch that would render a divorce law necessary. Guiraudet was not against the Revolution, but believed that women should be subject to the authority of the husband in the household. In the domestic sphere, they could facilitate the construction of the moral republic through their influential roles as wives and mothers. To allow women any other form of participation in society was to go against nature and would inevitably lead to immorality, corruption and debauch.

It also interesting to observe that Guiraudet used an argument familiar to the *divorçaires,* but turned it upon its head. One of the reasons for the introduction of a liberal divorce law, according to the *divorçaires*, was the existence of corrupted and unhappy marriages born out of the moral and social degeneration of the *Ancien Régime*. Unhappy individuals had to be liberated from such prisons and the provision of a divorce law would allow for this. One of the more common images evoked to support this argument was that of the unfortunate girl forced into marriage with a rich, old and debauched man. Women should have the right to free themselves from such unions and contract a marriage based upon affection and love.[65] Guiraudet held the contrary opinion that the barbarous morals of the early phase of the Revolution led to a situation that necessitated the introduction of a divorce law. Through public participation, women no longer filled their natural role. They behaved dissolutely, and therefore divorce became necessary. The task of the new administration was to help reshape public morals by confining women to the domestic sphere and by subjugating

[65] Le comte d'Antraigues, *op. cit.*, p.15
Anon., *Griefs et Plaintes des Femmes Malmariées*, (s.l., s.d.), p.52-53.
In Colette Michael, *op. cit.*, p.15.

them to the authority of their husbands. Thus, the natural order would be restored and morals would flourish.

The ideas set out in *De l'Influence de la Tyrannie sur la Morale Publique* were developed by Guiraudet in *De la Famille Considérée comme l'Elément des Sociétés.* Departing from the mainstream of Enlightenment thought, the author argued that the fundamental unit of society was the family, not the individual. Society was composed of many mini-societies in the form of families. He was critical of Rousseau and other Enlightenment thinkers for their intense study of the individual; for Guiraudet such study was not productive.[66] The family was the basic unit of society and it merited the attention given to the individual:

> "Il est évident que la société la plus nombreuse n'est que la famille répétée une infinie de fois."[67]

As the fundamental element of society, the family could not be broken into its constituent parts without negative effects for all of society. If the elements of society were unstable then society would also be unstable. To guard against such instability, divorce should not be allowed and the governance of the family should be decided by nature, not by artificial laws. This meant that fathers, as the strongest members of the family, should assume all the authority. Women would fulfil their duties in the family by obeying the will of the father.[68]

P.P. Alexandre Bouchotte, *op. cit.*, p.28.

[66] Labouisse agreed with Guiraudet that the family was natural, and the foundation of society. Jean-Pierre-Jacques-Auguste Labouisse, *Observations Contre le Divorce*, (Paris, 1797).

[67] Toussaint Guiraudet, *De la Famille Considérée comme l'Elément des Sociétés*, (Paris, an V), p.24.

[68] *Ibid.*, Ch.1 "De la famille; son gouvernement est monocratique; l'homme seul en est le chef; vices de toute autre forme."
Guiraudet defended himself against charges of royalist sympathies in the following chapter.

Although critical of Rousseau's investigation of the condition of the individual, Guiraudet accepted Rousseau's definition of women as essentially domestic creatures. They were to have an important role in the family by serving the needs of their husbands and nurturing their children. Women might find this situation unjust but they were obliged to accept the fact that there could be only one ruler in Guiraudet's patriarchal formulation of the family. Man was not the leader in the family and the actor in the public world because he was tyrannical. Instead, he led because Nature made him more powerful than woman:

> "C'est par conviction, et non par contrainte, par exemple plus que par la leçon, par intérêt, par sentiment, que la nature a décidé que vous deviez être gouvernées et c'est d'après ces principes que doit être dirigé le code qu'on doit faire pour vous, mais sans vous;"[69]

Laws should be made for women, but without their participation as they lacked the ability to function virtuously in public due to their natural weakness. Women needed the support of men, not freedom from them. Any other situation would lead to the disintegration of the family, and subsequently of society.

Guiraudet argued for a republic based on a patriarchal model of the family. Strong family units, governed wisely by strong men, would act as the foundation of stable, moral state in which every member had an important role to play. Divorce, as it gave women the power to upset the power relations in the family - which was the basis of society for Guiraudet - could only lead to the dissolution of morals and the

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He stated that it was erroneous to compare the authority of a king with that of a father. Kings ruled over vast amounts of people who were complete strangers to them. A father ruled over a small group that he

disintegration of society. Guiraudet and Necker both sought the foundation of a moral state, emphasising the importance of the family and the need for stable family units. It is interesting to note that the *divorçaires* and later apologists for divorce also sought the creation of a moral state, but their perception of how this was to come about was radically different. Pro-divorce writers insisted on the importance of individual liberty, especially for women in the domestic sphere, even if their access to public participation was limited. In contrast, the anti-divorce writers saw this equality as a threat to the stability of the state itself. The problem that the apologists for divorce had to surmount was how to justify the existence of divorce if it was viewed as a destabilising factor for the family and society.

(ii) Attempts to rescue divorce for the republic.

The response of those writers who defended the principle of the law on divorce was less than original. Nearly all the defenders of divorce legislation accepted many of the criticisms of anti-divorce writers. They tended agree that divorce could harm the family but they still insisted that it had an important role to play in revolutionary legislation. The most common solution to the apparent problem of rampant divorce, especially any form of divorce initiated by women, was to attack the provision for divorce by incompatibility of character.

An *officier public de l'état civil* sought changes to the divorce law in the year IV. [70] The writer praised the government for its suspension of the laws of 8 nivôse and 4

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was bound to by ties of affection, and who naturally assented to be ruled by him.

[69] *Ibid.*, p.98.

[70] Anon., *Réflections et Modifications sur le Divorce. Par un officier de l'état civil*, (Paris, an IV).

floréal year II. He also concurred with the arguments expressed by Guiraudet and Mme Necker, particularly with their principled objection to divorce. He believed that the institution of marriage was meant to last until the death of one of the parties:

> "De cette notion du mariage, il suit qu'il est une société perpétuelle contractée dans l'intention réelle de ne la jamais rompre."[71]

The author reiterated the criticisms of divorce expressed in Guiraudet and Necker. He insisted that divorce brought confusion and trouble to the children of divorced parents. He praised Necker's writings on the situation of women in society and their importance to the family. He also endorsed the view that happy families would provide stability for society. He questioned the wisdom of allowing women to divorce their husbands as such an action was offensive to nature and upset the chain of authority in the family. If a woman divorced her husband, who was the leader in the family, she subverted his natural authority. Such subversion of authority could be carried into society and according to the author, easily obtainable divorces would be a licence to fornicate, and women would move from one partner the next.

Another common ant-divorce argument focussed on the inability of morally impure citizens to use such a dangerous law as divorce wisely. The writer claimed that divorce law was abused in Rome. In France, where morals were much worse than

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The work received a favourable review in J.B. Gallais' *Censeur des Journaux*, issues 296 & 297 (18 & 20 June, 1796).

Another anonymous work, published a year earlier expressed similar themes to those developed by the *officier public*.

Anon., *Opinion sur les Abus du divorce, demandé par l'un des conjoints, par simple cause d'incompatibilité. Par un homme de loi*, (Paris, an III). The author argued that incompatibility was merely an illusion because incompatible people did not marry each other in the first place. Recourse to this provision by women was due to their whimsical and changeable nature.

[71] Anon, *Réflections et Modifications sur le Divorce...*, (Paris, an IV), p.4.

those of ancient Rome, the abuse of the law was widespread. The principal problem lay in the public use of divorce by women:

> "L'expérience a prouvé que les femmes, dans toute la France, se sont joué plus que les hommes, du divorce, et en multipliant l'action sans cause légitime."[72]

He agreed with Guiraudet's statement that divorce had become a form of *"prostitution juridique"* under the 1792 divorce legislation. Women subverted the natural order of authority in the family and in society by rejecting the supremacy of their husbands in the home. This was manifested through recourse to divorce due to incompatibility. For the author, this was divorce provoked by whimsy, not by deep unhappiness with one's situation in marriage.

The author's solution to this problem was not to abolish divorce, but to restrict it. He called divorce a necessary evil, and paraphrasing Hubert de Matigny, compared the use of divorce to prudent surgery necessary to save the life of a body. In short, restricted divorce was necessary in order to maintain the moral health of all marriages, and therefore society:

> "...quoique le divorce soit toujours un mal, nous pensons qu'il est dans certains cas un mal nécessaire; comme les opérations de chirurgie pour guérir un malade et lui sauver la vie."[73]

The writer acknowledged the criticisms of the secular anti-divorce writers and broadly agreed with them. His solution to the problem, however, was not to condemn divorce outright, but to abolish divorces not grounded on defined causes. Divorce due to incompatibility was not justified, as no reason for the marital breakdown was given.

Furthermore, divorce on the grounds of incompatibility allowed married women to subvert the authority of their husbands. Such behaviour by women led to instability at the basis of society. The author believed that divorce was a necessary evil but should only be allowed in restricted circumstances. These included fault-based divorce, but incompatibility was dismissed as a mere caprice. Marital breakdown was an unfortunate reality according to the *officier public*, and divorce was necessary to regulate this reality.

J. Girard also agreed with the main ideas expressed by Guiraudet.[74] He concurred that marriage was the basis of the social order, and that the family was patriarchal by nature. He believed that fathers ruled the family, while mothers mediated between public and private life by their softness and powers of persuasion. Children were subjects in the family, who would, in turn, become leaders, both of families and society. Children bound loving couples closer together and Girard stated that marriage would be a positive and stabilising institution in a society blessed with pure morals. However, the pleasures of marriage would be less apparent in a corrupt society:

> "Chez un peuple qui a des *mœurs* pures, le mariage est une société calme, mais douce, dont l'amitié, l'estime et la raison préparent et prolongent le bonheur, et dans laquelle chacun met en commun ses biens et ses maux…Chez un peuple corrompu, la chaîne de l'hymen, dont la reconnaissance ou la politique ont placé l'origine dans le ciel, devient lourde et pesante; ses plaisirs paraissent des devoirs, ses devoirs une servitude fatigante."[75]

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[72] *Ibid.*, p.10.
[73] *Ibid.*, p.15.
[74] J. Girard, *Considérations sur le Mariage et sur le Divorce*, (Paris, 1797).
[75] *Ibid.*, p.6-7.

Girard believed in the primacy of the family within society and saw divorce as a threat to this stability. His argument was that divorce was a dangerous institution that would not be necessary if the *mœurs* of society were pure. This was not the case in France, and divorce, although dangerous, was necessary. Therefore, access to the law had to be restricted.[76]

For Girard, divorce by incompatibility of character was the most dangerous provision of the legislation as it was easy to attain, needing no proof. Girard rejected the claims of defenders of this provision who said it was necessary as adultery and domestic violence were difficult to prove. He said that there were many witnesses in the community to testify to such behaviour.[77] He believed that the incompatibility provision encouraged libertinage, allowing libertines to have affairs, divorce their wives and marry other victims.[78] His argument, that easy access to divorce encouraged libertinism is somewhat unusual considering that the *divorçaires* argued for divorce on the basis that it would reduce libertinism as the libertine would be divorced due to their immoral behaviour, but it does reflect his general opposition to divorce. Girard was opposed to divorce in principle, but accepted the reality of marital breakdown and the need to regulate such situations. He believed this could be achieved through access to a restrictive divorce law. Incompatibility was not acceptable as no proof was necessary and was therefore too easy to attain. He concluded by stating that society and families would be improved if divorce could be restricted, not abolished.

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[76] *Ibid.*, p.26.
[77] *Ibid.*, p.13.
[78] *Ibid.*, p.11.

The author Chapuis, writing later than the critics of divorce by incompatibility, defended the principle of a divorce law, as they did – on pragmatic grounds.[79] His argument was not particularly original as it repeated the main arguments of the earlier *divorçaires*, while accepting the criticisms of those later writers who condemned the effects of divorce on French society and families. Chapuis believed that the law of divorce should be reviewed to see whether it was in harmony with the true spirit of the laws. He concluded that it was, although it seemed to go against the wishes of Nature (that man and woman be united and have children together). Chapuis believed that divorce was necessary in certain extreme cases. Such cases arose in the rare circumstances where people could not find happiness in marriage. As happiness was the natural goal of each individual, these marriages should be dissolved.[80] His argument ran counter to earlier writers who criticised the principle of divorce and condemned it outright or accepted its unfortunate necessity in limited circumstances. Unlike Guiraudet, Chapuis did not accept the primacy of the family and the patriarchal father over the individual in French society. The family was important but the liberty of its component individuals (and this included wives) was equally important. Anything that threatened the liberty and happiness of such individuals went against Nature and was detrimental to society. This view, re-emphasising the primacy of the individual was in opposition to Guiraudet's critique of divorce, which appealed for a stable French society founded on patriarchal power and indissoluble families. Chapuis accepted that divorce was not desirable, yet he insisted that individual liberty took

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[79] Chapuis, *Du Mariage et du Divorce. Considérés entre le rapport de la nature, de la Religion, et des Mœurs. Discours prononcé dans plusieurs Temples de Théophilanthropes*, (Paris, VII).
Writing in year III, Mercier also defended the principle of divorce, while criticising the actual legislation of 1792. He believed the institution was valid, but thought the law was flawed as it made divorce too easy to obtain.
Louis-Sebastien Mercier, *Le Nouveau Paris*, 6th volume, 2nd edition, (Genoa, an III), p.82
[80] Chapuis, *op. cit.*, p.4-6.

precedence over the stability of the family even if the consequence of such liberty was divorce and a threat to patriarchal power. Chapuis refocused the divorce debate upon the fate of the individual, rather than that of the patriarchal family.

Chapuis accepted the dangers and the undesirability of rampant divorce, but like Hennet, insisted on the importance of liberty in any just state. He stated that unhappy marriages existed in all states, and that it was the mark of despotism to allow these unhappy marriages to endure. Any liberal state would accept the fundamental importance of the individual to society and allow people to divorce. Furthermore, legal separation without divorce was equally horrific to individuals in liberal, just states, as man's natural desire was to live with a partner and have children. Prohibition of this, even for those unfortunate enough to have formed unhappy unions, was unnatural and therefore dangerous:

> "La simple séparation insulte donc à la fois la nature et les *mœurs*. La loi d'un divorce réel est donc un bienfait pour l'humanité en général et pour les époux malheureux en particulier."[81]

All of these writers expressed a desire to live in states guided by reason, with stable families at the basis of society. All of the authors wanted that each member of society to be happy within society but their opinions on how to achieve this happiness differed. Those against all forms of divorce expressed a desire to live in a society with stable, patriarchal families. The husband would provide for his family, while the wife would fulfil her role in the republic through the nurturing and education of her children and her loyal attention to her husband. The possibility of divorce, especially

[81] *Ibid.*, p.8.

divorce obtainable by one party without the need of a definite motive threatened the stability of such marriages, undermined patriarchal authority, and could lead to the breakdown of society if not checked.

On the other hand, Chapuis, borrowing heavily from earlier pro-divorce thinkers, insisted on the importance of liberty and happiness in the state. His ideal state was not founded on patriarchal families. Rather he sought happy families, composed of individuals free to make choices and bound together by bonds of mutual affection, not by coercion or patriarchal authority. For Chapuis, divorce law respected the liberty of each individual within the state and would ensure happiness and stability in society. Chapuis, unlike the *divorçaires*, accepted that divorces would take place, but he accepted this as the price of individual liberty for the citizens of the French republic. Marriage, as a freely entered contract, could be broken by either party if the conditions of that contract were not met. One of the conditions of the marriage contract was the mutual happiness and affection of each party. If this did not exist, then each individual must be free to separate from each other:

> "La loi a cédé l'importunité des deux époux, mécontents l'un de l'autre; elle a respecté la liberté, le premier droit de la Nature, le droit le plus essentiel au bonheur, après la vertu."[82]

The previous texts have dealt with divorce legislation and efforts to change the 1792 divorce law. Other theatrical texts explore the theme of divorce in society with another goal in sight - entertainment. These texts did not intend to change the divorce law but they do give us an insight into perception of divorce in popular culture.[83]

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[82] *Ibid.*, p.14.
[83] Beaumarchais, *La Mère Coupable* (1792). In *Œuvres choisies de Beaumarchais*, (Paris, 1825).

While accepting the possible need for a divorce law, the playwrights lampooned many of its potential consequences. For example, Desfontaines de la Vallée's work mocked the wishes of a former *abbé*'s desire to marry a divorced woman with children. The other characters in the play put him off such an action by informing him of the financial obligations one has in marriage, such as the purchase of jewellery, entertainment, food, and the maintenance of children and servants.[84] Neither this work, nor that of Demoustier treated divorce with any seriousness and both concluded that divorce might be necessary for some. However, they also communicated the message that divorce should not and would not be used by couples with children, as the mutual affection for their offspring would keep spouses together:

> "Souvenez-vous donc bien que les époux unis par un hymen stérile
> peuvent se dégager de sa chaîne inutile; Mais qu'un père, un mère,
> unis par ce lien, n'ont pas le droit de compromettre, pour s'affranchir,
> le sort de leur enfant; et que la loi gémit souvent, quand vous la forcez
> de permettre ce que la Nature défend."[85]

Popular commentators appeared to consent that divorce was socially acceptable but that its use should be restricted to those who did not have children. They did not comment on the specific provisions of the law but agreed that the happiness of the individual in marriage was paramount. However, if children were involved couples should make every effort to stay together and rediscover affection for each other through their children. Unlike the other commentators on divorce, they did not engage

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F.G. Desfontaines de la Vallée, *Le Divorce. Comédie en un Acte et en Vaudevilles*, (Paris, 1793).
C.A. Demoustier, *Le Divorce. Comédie en Deux Actes*, (Paris, 1795).

[84] Desfontaines de la Vallée, *op. cit.*, scene VII.
According to Traer, this work received a favourable reception at the Vaudeville theatre, later transferring to the Cité-Variétés. It ran almost continuously from August to December 1794.
See François-Alphonse Aulard, *Paris pendant la Réaction thermidorienne et sous le Directoire*, (Paris, 1901), 4: 835.
In James F. Traer, *op. cit.*, p.124.

[85] Demoustier, *op. cit.*, p.44.

in the debate as to whether the family should be structured along patriarchal or democratic lines. Guiraudet and Necker contested divorce and posited a vision of harmonious society constituted of patriarchal families, while Chapuis' vision of the family was more democratic.

(iii) Statistical evidence on divorce.

Before an analysis of the actual debate preceding the final change to divorce legislation prior to Napoleon's coup of 18 brumaire year VIII, it will prove instructive to conduct a brief analysis of the evolution of divorce statistics for the period under evaluation. The short-lived provision for divorce after *de facto* separation for six months attracted much attention as it was the most popular form of divorce until the suspension of the law of 4 *floréal* year II on 15 thermidor year III. Under the provision of 4 *floréal* year II, divorce could be attained by one spouse on the production of an *acte de notoriété* witnessed by six people. In Metz, over 50% of divorces pronounced up to the end of year III were for this reason, for abandonment for two years, or for absence without news for five years. Of eighty-six divorces for these reasons, forty-nine were due to separation of over six months, even though the decree was only in vigour for a period of fourteen months.[86]

A similar trend emerges if one observes the figures for Toulouse. Out of 347 divorces from September 1792 to the end of year X, seventy-six were for separation for six months or more, and sixty-two divorces were due to abandonment for over two years.[87] The high proportion of divorces under the 4 *floréal* legislation led to many criticisms of this measure, during and after the Revolution. Maurice d'Auteville,

writing two years after the reintroduction of divorce under the Third Republic claimed that the revolutionary divorce law encouraged immorality, adultery, and fornication.[88] The popularity of this measure led to claims that the measure itself encouraged the breakdown of families. Commentators alluded to the fact that the measure was introduced during the most radical stage of the Revolution, and that the dissolute morals of the time led to divorce. They perceived the 4 *floréal* law as the manifestation of the neglect of family institutions.[89] Other authors suggested that individuals availed of this measure because it was a simple and very speedy means of divorce.[90] There is also evidence that the relatively high number of divorces during the period 1793-1794, which coincided with the radical phase of the Revolution, was not due to political circumstances, but was the result of a backlog of broken marriages that required legislation to regulate their circumstances. This can be evidenced by establishing the number of legal separations converted to divorces, and the number of divorces by people who had been separated from their respective spouses for a long number of years.[91]

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[86] Jean Lhote, *Le Divorce à Metz et en Moselle dans la Révolution et l'Empire*, (Metz, 1981), p.16.
[87] *Archives Départementales de la Haute-Garonne.* Etat Civil, série 5 Mi.
[88] Maurice d'Auteville, *op. cit.*, p.15,16.
Germain & Mireille Sicard, *op. cit.*, 1975), p.1052-1071.
[89] There was much pro- and anti- divorce criticism of this measure during the Directory.
J. B. Mercier, *op. cit.*, p.81.
Anon., *Réflections et Modifications sur le Divorce, par un officier public de l'état civil*, (Paris, an IV), p.1.
[90] Phillips claims that the recourse to divorce because of separation was due, at least in part, to the fact that it was quick and easy to obtain. He states that, in Rouen, twenty-two petitioners commenced divorce proceedings for different grounds before converting these petitions to requests for divorce because of separation for over six months (fifteen of the twenty-two had commenced divorce proceedings on the grounds of incompatibility, five for mutual consent, and two for reasons of desertion).
In Roderick Phillips, *Family Breakdown in Late Eighteenth century France. Divorces in Rouen 1792-1803*, (Oxford, 1980), p.143.
[91] According to Phillips the mean duration of marriage (in years) of divorced couples in Rouen was 13, 12.1, and 12.5 for the years I, II, and III. For the years IV to VIII, the mean duration of marriage (in years) was 8.5, 8.4, 11.5, 9.3, and 9.7. He notes that although years I to III accounted for less than half of the divorces (46%) in Rouen during the period of years I to XI, this period (years I to III) accounted for 62% of the marriages which had lasted for twenty years or more at the time of divorce.
Ibid., p.74.

Most attacks on divorce after 9 thermidor, year II focussed on the provision of divorce for reasons of incompatibility. This measure was criticised because no definite proof was necessary and one party could take the action alone, even if the other spouse did not wish to divorce. An appraisal of the evolution of recourse to this law may help explain the fears and concern surrounding this particular provision of the divorce law. The evidence for the cities of Metz and Toulouse shows an increase in petitions for divorce due to incompatibility, while at the same time showing stabilisation in overall divorce trends.

There were 267 divorces in Metz during the period of the application of the September 1792 legislation. For the period September 1792 to the end of year III there were 120 divorces, eighteen of which were for reasons of incompatibility, accounting for 15% of divorces during this period.[92] From year IV to year XI, eighty-seven of the 147 divorces were due to incompatibility of character, 59.2% of the divorces for this second period. 78% of the petitioners for this form of divorce were women. According to Jean Lhote, this form of divorce was popular not because of the fickle and capricious nature of women, but because there was no need to prove a given motive, such as socially embarrassing behaviour on the part of the husband (adultery, or physical assault for example).[93] The increase in recourse to this measure also occurred after the law had been in vigour for three years. It is also possible that citizens had become more accustomed to divorce and found this form of divorce convenient. It did not expose private family affairs to public scrutiny, and although the process was

[92] Jean Lhote, *op. cit.*, p.31.
[93] *Ibid.*, ch.1 "Le Divorce à Metz sous le Régime de la Loi du 20 septembre 1792."

divorces for incompatibility, clearly show a decrease in the overall proportion of divorces per marriage in the given periods. This points not so much to the dissolution of morals and rampant family breakdown as the critics would claim. Instead, the level of divorce decreased after an initial surge in divorces and the institution became socially tolerated in some sections of society.

If this was the case, why was there outrage over the use of incompatibility as a method of divorce? Although divorces for this reason had increased during the Revolution, the absolute number of divorces had actually decreased and stabilised.[97] There are two probable answers to the above question. First, although divorce numbers dropped in absolute terms, divorce for incompatibility increased. Secondly, critics of incompatibility and divorce expressed concern over the position of women in the family and society, particularly with regard to their ability undermine paternal authority by escaping marriages without even presenting a motive. Guiraudet and Necker in particular expressed fears not uncommon among republican thinkers that the freedom accorded to women by divorce could undermine the stability of revolutionary society by rejecting their role of nurturer, wife and mother.

3. The Divorce Debate of Year V.

[97] For forty-six towns listed by Jacques Dupâquier divorce figures for the years 1793-year I, year II, year III were 2996, 3666, and 3898. For the same towns, divorce numbers for the years IV, V, VI, VII, VIII, were 2098, 1900, 1387, 1349, and 1256.
Jacques Dupâquier, *op. cit.*, p.36-37.
In Toulouse, there were five divorces between 20 September 1792 and 31 December 1792. For the period 1793-year II there were 139 divorces, and for the year III, there were sixty-three divorces. For the subsequent years IV, V, VI, VII, VIII, there were, respectively, twenty-three, twenty-one, thirteen, twenty-one, and twenty-two divorces.
Archives Départementales de la Haute Garonne, Etat Civil, série 5 Mi.

(i) The divorce debate of year V: Advocates of change.

The problem of the incompatibility of character provision in the 1792 divorce legislation was debated in the Council of 500 after the introduction of Cambacérès' proposals for divorce in the projected Code Civil. There had also been a number of petitions and requests from deputies to abolish the incompatibility provision of the law. Cambacérès' proposal for divorce in this projected code civil offered little satisfaction for those who wanted a restrictive divorce law. In fact, his proposals were remarkably similar to his previous proposals in the year II, and to the 1792 law.[98] Cambacérès and the committee for the classification of laws left the provisions for the law unchanged and did not curb women's access to the law.[99] Instead of waiting for the completion of the debate on the *Code Civil*, the Council of 500 agreed on 5 nivôse year V to nominate a commission to examine the possibility of suspending divorce for reasons of incompatibility of character. This decision followed the numerous requests in pamphlets and petitions to abolish this provision for divorce.

The deputies Favard and Duprat favoured the suspension of divorce for incompatibility of character. Favard presented the commission's report on 20 nivôse,

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[98] *Citoyen* Cambacérès, "Du Divorce," in *Projet de Code Civil présenté à la Convention Nationale, le 9 août, l'an II de la République française, au nom du comité de législation, par le citoyen Cambacérès*, (Paris, 1793).
Cambacérès, "Du Divorce," *Projet de Code Civil, présenté au Conseil des Cinq Cents, au nom de la commission de la classification des lois*, (Paris, an V).

[99] *Ibid.*, p.74-75. The following causes of divorce were listed in the *Projet de Code Civil* of year V: (325) Marriage is dissolved by divorce; (326) Divorce may take place, either by mutual consent, or by the request of one spouse; (327) Divorce by mutual consent is not subject to any allegation of motive; (328) Divorce is pronounced on the demand of one of the spouses in the following cases, incompatibility of character or humour, banishment, deprivation of the civil rights of one party, crimes against or the serious injury of one party by the other, the abandonment of one party by the other for an uninterrupted period of at least two years, absence without news for at least five years; (329) Legal separation shall not be allowed; (330) Divorce may be legally declared on proof of a legal separation or by proven emigration.

year V.[100] Favard pointed out that the remit of the commission was to examine the question of incompatibility alone and not the whole issue of divorce, which would be addressed in its entirety during the discussion of the *Code Civil*. Favard defended the suspension of this measure with the argument forwarded by Guiraudet, that stability of the family was essential for the good of society, and that the family acted as the safeguard of morals. He stated that wise laws must therefore protect marriage. Augustus did this and so should the French he argued, because:

> "...le mariage corrige les vices, active la population, et règle les *mœurs* qui doivent faire le pivot d'une république."[101]

His argument is characteristic of the republican opponents to divorce. They did not place the liberty of the individual above all else, but insisted that social stability and the integrity of the family was crucial for the survival of the republic and the preservation of *mœurs*. Duprat agreed with this assessment, but like some of the other deputies who spoke on the subject, argued that a law should not be suspended, as this would lead to confusion. Instead, it should be abolished outright.[102]

Another argument used by those in favour of the suspension or abolition of divorce for incompatibility was that such a reason was imaginary and fickle. Again, they used

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[100] Corps Législatif, Conseil des Cinq Cents, *Rapport par Favard sur le Divorce au nom d'une commission spéciale composée des représentans Cambacérès, Boissy, Méaulle, Blutel, & Favard*, (Paris, 20 *nivôse*, an V).

[101] *Ibid.*, p.2.

[102] Corps Législatif, Conseil des Cinq Cents, *Opinion de Pierre-Louis Duprat sur la suspension du divorce pour cause d'incompatibilité d'humeur et de caractère*, (Paris, 13 *pluviôse*, an V). Duprat (1760-1840), an *avocat*, was placed on the list of proscribed deputies after the coup of 18 *fructidor*, year V.

The deputy Siméon, another opponent of divorce for reasons of incompatibility, also questioned the wisdom of suspending a law. However, he believed that they should suspend the law in this case, out of deference to the authors of the *Code Civil*, who would make a definitive ruling on all of the divorce legislation.

Corps Législatif, Conseil des Cinq Cents, *Opinion de Siméon sur la suspension du divorce par incompatibilité*, (Paris, 5 *pluviôse* an V), p.4.

the themes developed by the writers opposed to divorce by incompatibility. Favard and Duprat both stated that this mode of divorce resulted in the breakdown of marriages that would otherwise endure and ensure the happiness of society. Favard claimed that twenty thousand couples had divorced due to this provision. Such people were victims of the law and the greed and stupidity of some members of society:

> "...il est bien reconnu que ce mode de divorce, souvent plus imaginaire que réel, exige de grandes modifications, puisqu'il n'a produit jusqu'ici que de très mauvais effets."[103]

Duprat argued that this provision in the law did nothing but encourage immoral behaviour and libertinage. These deputies rejected the argument of the defenders of incompatibility that this provision was necessary as some causes of divorce were difficult to prove. They believed that even if this were the case, divorce by incompatibility had caused so much turmoil in the community that the suffering of the few was a sacrifice that had to be made for the good of the many. This marked a distinct change from the idealistic dialogue of the deputies in the last days of the Legislative Assembly. The deputies of 1792 believed that the introduction of a liberal divorce law would produce happy marriages, stable society, and very few divorces. The deputies of the Council of 500 had lived with the experience of divorce, and had lost their idealism. Their main concern was divorce by incompatibility of character. They, like the petitioners to the Assembly and writers on the subject, thought that this form of divorce was too easy, but accepted that divorce, even if it was destructive to families, had become a social reality and could not simply be abolished. They acknowledged that divorce could not purify the institution of marriage by the threat of

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[103] Favard, *op. cit.*, p.4.
Duprat., *op. cit.*, p.9.

recourse to it. Some marriages would not work but these should only be dissolved by mutual consent or through the tangible fault of one party. Any imaginary incompatibility would have to be resolved by the couple in the marriage. Otherwise, fickle people would divorce as the mood took them. Duprat and Favart accepted the reality of divorce but wished to restrict its application in society.

Siméon and Bancal developed the same arguments as the two previous deputies with one important distinction.[104] They believed that divorce attacked the liberty that its apologists claimed would stem from it:

> "La loi du divorce attaque la société à sa source; elle attaque à sa source de liberté."[105]

Bancal did not believe that allowing people to extricate themselves from unhappy situations in marriage would lead to the liberty necessary for the foundation of a moral republic. Instead, he believed that such freedom would lead to immorality and fornication, as the destiny of man was to marry, multiply, and rule the world through reason. This would be impossible if the threat of divorce hung over every family in France. Stable families were necessary for the cultivation of *mœurs* in individuals, so that men might carry out their public roles with the assurance that they could return to

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[104] Joseph-Jérome Siméon (1749-1842) was an *avocat* and a professor at the legal faculty in the University of Aix. He was outlawed in August 1793, and later sat in the Council of 500. In Martin and Walter, *op. cit.*, tome 3, p.361.
Bancal des Isssarts was born in the Hérault, studied law in Lyon, and practiced as a notary in Paris. He worked as a publicist and pamphleteer for Brissot, and was an early member of the *Amis des Noirs*. He was elected to the Convention where he sat with the Brissotins and often interpreted for Thomas Paine. He was also friendly with the Rolands. Bancal was against the judgement of Louis XVI by the Convention, preferring the *appel au peuple*. He escaped arrest in 1793 as he and other deputies had been betrayed by Dumouriez in April 1793, who handed them over to the Austrian army. They were released in December 1795. He then served briefly in the Council of 500 before retiring to Clermont-Ferrand. During the Directory, he spoke out against gambling, debauchery, and divorce.
See A. Kuscinski, *op. cit.*, p.20, C. Manceron, *op. cit.*, p.42, Colin Jones, *The Longman Companion to the French Revolution*, (London, 1988), p.317.

their homes to receive the love and affection of their wives and children. Bancal did not explicitly state that this was impossible if women were free to divorce without giving a clear reason, but this argument is implicit in his critique of divorce:

> "Rendre les mariages dissolubles, c'est établir, par les vices et les mauvais *mœurs*, le relâchement, la dissolution des liens de la société; c'est vouloir la perte de la liberté, qui n'existe...que par l'observation de toutes les vertus."[106]

Bancal believed that divorce, rather than unhappy marriages, threatened society, as the family and not the individual formed the basis of society. Private virtue, formed in the family, was essential for the creation of *bonnes mœurs*:

> "Dans la république, les *mœurs* sont pures, les mariages sont purs, heureux, sûrs et indissolubles; on n'y connaît pas le divorce."[107]

Bancal's critique of divorce was based on practical and principled grounds. He claimed that the stability of the republic was dependent on the stability society achieved through the family. For Bancal, the family was the haven of peace for republican citizens. It should not be threatened by the possibility of divorce, particularly if women could unilaterally divorce their husbands. This would upset the natural hierarchy of the family and society and would lead to immorality. For the republic to survive, the unit of the family had to establish priority over the individual. To achieve this, the natural hierarchy of the family, with the father at the head, had to be respected. The possibility of divorce threatened the very existence of the republic

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[105] Corps Législatif, Conseil des Cinq Cents, *Opinion sur le divorce par Jean-Henri Bancal des Issarts*, (Paris, 12 *pluviôse*, an V), p.3.
[106] *Ibid.*, p6.
[107] Siméon believed that while the indissolubility of marriage was natural, the law might grant some wise exceptions in circumstances of marital fault.
Siméon, *op. cit.*, p.9.

for Bancal. Like Guiraudet, he placed the family at the foundation of the republic. Divorce would break up this indissoluble unit.[108]

(ii) The debate of year V: the defence of article III.

Félix Faulcon and Lecointe-Puyraveau successfully defended divorce by incompatibility of character (article III of the 1792 law).[109] Lecointe-Puyraveau's defence of divorce repeated all the original claims of the *divorçaires*. He believed that divorce was beneficial to morals, would help population growth by eradicating unhappy marriages, and most importantly, it would free unhappy individuals from the chains of oppressive unions. Lecointe-Puyraveau insisted that divorce would dignify marriages by abolishing corrupt unions and that divorce by incompatibility was an important provision of the law as it allowed women to escape from brutal husbands. It also allowed individuals to divorce when reasons for divorce were difficult to prove:

> "Vous devez le maintenir (art. III) pour donner à la femme estimable les moyens d'échapper à l'homme vicieux."[110]

In contrast to the opponents of incompatibility, Lecointe-Puyraveau prioritised the individual over the family. This deputy believed that the happiness of the individual

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[108] Bancal, *op. cit.*, p.38, 39.

[109] The *Décade*, commenting on the divorce debate, wrote that the actual discussion of divorce was not very interesting. The amendment (that divorce could only be pronounced six months after the final *assemblée de famille* in the case of incompatibility) was adopted unanimously. The *Decade*, although uninspired by the discussion in the Council of 500, praised the change in the law, in the belief that this would keep divorce safe from *"des goûts inconsistants"*.
In *La Décade Philosophique, Littéraire, et Politique; par une Société de Gens de Lettres*, (Paris; Bureau de la Décade, an V), 4th trimestre, *Messidor*, *Thermidor*, *Fructidor*, p.60.

[110] Corps Législatif. Conseil des 500, *Opinion de Lecointe-Puyraveau sur le projet de suspension de l'article III de la loi du 20 septembre 1792 qui permet le divorce pour incompatibilité d'humeur ou de caractère*, (Paris, 5 *pluviôse*, an V), p.6.

was crucial to the survival of marriage and the *mœurs* of society. Although the opponents of divorce by incompatibility and the defenders of this provision all claimed that their goal was the stability of society and the happiness of the greatest number of people in the republic, their perception of divorce and marriage was starkly different. Those against divorce by incompatibility generally believed that the stability of the family was more important than the liberty of the individual and only accepted divorce in limited, fault-based circumstances. On the other hand, supporters of divorce by incompatibility viewed the freedom of the individual as essential to the survival of the state and the happiness of all. For the latter group, the individual was the basic unit of society, while many in the former group thought the family was the basic unit.

Félix Faulcon defended divorce by incompatibility in three texts during the year V.[111] His argument was more subtle than that of Lecointe-Puyraveau in that he admitted that the law of 1792 required reform.[112] However, his argument in favour of divorce was based on the same principles of individual liberty. He stated that those who opposed divorce by incompatibility should admit their outright opposition to divorce,

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[111] Félix Faulcon, *Opinion sur le divorce et sur les ministres des cultes*, (Paris, 1 *prairial*, an V).
Corps Législatif, Conseil des Cinq Cents, *Opinion de Félix Faulcon relative à la Suspension du Divorce pour Cause d'Incompatibilité d'Humeur*, (Paris, 20 *prairial*, an V).
Corps Législatif, Conseil des Cinq Cents, *Rapport de Félix Faulcon. Au Nom de la Commission chargée de présenter des Vues sur la Législation du Divorce*, (Paris, 28 *prairial*, an V).
The other members of the commission were Vauvilliers, Grégoire de Rumare, Charles, Dumolard, Favart, Pison, and Galand.

[112] Michel-Mathieu Lecointe-Puyraveau (1764-1827) was born in the department of the Deux-Sèvres and was a successful *avocat* at the beginning of the Revolution. He was elected to the Legislative Assembly and later to the Convention. He also sat in the Council of 500. In the Legislative Assembly, he spoke out against refractory priests and called for their deportation. He voted for the *appel au peuple* during the trial of the king, but when this was refused, he voted for the king's execution without suspension of sentence. During the Directory, he spoke out against both royalists and Jacobins. He accused the Jacobins of counter-Revolution and accused them of pushing the people to anarchy so they might become disgusted with liberty. He also attacked royalists and asked that magistrates refusing to swear hatred to the king be sacked. He retired from public life in the Napoleonic period. See Kuscinski, *op. cit.*, p.387-388.
Félix-Marie Faulcon (1758-1843) was a *conseiller* in the *sénéchaussée* of Poitiers and sat in the Constituent Assembly. He hid during the Terror and later sat in the Council of 500. See A. Martin & G. Walter, *op. cit.*, tome 2, p.246.

and he defended divorce by incompatibility on practical and principled grounds.[113] He had experience of legal separations in his capacity of judge during the *Ancien Régime* and believed that such separations were detrimental to the moral well-being of society as they exposed the public to terrible private scandals, invaded the privacy of the domestic sphere, and spread hatred through society. Divorce, without the provision of incompatibility would expose the public to similar private outrages. Divorce was necessary for the protection of the individual and the maintenance of happy marriages. Without the incompatibility provision, it would be just as harmful to society as legal separations had been. It would be reduced:

> "...au niveau de ces scandaleuses demandes en séparation de corps,
> qui, en dévoilant publiquement les turpitudes cachées des ménages,
> furent le long fléau des *mœurs*, ainsi que de la dignité du lien conjugal."[114]

Thus, divorce by incompatibility was necessary to maintain moral decency and the privacy of families. In practical terms, reasons for divorce were not always easy to prove or desirable to expose in public.

Far from claiming that the 1792 divorce law was perfect, Faulcon believed the law was in need of reform:

> "*Citoyens*, j'ai déclaré que l'organisation actuelle du divorce est
> entièrement défectueuse et je voudrais ardemment qu'il fut possible
> de la perfectionner en ce moment même..."[115]

He accepted the claims, made by opponents of divorce, that the law was tainted by association with the Terror. Instead of trying to condemn it for this reason, he made a successful attempt to rescue divorce for the Directory. To this end, Faulcon made two

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[113] Faulcon, *Opinion de Félix Faulcon relative à la suspension du Divorce pour cause d'Incompatibilité d'Humeur*, (Paris, 20 *prairial*, an V), p.2.
[114] *Ibid.*, p.5.

proposals: that another commission be formed and that it should present its views on divorce to the Council of 500, and that all discussions on the issue of divorce be suspended until the commission presented its report. The Council of 500 accepted his proposals and Faulcon presented the report eight days later.

Faulcon achieved his goal of maintaining article III of the divorce law by postponing definite resolution on differences over the divorce law. Faced with considerable opposition to divorce by incompatibility in society and among political circles, Faulcon admitted that divorce in its current form did not contribute to the complete moral regeneration of the family. Instead, it resulted in many more divorces than its advocates had expected. However, Faulcon and many other deputies believed that France should have a legal mechanism that allowed for the dissolution of marriage. Their differences revolved around the issue of divorce by incompatibility. Many petitioners believed that this form of divorce was too easy to attain, and allowed divorce for passing or fickle reasons, particularly if women had the means to use the law. Faulcon, however, mounted a defence of this clause by expanding the debate to the whole divorce law. The commission's report accepted that the law required reform, but claimed that they needed more time to examine both marriage and divorce legislation.[116] Faulcon achieved the compromise he wished. Instead of suspending divorce by incompatibility, the *officier public* could only pronounce divorce by incompatibility six months after the date of the third and final *acte de non-conciliation*. By delaying a final decision on the problem of divorce, Faulcon

[115] *Ibid.*, p.7.

[116] The commission asked for permission to examine marital and divorce legislation. While doing this, they proposed to lengthen the waiting period for divorce by incompatibility.
In Corps Législatif, Conseil des Cinq Cents, *Rapport de Félix Faulcon. Au nom de la commission chargée de présenter des vues sur la législation du divorce*, (Paris, 28 *prairial*, an V), p.4-5.

succeeded in keeping the incompatibility provision, a method of divorce he deemed necessary for the maintenance of public decency.

Conclusion.

The changes to the 1792 divorce law were not remarkable. The substance of the law remained intact during the period of the first republic. What is remarkable is the manner in which these changes were introduced. The arguments used by advocates of change to the law give us a valuable insight into the evolution of thought on divorce and the family during this period. The changes to the divorce legislation were prompted by calls for reform in French society. At no point was change introduced on the sole initiative of the political actors of the French Revolution. The 1792 law was introduced on foot of requests by some pamphleteers and petitioners to the Legislative Assembly who claimed that divorce was a logical consequence of the Declaration of the Rights of Man and the Citizen and the secularisation of the marriage contract. Some mayors had sanctioned divorces before a law was introduced and the deputies acted to promulgate a divorce law based on revolutionary principles. The legislation was also heavily influenced by Albert Hennet's *Du Divorce* (1789). Subsequent changes to the law (4-5 *floréal* year II and *fructidor* year V) all followed appeals for change to the legislation from society. They were not due to the political initiative of the deputies.

The debate that preceded law of 4-5 *floréal*, year II was framed in the optimistic language used to promote divorce by the *divorçaires*. Proponents of the divorce legislation still argued that individual liberty had to be protected by legislation and

those in favour of the change argued that divorce would purify morals and ensure happy marriages that would act as the foundation of the state.

When the number of divorces in French society stabilised, advocates and opponents of divorce were forced to reflect on the actual consequences of the law. The debate on divorce was no longer only one of principle. Instead, those concerned with the legislation and its effects had to contend with the reality of divorce and marital breakdown. Although, the absolute number of divorces fell over time, divorce became part of the social landscape, used by men and women alike. There were two dominant responses to this reality. Writers like Guiraudet and Madame Necker emphasised the importance of the family as the basis of society. They insisted that its integrity was more important than the liberty of some individuals, particularly women, to divorce if they felt unhappy with their domestic situation. These writers prioritised the family and the role of women within this social unit. They believed that the freedom of women to divorce, especially without a specific motive, would lead to the disintegration of the republic. The state could only function successfully if men acted in the public sphere and women supported them and the state though devotion to their husbands and children in the restricted sphere of the family. They did not believe that women were unimportant to the political state. They thought women could best serve the state by fulfilling their domestic duties. The freedom of women to divorce on the whim of incompatibility threatened the authority of the father and the integrity of the family. According to the critics of divorce and the incompatibility provision, this would potentially lead to the destruction of the state.[117]

[117] For an analysis of the family and women, with reference to the domestic and public spheres during the French Revolution see Lynn Hunt, *The Family Romance of the French Revolution*, (Berkeley, 1992); Dorinda Outram, *The Body and the French Revolution*, (New Haven, 1989); Joan B. Landes,

The writers and deputies who defended divorce for incompatibility of character accepted that the divorce law had not fulfilled the idealistic aspirations of its earlier advocates. They accepted that the divorce law was flawed but did not know how to reduce recourse to divorce. They also believed that the family was an essential component of the state but insisted that the individual must remain free to leave a spouse if they were not happy in marriage. They believed the family should be a democratic union of equals, while critics of divorce held a patriarchal view of the family. They did not believe that women used the incompatibility provision on a whim. Instead, they claimed that this provision was essential to maintain public decency by hiding domestic outrages from public view. They also argued that the causes for divorce were not always easy to prove, especially domestic violence as this could be carried out in private where no witnesses could see it. The deputies who wished to maintain divorce and the incompatibility provision were concerned that individuals, and women in particular, remained free to liberate themselves from unhappy marriages, even at the risk of destabilising the family. Both groups believed that stable and happy families were crucial for prosperity and survival of the new French state, but their views on how to achieve this ideal were different. The opponents of divorce by incompatibility feared that women would usurp the authority of their husbands by leaving marriages for frivolous reasons. On the other hand, advocates of divorce by incompatibility insisted that women be allowed to divorce. They believed that women needed this provision, not necessarily to free themselves from their domestic duties, but to ensure that there was some balance in the divorce

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Women and the Public Sphere in the Age of the French Revolution, (Ithaca, New York,, 1988); Natalie Zemon Davies & Arlette Farge (eds.), *A History of Women in the West*, vol. 3, (Cambridge Mass., 1993).

law and in domestic arrangements. Finally, the Council of 500, uncomfortable with the idea of suspending the incompatibility provision until the promulgation of the *Code Civil*, accepted Faulcon's proposal that the declaration of divorce by incompatibility be delayed by six months. Instead of embarking on wholesale change, the Council accepted the reality of divorce and accepted the fact that women should participate equally in the divorce legislation through incompatibility. The deputies were clearly uncomfortable with the number of divorces declared by women using the incompatibility clause, but accepted that divorce had become a social reality in the French republic. They wished to restrict its application but did not know how and, despite a view that women should remain confined to the domestic sphere they did not deprive them of the opportunity to change the particular domestic sphere in which they resided.

Ch.4 Women and Divorce Legislation. A Quest for Liberty during the French Revolution.

Introduction.

This chapter examines a central question pertaining to the relationship between women and the enactment of revolutionary legislation. More precisely, it investigates whether revolutionary divorce legislation facilitated an engagement in public discussion of revolutionary issues, particularly those of liberty, equality, and the definition of citizenship. Finally, the chapter will investigate whether women could ever participate fully in the republic.[1] The problem of the position of women in French society arose during the French Revolution, and would cause dispute and controversy as long as no consensus on the issue was accepted. The chapter will analyse this problem and its relationship with the matter of divorce, in the first instance by reviewing the work of Jean-Jacques Rousseau and Emmanuel-Joseph Sieyès with particular reference to the importance of masculinity in their definitions of sovereignty and the ability to exercise it. Following this, the second section will examine the importance of the Marquis de Condorcet to the issues of liberty, female participation in public life and their ability to act as citizens. Etta Palm d'Ælders also examined similar problems but her perspective was different. If Condorcet was concerned with

[1] The more general issue of women and their relationship with the French Revolution both as individuals and as a group can be reviewed through many works, both in English and in French. See Lévy, Applewhite, Johnson, *op. cit.*; Dominique Godineau, "Daughters of Liberty and Revolutionary Citizens", in Geneviève Fraisse & Michelle Perrot (eds.), *A History of Women in the West. Emerging Feminism from Revolution to World War*, volume IV, (Cambridge Mass., 1993); Marie France Brive (ed.).), *Les Femmes et la Révolution Française*, tome II, (Toulouse, 1990); Joan Landes, *Women and the Public Sphere in the Age of the French Revolution*, (Ithaca NY, 1988); Dorinda Outram, *The Body and the French Revolution*, (New Haven, 1989); Lynn Hunt, *The Family Romance of the French Revolution*, (New York, 1993). Lynn Hunt criticises the argument of Joan Landes that the Revolution was anti-women. She claims that it was interesting that women were allowed to organise politically in the first place. See Lynn Hunt, "Male Virtue and Republican Motherhood", in Keith Michael Baker (ed.) *The French Revolution and the Creation of Modern Political Culture*, vol. 4, *The Terror*, (Oxford, 1994), p.205.

the principle of granting equal rights to women, Etta Palm d'Ælders shared similar concerns. However, she was at pains to develop concrete proposals to improve the position of women in society with the stated aim of benefiting all society. The extent to which similar thinking informed arguments advocating the introduction of divorce legislation is striking. The final part of this chapter will examine the proposals of ordinary female petitioners in favour of divorce. It is particularly instructive to note to what extent their proposals mirrored those of more articulate voices in the Legislative Assembly and the arguments of Etta Palm d'Ælders and Condorcet in particular.

1. The Question of Sovereignty and its Importance for Women.

(i) Rousseau's sovereignty and masculine virtue.

François Fénelon's *Les Aventures de Télémach* (1699) was written for the Duc de Bourgogne, Louis XIV's grandson and heir apparent.[2] It may be read as an indictment of the reign of the Sun King, or as a book of instruction for the heir. It may also be read as a treatise on civic virtue in a republic. The depiction of republican virtue in this work may be read as a prototype for the virtuous republicanism advocated later by Rousseau and aspired to by Jacobins during the French Revolution.

Fénelon, through the voice of Mentor, revealed various characteristics necessary for good sovereign leadership. In the case of a republican monarchy, these attributes had to be embodied in the person of the sovereign monarch. In a constitutional republic, the people (at least those people able to exercise sovereignty in the public sphere)

[2] François de Salignac de la Mothe Fénelon (trans. Patrick Riley), *Les Aventures de Télémach*, (1699) (Cambridge, 1994). Fénelon was the tutor to the king's grandson.

would have to live up to the necessary standards. Otherwise, bad or degenerate government would result from the faults of the sovereign people. According to Fénelon, to rule with wisdom the sovereign had to be free of effeminacy and sheltered from the corrupting influence of women in public life. The importance of the simplicity and frugality found in the countryside and absent from large wealthy cities, was crucial for wise rule, as was a well-educated population.

Throughout the book, Fénelon criticised the baleful influence of women and effeminate values in public life. The people of Cyprus were debauched, indolent, lazy and deceitful because of the powerful role that women played there, and even Telemachus was corrupted during his stay on the island.[3] Good kings could be corrupted by effeminacy - Mentor cited the example of king Idomeneus. Although he was a good man, Idomeneus had been corrupted because he was indolent and effeminate.[4] Mentor admonished his *protégé* for wanting to live a lazy life among the women of Calypso. He reminded him that virtue and glory were more important than love and the immortality he was promised.[5] In other words, stern love of the state was more important than any love for an individual. As a consequence, the influence of women in public life could distract men from carrying out their public duties. Opponents of divorce developed this theme during the French Revolution.[6] They argued that although a woman (or a man for that matter) might be desperately unhappy in a marriage, it would be disruptive for the broader community if divorce were to be

[3] *Ibid.*, book IV.
[4] *Ibid.*, book XI.
[5] *Ibid.*, book VI
[6] See Guiraudet, *De la Famille Considérée comme l'Elément des Sociétés*, (Paris, an V); Jean-Pierre-Jacques-Auguste Labouisse, *Observations Contre le Divorce*, (Paris; Desenne, Le Roux, Maret, 1797).

allowed, because the success of the family unit in ensuring social stability was more important than the happiness of any single individual.[7]

Simplicity and frugality were more important for a virtuous sovereign than wealth and ostentation. According to Fénelon, such values were more readily found in the countryside than in luxurious cities. In book VII, Mentor tells Telemachus of a simple land (Spain) that possessed no wealth, cities or artifice. The people of this land viewed the inhabitants of Egypt and Greece as corrupt due to their great wealth, big cities, and buildings. Mentor later asked his student:

> "'Which', said Mentor, 'is better, a city adorned with marble, gold, and silver, and a barren neglected country; or a fruitful, well-cultivated country, and a city in which there is a simplicity of manners, and not much magnificence?'"[8]

Mentor did not condemn cities outright, but he believed they were zones where corruption and wasteful luxury thrived.

Mentor's other essential piece of counsel to Telemachus was to remind him of the importance of the education of children. He claimed that education was paramount to the success of the state. It would prevent idleness and effeminacy, and nourish modesty, wisdom, and disdain for riches. Children were first and foremost small individuals, who should be moulded into virtuous citizens.

> "They belong not so much to their parents as to the public." [9]

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[7] Mme Suzanne Churchod Necker, *Réflections sur le Divorce*, (1794), (Paris ; Lescure, libraire des bibliophiles, 1881), Jean-Pierre-Jacques-Auguste Lebouisse, *op. cit.*, Charles-Philippe-Toussaint Guiraudet, *op. cit.*, Toussaint Guiraudet, *De l'Influence de la Tyrannie sur la Morale Publique*, (Paris, an IV). Guiraudet, the most systematic and coherent of these writers argued that the family was the basic unit of society and not the individual. Furthermore, as women were naturally inferior to men, it was natural that they should be inferior to men in the domestic family. Divorce, available to men and women, threatened the natural authority of the husband in the family and therefore the stability of revolutionary society.

[8] Fénelon, *op. cit.*, book XVII, p.296.

The message for Telemachus was one of ascetic austerity and emotional barrenness. Love between men and women was an undesirable distraction to devotion to the state. Parents had a duty to raise their children, not simply as loved and cherished offspring, but as future citizens. It was the parent's duty to the state to raise the children adequately.

Fénelon outlined an austere vision of virtuous republican citizenship. He portrayed a particular concept of the virtuous sovereign, later expanded to the virtuous citizenship that made up the body politic in a state where all appropriate citizens could exercise sovereignty. To be a worthy sovereign, one would have to be just, frugal, and educated to love the state more than one's parents. Women were a degenerate and distracting influence in the public sphere. The sovereign needed to place the glory of the state above the particular love he might feel for any individual. Sacrifice and love of the *Patrie* took precedence over the love for one's children or spouse. This was a vision shared by Rousseau but modified somewhat by the privileged position he ascribed to women in a limited sphere. Women were privileged in the family (although still inferior to men) as they assumed the crucial duties of providing a soft and sentimental haven from the harsh public world. Domestic life, ordered and influenced by women gave them an important role in the community, but their influence was strictly confined to the family, as Rousseau still feared their corrupting influence in public life.

Jean-Jacques Rousseau's writings shared common themes with those of Fénelon. Rousseau insisted upon the importance of education for the young so that they may be

[9] *Ibid.*, book XI, p.194.

fit to take their place in society. In *Emile* (1762) he developed an education programme to make the young Emile fit for the exercise of citizenship and even counselled the young Emile to read *Les Aventures de Télémach.*[10] For Rousseau, the people were sovereign, as they placed each of their individual wills together to form the social contract, which bound them as one body, so that men would act for the general benefit of all and the particular benefit of no one particular individual:

> "Each of us puts his person and his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole."[11]

In Rousseau's republican paradigm women, were both idealised and reviled. They enjoyed a privileged position in the family but had no power outside of it, and even their authority in the family was circumscribed by that of the father. In chapter two, book one of *The Social Contract*, Rousseau partially explained why women were apportioned different social and political roles to men. According to the author, the father ruled the family unit for the benefit of all. Thus, women and children were dependent on the protection of the father and were therefore obliged to remain obedient to him. The male children could grow and form their own families but women would always be dependent on the protection of another:

> "The most ancient of all societies and the only one that is natural, is the family; and even so the children remain attached to the father only so long as they need him for their preservation. As soon as this need ceases the natural bond is dissolved. The children, released from the obedience they owed to the father, and the father, released from the care he owed his children, return equally to

[10] Jean-Jacques Rousseau (trans. Allan Bloom), *Emile* (1762), (New York, 1979); book V, p.467. . François Fénelon, *op. cit.*, introduction.

> independence. If they remain united, they continue so no longer naturally, but voluntarily; and the family itself is then maintained only by convention."[12]

Therefore, lacking an independent will and still dependent on the protection of the father or husband, women could not take part in the formation of the social contract. Translated into the conditions of the French Revolution, women could not enjoy the capacity to partake fully in the formation of the nation, and by consequence, they could not participate in the formation of the laws that guided the nation.

Members of the body politic had to be ready to fight against factions within it, for these particular wills would attack the general will. Also, all members of the body politic had the right to the protection of the state, but they had the duty to fight for the state if it was under attack. To fulfil these duties, citizens would need a specific form of virtue to defend the state. Male citizens enjoyed this form of virtue. It was gained by the protection of their families and by fulfilling their duty to the state in times of peace and war. However, this concept was highly problematical for women, as they could not exercise public functions to gain it. They could only lose their virtue by private infidelity, sexual incontinence and educate their children. In short, women's honour was put in danger by acting publicly, while men's honour was enhanced by public service. The question of divorce would pose many problems for those who believed that man was naturally ordained to rule in the family, as the legislation was formulated in a manner that gave women the opportunity to act as equal individuals with their spouses and not as subordinate beings. Ideas of liberty and equality were central to debate on divorce legislation. Those in favour of divorce generally argued

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[11] Jean-Jacques Rousseau (trans. G.D.H. Cole), *The Social Contract and Discourses*, (London, 1973), p.192.
[12] *Ibid.*, p.182.

that liberty must be afforded equally to all men and women. They also believed that women could contribute to the state in broader terms than those forwarded by Rousseau.

(ii) Sieyès and the Constitution of 1791.

Prior to the drafting of the 1791 constitution, Emmanuel Sieyès defined citizenship in the Constituent Assembly in the *Préliminaire de la Constitution: Reconnaissance et exposition raisonnée des Droits de l'Homme et du Citoyen.* His definition was later used in the 1791 constitution.[13] For Rousseau, those who shared in the sovereign authority were called citizens; those under the law of a state, he called subjects.[14] Sieyès also believe that the law should be the expression of the general will. Unlike Rousseau, he thought that the representatives of the citizens should make the law and that the citizens should choose those representatives for a limited period of time. [15]

To partake in the formation of the law one had to be in possession of one's independent will. Sieyès formulation of citizenship excluded women from full citizenship, as did the 1791 constitution. Those dependent on others, and therefore unable to bring their own will to the body politic, were eliminated from the formation of the laws or the election of representatives. This group included women (dependent on fathers or husbands), but also children, servants, mendicants and non-taxpayers.

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[13] J. Mavidal & E. Laurent, *Archives Parlementaires*, tome 63, (Paris, 1969), p.562.
Emmanuel Sieyès, *Préliminaire de la Constitution: Reconnaissance et exposition raisonnée de Droits de l'Homme et du Citoyen*, (Versailles, 1789). In Robert Zapperi (ed.), *Emmanuel-Joseph Sieyès: Ecrits Politiques*, (Paris, 1985).
See also William H. Sewell jr. "Le Citoyen/la Citoyenne: Activity, Passivity, and the Revolutionary Concept of Citizenship". In Colin Lucas (ed.), *The French Revolution and the Birth of Modern Political Culture.* Volume 2 of *The Political Culture of the French Revolution*, (Oxford, 1988), ch. 6.
[14] Jean-Jacques Rousseau, (trans. G. D. H. Cole), *The Social Contract and Discourses*, (London, 1973), p.193.

They were all dependent beings, reliant on fathers, husbands, parents, their masters or charity.

Thus, in the 1791 constitution, those deemed to be incapable of participating in the formation of the general will were not accorded the status of full citizens able to sit in primary elections.[16] Those "full" citizens were called *citoyens actifs*, while those who could not sit in the primary assemblies, but benefited from the protection of the law and the Declaration of the Rights of Man were called *citoyens passifs*. To be a *citoyen actif* one had to be over twenty-five years of age, and male. It was also necessary to be permanently resident in one's commune in order to exclude vagabonds. Active citizens needed to swear the civic oath, and pay taxes equivalent to at least three days labour. An active citizen could not be a bankrupt or under accusation from the courts.

Therefore, women and other groups in society deemed incapable of exercising their individual will were deprived of the exercise of sovereignty. They would enjoy the protection of the law and would be bound by it but they could not take part in its formation through the exercise of franchise or by acting as representatives. In reality, this was not the case as women did take part in some primary assemblies. They also attempted to influence the formation of the law by petitioning primary and national assemblies.

Ancien Régime marriage and separation laws denied women full equality with their spouses and pleas for the introduction of divorce legislation frequently referred to this.

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[15] Sieyès, *Préliminaire de la Constitution...*, (Versailles, 1789), p.20-21. Quoted in William H. Sewell jr, *op. cit.*; p.107.

The majority of writers in the eighteenth century did not accept that women deserved the same rights as men. In this respect, Condorcet is exceptional as one of the few leading *philosophes* and revolutionary deputies to have advocated liberty and equality for women in all domains of life, public and private.[18] Condorcet's egalitarian ideas were based on his conception of rights and liberty, which did not allow for distinctions based on sex or race. Condorcet did not explicitly advocate divorce but his concept of liberty was the same as that used by his colleagues in the *Cercle Social* who called for divorce on the grounds of liberty and the rights guaranteed by the Declaration of the Rights of Man and the Citizen.[19]

One of the few writers to precede Condorcet's call for the equality of women was François Poullain de la Barre. He wrote *De l'Egalité des Deux Sexes* in 1673 and in it, he questioned the prevailing attitude that women were subordinate to men. In this work, he set out to rid mankind of prejudices acquired through ordinary teaching methods by his use of the Cartesian method. He attempted to prove the equality of the two sexes through reasoning from first principles.[20] He accepted that women were subordinate to men, not because this was naturally ordained but due to environmental factors. Therefore, he believed that if given adequate education and opportunity

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slaves. Women would be free to divorce tyrannical husbands if a divorce law was introduced. See Mavidal & Laurent, *op. cit.*, vol. 49, p.117.

[18] Others argued, on the contrary, that women were naturally inferior to men and therefore should neither participate in the public sphere nor enjoy equality in marriage either through a divorce law or by other means. See Guiraudet, *op. cit.*, Necker, *op. cit.*, Labouisse, *op. cit.* See the discussion of these works in ch. 3

[19] Other figures involved in the *Cercle Social* with Marquis de Condorcet advocated divorce and liberty for women.
Nicolas Bonneville, "Considérations Générales sur le Mariage". In *La Chronique du Mois ou les Cahiers Patriotiques*, (Paris, April, 1792).
"Du Divorce", in *La Chronique du Mois*, (Paris, March 1792).
Nicolas de Bonneville, *Le Nouveau Code Conjugal*, (Paris, 1792).
Claude-Louis Rousseau, *op. cit.* See ch. 2

[20] François Poullain de la Barre (trans. D. Frankforter & P. Morman), *The Equality of the Two Sexes* (1673), (Lewiston, New York, 1989). preface.

women would be capable of proving their equality to men. He refuted the argument that because women were weaker than men and they suffered in childbirth, they were inferior to men. He argued that this may have been the case in primitive societies but was no longer so important.[21] Poullain de la Barre concluded by claiming that women were no less competent than men; they were merely given fewer opportunities and were deprived due to environmental factors such as inadequate education and opportunities in society.[22]

Condorcet concurred with Poullain de la Barre that women were not naturally subordinate. He too believed that they had been subordinated because of the environmental conditions of French society, and especially due the fact that they had been denied the same education as men. Between 1788 and 1791, he wrote at least five tracts calling for the equality of women in French society. His most comprehensive work calling for equal civil and political rights was written in 1790.[23] *Sur l'Admission des Femmes au Droit de Cité* argued, with a logic similar to that of Poullain de la Barre's work written 117 years earlier, that women had been deprived of their right to equality with men due to the ignorance caused by their lack of education. Most women accepted this because habit can even make men accept the loss of their natural rights, argued Condorcet, and he insisted that men were not

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[21] *Ibid.*, p.27-29.

[22] Later Cornelius Agrippa of Nettesheim would be called the father of modern feminism. He published his *De Nobilitate et proecellentia foemini sexus* in 1726. George Ascoli claimed this in the *Revue de Synthèse Historique* (1906). See Colette Michel (pub.), *Les Tractes Féministes au XVIIIè Siècle*, (Geneva, 1986).

[23] Others called for the extension of some rights to women but very few wished to give full and equal political rights to women. Marquis de Condorcet's colleague in the *Cercle Sociale*, Claude Rousseau believed that women should play a public role in society but this role was limited. See Claude Rousseau, *op. cit.*, p.33-40. In this section he suggests that women should not exercise the greater public functions, but that should enjoy equal civil existence.

superior to women. Men and women were equally possessed of sensibility, moral ideas, and a rational mind. They were also gifted with equal rights in nature.[24]

Condorcet developed his thought by repudiating several arguments used to justify the exclusion of women from public life. Some people argued that women had not shown genius in the arts, sciences or letters, but Condorcet stated that most men had not shown such talents either. Another argument was that women did not possess the same range of knowledge or strength of reason as men. The author said this was a ridiculous reason to exclude women from citizenship; such strength of reason was limited to a small intellectual elite. Men had been foolish enough to display religious intolerance and enslave black people; the political exclusion of women was equally stupid. Subsequently, he cited examples of women who proved themselves equal to men in public life such as Elizabeth I and the two Catherine's of Russia.[25]

He argued that women, like men, were driven by reason, adding that female reason might be different to that of men but it still existed:

> "Cette observation est fausse: elles ne sont pas conduites, il est vrai, par la raison des hommes, mais elles le sont par la leur."[26]

Mirroring the conclusions of Poullain de la Barre, Condorcet accepted that women might be superior to men in domestic virtues but he believed that such an attribute should not diminish their love of liberty. It was true, he argued, that women may be driven by sentiment rather than by conscience, but this was probably due to environment and education, not from a natural inability to use reason. Condorcet also

[24] Marquis de Marquis de Condorcet, *Sur l'Admission des Femmes au Droit de Cité.* In *Oeuvres de Condorcet*, (Paris, 1847); tome X, p.122.
[25] *Ibid.*, p.123.

attacked women's dependence in marriage. Such dependence was a fact, but it should not be used to justify their exclusion from the full exercise of citizenship, as Sieyès had argued. Instead, it was another injustice that must be corrected.

Condorcet concluded by rebuffing two more reasons for the exclusion of women from public life. Some argued that women should be excluded for reasons of utility, but Condorcet countered this with the statement that such logic filled the Bastille and put Africans in chains.[27] The final justification for the exclusion of women was the fear of their influence on men in public life. He contended that such fears were unnecessary as women could participate productively in public life if they were properly educated. Finally, he rebuked the fear that women would abandon their families if they had the opportunity to become national deputies: bakers did not abandon their work or families for such a reason, so why should women, he asked. He admitted that one might not necessarily vote for women in elections, but he argued that such thinking should not justify the legal exclusion of women from the opportunity to stand for election.[28] In this work, Condorcet attempted to expose male fears surrounding women's potential to act in public by arguing that those opposed to female public participation had no rational basis for the exclusion of women from public life.

The other texts written by Condorcet emphasised the need to grant women the rights and liberty that they were naturally entitled to. As early as 1788, he called for the law

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[26] *Ibid.*, p.125.

[27] By reasons of utility, Marquis de Condorcet meant that just as economic reasons were used to justify the enslavement of Africans, some argued that women were most useful fulfilling a domestic role. It was not that they could not exercise public functions, but that they were most useful working in the domestic environment.

[28] *Ibid.*, p.125.

to be applied equally to everybody in France.[29] He criticised the fact that not all of the population were called to the Estates General and stated that women should also have the right to be represented by female deputies:

> "...nous demandons formellement au Gouvernement d'y appeler les Députées de notre sexe."[30]

He insisted that women should be allowed to take part in public life. He admitted (as he and others would in later texts) that some women would be too busy with their families to partake in public life, but Condorcet believed that some mothers were capable of acting both in the domestic sphere and in public life, while other women were childless.[31] In a letter to the *Bouche de Fer*, Condorcet again insisted on the need for liberty in French society, for women to be respected in their families, and in society. He insisted that all individuals had the right to liberty, that all should be free to act as they pleased as long as they did not infringe the liberty of others, and that any deviation from this concept of liberty attacked the very integrity of the state and the liberty of all:

> "La liberté est le droit de faire tout ce qui ne nuit point au droit antérieur de l'autrui. Si on porte atteint à ce droit, l'autorité devient arbitraire et l'homme n'est plus libre."[32]

Thus, he criticised the state regulation of theatres, as liberty should be respected in all its senses and the liberties guaranteed by the Declaration of the Rights of Man and Citizen should be upheld. This insistence on the primacy of liberty, or freedom to do what one wished to without jeopardising the liberty of others, was shared by the early advocates of a divorce law. They believed that society could not function if

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[29] Marquis de Marquis de Condorcet, *Très-Humbles Remontrances des Femmes Françaises*, (Paris; Imprimerie Galante, 1788). In Colette Michel (pub.),*op. cit.*, p.8.
[30] *Ibid.*, p.8. Condorcet wrote the article anonymously, pretending to be a woman. Hence the wording.
[31] *Ibid.*, p.9.

individuals, men or women, were unable to enjoy the benefits of liberty in their private lives. As the family was a crucial element of society for those who argued for and against divorce, the apologists for a divorce law declared that the institution of marriage must be dissoluble to allow for those unhappy in marriages to free themselves so they might find their ideal partner. Opponents of divorce believed that such a law would make a mockery of marriage and instead of strengthening marriages, it would destroy them.

Condorcet proceeded to criticise French society in general and the marriage system in particular, lamenting the fact that women, who raised and educated the children of the *Patrie*, were not honoured. Instead, they were ignored and forbidden to take public functions. Worse, they were kept in a state of permanent minorhood until the deaths of their husbands or fathers and were denied property and voting rights. Such injustices attacked the principles of the Declaration of the Rights of Man and the Citizen and threatened the integrity of society.[33] Those who argued for the introduction of a divorce law in 1792 made similar arguments.[34] They justified a divorce law on the grounds that it would give women the possibility of liberty (at least in their domestic arrangements) and freedom to decide their own fate. They would be allowed some financial maintenance from the husband, if necessary, and would have their property restored to them, thus guaranteeing a measure of freedom and independence.[35]

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[32] Marquis de Condorcet, *Lettre sur les Spectacles*. Letter to the *Bouche de Fer* (ed. N. de Bonneville), 10 octobre 1790. In Colette Michel, *op. cit.*; p.13.
[33] *Ibid.*, p.14.
[34] Nicolas Bonneville, *Le Nouveau Code Conjugal*, (Paris, 1792); A. Hennet, *Du Divorce*, (Paris, 1789); Anon., *Du Divorce. Adresse à un Grand Prince qui s'est fait Homme*, (n.p., n.d.); Anon, *Le Divorce ou Art de Rendre les Mariages Heureux*, (n.p., n.d.); P. P. Alexandre Bouchotte, *op. cit.*
[35] Articles IV to XI of paragraph III regulate financial settlements between divorced couples. The regulations clearly favour the person who took the divorce action in the case of divorces for specific causes and also favours the husband over the wife in some instances. Article IV states that the settlement shall be made according to the marriage contract that existed between the couple. Article V

Condorcet, in the *Bouche de Fer*, continued to advocate liberty in society as a necessary prerequisite to prosperity, *bonnes mœurs*, and happiness in the republic. He indicated that amusement was essential if one were to behave as a good citizen. If the citizen were relaxed and happy, he would work better for the community. It was for this reason that he complained about those who wished to ban balls held for young people. He insisted that these balls were occasions for young people of both sexes to make acquaintance with each other in a safe and public environment before deciding to marry.[36] Condorcet hoped that such balls would be publicly authorised, not banned. He believed that by sanctioning such entertainment, the nature of social relations and marriages could be improved. If these balls were more regular and popular, the parents of the children could go to these occasions. Young couples would not be tempted to meet in secret and the respective families could become friendly with one another while the young people enjoyed themselves. This could result in marriages based on mutual affection, rather than the arranged marriage of two strangers. These circumstances would lead to respect between couples and a reduction in unsuitable marriages.

> "Ces bals, ainsi dirigés, ressembleraient moins à un spectacle public, qu'à l'assemblée d'une grande famille; et du sein de la joie et du plaisir naîtront la conservation, la concorde et la prospérité de la CHOSE

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deprives the wife of any benefit she might accrue if the divorce action was taken by the husband for one of the reasons in article IV, paragraph I (with the exception of madness). All gifts, pensions and promises of pensions made before and since the marriage were also voided for all forms of divorce. The exceptions to this rule were set out in articles VII to XI, paragraph III. In the case of divorce under article IV of paragraph I (*causes déterminées)*, the party taking the divorce action would be indemnified against losses resulting from the divorce by a pension levied on the income of both spouses. The following article stated that, in the case of all divorces, a subsistence pension would be paid to the spouse who found themselves in financial difficulties. This would levied on the other spouse if they had the means to fund this measure. All such arrangements would be nullified if the divorcee who benefited from the arrangement contracted another marriage. See appendix II for the full text of the law.

PUBLIQUE."[37]

Condorcet wished for the proliferation of these balls in the name of liberty, friendship and affection between married couples and their families and he believed that such entertainment would aid in the socialisation and relaxation necessary for the foundation of a just, morally healthy society. He also connected the happiness of isolated individuals and of potential spouses with the success of the new republican project. Without the freedom to choose one's partner, successful marriages would not occur, and without stable, contented families forming the foundation of society the republic could not survive.

Equal access to education was a prerequisite of any form of political liberty or equality of opportunity for Condorcet. He believed that public education, in order to be worthy of the name, should be available to all citizens, male or female. The mother, as the primary educator in the home, must enjoy at least a basic education if she was to initiate her young into the joys of learning.[38] Equality and universal education were part of the same agenda for Condorcet. He believed that discrimination against women in education would lead to the introduction of inequality within the family and thus constitute an attack on happiness. Families, as the basis of society, needed to act as vectors of equality and happiness for all of society under the new régime:

> "L'égalité est partite, mais sur-tout dans les familles, le premier aliment de la félicité, de la paix et des vertus".[39]

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[36] Marquis de Condorcet, "Fêtes Civiques et Fraternelles", *La Bouche de Fer*, 27 janvier 1791. In Colette Michel, *op. cit.*; p.15-16.
[37] *Ibid.*, p.16.
[38] Marquis de Condorcet, "Il est nécessaire que les femmes partagent l'instruction donnée aux hommes", in *Bibliothèque de l'Homme Public; ou Analyse Raisonnée des Principaux Ouvrages Français et Etrangers; sur la politique en général, la législation, les finances, la police, l'agriculture, et le commerce en particulier, et sur le droit naturel et public*, tome 1, (Paris, 1791); p.17-22.
[39] *Ibid.*, p.17.

Equality of opportunity was a key element of the Revolution for Condorcet, and he believed that it should exist in the family, the heart of society. The way to achieve equality in the family was through equality of education. The education of republican mothers was of paramount importance, as their children would ridicule them if they were ignorant. This would undermine the authority of one of the parents in the household. Condorcet hoped that equal education for men and women would serve to strengthen the bonds of marriage, as he believed that if both spouses had a similar level of education, they could discuss diverse subjects with each other and enjoy the company of one another.

The final argument Condorcet used in favour of equal education for men and women was one based on the Declaration of the Rights of Man and the Citizen. As women had gained the right to enjoy equality of opportunity, they deserved to benefit from the same education as men:

> "Enfin les femmes ont les mêmes droits que les hommes; elles ont donc celui d'obtenir les mêmes facilités pour acquérir les lumières qui seules peuvent leur donner les moyens d'exercer réellement ces droits avec une même indépendance et dans une égale étendue."[40]

In his rights-based argument in favour of the equality of education for boys and girls, he lists several reasons justifying the right of girls to the same education as men. It would be economical as only one school per village would be necessary; both sexes have to live together in adult life, so they should not be separated in their youth; the spirit of equality would never thrive if girls were handicapped by ignorance. He concluded by maintaining that ignorance would attack the virtue of the individual, and

[40] *Ibid.*, p.18.

therefore of the nation. The ignorance of people would only lead to corruption, a poor use of freedom, and inequality:

> "C'est en répandant les lumières que, réduisant la corruption à une honteuse impuissance, vous ferez naître ces vertus publiques qui seules peuvent affermir et honorer le règne éternel d'une paisible liberté."[41]

Condorcet believed in the right of all members of society to equality of opportunity and the freedom do what they wanted as long as this did not interfere with the liberty of others. He also believed that the family was an extremely important element in society. Etta Palm d'Ælders shared many of the convictions of Condorcet and pushed the claims of women further by demanding the introduction of divorce as part of an overall programme to benefit the women of revolutionary France.

(ii) Etta Palm d'Ælders and divorce.

Etta Palm d'Ælders, like Condorcet, was involved in the *Cercle Social* in 1791. She was particularly concerned with the position of French women under the new revolutionary order and sought to address the problem of female rights in a series of pamphlets. Like Condorcet, she was especially concerned with education, the family, and the role that women could play to further improve revolutionary society. She differed from him in the importance she ascribed to the introduction of a divorce law that would allow both men and women to dissolve their unions.[42] In the *Appel aux Français sur la Régénération des Moeurs, et Nécessité de l'Influence des Femmes*

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[41] *Ibid.*, p.22.

[42] Gary Kates, *The Cercle Social, the Girondins, and the French Revolution*, (Princeton; Princeton University Press, 1983); p.119.

Etta Palm d'Ælders was born in Holland and probably died there. From 1790, she appeared in Parisian clubs that admitted women, and was close to Fauchet and other members of the *Cercle Social*. She was sent to the United Provinces to spread republican ideas during the Revolution, returned to Paris and again went to the United Provinces in 1793. See Claude Manceron, *op. cit.*, p.462-463.

dans un Gouvernement Libre (1791), Etta Palm d'Ælders outlined her general thoughts on the need for equality between men and women in all aspects of life, not simply in the home, although she thought that equality in the home and a divorce law were essential and urgent.[43] In a passionate plea to the National Assembly and more generally, to all Frenchmen, Etta Palm d'Ælders pleaded for French women to be allowed to play a full role in the French Revolution. She insisted that justice, equality and liberty be applied to women as they were to men. To achieve this she believed that women should be allowed to participate in public life, receive an adequate education, and enjoy equality in marriage. She also believed that they should also be allowed to divorce.

Etta Palm d'Ælders addressed the *Assemblée Fédérative des Amis de la Vérité* to defend her sex. She praised the assembly for allowing women to speak and defended the rights of women on the grounds of justice. She stated that no legislation could be just if women were denied equality before the law. She asked men to make laws to protect women, not to form legislation for the sole pleasure of men. In thinking of women as their playthings, men had led women into a state of slavery, and no more so than in the state of marriage:

> "La justice doit être la première vertu des hommes libres, et la justice demande
>
> que les loix soient communes à tous les êtres, comme l'air et le soleil; et cependant

[43] Etta Palm d'Ælders, *Appel aux Français sur la Régénération des Mœurs, et Nécessité de l'Influence des Femmes dans un Gouvernement Libre*, (Paris; Imprimerie du *Cercle Social*, 1791). The author claims that she published this text to refute claims in the *Gazette Universelle* (19 & 25 July 1791) that she was an agent of the Prussian court and a "démocrate outrée". The work is made up of several speeches:
"Discours sur l'Injustice des Lois en Faveur des Hommes, au dépend des Femmes, lu à l'Assemblée Fédérative des Amis de la Vérité" (30 December 1790); "Extrait du registre des délibérations de la municipalité de Creil-sur-Oise" (8 February 1791); "Discours d'une Amie de la Vérité. Palm d'Ælders, Hollandaise, en recevant la cocarde et la médaille nationales envoyées pour elle à l'assemblée fédérative par la municipalité de Creil" (14 February 1791); "Discours... et justification sur la

> partout, les loix sont en faveur des hommes, au dépens des femmes, parce que partout le pouvoir est en vos mains."[44]

She appealed to men to show justice to women and to accord them liberty. Only then, could women respect the constitution and become part of the new regime. She believed that through education and the full protection of the law women could become good citizens and serve the state. The freedom to choose one's partner was an essential component of liberty for women. Otherwise, they would languish in slavery, as they had done under the *Ancien Régime*:

> "Hé! quoi de plus injuste! notre vie, notre liberté, notre fortune, n'est point à nous; sortant de l'enfance, livrée à un despote, que souvent le cœur repousse... tandis que notre fortune devient la proie de la fraude et de la débauche."[45]

Furthermore, she criticised those men who believed that women would always be subordinate to men, and said that such statements were as absurd as saying that Frenchmen were born to slavery and should not have demanded their rights in 1789.[46]

In the same vein as Condorcet, Etta Palm d'Ælders insisted that, while men may be physically stronger, women were created to be the equal companions of men possessed of equal moral strength and superior imagination, sentiment and patience. She believed that women might even surpass men if they received the benefit of an enlightened education. Etta Palm d'Ælders was convinced that women could serve the Revolution if given the opportunity and education: then they could rear their children

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dénonciation de Louise Robert (12 June 1791); "Adresse des citoyennes françaises à l'assemblée nationale."

[44] *Ibid.*, p.2-3.

[45] *Ibid.*, p.4-5.

[46] *Ibid.*, p.6. She cites L.S. Mercier's *Tableau de Paris* here.

and give comfort to their husbands.[47] They could also serve the Revolution by other acts. Women could establish "*cercles des femmes*" to supervise wet nurses. They could also protect girls from the dangers of city life, teach them the rights of man, instil respect for the law, and impart the duties of the citizen in *"écoles de charité"*.[48] Etta Palm d'Ælders did not expect women to desert their traditional role of mother and wife, but she did believe that women deserved the right to education and the full benefit of the law so that they might enjoy the rights and duties of citizenship. All these forms of public participation would give women a legitimate role in public life, while not undermining the rights of men. In fact, while Etta Palm d'Ælders argued for the public participation of women in French society, she accepted that women would probably not fulfil the same functions as men, and instead asked that they might be allowed control over areas traditionally regulated by women such as childbirth and the protection of women. In doing this, they could act publicly and fulfil their civic duties while not threatening male authority.

She believed, like Condorcet, that women and men must enjoy liberty and freedom in the home so that they could enjoy such values in society. She concluded by insisting that the Revolution could only succeed if women were granted a decent education, equality in marriage, and the right to divorce. She insisted that if a woman were trapped in a loveless and oppressive marriage, like a slave, she would break her chains, and the correct way to allow women to exercise liberty in marriage was to give them the opportunity to legitimately break from an unloving husband. Then they would not destroy the natural order (by cuckolding their spouses or fleeing their

[47] *Ibid.*, p.13.
[48] *Ibid.*, p.26-27.

authority) but would help maintain it by dissolving the marriage before exposing her partner to public ridicule.[49]

3. Different Approaches to the Problem of Female Participation in Society.

(i) Olympe de Gouges & Claude-Louis Rousseau: contrasting views of women's' rights.

Both Olympe de Gouges and Claude-Louis Rousseau advocated the improvement of women's rights and the introduction of divorce. They agreed that the condition of women in French society was one of ignorance and servitude, and they also agreed, like Condorcet and Etta Palm d'Ælders, that women required a better education to remedy this problem. However, they differed over the suitability of women acting publicly and in the manner in which they sought to change the position of women.

Olympe de Gouges was born in Montauban in 1748 as Marie Gouze. She moved to Paris in 1770, the widow of Louis-Yves Aubray, but changed her name when she sought fame as a writer. She also claimed to be the biological daughter of Jean-Jacques le Franc, the Marquis de Pompignan and was rumoured to have been the mistress of Philippe d'Orléans. Her plays, rejected by the *Comédie Française*, were unsuccessful, but she also wrote many pamphlets advocating the equality of political

[49] *Ibid.*, p.40.

rights for women. She defended the position of the king during his trial and was arrested as a counter-revolutionary and guillotined on 30 November 1793.[50]

Olympe de Gouges' most famous work is the *Déclaration des Droits de la Femme et de la Citoyen* (1791). This work, addressed to the queen, used the framework of the Declaration of the Rights of Man and the Citizen to forward an argument for equal rights for men and women. In this work, the author demanded absolute equality of rights between men and women.[51] De Gouges' *Déclaration*, like the other *Déclaration*, based its argument on nature and reason. In the preamble, de Gouges appealed to the queen to bring back the princes; this was her duty to the nation, she said, and it would redeem her in the eyes of the people. Like Condorcet and Etta Palm d'Ælders, she stressed that the Revolution could not truly succeed in bringing liberty and equality to France if women were denied political rights. Depriving women of political rights would mean the failure of the Revolution to achieve its goals:

> "Cette Révolution ne s'opéra que quand toutes les femmes seront pénétrées de leur déplorable sort, et des droits qu'elles ont perdus dans la société."[52]

Olympe de Gouges was one of the most overtly political of writers who investigated the condition of women in revolutionary France. By assuming the very language of the male revolutionaries who sought to exclude women from public life, she challenged them to explain the exclusion of women from public life and asked why women should be subordinate to men if rights were supposed to be universal. Like Condorcet,

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[50] Colette Michel (pub.), *op. cit.*, p.vi-vii.
Claude Manceron, *op. cit.*, p.283-285.
[51] Olympe de Gouges, *Déclaration des Droits de la Femme et de la Citoyenne*, (Paris; n.p., n.d.,1791). In Geneviève Fraisse (préface), *Opinions de Femmes, de la Veille au Lendemain de la Révolution Française*, (Paris, 1989); p.47-62.

she believed that all should benefit from the rights bestowed by the Revolution, but she went further and insisted on absolute equality between women and men. Not only should women be equal in the family, but they should also be allowed to participate in the formation of the laws. Instead of bestowing equal rights on women and suggesting that they would not use them in the political sphere, de Gouges confronted the fears of those who believed that women should confine themselves to a domestic role:

> "The law should be the expression of the general will; all citizenesses and citizens should take part in its formation personally or through the agency of their representatives; the law should be the same for all: all female and male citizens, being equal before the eyes of the law, should be admissible to all dignities, places, and public employment, depending on their capacities, and without any other distinction than their virtues and talents."[53]

She believed that nature and reason ordained women to be equal in rights with man; only prejudice, superstition, and lies perpetuated the suppression of women.[54] De Gouges wished to change this situation and she was not satisfied with praise and a valorisation of the domestic efforts of women. Rather, she wanted women to enjoy complete political participation in the in French Revolution.

De Gouges also called for the introduction of divorce, although she did not elaborate on the form of legislation she desired. However, she did view it as necessary to guarantee liberty and *bonnes mœurs* in revolutionary France:

> "Je n'insisterai pas sur le divorce que j'ai proposé, quoique d'après mon opinion,

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[52] Olivier Blanc (préface), *Ecrits Politiques 1788-91 * Olympe de Gouges*, tome 1, (Paris, 1993). Olympe de Gouges, "Les Droits de la Femme"; p.205.

[53] Olympe de Gouges, *Déclaration des Droits de la Femme*, art. VI. In Geneviève Fraisse, *op. cit.*, p.52. For Olympe de Gouges, see Joan W. Scott, *Only Paradoxes to Offer: French Feminists and the Rights of Man*, (Cambridge Mass., London , 1996). For opposition to female participation in public life see Joan B. Landes, *Women and the Public Sphere in the Age of the French Revolution*, (Ithaca, 1988), and Lynn Hunt, *The Family Romance of the French Revolution*, (London, 1992).

> je pense qu'il est très nécessaire aux mœurs et à la liberté de l'homme: son plus cher intérêt, est celui de la postérité."[55]

For de Gouges, divorce was an important issue, as it would give women more power in marital relations as each partner could freely decide to terminate the marriage contract, but her broader goal was the acquisition of political equality for women. De Gouges saw the liberation of women in the public sphere as more important than allowing them authority over areas of social life traditionally dominated by women. Another measure that she demanded was the legal recognition of illegitimate children. She wanted the stigma to be removed from them and called for equal inheritance rights for children born within or outside wedlock.

Claude-Louis Rousseau was also concerned with the improvement of the position of women in French society. However, his approach to this problem was somewhat different from those of Condorcet, Etta Palm d'Ælders, and Olympe de Gouges. Rousseau stated that he deplored the subjugation of women in society and insisted that women had a very important role to play in society if *bonheur* and virtue were to be achieved in France.[56] He insisted on the importance of liberty and justice in both public and private life and believed that only by creating happy and moral domestic arrangements could virtue hope to reign in public life. This could only be achieved if women were given a good education, away from convent schools, where young women were more likely to learn the vices of society than to be protected from them.[57]

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[54] Olympe de Gouges, *Déclaration des Droits de la Femme*. In Geneviève Fraisse, *op. cit.*, p.54.
[55] 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*. In Benoîte Groult (ed.), *Olympe de Gouges. Oeuvres*, (Paris, 1986); p.113.
[56] Claude-Louis Rousseau, *Essai sur l'Education et l'Existence Civile et Politique des Femmes*, (Paris; Imprimerie de Girouard, 1790); p.6.
[57] Etta Palm d'Ælders also deplored the conditions of education in convent schools. See her petition to the Legislative Assembly. In Mavidal & Laurent, *Archives Parlementaires*, volume 41, 1 April.

Claude-Louis Rousseau believed, like Jean-Jacques Rousseau that an appropriate education for women was essential if women were to do their duty to the state, and raise and educate their children to virtue. He thought that women had an essential role to play in the success of the new state. However, in common with Jean-Jacques Rousseau, he apportioned a restricted domestic sphere to women as their zone of influence. It was here, especially, that he differed with other writers who also aspired to improve the situation of women.[58]

Claude-Louis Rousseau dreamed of a new society where rights would be known and duties respected.[59] To achieve such a society, he believed that women had to breastfeed their children and give them a "natural" education at home that would lead to a healthy curiosity and an appreciation of the sciences and the arts. To be capable of this, young women would require a comprehensive education in the arts, sciences, music, history, philosophy, and the constitution.[60] He wrote that such an education would lead to loving marriages that would form the basis of the state and encourage patriotism:

> "La population s'accroîtra, l'industrie prendra de l'activité, toutes les parties de l'Empire seront régénérées..."[61]

For Claude-Louis Rousseau, education for women was not primarily to free them from ignorance (this was the basis of de Gouges' and d'Ælders' argument). It was also necessary in order to enable to educate and instruct their children. He emphasised the importance of women, but only in the domestic sphere.

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[58] Claude-Louis Rousseau, *op. cit.*, p.9-12.
[59] *Ibid.*, p.19.
[60] *Ibid.*, p.22.

Despite this, Claude-Louis Rousseau desired that women should be accorded a civil and political existence under the French Revolution. He believed that marriage laws should be changed in order to grant liberty and justice to women in the domestic sphere and thought that parents should not be permitted to oblige their daughters to marry somebody not of the woman's choosing. He also thought that either party in a marriage had the right to demand divorce if adultery had been committed.[62] However, he was not in favour of a liberal divorce law. Instead, he believed that divorce should be as difficult to get as legal separation had been. He stated that if divorce were available on demand marriage would become a form of legal concubinage. According to Claude-Louis Rousseau, only the wronged party, not the adulterer, should be allowed to demand divorce. Here, he parted with Nicolas de Bonneville and the liberal divorce writers who also believed that marriage and divorce laws should be reformed. They thought that a liberal divorce law was necessary to facilitate liberty in domestic relations and to avoid the persistence of sterile, unproductive marriages. His opinions on divorce departed radically from those of Etta Palm d'Ælders and Olympe de Gouges, but they were consistent with the role he apportioned to women in French society, as his conception of the role they should play in revolutionary society was a limited one.

Claude-Louis Rousseau believed that women should have a political existence outside the family. However, this political existence differed radically to that imagined by the Marquis de Condorcet and Olympe de Gouges. They believed that women should have the same rights of citizenship as men, otherwise the Revolution would have

[61] *Ibid.*, p.26.
[62] *Ibid.*, p.31.

failed in its mission to create a liberal, egalitarian, and just society. Rousseau confined the public role of women to those tasks that did not require:"...un travail trop pénible..."[63] He thought that the physical constitution of women excluded them from the exercise of public functions. Women served the state by giving it children, and by educating them:

> "La législation, la justice, et toutes les autres grandes fonctions publiques
> ne peuvent être exercer que par les hommes mûris par l'expérience
> et l'étude la plus soutenue."[64]

Nevertheless, women could be of public utility when they were no longer concerned with questions of childbirth and maternity. Suitable participation would strengthen women's attachment to the state. To this end, Claude-Louis Rousseau suggested the foundation of a magistrature for women, to be elected by adult women at the time of communal elections. They would then form an office called the *Surveillance générale des moeurs.* This organisation would be divided into three committees: *le comité particulier de surveillance des mœurs; le comité de bienfaisance publique; le comité d'instruction maternelle.*[65] These committees would survey the behaviour of women in the communes, especially that of prostitutes. They would also supervise the public and charitable establishments of the commune and suggest useful ways to spend public money. The committees would aid mothers and pregnant women, support orphans, supervise the education of young girls, and come to the aid of girls and women in unfortunate circumstances who might be tempted to support themselves through prostitution. The women involved in these committees would help maintain public order and the public good. Claude-Louis Rousseau saw prostitution as a cancer

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[63] *Ibid.*, p.33. Although Claude-Louis Rousseau and Guiraudet differed on the issue of divorce, both believed that women were incapable of certain tasks (especially in the public sphere) due to their "natural" weakness.
[64] *Ibid.*, p.33.

in society that had to be eradicated. By giving women a public role in preventing this cancer, they would grow attached to the state as a result of their role in the maintainance of public order:

> "Par l'institution maternelle, l'esprit public se propagera, et nous aurons enfin des femmes dignes de donner des hommes à la patrie."[66]

Rousseau believed that women should contribute to the state, but in order to do so without corrupting the public sphere or assuming tasks too difficult for them, he created a parallel and restricted public sphere, a sort of domestic idyll where women would control the actions of other women for the benefit of the state, but would nevertheless suffer exclusion from all other forms of public participation.

Claude-Louis Rousseau, Condorcet, Etta Palm d'Ælders, and Olympe de Gouges all believed that the position of women in French society should be changed if the Revolution was to succeed in its aims of introducing liberty and justice to all sections of French society. They based their arguments on the importance of liberty for all members of the community and believed that the situation of women must be improved if liberty were to reign. However, Claude-Louis Rousseau had a radically different conception of female public participation. He thought, like the other writers, that divorce was of crucial importance if women were to escape from subordination in domestic relations. He insisted that women should be entitled to participate in public life. However, he held the opinion that women were not suitable for public office. Condorcet and Etta Palm d'Ælders agreed that women might not necessarily choose to participate in public life by taking up official positions, but believed that they should have the right to choose. Olympe de Gouges stated baldly that women should have the

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[65] *Ibid.*, p.34.

exact same civic and political rights as others. Condorcet and Etta Palm d'Ælders believed that women were physically, morally, and mentally capable of participation in public life, although they might prefer to serve the state by raising their children, while Claude-Louis Rousseau believed that the role of republican wife, mother, and educator was the single most important position for women in society. After this task had been completed, they might take a limited role in public life related to their sex, but could not participate to the extent that men could, due to their physical and temperamental disposition.

The above authors believed that women should be allowed to participate in public life, but they held three distinct attitudes. The most radical position was that of Olympe de Gouges who founded her arguments on the language of the Declaration of the Rights of Man and the Citizen. She insisted on absolute equality between men and women in both the public and private spheres and summarised her argument by stating that if women could die on the scaffold they should be allowed to address the tribune at the National Assembly. Nothing less than absolute equality and full participation in public life was acceptable for de Gouges. Part of her criticism focussed on the domestic arrangements of men and women, and de Gouges advocated a civil marriage contract that guaranteed equality between spouses along with a divorce law that would allow either partner to extract themselves from an unhappy union. Such legislation would allow women to enjoy freedom in the domestic sphere, which was as important as equality in public life. The second position, shared by the Marquis de Condorcet and Etta Palm d'Ælders, concentrated more on the principle of liberty than equality. Both authors believed that the position of women needed to be radically altered if the goals

[66] *Ibid.*, p.40.

of the Revolution were to be achieved. Crucial to their aspirations was the establishment of an enlightened education system for both sexes, allied with reform of marital laws. Divorce was necessary so that women could protect themselves against oppressive husbands or free themselves from an unhappy relationship. Civil marriage and divorce would restore the balance of power in domestic arrangements because, if a husband abused his physical and legal superiority, his wife could simply leave him and remarry. Condorcet and Etta Palm Ælders believed that women should be allowed to participate in the public sphere, but did not believe that they would rush to do so. The final position on the right of women to participate was that of Claude-Louis Rousseau. While also insisting on the importance of education, and advocating a (more restricted) divorce law, he sought to confine women's public participation to a limited and well-defined area. He believed that they should be educated so they could converse with their husbands and help in the education of their children. However, any public role would be confined to issues dealing directly with women, and they would be excluded from broader public participation due to their delicate nature.

(ii) Other female voices.

Women, while denied formal political participation by the political community, did exercise some influence in the public domain. One need only observe the lasting influence of the often-anonymous drafters of pamphlets and petitions to the assemblies, national and local. By writing, rather than through direct action, women influenced policy, especially in the area of family legislation. By appealing for the reform of family legislation, particularly with concern for the liberation of wives from abusive husbands, women voiced their opinions during the French Revolution. They did not merely appeal for divorce in order to free themselves from brutality, but they

tapped into the language of rights and liberty so beloved of the revolutionaries, and called for divorce, not to satisfy particular needs, but in order to spread liberty throughout society in the name of the French Revolution.

A number of pamphlets attributed to female authors pleaded for the introduction of divorce. They justified divorce by arguing that it would facilitate the transformation of *moeurs*, that it would benefit children, enshrine liberty at the heart of the revolutionary society (the family), increase fecundity by facilitating more marriages, and rid French society of the cancer of unhappy families. These texts reprised the arguments of Hennet and the other liberal divorce writers of 1789 to 1792 by appealing for a liberal, revolutionary divorce law, which would also grant women some authority and freedom in marriage.[67] One should observe that the authors of these texts understood the rhetoric of liberty and regeneration and they framed their pamphlets so as to demand divorce in the name of liberty, and not for any particular or selfish interest.

The most comprehensive of the women's texts was the *Griefs et Plaintes des Femmes Malmariées*. The authors echoed all the liberal, republican, pro-divorce writings but the argument was nuanced to favour the conditions of women in the family. They emphasised the problems that eighteenth-century marital law posed for women, especially marital indissolubility. Neither this text, nor any of the others, questioned

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[67] Anon., *Mémoire sur le Divorce*, n.p., n.d.
Anon., *Griefs et Plaintes des Femmes Malmariées. A Nos Seigneurs de l'Assemblée Nationale*, n.p., n.d. Both works are published in Colette Michel (intro.), *Sur le Divorce en France*, (Geneva, 1989). The *Mémoire* is attributed to Madame Fumelh by Evelyne Sullerot, *Histoire de la Presse Féminine des Origines à 1848*, (Paris; Armand Colin, 1966).
Other anonymous works that pleaded for divorce and may have been written by women include: Anon, *L'Ami des Enfants. Motion en Faveur du Divorce*, (n.p., n.d.). Also in *op. cit.* Also see Anon., *Adresse à un Grand Prince qui s'est fait Homme*, (n.p., n.d.); and Anon., *Le Divorce ou Art de Rendre les Ménages Heureux*, (Paris, 1790).

the fundamental basis of the marriage contract or the ideal role of women in revolutionary society. Instead, they sought a gradual improvement of their conditions through a form of liberty in marriage. They believed the freedom to divorce one's husband if necessary would provide such liberty. The tone of this work was admonishing. The authors criticised the lamentable state of eighteenth-century marriages and insisted that marriages had to be reformed as, in their current state, they bred licentiousness, and thus damaged society. The authors appealed to the deputies of the National Assembly to permit divorce in order to remedy this problem and return dignity to the state of marriage:

> "Rendra-t-elle aux mœurs leur pureté si scandaleusement profanée par la licence de ces époux entre lesquels l'accord est impossible?"[68]

The authors were scathingly critical of a law that forced people who hated each other to remain together for life. Such relationships would be poisonous for the individuals involved, male and female. They would also be harmful for such couples' children, if they had any. Children of such relationships would be deprived of a loving atmosphere and education.

The pamphlet compared such marriages to a state of slavery, a device shared with other divorce writers.[69] They claimed that contemporary marriage laws were barbarous as they gave the husband absolute authority in marriage and chained his unfortunate wife to him forever. They argued that eighteenth-century marriage laws created a state of dissoluteness in the family, due to the absence of love, and this

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[68] Anon., *Griefs et Plaintes des Femmes Malmariées*, n.p., n.d. In Colette Michel (intro.), *op. cit.*, p.49.
[69] The petition of "*plusieurs citoyens et citoyennes du département de Paris*" sent to the Legislative Assembly used the slavery image to criticise marital indissolubility, as did Aubert-Dubayet in his speech demanding the introduction of divorce. In Mavidal & Laurent, *op. cit.*, volume 38, 13 February 1792, p.466; and volume 49, 30 August 1792, p.117.

resulted in a decline in population due to a fall off in fertility, while the number of illegitimate children rose:

> "Que résultera-t-il-de ces deux espèces de mariages? Rien pour la population, si la femme est honnête, ou des enfants adultérins, si elle ne l'est pas."[70]

The writers shared the pessimistic view of other pro-divorce texts that the absence of a divorce law would result in adultery and the proliferation of illegitimate children while the number of children born in wedlock diminished.

One should note that, while all the liberal, pro-divorce authors insisted that the introduction of divorce would lead to an increase in fecundity, this appears not to have been the case. The discourse they developed, from Cerfvol to Hennet, claimed that marriages based on affection, such as those that would thrive if divorce were introduced, would result in an abundance of children and subsequent population growth. The reality did not bear this out. Other factors than the divorce law, such as war and the uncertainty of the revolutionary situation, probably played a part in the fertility figures for France.

Although exact figures are difficult to assess because of the transfer of the civil register from church to lay authorities and the refusal of some people to have their marriages and children registered by the civil authorities, Jacques Dupâquier has come up with approximate figures for the period. While marriages reached a record 2,693,000 during the revolutionary decade of 1790 to 1799, fertility figures did not

[70] *Ibid.*, p.55.

rise.[71] According to Dupâquier, the fertility level dropped from 4.53 baptisms per 100 marriages in the decade 1780-1789, to 4.19 baptisms per 100 marriages in period 1790-1799. Although the number of marriages increased over the period and divorce was introduced, other factors meant that the actual level of fertility dropped.[72]

The authors of the *Griefs...* may have accepted the idea that women were subordinate to the authority of men in public life, but they objected to being treated like slaves in marriage:

> "Comme les esclaves, leurs personnes et leurs biens sont, par la loi, une propriété du mari..."[73]

The authors insisted, like Etta Palm d'Ælders that women, as the weaker sex, deserved to be protected by the rigours of the law. Instead, they believed that marriage laws persecuted women. Consequently, women thus needed a divorce law to protect them from the power of husbands. They also demanded the opportunity to gain a measure of freedom by having the ability to leave their husbands on equal terms.

Finally, like all the other liberal divorce advocates, and the deputies that supported the motion in 1792, they called for divorce on the grounds of liberty. They claimed that liberty would not survive in the Revolution if the vow of indissolubility enslaved women in unequal and often tyrannical marital arrangements:

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[71] Jacques Dupâquier (dir.), *Histoire de la Population Française de 1789 à 1914*,, vol. 3, (Paris, 1988); p.71. The number of marriages in the previous decade (1780-1789) was 2,408,000, and this figure was not equalled until the decade 1840-1849.
See also Jacques Dupâquier & Berg-Hamon, "Le Mouvement de la Population Française de 1789 à 1800". In Colloque Albert Mathiez-Georges Lefèbvre, *Voies Nouvelles pour l'Histoire de la Révolution Française XXXV*, (Paris; Bibliothèque Nationale, 1978).

[72] The average is calculated by the number of births for the periods 1780-1799 and 1790-1799 respectively, compared to every hundred marriages in the periods 1774-1783 and 1784-1793 respectively. See Jacques Dupâquier, *Histoire de la Population Française de 1789 à 1914* volume 3, (Paris, 1988); p.73.

[73] Anon., *Griefs et Plaintes des Femmes Malmariées*, n.p., n.d. In Colette Michel, *op. cit.*; p.56.

"Un vœu indissoluble est un attentat à la liberté de l'homme, et le système actuel est, et doit être celui de la liberté. L'indissolubilité d'un vœu... est... absolument contre nature."[74]

The text attributed to Madame Fumelh insisted, like the *Griefs...*, that marriage laws should be reformed if regeneration were to occur in the family and French society.[75] However, the author was more emphatic in demanding that women should be treated equally in the family at least. The author made no reference to the treatment of women outside the domestic sphere. The text stated that the marriage laws made tyrants out of husbands and slaves out of wives. She argued that a divorce law was necessary to give women equality in marriage as women were born the equals of men. Such a law according rights to women would therefore improve the morals of society by encouraging marriages based on equality and love:

"Soyons justes envers les femmes; rendons-leur leurs droits; qu'elles cessent d'être nos esclaves; qu'elles deviennent nos égales."[76]

Conclusion.

The enthusiasm of many women for divorce and the fashion in which they demanded it

may be viewed as a manifestation of two different aspects of their lives during the revolutionary period. These facets touched both their public persona and the most intimate, private part of their lives. On the one hand, women argued for divorce in a rhetorical style not dissimilar from other revolutionary orators and pamphleteers,

[74] *Ibid.*, p.64.
[75] Anon., *Mémoire sur le Divorce*, n.p., n.d. In Colette Michel, *op. cit.*, p.38.

arguing in general and abstract terms for the introduction of a divorce law in tune with the principles of liberty, equality and the Declaration of the Rights of Man and the Citizen. Such arguments show the awareness of women of the need to align requests for change with revolutionary principle in order to make their requests heard, as well as manifesting their knowledge of contemporary revolutionary debate and the commitment of some women to the revolutionary programme. Above all, they stressed the importance of liberty to the revolutionary programme and the need to enshrine the family at the heart of revolutionary society. The second point emphasised by women was of a more intimate and personal nature. They continuously argued that the marriage and separation laws of the *Ancien Régime* had reduced women to the status of slavery. To redress this balance and restore some dignity and power to individual women, as well as liberating some women from the chains of brutal husbands, they argued that women must be allowed to divorce and remarry on an equal footing to men. Such a law, they claimed, would restore dignity to women, men, and the institution of marriage, while also serving to advance revolutionary ideals. It was the interplay of the arguments based on general revolutionary principles and the appeals to improve the status of women in marriage through a divorce law that made the demand for divorce so potent.

[76] *Ibid.*, p.45.

Ch.5 The Reality of Divorce in a Regional City: Toulouse.

1. Toulouse: Demography, Social Composition and Revolutionary Commitment.

(i) Population and Demography.

Estimates of the population of Toulouse during the Revolution vary. Although the population for the *Midi Toulousain* increased by 40% over the eighteenth century, Toulouse only experienced a growth rate of 20%. For this period, the birth rate of Toulouse was inferior to the death rate so the increase in population can be ascribed to rural migration towards the city.[1] Godechot claims that Toulouse had a population of 52,800 in 1790, while Bonin and Langlois estimate the population at 53,000.[2] These figures vary from the results of Coppolani's research and from the population given by the *Almanach Historique du Département de la Haute-Garonne*. Coppolani estimates that the population of Toulouse was 59,343 in the year 1790, and the *Almanach* records a population of approximately 62,000 for 1791 and 1793.[3] Coppolani's detailed investigation of the population of Toulouse during the

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[1] Godechot describes the area around Toulouse as the Midi-Toulousain. This area does not include the whole of the Languedoc, as the power of the city did not extent to the Bas-Languedoc, and the city had influence over areas outside the Languedoc, especially around Foix. Godechot defines the Midi-Toulousain as comprising of the area around the towns of Tarbes, Auch, Montauban, Cahors, Rodez, Albi, Castres, Castelnaudray, and Foix. This area is not dissimilar to the twentieth-century administrative region of the *Midi-Pyrénées*. In Jacques Godechot, *La Révolution Française dans le Midi Toulousain*, (Toulouse, 1986), p. 10 & 12-13.

[2] J. Godechot, *op. cit.*, p.12. S. Bonin & C. Langlois (dir.), *op. cit.*, p.74.

[3] J. Coppolani, "Bilan Démographique de Toulouse", P. Clémendot, J. Coppolani, Y. Durand, J.C. Gouer, Y. Le Moigne, G. Perrin, J.C. Perrot, M. Reinhard, *Contributions à l'Histoire Démographique de la Révolution Française*, deuxième série, (Paris, 1965), p.221-222.
Almanach Historique du Département de la Haute-Garonne, (Toulouse, 1791), p.25 & *Almanach Historique du Département de la Haute Garonne*, (Toulouse, 1793), p.15. The *Almanach's* figures

revolutionary period reveals some interesting results and may explain why other commentators have given lower figures for the town's population. The population of Toulouse, as taken from an *état détaillé par capitoulat, moulon et famille* dated January 1790, reached 52,863. This figure corresponds with that of Godechot, but Coppolani explains that this number does not include the population *"compté à part"*: i.e. prisoners, interns in schools and patients in hospices and hospitals. When these are added to the previous total one reaches a population of 59,343. This number approaches that of the *Almanach* for 1791 and is close to the population estimated by the *Journal Universel et Petites Affiches de Toulouse et de la Haute Garonne* (60,283).[4] If one accepts Coppolani's figures for Toulouse, this makes Toulouse the third largest city in the Midi, after Marseille and Bordeaux, and the eighth largest city in France.[5]

(ii) The social composition of Toulouse.

Toulouse differs from the other municipal centres in its size, social and economic composition and its distance from Paris. At 657 kilometres from the capital, it is the

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should be doubted as they do not vary between the two dates, while all other commentators, describe a drop in population for the period 1791-1793, attributed to the revolutionary upheaval and emigration.

[4] The *capitoulat* consisted of the constituency that named the eight *capitouls* of the municipality; *moulon* corresponds to the modern term *îlot* or "block". The figures from the *Journal Universel et Petites Affiches de Toulouse et de la Haute Garonne* are found in an official notice of the municipal elections, fixing the date of these elections for 14 November, and stating the population of Toulouse according to a count of 26 October 1790. Coppolani, *op. cit.*, p.22

[5] Coppolani claims that the population for Toulouse for much of the rest of the revolutionary period can only be estimated as records were not kept systematically despite the stipulations of the law of 22 July 1791 (stating that each municipality had to calculate the number of citizens along with their names, sex, age, profession, and other means of subsistence), as it was not taken seriously by the municipal authorities until 18 *brumaire* year VIII. He estimates that the population dropped by almost 9,000 between 1790 and 1793, that it rose by 9,000 in the following eighteen months, rising again by 3,500 between 1794 and 1796, only to fall again by 6,000 between 1796 and 1799. *Ibid.*, p.223-224. He concludes that the Revolution halted the growth of Toulouse manifested in the eighteenth century as it destroyed the religious and noble institutions the town had relied upon. Also, he claims that the demographic behaviour of the city experienced little change, as death rates remained higher that birth rates and immigration from the surrounding countryside halted further decline in the population. *Ibid.*, p.229.

furthest town in the sample from Paris. The *Ancien Régime* institutions of the *Parlement* and the Catholic Church exerted great influence on the social composition of Toulouse. The city could not compare with Bordeaux, Marseille or Lyon in terms of industry and wealth, particularly among the non-noble elites. As a consequence, Toulouse relied upon the *Parlement* and the Church for employment, prosperity and prestige. For these reasons Toulouse was known as *'la Sainte, la Sage, la Sale.'*[6] A brief description of the dominant trades and professions of the city to illustrates differences between the social groups of Toulouse. Later, we see how the various sectors of the community availed of the revolutionary divorce law. This will illustrate how different elements of the community utilised the law on divorce.

The diocese of Toulouse was the largest in the Languedoc with a population of 134,000. The city contained the cathedral of Saint Etienne, the basilica of Saint Sernin, seventeen parishes (including the *gardiage*), two religious chapters, an abbey, twenty-three monasteries, twenty-eight convents and the Grand Priory of Malta.[7] Toulouse had an ecclesiastical population of 200 priests, 400 monks and 600 nuns, while the Catholic Church possessed approximately twelve million *livres* in property.[8] One third of the total area of Toulouse was taken up by church property, and the Catholic Church provided much work for skilled tradesmen. Bookbinders, clerical

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Bordeaux (110,000) and Marseille (100,000) were the biggest cities in the Midi. Godechot, *op. cit.*, p.21. For the population of the largest cities and towns in France (in 1806) see Jacques Dupâquier, *op. cit.*, p.36. See also Bernard Lepetit, *op. cit.*, p.450-453.

[6] Jacques Godechot, *La Révolution Française dans le Midi Toulousain*, (Toulouse ; Privat, 1986), p.21.

[7] Godechot, *Ibid.*, p.21. Lyons, *op. cit.*, p.18.
The parishes of Saint Etienne, Notre Dame de la Daurade, Notre Dame de la Dalbade, Notre Dame du Taur, St. Augustin, Saint Nicolas, Saint Pierre-des-Cuisines, and Saint Sernin were all in the city proper. The parishes of Croix-Daurade, Lalande, Montaudran, Pouvourville, Saint-Exupère, Saint Martin-du-Touch, Saint Michel-du-Faubourg, Saint Michel-du-Touch/Saint Michel Ferrery, and Saint Simon were comprised of the parishes of the *gardiage*. The *gardiage* was the area surrounding the municipality where much of the economic activity was dominated by market gardening. It fell under the municipal jurisdiction of Toulouse.
Robert Nadal & Pierre Gérard, *Inventaire Sommaire de la Sous-Série 1-L*, (Toulouse, 1990).
Benjamen Faucher, *Répertoire Numérique Imprimé de l'Etat Civil* (Toulouse, 1948).

tailors, candle makers and silversmiths were well represented among the artisans of Toulouse. As stated by Lyons, the contribution of the Church to the local economy was of great significance due to its size and wealth.[9]

The other great *Ancien Régime* institution of Toulouse was the *Parlement*, which was founded in 1437. The second oldest in France after Paris, it dominated the administrative and economic life of the city. The *Parlement* employed 100 noble *conseillers*, beneath which were many *avocats, procureurs, huissiers, notaires* and other legal functionaries with the more general title of *hommes de loi*. Not only did the *Parlement* support the legal profession of Toulouse, but also it was also vital for the survival of many other businesses in the city, particularly the *aubergistes* who provided accommodation for the litigants attending the *Parlement*. The *Parlement* was also influential in the running of the municipal council as it elected the eight *capitouls* of Toulouse. Thus, both Church and *Parlement* exerted great influence on the social composition of Toulouse. Godechot estimates that the nobility of Toulouse held two-thirds of the total wealth of the city, while they accounted for 1% of the population; the liberal professions, artisans, and small agricultural proprietors held approximately one-third of the city's wealth, while accounting for 72% of the population; whereas the popular classes (defined by Godechot as small artisans, *compagnons*, and agricultural day labourers), comprising 25% of the population, possessed less than 1% of the wealth of Toulouse.[10]

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[8] Godechot, *op. cit.*, p.21.

[9] Martyn Lyons, *op. cit.*, p.13, 18.

[10] Godechot, *op. cit.*, p.26-27. He summarises that the city had a small nobility that had amassed the bulk of the fortune of the city, a relatively poor middle rank compared to other cities of comparable size, and a mass of poor people who had great trouble feeding themselves and their children. Approximately 17% of newborn children were abandoned, while 40% of newborn children in the poorest parish of Saint Pierre-des-Cuisines were abandoned.

The level of literacy of those who divorced reveals much about the social and educational background of these individuals. The normal method of establishing literacy for the period is to examine whether either or both parties to the union signed the marriage acts.[11] The same method can be used establish the literacy of those who divorced by using the divorce acts. In 1785, amongst the higher popular classes, 53% of men signed their marriage acts, while 20% of women did so. For the lower popular classes, 27% of men and 8% of women could sign their marriage acts. Godechot and Tollon do not give figures for the nobility or the middle ranks of society for that year, but in 1749 all noble and middle-class (Godechot and Tollon use the term *bourgeoisie*) husbands could sign the marriage register. 94% of noble brides could sign. In 1785, 75% of middle-class brides could sign the marriage act.[12] In Toulouse, the question of literacy was complicated by the fact that only the nobility and the wealthy middle ranks of society used the French language as their normal means of oral communication. The majority of the population communicated orally in *Occitan* in eighteenth century Toulouse. Artisans and domestic servants needed to use French in order to communicate with their noble and wealthy clients and, as French was the administrative language of both *Ancien Régime* and revolutionary France, some knowledge of it was necessary when dealing with the courts. This had been the case

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See Jean Sentou for an analysis of the wealth of Toulousains during the eighteenth century and the Revolution: Jean Sentou, *Fortunes et Groupes Sociaux à Toulouse sous la Révolution 1789-1799. Essai d'Histoire Statistique*, (Toulouse; E. Privat, 1969).
Jean Sentou, *La Fortune Immobilière des Toulousains et la Révolution Française*, (Paris ; Bibliothèque Nationale, 1970).

[11] This is the standard method since the publication of Maggioli's work. L. Maggioli, Ministère de l'Instruction Publique, *Statistique rétrospective. Etat récapitulatif et comparatif indiquant par département le nombre des conjoints qui ont signé leur acte de mariage aux XVIIè, XVIIIè, et XIXè siècles. Documents fournis par 15,928 instituteurs*, s.l., s.d. (Paris, 1880). *Tiré à part et augmenté de statistique de l'enseignement primaire*, (Paris; Imprimerie Nationale, 1880).
See François Furet & Jacques Ozouf, *Reading and Writing. Literacy in France from Calvin to Jules Ferry*, (Cambridge; Cambridge University Press, 1982).

[12] J. Godechot & B. Tollon, "Ombres et Lumières sur Toulouse (1715-1789)". In Philippe Wolff (dir.), *Histoire de Toulouse*, (Toulouse; Privat, 1974). P.363.

since the edict of Villers-Cotteret (1539) which decreed that court sessions should be held in French, but the records of the different courts in Toulouse show that the majority of those before the courts spoke in *Occitan*, and these deliberations had to be translated into French for the official record.[13] A failed attempt to publish a journal in *Occitan* illustrates the oral nature of *Occitan* and the misplaced optimism of one revolutionary publisher.[14]

(iii) Revolutionary engagement and political activity in revolutionary Toulouse.

Toulouse was renowned for its attachment to the *Ancien Régime* in the eighteenth century, so did the revolutionary authorities gain control and maintain stability in this southern city throughout the revolutionary period? Lyons suggests that the genuine threat of royalism, latent clerical power and preoccupation with the war against Spain ensured that republicans of all hues in Toulouse maintained an allied front against any threat of counter-revolution. Such an atmosphere, allied to the revolutionaries need to impose both legislation and *mœurs* in a pragmatic fashion, meant that the law on divorce was never opposed by any but the most dedicated Churchmen and counter-revolutionaries in the city.[15] Unlike Troyes, the municipal authorities were not overthrown in the city during the summer of 1789, but the traditional authorities of Toulouse were ignored in the elections to the Estates-General as they were in the municipal elections of 1790. Only two ex-*capitouls* were elected while all the leading *Parlementaires* were omitted from the new municipal council. The new revolutionary

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[13] *Ibid.*, p.364.
[14] *L'Homé Franc, journal tout noubel en patois faït esprès per Toulouse.* The first, and only remaining edition of this work, dated 8 February 1791, can be found in the Bibliothèque Nationale de France.
[15] M. Lyons, *op. cit.*, p.166-167.

political class of Toulouse was mainly composed of businessmen and lawyers.[16] The municipality displayed its self-confidence by refusing to inform the *Parlement* of the election officially.

The new revolutionary authorities were soon confronted with aristocratic and religious opposition. The nobility gained command of twelve of fifteen legions of the National Guard, the most notorious of which was the *Légion de St.-Barthélemy*, commanded by d'Aspe. This legion, based around the *quartier du Parlement*, was composed of those formerly employed by the *Parlement* and was the main royalist force in the city. The legion was in constant conflict with a legion based in the poorer popular *quartier* of St.-Cyprien. One such incident led to the killing of two men from St.-Cyprien by members of the *Légion de St.-Barthélemy* in a street brawl. The municipal authorities acted swiftly and dissolved the royalist legion on 18 March 1791.

Hope of royalist leadership from the members of the *Parlement* faded when they effectively banished themselves from the city and France by their proclamations in 1790. Defying the suppression of the sovereign courts by Letters Patent in September of 1790, the *Chambre des Vacations* refused to register its own abolition. Instead, they issued their protestations of 25 and 27 September 1790, complaining about the Assembly's attack on religion, judicial reform and the abolition of privilege. They also questioned the legality of the Assembly and whether it had any right to issue decrees.[17] In the National Assembly, Robespierre denounced this action, but it was De

[16] *Ibid.*, p.33-34. There were nine businessmen and four *avocats* on the council. The mayor, Rigaud, was professor at the Law Faculty.
[17] *Arrêtés du Parlement de Toulouse séant en vacations, 25 et 27 septembre 1790*, (Toulouse, 1790). In *ibid.*, p.36.

Marie-Jean-Philippe Dubourg. It was against this background that the revolutionary divorce law was introduced in Toulouse. How, then did it succeed and what institutions supported it and other revolutionary measures?

The networks that furnished support for the Revolution in Toulouse succeeded in keeping Toulouse loyal to the Revolution, using a cadre of dedicated men who were interchangeable despite the changes in the direction of the Revolution. Lyons divides the defenders of the new regime into the constituted, elected authorities of the municipality and the parallel *société populaire* and revolutionary committees. Membership in these groups was often interchangeable. These individuals and groups ensured that revolutionary legislation and *mœurs* were introduced to Toulouse despite royalist or ecclesiastical opposition. Although Godechot and Lyons disagree on the size of the *société populaire*, they do agree that it played a crucial role in maintaining Toulouse within the Jacobin fold. Its bi-weekly newspaper, *Le Journal Révolutionnaire de Toulouse ou le Surveillant du Midi*, concentrated on local events and spreading political propaganda.[20]

The origins of the Toulouse Jacobin club lay in the foundation of the *Club des Cent*, a literary club established by sixteen active citizens in May 1790. Membership cost three *livres* and the monthly subscription was set at twenty-four *sous*. Lyons states that the club played an important social role in the city as well as carrying out the political tasks of *surveillance* during the Terror. It distributed charity and propaganda

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[19] Timothy Tackett, *Religion, Revolution and Regional Culture in Eighteenth-Century France. The Ecclesiastical Oath of 1791*, (Princeton, 1986), p.327.

[20] Godechot states that the membership of the *société populaire* was reduced to 500 in January 1794 after successive purges to ensure its Jacobin purity. Lyons believed the membership to be smaller as meetings had to be dissolved in July due to a lack of a quorum of fifty members.

in equal measure, providing free theatre tickets for patriots on the *décadi*. The club granted dowries of 1,000 *livres* each to fifteen eligible and patriotic brides. Politically, the club was more concerned with the success of the war against Spain and local issues than national politics, until the existence of the *sociétés populaires* was threatened in the year III. During the Terror, the *société populaire* forged close links with the municipal council as both kept an eye on sedition through the *comité de surveillance de la commune* organised by the *société populaire*, but funded by the municipality.[21]

Thus, despite the residual strength of the Catholic Church in Toulouse, even at the height of religious persecution, the reopening of the churches permitted under the law of 11 *prairial* year III and the subsequent demise of the Costitutional Church, the constituted authorities in Toulouse still defended revolutionary family legislation. Notably, while they had failed to abolish Catholicism, or convince the population to abandon the use of Christian names, they did make a concerted effort to promote republican family policy. Desbarreaux, charged with organising the *Fêtes de la Décade* and the republican theatre stressed the importance of the family to the French Revolution. In this discourse, patriots would and should marry, produce good republican children, live frugally and defend *la Patrie*. Their republican wives would educate their children to patriotism, thereby ensuring the survival of the Revolution. Part of the secularisation of the family came in the form of divorce legislation and, although the municipality gave no official publicity to the introduction of the legislation, the population of this Catholic city accepted the secular legislation. This

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Jacques Godechot, "La Ville Rose devient une Ville Rouge (1789-1815)," in Philippe Wolff (ed.), *op. cit.*, p.413.
Martyn Lyons, *op. cit.*, p.90, 173.
[21] Lyons, *op. cit.*, p.91-92.

was particularly the case with women, who initiated most divorce cases. The recourse to divorce was not necessarily a statement of political affiliation to the Revolution or a rejection of the Catholic Church, but it pointed to a concrete engagement with the legislation and philosophy of social transformation preached by the revolutionaries. Those who used the divorce legislation almost certainly did not resort to it out of ideological commitment, but through it they learned how some of the ideals of the Revolution reached into every corner of France, even the most Catholic. Women who divorced were particularly affected by the legislation, which placed them in a position of real and legal equality with their spouses in the context of family breakdown. The divorce legislation conveyed a form of agency to every citizen in the republic, whether they believed in the secular programme of the Revolution or not. This fact is particularly startling in a city as heavily influenced by Catholicism as Toulouse.

2. Divorce Procedure and Practice.

(i) How individuals divorced.

The divorce law was introduced with the expectation that it would facilitate the proliferation of happy marriages based on love and affection. The authors of the law wished to rid French society of unions formed for reasons of profit or dynasty building. The legislators believed that divorce would purge society of the unhappy marriages formed during the *Ancien Régime*. In the new regenerated society, they accepted that contractual marriages based on affection might also break down for a variety of reasons, despite the best intentions of the couples and society. However, they believed that such breakdowns would be rare. Therefore, a divorce law would be

necessary to regulate these cases, and also to allow individuals to find happiness in another, more suitable, union. The deputies attempted to draft a law that would instil revolutionary *mœurs* in society. The law offered equality to women in the sphere of marital breakdown as the deputies of 1792 believed that a counterbalance to the power of men was necessary in marriage. The following section shall examine whether the divorce law served these aspirations.

The 1792 law stipulated the various grounds for divorce and described the procedure for divorce, which varied according to the different reasons for divorce. For divorce by mutual consent the couple were obliged to gather an assembly of at least six of their closest relations or, failing that, six neighbours or friends. The husband and wife would each choose three members of the assembly.[22] A period of one month was to lapse between the summoning and the meeting of the family assembly. The act of summons was to be signed by the members of the assembly and a bailiff. On the appointed day, the spouses stated their reasons for divorce, and the assembly made any comments or observations that it felt were necessary. If no reconciliation occurred, then a municipal official (*officier public*) would draw up an act to this effect indicating the meeting of the family assembly and the failure of the couple to reconcile their differences.[23] This act would then be sent to the local court clerk's office. This measure was free for the participants, ensuring that all members of society could avail of divorce:

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[22] This assembly was actually an *assemblé de famille*, although the phrase was not used in the divorce legislation. For the 1792 divorce legislation see appendix, II and Mavidal & E. Laurent, *Archives Parlementaires*, (Paris, 1969), tome 50, p.188-191.

[23] Guillaume Lorien and Marie Angélique Mathieu decided to divorce by mutual consent after mature reflection. They decided that they could not get on with each other and that it would be better for them and their child, Brutus, if they divorced. They agreed that Brutus would stay with his mother, although both parents would take part in his education and upbringing, and they agreed to share their wealth almost equally. The husband received 1000 livres worth of goods, while the wife received 1036 livres

"La minute de cet acte, signé 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."[24]

Following on from this action, the couple appeared before the municipal officer of the domicile of the husband not less than one month and not more than six months after the pronunciation of non-conciliation between the spouses. The municipal officer then pronounced the dissolution of their marriage by mutual consent and this would be registered in the acts of birth, marriage, and death. The couple were then free to go their separate ways. Divorce by means of mutual consent was probably the easiest method of divorce if both spouses could agree on their irreconcilable differences. The *actes de divorce* for mutual consent were always the briefest as no evidence and only one *assemblée de famille* was necessary. Joseph Jougla, a *manœuvrier*, and Marie Lacas divorced by mutual consent on 24 *fructidor* year VI. Their divorce act simply states that they had one child, they convened an assembly of relations or friends in accordance with the law and, on failing to be reconciled, they observed the necessary time period before presenting themselves before the municipal officer to have their divorce officially announced and registered. All parties signed the act (along with two of the four witnesses), except for Lacas, who could not.[25]

Although this method of divorce was quick and relatively easy to obtain, it was not a popular method of divorce in Toulouse. Twenty-three out of the 347 divorces between

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in goods. In *Archives de Paris*. "Justices de Paix. Tribunaux de Familles etc.", D. 1 U` 3, chemise 5, no.227. "Acte volontaire de divorce entre le citoyen et la citoyenne Lorien. 16 messidor, an 3."

[24] Section II, article IV, "Loi, Qui détermine les causes, le mode & les effets du Divorce, du 20 septembre 1792, l'an 4 de la liberté." In Francis Ronsin, *op. cit.*, p.491.

[25] "Divorce entre Jougla et Lacas". *Mariages et Divorce. Toulouse, 3ième section.* In *ADHG*, 5 Mi 240.

years I to X were based on this motive.[26] It is quite possible that the fact of irreconcilable differences between spouses meant that they were not able to agree to divorce in an amicable fashion. Also, all commentators, including those most in favour of divorce, regarded marriage as an institution that lay at the very foundation of the new society. The evidence in Toulouse suggests that couples resorted to divorce as a last resort. Eighty-one divorces were granted on the grounds of mutual consent and incompatibility, while the majority of divorces resulted from the various forms of separation and other fixed motives.[27]

The procedure for divorce on the grounds of incompatibility of character was somewhat different from that of divorce by mutual consent. Divorce by incompatibility also required the convening of an *assemblée de famille*, consisting of three members chosen by either party. If the defending party refused to nominate three relatives, friends, or neighbours, or if the defending party did not appear, the municipal officer would nominate three people to sit on the *assemblée*.[28] As with divorce by mutual consent, the *assemblée de famille* met one month after it was summoned. The summoning of the *assemblée* took place at the town hall of the husband's municipality at a time chosen by the municipal officer. If the members of the assembly did not appear at the appointed moment, they were replaced by other citizens. For divorce by incompatibility, the *assemblée de famille* had to meet three times at intervals of one, two and three months after the initial summoning. It was obliged to attempt to dissuade the parties from divorcing. If it failed in this task, the

[26] There were five divorces for mutual consent in the year III, three in year VI, four in year VII, three in year VIII, two in year IX, and six in year X.
[27] The three forms of separation resulted in 155 divorces. Divorce for the other motives stipulated in the law accounted for 111 divorces.
[28] According to the *actes de divorce* in the *ADHG*, the defending spouse failed to appear on fifty-five occasions out of fifty-eight divorces for incompatibility.

The divorce between Pierre Henault, a *négociant* and Jeanne Marie Thérèze Boué illustrates the simplicity of the incompatibility provision. The couple had married in the parish of Saint Etienne on 1 June 1792 but on 28 *floréal* year IV called an *assemble de famille* requesting divorce on grounds of incompatibility. They failed to reconcile at the three assemblies held on 29 *prairial* year IV, 29 *messidor* year IV and 25 *brumaire brumaire* year V. After receiving a final certificate of non-reconciliation, Pierre Henault summoned his wife to appear at the *maison commune* to hear the divorce declaration. She did not appear and Toussaint Mazaigues the *administrateur municipal* declared the divorce valid. The four witnesses were all soldiers and all signed the register.[31]

It is impossible to discover exact causes for divorce, other than the explicitly stated one of incompatibility, although one can discern that those who undertook divorce for this reason strictly observed the rules and regulations attending to this form of divorce.[32] Speculation as to whether this form of divorce was used capriciously seems futile.[33] Such a claim cannot be substantiated by the evidence available and this form of divorce was the most difficult and time-consuming to attain.

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[31] "Divorce entre Henault et Boué," *Mariages et Divorce Toulouse. Première Section.* In *ADHG*, 5 Mi 239.

[32] See appendix IV for examples of the various *actes de divorces* and the comparison with the official model found in, Département de Seine et Marne, *Modèles des Actes relatifs aux Naissances, Mariages, Divorces, et Décès*, (Melun, 1793), p.12.

[33] Many of those critical of divorce on grounds of incompatibility of character claimed that the causes for this form of divorce were more imaginary than real. See *Pétition présentée au Conseil des Cinq Cents le 29 Messidor, l'an IVième de la République française. Pour réclamer contre les Abus du Divorce sur la simple allégation d'incompatibilité d'humeur et de caractère. Par Marie-Anne Campion, encore épouse de Claude Perpétue, manœuvrier, demeurante à Paris, rue d'Anjou, no.12 section de l'Homme Armée, septième arrondissement.* Campion claimed that she had been happily married to her husband until another woman seduced him. She stated that he was divorcing her for incompatibility, which was only an imaginary cause and a caprice. The deputy Favard, when presenting his report on divorce by incompatibility to the Council of Five Hundred echoed the same sentiments. The report suggested suspending divorce on grounds of incompatibility until a civil code was drawn up. Corps Législatif, Conseil des Cinq-Cents, *Rapport par Favard sur le Divorce*, (Paris, an V).

The high level of divorce consequent to desertion testifies to the ongoing popularity of abandonment as a means by which one party terminated a marital union without giving cause. Between the years I and X, there were 155 divorces for the various forms of abandonment and absence, as opposed to a total of fifty-eight for incompatibility.[34] Toulouse, notorious as a traditional and Catholic city before the Revolution accepted the revolutionary divorce legislation. Despite their tendency for stronger religious belief than their husbands, women divorced more frequently than men, but when men divorced, they maintained the traditional practices of marital separation.[35]

The other forms of divorce were generally less complicated and time consuming than divorce by incompatibility. For divorces on grounds of a predetermined motive, or for the transformation of a legal separation into a divorce, no waiting period was necessary. If the motives were established by prior judgement in a court of law (for example, legal separation and criminal conviction) then the petitioner appeared before the public official in the municipality of the husband with proof of the crime or separation and immediately requested a divorce. Any disputes arising from such matters were settled by the local district tribunal, which judged the validity of the divorce.

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[34] For abandonment for more than two years there were sixty divorces, for absence without news for more than five years, there were nineteen divorces, and for separation for more than six months there were seventy-six divorces between the years I and X in Toulouse. Men usually availed of this solution to marital problems as women took most of the divorce cases for separation or abandonment. For abandonment of over two years, thirty-two women initiated divorce proceedings as opposed to twenty-six men, and both parties applied for divorce in two cases. Sixteen women applied for divorce on grounds of absence without news, as opposed to three men, and forty-eight women applied for divorce due to separation for over six months, while twenty-three men took divorce action for the same reason. See *ADHG*, "*Etat Civil*", série 5 Mi.

[35] Roderick Phillips, *Putting Asunder*, (Cambridge, 1988). P.285-289.

Divorces for reasons of absence without news for more than five years or for separation for over six months were equally simple to obtain. Again, the person requesting the divorce appeared before the municipal officer charged with the registration of births, marriages, and deaths. In the above cases, the only proof necessary was a notarised act signed by six witnesses. On the registration of this document the couple were officially divorced. An example of the ease with which a divorce could be attained is the divorce between Bernard Jouquières and Marie Boisseau. The couple had been married for approximately twenty-two years and had two children. Jouquières summoned his wife to appear at the town hall (*maison commune*), but she did not arrive. He produced a copy of the *acte de notoriété* signed by six witnesses, and issued by the *conseil général* of Toulouse. Then, the *officier public* sanctioned the divorce in the presence of Jouquières and four witnesses.[36] One can observe the ease with which divorce was obtained for absence for over five years, or separation of over six months. Given these circumstances it is understandable that there were so many divorces on the grounds of separation for more than six months. The period of separation was brief, the burden of proof was light and the procedure was extremely simple and quick.[37]

For divorce on the grounds of the other determined motives, it was necessary to organise a family tribunal.[38] This informal group, composed of four members chosen among the relatives, neighbours, or friends of the divorcing couple decided whether

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[36] "Divorce entre Jouquières et Boisseau". *Mariages et Divorces. Toulouse. Saint Sernin.* In *ADHG*, 5 Mi 391 (62).

[37] Of the seventy-six divorces on grounds of separation for over six months in the years II and III (the period when this method of divorce was permitted), the defending spouse only appeared at the divorce hearing three times.

[38] The other determined motives were, *"la démence, la folie ou la fureur de l'un des époux...les crimes sévices, ou injures graves de l'un vers l'autre, sur le dérèglement de mœurs notoire, sur l'abandon de la femme par le mari ou du mari par la femme, pendant deux ans au moins...sur l'émigration dans les*

the grounds for divorce were justified. If they were accepted, the couple appeared before the public official of the domicile of the husband in order to have the divorce validated. Appeals against such divorces were heard at the district tribunal within a month of the divorce declaration.[39] During the divorce taken by Marie Lanes against Jean-Baptiste Galibert, who had been married for about twenty-three years and had one child, the family tribunal accepted the request for divorce for the reason of *dérèglement de mœurs notoire* (dissoluteness of morals or adultery). Galibert opposed the divorce but the *tribunal de district* overturned this opposition. Galibert objected to the divorce for a second time during the divorce declaration but his objection was refused again. He had gone through the legal channels in his objection to the divorce, but the decision of the family tribunal was upheld. All appeals against divorce proved unsuccessful according to the register of the *actes de divorce*.[40]

Divorce legislation succeeded in making the practice of divorce simple, relatively quick, cheap and accessible to the majority of citizens who were capable of reading and understanding the law. Those who used it did not take divorce lightly. The majority of cases were taken to regulate severe marital problems - 155 divorces were taken for the various forms of separation, absence and abandon as specified by the law. The next most common reason for divorce was domestic violence (*sévices et injures graves*). There were sixty-six divorces for this reason. After that the most common form of divorce was for incompatibility of character (fifty-eight cases). Despite the polemic against this means of divorce, which claimed that divorce for

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cas prévus par les lois, notamment par le décret du 8 avril 1792." See section I, article IV of the 1792 divorce law.

Section II; article XX of the 20 September 1792 divorce law. The provision for appeal was abolished under the law of 4 *floréal*, year II, article VI, p.3. Département de Seine et Marne, *Décret (no.2329) de la Convention National, des 4è et 5è jour de Floréal, an II de la République Française, une et indivisible*, (Melun, an II). This provision was suspended on 15 *thermidor* year III.

incompatibility facilitated the caprice of foolish people (particularly foolish women), the evidence suggests that such divorces were taken seriously. There was meticulous attention to the detail of the law for all divorces, particularly when it came to observing the necessary time limits between different hearings of the family assembly, the importance of providing the appropriate paperwork, and the need to duly notify the other spouse as to the date and time of the various divorce hearings.

Although conceived as an ideological tool to instil revolutionary *mœurs* into the heart of the family, divorce was also used as a practical instrument to resolve situations of family breakdown. As a measure, it was a complex mixture of the practical and the principle, but in the towns and provincial cities of France, it acted as a vector for revolutionary ideals. Due to the individual circumstances of individuals, a significant minority of *Toulousains* engaged with the practice and ideology of revolutionary legislation in a real and meaningful manner. The Revolution, through its idealistic and egalitarian legislation on marriage and divorce, enabled individuals to change fundamental aspects of their lives through recourse to its legislation. This was especially the case for women, who although influenced on the one hand by the traditions of the Catholic Church and on the other by a republican discourse of the dutiful subservient and patriotic wife, could also participate fully in revolutionary ideology by exercising their agency and freedom to permanently separate themselves from their spouse and pursue a new life.

[40] Divorce entre Lanes et Galibert, 17 *frimaire*, an III." *Mariages et Divorces. An III. Toulouse. Notre Dame de la Dalbade.* In *ADHG*, 5 Mi 374 (13).

(ii) The family court.

The *tribunal de famille*, or family court, was established on 16 August 1790 as part of a broader reorganisation of the French judiciary. The purpose of the family court was to arbitrate between different family members in case of a dispute, particularly over succession rights, legal separation (from August 1790 to 20 September 1792), and other disputes arising between various family members.[41] James Traer claims that the family court originated out of the necessity to provide a more equitable means of adjudicating over family disputes after the abolition of the *lettre de cachet*.[42] However, there was no mention of this in the legislation, and article xii of the law merely established the jurisdiction of the family court:

> "S'il s'élève quelque contestation entre mari et femme, père et fils, père ou petit-fils, frères et sœurs, neveux et oncles, ou autre alliés aux degrés ci-dessus ; comme aussi entre les pupilles et leurs tuteurs, pour choses relatives à la tutelle, les parties seront tenues de nommer des parents, ou à leur défaut, des amis et voisins pour arbitres, devant lesquels, ils éclairciront leur différent, et qui, après les avoir entendus et avoir pris les connaissances nécessaires, rendront une décision motivée."[43]

Furthermore, the law stated that each party to the dispute would nominate two members each; if one party refused, the judge of the local *tribunal de district* would make the choice. If the four arbiters could not agree on a decision, a fifth arbiter would be chosen to break the deadlock and if one of the disputing family members was not satisfied with the decision of the family court, they could appeal the decision to the *tribunal de district*. This court was obliged to make a final decision within one month of the date of appeal. All members of the family court would ideally be

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[41] James F. Traer describes the background to the establishment of the family court in James F. Traer, "The French Family Court", *History*, volume LIX, June 1974, and in James F. Traer, *Marriage and the Family in Eighteenth Century France*, (Ithaca and London, 1980). See chapter 5, "Reorganisation of the Family: The Family Court, Majority, Adoption, Illegitimacy, and Successions."

[42] James F. Traer, *op. cit.*, p.137.

relatives of the disputing parties. Failing that, they could be either neighbours or friends.[44] This method of arbitration was meant to provide quick, fair and cheap justice for those engaged in family disputes. However, the institution was abolished on 9 *ventôse*, year IV, as it was deemed to have failed in its mission.

The family court adjudicated over divorces for the predetermined causes mentioned earlier. However, the desire of revolutionary legislators to provide cheap and quick justice in divorce cases was undermined by the composition of the family courts. According to the law establishing the family court, they were to be composed of relatives, friends or neighbours but this was often not the case. Both Phillips and Maraval point out that many of the members of these family courts were legal professionals who appeared at an unusually high number of divorce hearings. Phillips points out that, of all the arbiters in the family courts of Rouen gathered for the purposes of divorce in the years I to IV, 30% of them were legally trained, while only 24% of the arbiters were relatives of the divorcing couple.[45] This is an unusually elevated proportion of legal friends or representatives. A similar pattern emerges for Toulouse. In the eight-six cases when the arbiters of the family court are mentioned in the *actes de divorce*, certain names appear with astonishing regularity. Double appears in forty-three cases, Gratien on twenty-seven occasions, Hinard on nineteen occasions, Roux on seventeen occasions, Viguier on sixteen occasions, Roques on fourteen occasions, and Corail on thirteen occasions. Double, Decamps, and Corail were all *hommes de loi*, and Roux was an *avoué* at the district court. Such a

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[43] M..J. Mavidal & M.E. Laurent, *Archives Parlementaires*, tome xviii (12 août 1790-15 septembre 1790), (Paris, 1969), p.90.
[44] *Ibid.*, p.90.
[45] Roderick Phillips, *Family Breakdown in Late Eighteenth Century France 1792-1803*, (Oxford; Clarendon Press, 1980), p.21. Relatives who were also legally trained are included in the figure for relatives.

preponderance of legal personnel at the family tribunals meant that the very purpose of the family court was nullified, as the institution lost both its cheapness and its ability to conciliate. There is no record, but one could speculate that the legal professionals were paid at least some of the time for their services. Unlike family members or friends, these experts had no interest in reconciling the couple, acting simply to serve the interests of their clients. When the family tribunal was abolished on 9 *ventôse*, year IV, and its hearings were transferred to the *tribunal de district*. They were later transferred to the *tribunal civil*.

The fact that divorces did not take place exactly as had been intended meant they were potentially more costly and complicated than had been intended by the law of 1792. However, these changes were instigated by those who wished to divorce and not by the legislators. They were not thrust upon them and legal representation at the family court was not strictly necessary. Indeed, the opposite was desirable in the eyes of the law. Nevertheless, many individuals felt that their best interests were represented by a legal presence at these meetings. Such a legal presence was not strictly necessary at these gatherings, as the criteria for allowing divorce were strict but simple, and all decisions of the family court had to be registered by the district court, which could overturn or modify judgements. This ensured that decisions of the family court were in accordance with the law.[46] Despite the fact that individuals modified the structure of the family court by introducing legal representation, the process of divorce remained straightforward for those capable of operating in a legal and contractual context.

[46] *Ibid.*, p.18.

(iii) Why were there more divorces in the years I-III than in the years IV-X?

Motive/Year	I	II	III	IV	V	VI	VII	VIII	IX	X	Total
Mutual consent	0	0	5	0	0	3	4	3	2	6	23
Incompatibility	3	4	4	6	10	3	9	8	6	5	58
Abandonment for over two years	11	27	0	3	4	3	2	5	3	2	60
Absence without news for over five years	4	4	0	1	2	1	1	0	3	3	19
Insanity	0	1	1	0	0	0	0	0	0	0	2
Criminal conviction	0	1	0	0	0	0	2	0	1	0	4
Dissoluteness of morals	1	2	3	3	0	2	1	0	0	2	14
Spousal violence (*sévices*)	8	20	10	7	5	1	1	6	5	3	66
Emigration	1	10	1	1	0	0	1	0	0	0	14
Conversion of a legal separation	6	3	0	1	0	0	0	0	0	0	10
Separation for over six months	0	37	39	0	0	0	0	0	0	0	76
Unspecified	0	1	0	0	0	0	0	0	0	0	1
Total	34	110	63	22	21	13	21	22	20	21	347

5.1 Divorce in Toulouse.

Between the years I and III there were 207 divorces in Toulouse, while in the subsequent seven years, the total number of divorces reached 140.[47] Some commentators have explained the enormous decrease in the divorce rate by pointing to political radicalism as the primary influence on the divorce rate in Toulouse.[48] The exception to this general pattern is Roderick Phillips. Phillips examines the

[47] This gives a divorce to marriage percentage of 11.3% for the first period, and 5.5% for the second period.

revolutionary phenomenon of divorce in France generally, and analyses the local context of Rouen, although he does not examine Toulouse in any depth.[49] The following section attempts to examine the reasons for this greater number of divorces in the years I to III, and the subsequent drop in divorces for the subsequent period (years IV to X), by examining the conditions of divorce for these different periods.

In Toulouse, the divorce rate reached its zenith during the years II and III. Undoubtedly political radicalism played its part in promoting revolutionary legislation although there is no evidence to suggest that this led directly to an increase in divorce. The policy of dechristianisation in Toulouse meant that the Catholic Church was at its weakest during the period of high divorce (the years II and III), with 60% of constitutional priests abdicating their functions in order to prove their *civisme*. Some priests went as a far as marrying to avoid the suspicion of the revolutionary authorities. By the end of year III, attempts at continued religious persecution had failed and the law of 3 *ventôse* year III permitted the freedom of worship. This was followed by the law of 11 *prairial* Year III that legalised the reopening of churches. Religious practice resumed in Toulouse as the refractory priests re-emerged from the shadows and the Constitutional Church faded away.[50] While it is impossible to quantify the extent to which the weakness of church organisation aided the successful introduction of divorce in Toulouse, religious opposition lost a potent vehicle of communication while the churches were shut and priests imprisoned during the height of dechristianisation. These factors may have influenced the ease and rapidity with

[48] Simone Maraval, *op. cit.*, Germain & Mireille Sicard, *op. cit.*
[49] Roderick Phillips, *op. cit.*, R. Phillips, "Le Divorce en France à la Fin du Dix-Huitième Siècle", in *Annales, Economies, Sociétés, Civilisations*, no.2, February-March, 1979, R. Phillips, *Putting Asunder*, (Cambridge, 1988).

which divorce was accepted, but the political situation and religious weakness were not the only factors prompting the great number of divorces during this period.

Divorce also depended on legislative availability and the ease with which the law could be used. Phillips rightly points to the desire of many to regularise situations of *de facto* marital breakdown when the opportunity arose with the introduction of the 1792 divorce legislation. Testimony to this is the evidence that many more divorces took place for reasons of absence before the year III than afterwards. Of the ten divorces justified by the conversion of a legal separation, all except one were granted in the first two years of the divorce legislation. This evidence points to the desire of many couples to regularise their domestic situation. Therefore, divorce cannot be viewed solely as either a consequence of political circumstance or as an instrument of regularising marital difficulties. In fact, the law was both. It was conceived as a tool of revolutionary ideology and was used to regulate marital breakdown. However, those who engaged with the law took part in the revolutionary process and participated in the reshaping of the social world of their locality, directly influenced by revolutionary policy. Through the use of this legislation, no matter what their religious or political convictions were, they learned a practice and language of citizenship directly inspired by the pro-revolutionary discourse of 1789-1792.

Other local studies of divorce in revolutionary France include Jean Lhote, *op. cit.*. Lhote also observes that a large number of divorces occurred in the years II and III (20% of the total number of divorces in Metz under the 1792 law), ch.1, p.10. Also see Dominique Dessertine, *op. cit.*

[50] Martyn Lyons, *op. cit.*, p.154-156.

Motives	Years I-III (Period one)	Years IV-X (Period two)	Total years I-X
Abandonment for more than 2 years	38	22	60
Absence without news for over 5 yrs.	8	11	19
Actual separation for over 6 months	76	0	76
Conversion of a *séparation de corps et de biens*	9	1	10
Other reasons	76	106	182
Total divorces	207	140	347

5.2 *Divorce for reasons of separation, abandonment, and absence: Toulouse.*

From the above table, it is clear that there were many more divorces for reasons of absence during period one than period two. For the various motives of absence, there were a total of 122 divorces in period one as opposed to thirty-three in the second period. The provisions of the law of 4 *floréal*, year II can in some ways explain this enormous difference. This law allowed for a very simple and swift form of divorce. This form of divorce accounted for seventy-six of the 207 divorces declared from year I to III; the same number of divorces as was declared for all of the determined motives. The ease and speed with which one could divorce under this provision helps

explain the popularity of divorce for this reason. Critics of this form of divorce claimed that it was too easy to enact and allowed divorce on fickle and unjust grounds, for example if the husband was away fighting for the *Patrie*.[51] However, the law accounted for such possibilities and the length of the marriages that were dissolved under this provision suggests different conclusions. Given that divorce was already allowed for the abandonment of one spouse by the other for more than two years and for absence without news for more than five years, one might image that those whose reason for divorce was for separation of over six months might not have qualified for the other provisions. It is impossible to say how long these couples had been separated, but we can examine the length of these marriages. Only fourteen of those who divorced for this reason had been married for under five years, while the majority (forty couples) had been married for between five and fifteen years. The remainder, twenty-two couples, had been married for over fifteen years.

Jeanne Bali, from the *arrondissement* of Dalbade in Toulouse had been married to her husband for eighteen years when she decided to divorce her husband Pierre Cor, a manual labourer. On 16 *messidor* year II Bali summoned her husband to hear the divorce declaration. She provided proof of separation for over six months in the form of an *acte de notoriété* and had the divorce registered on 2 *thermidor* year II. [52] This divorce highlights the simplicity and rapidity of the divorce legislation when divorcing on grounds of *de facto* separation of more than six months.

It seems unlikely that this measure was availed of by one party to a marriage who had realised that the union had been a mistake and wished to extricate himself or herself

[51] See chapter three for more information on this provision. Also see appendix III.

from it as quickly as possible.[53] It is more plausible to argue that this form of divorce was popular from 4 *floréal* year II until it was abolished on 15 *thermidor* year III because it was a straightforward and prompt method of divorce for those who could prove a minimum period of separation. This shows the influence of the shape of the legislation on the divorce rate. When the law was abolished the rate of divorce dropped even though the figures for divorce due to determined causes was greater in the second period than in the first.

Despite the greater length of the second period (years IV to X), the number of divorces for absence and abandonment is higher for period one (years I to III). This may be explained by the wishes of people who had been separated for a considerable length of time to regularise their situation. Another indication of the desire to regularise situations of marital breakdown under the new law is the evidence that nine couples transformed their *separations de biens et de corps* into divorces during the first period, while there is only evidence of one divorce for this reason during the second period under examination.

The greater number of divorces for period one (years I to III) than for period two (IV to X) resulted, in part, from the desire of some individuals to legally regularise their situation of actual marital breakdown. The influence of the political situation and the policy of dechristianisation cannot be discounted, but nor can these factors be viewed as the only reason for the high divorce rate. Even if divorce for separation of six

[52] "Divorce entre Jeanne Bali et Pierre Cor, 2 *thermidor* an II," *Marriages et Divorces 1793/II. Toulouse. Notre Dame de la Dalbade. ADHG*, 5 Mi 374.

[53] Only two of the couples that divorced for this reason had been married for less than a year. One couple had been married for seven months and the other had been married for eleven months. "Divorce entre Nicolas Mouton & Anne Delfol (20 *fructidor* an II)," *Mariages et Divorces. Toulouse Saint*

months were excluded from the figures, the years II and III would have seventy-three and twenty-four divorces respectively. This would leave year II as the year of highest divorce, and year III would be that of third highest divorce, instead of the year of second highest divorce. The political situation influenced divorce in that deputies introduced a comprehensive, simple and cheap form of secular divorce prioritising the liberty of the individual to France during the revolutionary period. When they made divorce much simpler to attain through the decree of 4 *floréal* year II, there were many divorces for this reason, but when it was abolished and other *de facto* situations of marital breakdown had been regularised, divorce settled into a stable pattern in Toulouse. Neither the Directorial period nor the coup of brumaire year VIII altered the regular pattern of divorce in Toulouse from the year IV to X. Only the restrictive legislative changes in divorce under the *Code Civil* affected divorce in this provincial city. This analysis does not diminish the influence of political and religious factors on the rate of divorce, but points to other factors that must also be taken into account, such as the regularisation by divorce of already separated couples and the ease with which divorce could be enacted.[54]

Etienne. ADHG 5 Mi 368, "Divorce entre Garrabitet & Baudonnet (20 *frimaire*, an III)", *Mariages et Divorces. Toulouse Saint Exupère. ADHG* 5 Mi 393.

[54] The *Code Civil* divorce law was much more restrictive than that of September 1792. It was also more difficult for a woman to divorce under the later legislation. Divorce was allowed for adultery by the woman, or adultery by the man if he brought his concubine into the family home; divorce was permitted for the specific grounds of domestic violence, or the criminal condemnation of one spouse; divorce was also allowed by the mutual consent of both parties. In the case of divorce by mutual consent, the husband had to be over twenty-five years of age, and the wife between twenty-one and forty years old. The couple could not divorce if they had been married for less than two years or for more than twenty years. The consent of both sets of parents, or living ascendants was necessary for divorce by mutual consent. For the full text of the *Code Civil* law on divorce, see Francis Ronsin, *op. cit.*, p.219-234.

Year	I	II	III	IV	V	VI	VII	VIII	IX	X
Divorces	34	110	63	22	21	13	21	22	20	21

5.3 Divorces per annum: Toulouse.

3. The Social and Sexual Practice of Divorce.

In order to shed further light on the practice of divorce in revolutionary Toulouse this section analyses divorce by the following groups of motives; mutual consent and incompatibility; absence, abandonment and separation; divorce by the other fixed reasons (insanity, criminal conviction, dissolution of morals, violence by one party to the other, and political emigration). There follows an analysis of the number of divorces requested by women for each separate motive, and the section concludes with a brief analysis of the profession and literacy of those who divorced.

(i) Mutual consent and incompatibility of character.

Divorce by mutual consent was the fifth most popular form of dissolution. Twenty-three marriages were terminated on these grounds between the years I to X, representing 6.6% of all divorces for the period. There were no divorces for mutual consent until year III when five divorces took place for this reason; in the years VI to X, there were three, four, three, two, and six divorces respectively for this reason. Germain and Mireille Sicard ascribe the increase in mutual consent divorces to a change in the behavioural patterns of Toulousains; instead of divorce by the sanction of a defined fault, individuals moved towards liberating themselves from unhappy unions. The Sicards question whether all of these marriages were unhappy by pointing to the fact that one of the couples who divorced by mutual consent had four children

in four years.[55] One can accept the theory that the concept of no-fault divorce was not accepted as quickly as divorce for specific marital indiscretions such as domestic violence, imprisonment, or abandonment. However, there is no reason to suggest that the presence of children was a definitive indication of domestic and marital happiness. Examination of divorce in Toulouse shows that 40.4% of divorced couples (140) did not have children, 34.3% had children (119), and there was no mention of children in 25.4% (eighty-eight) of divorce cases. If we assume that there were no children in the cases where they were not mentioned, this means that 65.8% of couples did not have children at the time of divorce. In the case of those who divorced on the grounds of mutual consent, 43.5% of the couples had children (ten), while 56.5% (thirteen) did not. One can only conclude that some people who had children divorced for the reason of mutual consent, and some did not. The presence of children did not appear to dissuade couples from divorcing on the grounds of mutual consent.

On the other hand, it is reasonable to accept the assumption that divorce by mutual consent, as it became part of the landscape of divorce, fulfilled the prophesies of the *divorçaires* and the deputies who drafted the divorce law.[56] These advocates of divorce held that couples were meant to be happy in marriage and happy in society. If individuals were not content in their marital arrangements, they should seek to free themselves from their bond, regardless of the circumstances, but nor should they treat

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[55] Germain et Mireille Sicard, *op. cit.*, p.1071.
"Divorce entre Lavigne & Gendron, 23 *thermidor* an VIII" *Mariages et Divorces. Toulouse an VIII. ADHG* 5 Mi 249.

56 Hennet stated that the goal of marriage was to guarantee happy spouses and have children. For the *divorçaires*, this optimistic vision was vitally important for the well being of society. If either party was not happy in marriage, then they should be allowed to divorce on fixed grounds, mutual agreement, or by the demand of one party on no specific grounds (incompatibility). In a display of great optimism, Hennet summarised his argument for divorce in the following manner:

> "Divorce...est moins l'art de détruire les mauvais mariages, que l'art de rendre tous les mariages heureux."

Albert Hennet, *Du Divorce*, (Paris, 1789), second edition, p.8, p.115.

the commitment of marriage lightly. From the evidence available, this was the case with divorce by mutual consent. The number of divorces for this reason was relatively low even though it was one of the simplest methods of divorce and few of the divorces took place after a brief period of time. This suggests that the couple made some effort to make their union last. Only two of the divorces for mutual consent were between couples that had been married for less than a year, while three couples had been married for one year only. Most of the marriages lasted for more than five years and two lasted for eighteen and twenty-three years respectively.

Length of marriage	Less than one year.	1 to 5 years	5 to 10 years	10 to 15 years	Over 15 years
Number of divorces	2	7	9	3	2

5.4 Length of marriage of those who divorced by mutual consent: Toulouse.

Divorce on the grounds of incompatibility of character (*incompatibilité d'humeur et de caractère*) was the fourth most popular method of divorce, with fifty-eight marital dissolutions (16.7% of all divorces) occurring for this reason. However, this was by far the most controversial and criticised form of divorce. One party to the marriage could repudiate the other without specifying any marital fault and it was for this reason, along with the fact that it was an action usually taken by women, that divorce

by incompatibility was criticised. Most of the critics of the incompatibility clause claimed that this method of divorce allowed fickle, capricious women to divorce upon a whim.[57] This argument would lead one to believe that marriages dissolved by incompatibility were of a very short duration. In reality, the average length of marriages dissolved on the grounds of incompatibility was only slightly shorter than the overall average, at 9.86 years, as opposed to the overall average of 11.2 years. Eighteen of these marriages lasted for more than fifteen years, three were between ten and fifteen years in duration, twenty-one lasted for between five and ten years, fifteen were of a duration of between one and five years, and one lasted for ten months.

Jeanne Preynet married Jean Pascal Marie Clavière, a *cultivateur* in the *maison commune* of Toulouse on 26 *floréal* year III. On 4 *vendiémiare* year V, Mme. Preynet called for the convening of an *assemblée de famille*. She desired a divorce on the grounds of incompatibility and, to this effect, three assemblies were held on 1 *brumaire,* 1 *nivôse* and 11 *germinal* year VI. At the third assembly, she received a final certificate of non-reconciliation and her husband was summoned to appear at the *maison commune* on 17 *vendémiare* year VII to hear the official divorce announcement. All four witnesses signed the declaration, as did Jeanne Preynet.[58] This divorce is typical of those for incompatibility and it illustrates the complexity of this divorce provision compared to that of other methods of divorce.

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[57] "Un membre demande, par motion d'ordre, la suspension provisoire des demandes en divorce pour cause d'incompatibilité d'humeur, comme remplissant chaque jour la société de scandales, comme favorisant l'inconstance des époux, et comme portante atteinte à la dignité du mariage, 24 ***brumaire***, an V," Imprimerie Nationale, *Procès-Verbal des Séances du Conseil des Cinq Cents*, (Paris, an V), p.513. "La citoyenne Bress, d'Avalon, département de l'Yonne expose qu'elle est poursuite en divorce, sous le prétexte frivole d'incompatibilité d'humeur; elle sollicite, jusqu'à l'émission du *Code Civil*, une loi qui suspend la faculté du divorce, pour cause seulement d'incompatibilité d'humeur, 27 ***brumaire***, an V," in *Ibid.*, p.560.

Divorce by incompatibility of character was the most controversial aspect of the divorce legislation, particularly during the period of the Directory. No local factors can explain the controversy over this aspect of the divorce legislation. The use of this provision by women was particularly criticised, but the figures do not fully explain this. 62.1% petitioners for such divorces were women but this figure is only 1% above the overall percentage of women who requested divorce. If one includes all forms of divorce, 61.1% of divorces were demanded by women, 31.1% by men, 1.2% by both, and 6.6% of divorces were taken on the grounds of mutual consent. Divorce due to incompatibility was innovative in that it broke definitively from the legal tradition of separation due to a specific fault. On the other hand, divorces taken by mutual consent were just that, mutual. Divorces for reasons of violence or desertion had to be proven in the family or later in the district court, but a divorce by incompatibility allowed women the power to free themselves from husbands with whom they were unhappy without specifying any specific fault. This challenged the traditional authority of men in the domestic sphere and also questioned a republican view that women should remain at home, please their husbands and display sensibility. The ability of women to exercise equal authority with their husbands by unilaterally divorcing unsatisfactory spouses threatened to undermine this ideal, however exaggerated the threat might have been.[59] This was at the heart of the criticism of divorce by incompatibility of character.

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[58] "Divorce entre Preynet et Clavière 24 vendémiare an VII," *Mariages et Divorces. Commune de Toulouse an VII.* In *ADHG*, 5 Mi 249.

[59] Garrioch states that in eighteenth-century France the reality for most women was that they were expected to be hard working, thrifty and sexually loyal. They were particularly expected to be hard working. The model of the wife cultivating and residing in the domestic haven was only feasible for wealthier members of society. However, all sections of society expected the wife to obey her husband. The possibilities of divorce by incompatibility undermined this.
See David Garrioch, *Neighbourhood and Community in Paris, 1740-1790*, (Cambridge, 1986), p.75-78.

Divorce for incompatibility did not come under any great criticism until years IV and V.[60] One explanation for this may be suggested by the statistics for Toulouse, which indicate a sudden proportional increase in divorces for incompatibility:[61]

Year	I	II	III	IV	V	VI	VII	VIII	IX	X
Divorce by incompatibility	3	4	4	6	10	3	9	8	6	5
Total number of divorces	34	110	63	22	21	13	21	22	20	21
Divorce by incompatibility as a % of total number of divorces	8.8	3.4	6.4	27.3	47.6	23.1	42.9	36.4	30	23.8

5.5 Divorce due to incompatibility of character as a % of divorces: Toulouse.[62]

Divorce by incompatibility reached its peak in absolute terms, and as a proportion of the divorce figures (ten divorces out of twenty-one, 47.6% of the total) in the year V,

[60] Between 9 messidor year IV (28 June 1796) and 5 *nivôse* year V (26 December 1796), there were three propositions in the Council of Five Hundred for the revision or suspension of divorce by incompatibility, two petitions to this effect, and one petition asking for a general revision of the divorce law. Favard produced the report of the committee assigned to examine this question on 20 *nivôse*, year V (10 January 1797). The committee proposed the suspension of divorce by incompatibility until the provision of a civil code. This proposal was not acted upon. In *Table de la Seconde Législature*, (Paris, *nivôse* an VII), p.110, and *Procès-Verbal des Séances du Conseil des Cinq Cents*, (Paris, *pluviôse*, an IV), p.139, 484, *Procès-Verbal du Conseil des Cinq Cents*, (Paris, *brumaire*, an V), p.513, 560, *Procès-Verbal du Conseil des Cinq Cents*, (Paris, *nivôse*, an V), p.71, 72, 313, 469, 478.

[61] The figures for Troyes also reflect this, although not as dramatically as Toulouse. Epinal was the exception as there were two divorces for incompatibility in the years I to III, while there was only one after year III.

the year in which the national debate on this form of divorce took place. The legislation that delayed the granting of divorce by incompatibility was promulgated at the end of the year V, but the rhythm of divorce for this reason remained much higher than for the first years of the divorce legislation.[63] This fact may have highlighted the threat to the authority of the father in the domestic sphere, as women could repudiate their husbands without providing any specific marital or criminal fault. Yet, despite the criticism of this measure, the deputy Faulcon successfully defended it in the Council of Five Hundred with the dual argument that the provision itself was a justifiable form of divorce as marriages were the foundation of private and public happiness. Therefore, he argued that if one unhappy person could not prove a motive for divorce they should nevertheless be allowed to free themselves from the unhappiness they suffered as a result of living with someone they did not love. He also argued that private individuals should not have to suffer the indignity of exposing their private shame (of adultery, violence, depravity) to public condemnation. Thus, Faulcon used the idealistic defence of the freedom of the individual and the practical defence of hiding private shame from public ridicule to defend the incompatibility clause:

> "Citoyens, vous adopterez donc le divorce, et parmi les causes qui y donneront lieu, vous laisserez subsister encore celle d'incompatibilité d'humeur, soit que le motif intrinsique qu'elle renferme est bien suffisant pour nécessiter le divorce, soit parce qu'elle est propre à couvrir d'un voile salutaire beaucoup d'excès affligeants..."[64]

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[62] All percentages have been rounded to one decimal place.

[63] The law, delaying the declaration of divorce by six months in cases of divorce by incompatibility, was promulgated 17 September 1797. *Loi relative aux demandes en divorce pour incompatibilité d'humeur, du premier jour complémentaire an V de la République*, (Melun, an V).

[64] Félix Faulcon, *Opinion sur le Divorce et sur le Ministre des Cultes*, (Paris, an V), p.12.

(ii) Divorce by absence, abandonment and separation.

The various forms of *de facto* separation were the most popular methods of divorce for the years I to X, accounting for 155 divorces out of 347, or 44.7% of the total in Toulouse.[65] There were nineteen divorces for absence without news for the ten-year period under examination. This form of divorce was used to regularise situations where the marriage had ended in reality for a considerable amount of time. The great majority of these couples had been married for considerably longer than other couples who divorced, and only four of the couples had been married for less than ten years.[66]

In eleven of the divorces for absence without news, the petitioner had not seen or heard from their spouse for over ten years and the lengthiest absence recorded is one of thirty-five years before one of the spouses decided to petition for divorce.[67] Women instigated sixteen of the nineteen divorces for this reason.[68] This pattern of male absence was not new, but the revolutionary moment gave the person left behind the possibility of legally divorcing their husband or wife who they had not seen or heard from for a great number of years.[69] If they wished, they could also remarry or, in the case of women, seek the return of their dowry, if this was possible.

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[65] Abandonment for more than two years accounted for sixty divorces (17.3%), absence without news for more than five years accounted for nineteen divorces (5.5%), and separation for over six months, the most popular form of divorce, was used seventy-six times (21.9%) as a means of divorce.

[66] On average couples were married for 11.2 years, whereas the average length of marriage for divorcing on grounds of absence without news was 20.4 years.

[67] Mme. Tirabaques claimed to have been abandoned for more than thirty-five years by her husband, and told the divorce hearing that she presumed that he was dead:
"Divorce entre Tirabaques et Fourier." *Mariages et Divorces. Toulouse. Notre Dame de la Daurade.* In *ADHG*, 5 Mi 378.
In the following case, the husband had been abandoned for thirty-four or thirty-five years:
"Divorce entre Saint Genies et Marignac." *Mariages et Divorce. Toulouse, an X. ADHG* 5 Mi 249.
The other couples had been separated for ten, fifteen, eighteen, sixteen, twenty, seventeen, twenty, twenty-seven or twenty-eight, and twenty-eight or thirty years respectively. See *Mariages et Divorces. Toulouse. ADHG*, 5 Mi 385, 5 Mi 367, 5 Mi 368, 5Mi 249.

[68] This constitutes 84.2% of divorces taken on the grounds of absence without news. On average, women requested 61.1% of all divorces for the years I to X.

[69] Phillips points to murder, informal separation, desertion, and suicide as alternatives to divorce. Informal separation and desertion were the more popular alternatives due to the terminal nature of

Length of marriage in years	5-10	10-15	15 or more	Not available
No. of divorces	4	2	11	2

5.6 Length of marriage of those who divorced due to absence without news: Toulouse.

In contrast with Troyes, divorce by abandonment for over two years and separation for more than six months were more popular than divorce for absence without news.[70] In Toulouse, thirty-two of the sixty divorces for abandonment for more than two years were instigated by women, twenty-six cases were taken by men, and in two divorce cases both parties requested the dissolution of their marriage. Jean Teraucle and Catherine Charles had been married for fourteen years and as one of them had been abandoned for over two years both parties assembled a family court to get a divorce:

> "...et chacun des parties ayant demandé le divorce et donné les motifs déterminés."[71]

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suicide, and the probability of execution if found guilty of murder. See Roderick Phillips, *Untying the Knot*, (Cambridge, 1991), p.82-95. See also Lawrence Stone, *Road to Divorce; England 1530-1987*, (Oxford, 1995), ch.6, "Desertion, Elopement, and Wife-Sale."

[70] There were fifteen divorces for abandonment of more than two years in Troyes. For absences without news, there were thirty-five divorces. Only three divorces occurred for separation of over six months although these figures may not be exact as the three forms of divorce were not always distinguished from one another in the *Actes de Divorce*.

[71] "Divorce entre Teraucle et Charles, 20 mars 1793." *Mariages et Divorces. Toulouse, Saint Exupère. ADHG* 5 Mi 393

Philippe Gouzon, a cobbler, and Simone Nouailhou had been married for nine years before they both requested a divorce on the grounds of abandonment for more than two years.[72] It is unusual that these couples chose to apply for divorce on the grounds of abandonment when it would have been somewhat easier to divorce by mutual consent. It is possible that couples were not as conversant with the law less than one year after its introduction as they later became. Other cases of divorce by abandonment are characterised only by their banality and became accepted in the social and cultural framework of family relations in Toulouse.

No divorces for abandonment occurred during year III.[73] One explanation for the absence of this form of divorce in year III was the presence of divorce on the grounds of separation for six months or more. This form of divorce, the most popular of all motives for the ten-year period under examination, was used seventy-six times. The procedure for divorce on grounds of separation did not require the gathering of a family court. Instead, the production of an *acte de notoriété* signed by six witnesses and testifying to actual separation for more than six months was sufficient to procure a divorce. An example of the use of this measure, instead of the more complicated form of divorce by abandonment, is witnessed in the case of Jeanne-Marie Bouier and Dominic Raymond Azemar, a printer. They had been married for seven years and five months. Bouier stated that the couple had been separated for over four years, and produced an *acte de notoriété*, procured from the *conseil général* of Toulouse to this

[72] "Divorce entre Gouzon et Nouailhou, 24 mai 1793." *Mariages et Divorces. Toulouse, arrondissement de Saint Augustin. ADHG* 5 Mi 381.
[73] In the years I and II, there were eleven and twenty-seven divorces on grounds of abandonment. In the years V to X, there were three, four, three, two, five, three, two divorces for this reason.

effect. Azemar did not appear to hear the divorce and the *officier public* declared the divorce in the presence of four witnesses.[74]

Divorce by separation of more than six months was introduced in the reform of the divorce law on 4 *floréal* year II and was suspended by the law of 15 *thermidor* year III.[75] This law made divorce easier to achieve; however, the deputies and other citizens had not yet observed the manifestation of marital breakdown in the form of divorce. In year III, when faced with the reality of divorce, the political actors became increasingly concerned with this phenomenon. The provision of divorce for couples separated for six months or more, the most popular method of divorce in Toulouse, was suspended and the committee of legislation was charged with drafting a revision of all divorce legislation.[76]

Women were not alone in using this form of divorce. They instigated forty-eight divorces for separation of six months, while men took twenty-eight cases. There is little information available on the nature of these divorces in the existing records, except that, as the law intended, they were accessible to all and required only the minimum amount of proof in order to divorce. Although there was a drop in divorces for reasons of absence and abandonment (along with the suspension of divorces for separation of more than six months) after year III, there was a steady stream of divorces for absence and abandonment up to year X. Divorce taken on the grounds of the aforementioned reasons were readily adopted in Toulouse society. Divorce on the

[74] "Divorce entre Bouier et Azemar, 8 *floréal* an III." *Mariages et Divorces, an III, Toulouse. Notre Dame de la Dalbade. ADHG* 5 Mi 374.
[75] For greater discussion of the implications and the background to legislative changes in the 1792 divorce law see chapter 3.
[76] The law of 15 *thermidor* year III suspended the execution of the laws of 8 *nivôse* and 4 *floréal* year II.

Divorce for dissoluteness of morals (*dérèglement de mœurs notoire*), or adultery, was also relatively rare, with fourteen divorces for this reason between years I and X. The length of marriage varied from twenty-three years to three years, but the majority of marriages dissolved for dissoluteness of morals had lasted for less than ten years:

Length of marriage in years	Less than 1	1-5	5-10	10-15	15 or more
Number of divorces	0	3	6	1	4

5.7 Length of marriage of those whose divorces were provoked by dissoluteness of morals: Toulouse.

The relatively short duration of these may be explained by the reason for divorce, adultery. In addition, this method of divorce was unusual in that the majority of the petitioners were men. Men initiated nine cases, while only five cases were taken by women. Women were more prone to divorce for the more opaque motive of incompatibility, and legal-cultural precedent probably influenced the figures. Before the French Revolution, women could only get a separation for her husband's adultery

if he brought his concubine into the marital home. This provision was reinstated under the Napoleonic divorce law.[78]

An example of this form of divorce was that of Jean Bart Claude Toussaint Darmagnac and Jeanne Dubarry. Both were thirty-six years old and resident in Toulouse although Dubarry was originally from Murat, outside the city. They married in the parish of Saint Sernin in Toulouse on 24 November 1784 and had one child. Darmagnac, a *général de brigade* in the army, requested a divorce for the motive of dissolutcness of morals at the *tribunal civil* of Toulouse on 16 *messidor* year X. The court judged in his favour and although Dubarrry opposed the divorce the court confirmed the order and the divorce was publicly declared valid on 24 *fructidor* year X.

Divorce motivated by political emigration was also availed of on fourteen occasions between years I and X. Only women used this form of divorce and it has been alleged that it was only used to protect the family property of an *émigré* from confiscation. There is no direct evidence to prove this, but the high number of divorces for this reason during year II highlights the peculiarly political nature of this form of divorce. There were nine divorces for this motive in year II, one divorce for each of the years I, III, IV, and VII. The length of marriages dissolved due to emigration varied from

[78] For *separations de corps* under the *Ancien Régime*, see Roderick Phillips, *Family Breakdown in Late-Eighteenth Century France*, (Oxford, 1980), p.4-11. Women could apply to the royal courts for legal separation on the following grounds: severe ill treatment, aggravated adultery, the husband's conviction for attempted murder of his wife, and the husband's conceiving of a deadly hatred (*haine capitale*) of his wife. Phillips points out that aggravated adultery usually meant that the husband had to entertain his concubines in the marital home. Only women could apply for legal separation in the secular courts as the husband was deemed to have other means at his disposal for correcting his wife, such as his *puissance paternelle* and the use of *lettres de cachet*.
Ecclesiastical courts also heard separation cases and allowed both spouses to apply for such separations on the grounds of adultery, serious injury, lengthy absence, corruption of morals, and the adoption of

forty-three years to two years, with the majority of these unions lasting between five and fifteen years:

Length of marriage in years	Less than 1	1-5	5-10	10-15	15 or more
Number of divorces	0	3	4	4	3

5.8 Length of marriage of those whose divorce was motivated by political emigration: Toulouse.

Two couples that divorced for this reason had children, two did not and there is no mention of children in ten of the divorces. If one assumes that where no children were mentioned, the marriages were also childless, then divorce for the reason of emigration was mainly a phenomenon for the childless couple. This is considerably higher than the overall average for divorces. From the years I to X, 114 or 34.3% of divorced couples had children, while only 14.3% of the couples that divorced because of political emigration had children. This method of divorce was, for the most part, the preserve of the childless whose husbands had fled in or before year II.

false or heretical religious beliefs. In James F. Traer, *op. cit.*, p.40. Also see Georges Dumas, *Histoire*

Ten couples converted legal separations into divorces under the provisions of the 1792 divorce law. All but one took place in years I and II. The final conversion occurred in year IV.[79] Men applied for four divorces on these grounds, while women applied for six. In three instances, the divorcing couple had children, which means that this method of divorce falls in line with the overall pattern with regard to the sex of the spouse who requested a divorce and the presence of children in the marriage. One of the couples had been married for twenty-nine years, while one couple had only been married for two years.

Seven of the ten couples had been married for between five and fifteen years, again making this form of divorce typical of the average pattern. Either or both parties to the marriage could apply to have divorce declared for this reason but one spouse alone always requested the divorce. Divorce by conversion of legal separation was a simple form of divorce, requiring only proof of one's separation. However, this form of divorce was limited to the small proportion of individuals who had obtained a legal separation before the measure was abolished with the introduction of the divorce law on 20 September 1792.

The most common method of divorce for a specific fault, and the second most common of all means of divorce in Toulouse, was divorce provoked by of cruelty or ill treatment (*sévices ou injures graves*). Women were the main initiators of this type

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de l'Indissolubilité du Mariage en Droit Français, (Paris; Arthur Rousseau, 1902).

[79] Six of these divorces took place in year I, and three divorces were granted for this motive in year II. The one exception was the divorce between Jacquette Cathérine Nouilhau and Henri Taudou in the year IV: "Divorce entre Nouilhau et Taudou." *Mariages et Divorces. Toulouse, an IV, Le Taur. ADHG* 5 Mi 380. The couple had received a legal separation, "n'ayant plus vivre ensemble" on 10 September 1787.

of divorce, although some men availed of the measure.[80] On two occasions, both spouses requested divorce on grounds of cruelty. The divorce between Viala and Linas took place on 24 August 1793.[81] Jean Viala requested a divorce from his wife for two motives, dissoluteness of morals and ill treatment. While Viala was organising a *tribunal de famille* to hear his divorce request, his wife mounted a counter-plea for divorce, alleging that he had been violent towards her. What happened next is not entirely clear, but Viala succeeded in registering his plea for divorce with the district court and he went to the town hall to have his divorce registered. Linas, like most of those who were divorced by their spouse, did not attend the declaration of divorce.

The record is somewhat ambiguous, but it seems that Viala and Linas accused each other of violent behaviour, while Viala also claimed that his wife was unfaithful (or that her behaviour was dissolute). He was the first to apply for the divorce and had his plea accepted. One reason for this contestation lies in the text of the divorce law. Although it normally treated men and women with complete equality, the advantages in the divorce settlement lay with the party who successfully accused his or her spouse of a marital fault:

> "Il sera 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 de la première section ci-dessus, autre que la démence, la folie, ou la fureur ; la femme en ce cas sera privée de tous droits et bénéfice dans la communauté de biens ou société d'acquêts ; mais elle reprendra les biens qui sont entrés de son côté."[82]

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[80] Fifty women (75.8%) and fourteen men (21.2%) asked for divorce on grounds of cruelty or ill treatment. This is higher than the average rate of requests for women (61.1%), but due to the nature of the divorce one might have expected a lower rate of request by men, and no joint requests for divorce for this motive. The divorce acts did not, however, tell us the full extent of the ill treatment.

[81] "Divorce entre Viala et Linas." In *Mariages et Divorces, 1793. Toulouse, Saint Etienne. ADHG* 5 Mi 368.

[82] Article V, section III of *Loi qui Détermine les Causes, le Mode, et les Effets, du Divorce, du 20 septembre 1792, l'an IV.è de la liberté.* In François Ronsin, *op. cit.*, p.496. Article VII, section III of

The previous article stated that the settlement between divorced couples would be regulated by the marital contract they had drawn up before entering the marriage.[83] Article V, section III of the divorce law deprived women of the benefit accrued for the common property in marriage, although she was entitled to her dowry, and this may explain why Linas wanted to divorce her husband. This provision may have also influenced women to divorce their husbands if they feared that they were about to be divorced. However, this would have been extremely difficult as it would require the fabrication of a motive for divorce at short notice. Moreover, divorce by incompatibility took considerably longer than divorce for a defined motive.

The divorce between Louis Auriol, a dancer (*sauteur et danseur*), and Petronille Thoumelon in April of 1793 was different.[84] The couple had been married for nine years before they jointly decided to convene a family tribunal. Each party asked for a divorce on the grounds of cruelty and ill treatment. The family court accepted the motive, and the public official later declared the divorce in the town hall. This case is unusual in that it appears that the couple mutually appealed for a divorce on the grounds of cruelty. The record does not state who assaulted whom, or if they attacked each other, but the mutual desire for divorce is explicit. One would expect that such a divorce could have been granted on the grounds of mutual consent, but the couple either did not want to divorce for this reason, or were ignorant of the provision. The unusual nature of this divorce may also be explained by the fact that the divorce law was less than a year old and individuals has not yet realised the full potential of the

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the law states that the person who divorces for a defined motive shall also be indemnified against any loss by the provision of an allowance from the goods of both spouses, to be decided by a family court. In *Ibid.*, p.497.

[83] Article IV, section III, in *Ibid.*, p.496.

[84] "Divorce entre Auriol et Thoumelon.." *Mariages et Divorces. Toulouse. Notre Dame du Taur.* *ADHG* 5 Mi 380.

law, particularly with regard to divorce by incompatibility or mutual consent. The first divorce by mutual consent did not take place in Toulouse until year III and it is possible that some individuals believed the new divorce law to be similar to the older form of legal separation, which did not allow divorce for mutual consent or incompatibility.

Given the violent reasons for the dissolution of these marriages, it is not surprising to note that marriages dissolved due to ill treatment and cruelty were of a shorter length than other marriages terminated by divorce. Eight of these marriages were dissolved less than a year after the declaration of marriage, the two briefest unions lasting only three months.[85] However, other marriages that were terminated for this motive lasted considerably longer. Eight of the marriages lasted for over twenty years, and the longest marriage was dissolved after thirty-nine years. Women terminated these lengthy marriages, while they ended only five of the eight marriages that lasted less than a year. This suggests that women were more willing to accept domestic violence over a prolonged period of time, while men left at the first sign of violence. Twenty-six out of the sixty-six couples who divorced for this reason had children, but in the case of those whose marriages lasted over twenty years, five out of eight had children. It is possible that the parents (or more precisely the mother) decided to remain married until the children were raised before divorcing.

[85] "Divorce entre Bonnet et Masse, 12 août 1793," *Mariages et Divorces, 1793, an II, III, IV. Toulouse Saint Etienne. ADHG* 5 Mi 368.
"Divorce entre Boyer et Laroque, 12 *brumaire* an III," *Mariages et Divorces. Toulouse Saint Exupère, an III. ADHG* 5 Mi 393.

Length of marriage in years	Less than 1	1-5	5-10	10-15	Over 15	Not available
Number of divorces	8	14	23	8	12	1

5.9 Length of marriage for those who divorced as a result of cruelty or violence: Toulouse.

(iv) Profession and literacy of the divorced.

The following section will analyse divorce by occupational group and by the literacy of the petitioners for divorce, in order to discover whether those who divorced were representative of the general population of Toulouse and if the literacy of divorcing couples was commensurate with that of the population for Toulouse. The occupation of those who divorced is available for 255 out of the 347 divorced couples and the occupational groups have been divided in the following manner: professional or administrative occupations, commercial occupations, property owners, soldiers, agricultural occupations, artisans and small business occupations, unskilled labour, unspecified or other occupations, and domestic servants. Godechot estimates that the liberal professions, artisans, and small agricultural proprietors accounted for 72% of the population of Toulouse, the popular classes (small artisans, apprentices, and

unskilled or day labourers) made up 25% of the population, while the remaining 3% was comprised of the nobility and the clergy.

According to the divorce record, 0.6% (two divorces) of those who divorced formed part of the nobility, while ten property owners (2.9% of all divorces) divorced in Toulouse. [86] Professionals, functionaries and administrators represent 6.6% of all divorces, or twenty-three divorces, those engaged in commerce account for fifty-four divorces (15.6% of the total), six farmers or 1.7% of the total divorced, and 102 artisans (29.4% of the total) divorced.[87] Four domestic servants divorced (1.2% of the total), seventeen soldiers availed of the law (4.9% of the total), nineteen unskilled workers (5.5% of all divorces) divorced, eighteen individuals engaged in other employment used the divorce law (5.2%), and no occupation was given in ninety-two instances of divorce, or 26.5% of the total number of divorces for Toulouse.[88] It is evident from this survey of the occupations of the divorced that the largest category is that of artisans, followed by the category of men involved in commercial dealings. If we adjust the percentage of those who divorced per category, by eliminating the ninety-two couples of unspecified occupation we get a clearer picture of the occupation of those who divorced in the table below:

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[86] Although the category of nobility was abolished in 1790, two divorcees described themselves as such. Those classified as nobles appear as "noble" in the divorce acts, while *rentiers* and *propriétaires* are expressed as property owners.

[87] For the purposes of this analysis, professionals and functionaries include the legal and medical professions, along with those who worked in public offices. Commercial people include *marchands, négociants, fournisseurs, armuriers, and hommes d'affaires*. Those classified as *agriculteurs* and *cultivateurs* come under the bracket of farmers, while artisans, a broad group, include all skilled tradesmen from *orfèvres* to *fabricants de bas*.

[88] Two *valets de chamber* divorced, one *ménager* (domestic), and one *domestique* divorced. Soldiers include officers and conscripts, so the social background is varied. Unskilled workers comprise all those engaged in manual labour. Those engaged in other activities include actors, singers, musicians, writers, and one prisoner of war.

Occupation	Number of divorces	% of total	Adjusted % of total (not including unspecified occupation)
Professional/Admin.	23	6.6	9
Commercial	54	15.6	21.2
Agriculture	6	1.7	2.4
Artisan	102	29.4	40
Domestic servants	4	1.2	1.6
Unskilled	19	5.5	7.5
Soldiers	17	4.9	6.6
Nobility	2	0.6	0.8
Property-owners	10	2.9	3.9
Other	18	5.2	7.1
Unspecified	92	26.5	—

5.10 Divorce per occupational group: Toulouse.[89]

These statistics show us that the majority of those who divorced in absolute and relative terms came from artisanal and small to medium commercial backgrounds.

The pattern that emerges is one of what might be very loosely termed *sans-culottes* (the term loses it direct relevance outside Paris) divorce. Those who divorced were almost entirely representative of the body of the population who were most in favour of the Revolution in Toulouse and the reforms that it promised.[90] The nobility, due to emigration, antipathy to the Revolution and attachment to the Catholic Church, did not avail of the divorce law, while the mass of unskilled labour in Toulouse did not have the learning or literacy skills to engage in the process of divorce.

Lyons analyses the socio-professional background of committed revolutionaries in Toulouse through an examination of the members of *comités de surveillance révolutionnaire* between March 1793 and its dissolution in *messidor* year III. The membership was drawn from the *société populaire* and is indicative of the active republicans in Toulouse. He divides his analysis into three phases: pre-September 1793; the terrorist committees who sat between September 1793 and the end of year II; and the *thermidor*ian committees who sat until *messidor* year III.[91] Despite the purges, most of the membership came from the middle ranks of Toulouse's urban society and some members retained their positions on the committees throughout the period. Membership in the first period consisted of six lawyers, two doctors, two civil/municipal servants, five businessmen, one printer and one *propriétaire*. The terrorist committee was populated by artisans and shopkeepers (one third of the membership), a handful of doctors and functionaries and two domestic servants. Of the *thermidor*ian committees, one half of the membership consisted of lawyers and

[89] All percentages have been rounded to one decimal place.
[90] For eighteenth-century artisans and the *sans-culottes*, see Michael Sonenscher, *Work and Wages. Natural law, Politics and the Eighteenth-Century French Trades*, (Cambridge, 1989); Albert Soboul, *The Parisian Sans-culottes and the French Revolution, 1793-4*, (Oxford, 1964); R. B. Rose, *The Making of the Sans-culottes: Democratic Ideas and Institutions in Paris, 1789-92*, (Manchester, 1983).
[91] Martyn Lyons, *op. cit.*, p.166-169.

the commercial classes.[92] These categories, despite the difficulties inherent in accepting socio-professional self-definitions mirror those who most often had recourse to divorce. Divorce was influenced by structural factors as Phillips has stated, but political commitment, or at least some understanding of the general revolutionary project categorised many of those who divorced. Through this legislation, even those not dedicated to the cause of the French Revolution learned a form and a language of citizenship through this egalitarian law that affected the family. This is even more the case for women, who took the majority of divorce cases. Despite the fact that women were formally excluded from active political participation, and had a far greater attachment to the Catholic Church than their husbands, they availed of this divorce law to regulate marital breakdown. Through this process, the French Revolution touched them directly and they engaged in a form of social citizenship in the domestic sphere.

Taking Godechot's 1785 figures for literacy in Toulouse one observes that literacy (judged by the ability to sign the marriage register) ran at 53% for men and 20% for women in the higher popular classes, while for the lower popular classes, 27% of men and 8% of women could sign the marriage register. For the nobility, husband and wife could sign, while for the middle ranks of society, all husbands could sign the register, and 75% of brides could sign. Comparison with the divorce record for years I to X is not entirely straightforward, as the defending party to the divorce usually did not appear.[93] Nevertheless, the record shows a vast discrepancy between the literacy of the popular classes and that of those who availed of the divorce law. Literacy rates for divorced couples ran much closer to those of the middle ranks of society. Both parties

[92] *Ibid.*, p.182-184.

or the one party that appeared for the divorce signed the register 245 times, or 70.6% cases, while neither party (or the one party that appeared) could sign on 101 occasions, or for 29.1% of divorces.[94] These literacy statistics indicate, along with the occupational breakdown of divorcees, that divorce in Toulouse was overwhelmingly a phenomenon of the artisanal and small to medium business class, to the exclusion of the upper and lowest strata of society. The groups that divorced were literate, aware of the general revolutionary situation, and probably in favour of the French Revolution. Those social groups opposed to the Revolution rarely divorced, nor did the poorest sectors of society, hampered by ignorance of the legislation, illiteracy, and without even the meagre means necessary to engage in the divorce process.

The pattern of divorce that emerges in Toulouse over the ten years of the examination is one that shows divorce touching all sections of society in this provincial capital. However, the mass of divorces were concentrated in a literate group of artisans and businesspeople, who tended to support the Revolution in Toulouse. Neither the upper echelons of society, nor the illiterate mass of the people, had the same engagement with this part of revolutionary legislation and culture. The wave of divorce emerges as one that peaks in the first years of the Revolution and then settles into a steady flow of twenty to twenty-two divorces for the years IV to X (with the exception of the year VI). This rhythm supports the theory that many divorces in the early years of the Revolution regularised a *de facto* state of separation. This belief is further supported by the nature of divorces for this period. Most of the divorces for years I to III took place for one of the various forms of absence, abandonment, or separation. The most

[93] This happened 297 times out of 347 divorces. On 200 occasions when the woman appeared the man was absent, and the woman was absent 97 times when the husband was present.
[94] Information is not available for one divorce case.

popular form of divorce was the easiest method to attain; divorce by separation for more than six months.

In subsequent years divorce by fixed motive, mutual consent and incompatibility was more common, which can be explained by the fact that many previously separated couples had placed their separations on a legal footing by using the divorce law. Others continued to divorce for the fixed motives, particularly on the grounds of domestic violence. More women than men divorced. Complaints about the rise in divorce for reasons of incompatibility were understandable if one considers that in year II, there were four divorces for this reason out of one hundred and ten divorces, while in year V there were ten divorces for this reason out of a total of twenty-one. While the number of divorces dropped significantly, the number of divorces on the grounds of incompatibility increased in both relative and absolute terms. This increase can be explained by two factors: individuals were more familiar with the legislation and no longer deemed it necessary to specify exactly why they wished to divorce and secondly, with their knowledge of the legislation, individuals saw that it was possible to divorce without exposing their private family history to public disapproval (by using the incompatibility motive).

Revolutionary discourse on divorce, positive and negative, does not hold true if one analyses the actual record of divorce. The *divorçaires* claimed that not only would divorce facilitate individual and public happiness in society (an unverifiable assertion), but that the legislation, by its very existence, would ensure that couples would not separate as they would work harder at their marriages. The deputy Oudot claimed that once the corrupted unions of the *Ancien Régime* had been abolished,

none of the unions of the purified society of the new order would need to divorce as they had been contracted under an enlightened legislature and society. This utopian aspiration did not transpire, as individuals continued to divorce at a steady rate throughout the revolutionary period.[95] Critics of divorce believed that society would fall apart if liberal divorce legislation were introduced. This did not happen either as, with the exception of years II and III, divorce remained at a consistent level in Toulouse. For a population of 59,000 to 62,000, divorces ran at around twenty per annum for the years IV to X.[96] The existence of divorce legislation resulted in neither the purification of society, nor the disintegration of the family in Toulouse during the revolutionary period. It was used, mainly, by the wives of literate artisans and small businessmen to regulate situations of marital breakdown, especially breakdown caused by separation and domestic violence. Once divorce left the discursive and legislative arena, it lost much of its ideological content and became a banal method of legally separating individuals whose marriages were in terminal difficulties. Despite this, ideological and cultural factors mattered insomuch as one had to be favourably disposed to the revolutionary discourse of liberty, individual rights, and the ability of each to find happiness. Those opposed to the general aims of the secular republic and attached to the Catholic Church did not divorce, as they still believed in the indissolubility of marriage. But to those who did believe in the necessity of a secular divorce law, even the change of regime under the Consulate did not slow the rhythm

[95] "Le membre Oudot au nom du comité de la législation, fait en rapport sur plusieurs pétitions tendante à faire entreprêter différentes dispositions de la loi du 20 septembre 1792 sur le divorce et à y faire ajouter plusieurs articles." In Mavidal & E. Laurent, *Archives Parlementaires*, (Paris, 1909), p.653. Oudot claimed that, at most, only one out of one hundred divorces would ensue from marriages contracted since the promulgation of the divorce law.

[96] For years I to X, divorce ran at 7.4% of all marriages during this period. It hit a peak of 15% of all marriages for the year III, and dropped to 2.9% of marriages in the year VI.

of divorce, until the law became more restrictive in its application, especially for women, who availed of the 1792 divorce law more often than men.[97]

[97] For years VIII, IX, X, and XI, there were twenty-two, twenty, twenty-one, and twenty-one divorces. After the introduction of the *Code Civil*, the number of divorces in Toulouse dropped to three for year XII.

Ch.6 Divorce in a Medium and Small Town: Troyes and Epinal.

1. Troyes and Epinal: Demography and Social Composition.

(i) Population and social composition of Troyes.

The *Almanach Historique* of the department of the Aube and the town of Troyes for year IX provides invaluable information on the population, geographic position, and industry of this regional town.[1] According to the *Almanach*, Troyes was situated in the middle of the department, with plains spreading out to the north and to the east, and gardens to the south. The town had been a commercial centre for many centuries and was ideally placed for this purpose, close to Paris, situated on the roads to Dijon, Basel, Sens, and Paris.[2] Geographically, its position was in marked contrast to Toulouse and Epinal, which were both on the periphery of France, Epinal to the northeast and Toulouse to the southwest. The *Almanach* assessed the population of Troyes at 29,782 for year IX. The main industries were the manufacture of cotton textiles and hosiery (*bonneterie*). Other industries included tanning, starching, printing, and the prepared meat trade (*charcuterie*). The authors of the *Almanach* calculated that there were 1,500 to 1,800 looms employed in the manufacture of the various forms of cotton textile, along with 620 hosiery looms. Allied to the many

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[1] *Almanach Historique, géographique, et politique du département de l'Aube et de la ville de Troyes...an IX*, (Troyes, an IX).
Bonin & Langlois give a similar figure (27,000) for the population of Troyes in 1794. Serge Bonin et Claude Langlois (dir.), *op. cit.*, p.74.

[2] *Ibid.*, p.160-161.
Lynn Avery Hunt, *Revolution and Urban Politics in Provincial France. Troyes and Reims, 1786-1790*, (Stanford, 1978), p.30.

Revolution. This factor, allied to political instability and hunger led to great unrest and violence in Troyes in the early years of the Revolution.

Lynn Hunt agrees with the contemporary authors regarding the decline of Troyes' largest industry in the years immediately preceding the French Revolution. Troyes was characteristic of medium-sized towns of the *pays d'élections*. On a municipal level, these towns were not as well provided for as large administrative and judicial capitals of the *pays d'état*, such as Toulouse. It had a subdelegate, a civil and a criminal court, a tax court, a *maîtrise des eaux et forêts* (in charge of the waterways and forests of the kings domain) and the *maréchaussée* (mounted highway police). Troyes had been an important artistic, ecclesiastical and commercial centre in the middle ages, but the importance of her fairs and church life had declined by the eighteenth century, although the cotton textile industry continued to expand.[6] In Troyes, the merchants and non-noble royal officials dominated the social and political scene. According to the census of 1774, Troyes had 135 nobles, excluding those under seven years of age, 322 ecclesiastical personnel including secular clergy, monks and nuns, while at least two-thirds of the population was employed in the manufacture of cotton.[7] Unlike Toulouse, the Catholic Church and Parlement did not dominate the town, and the local elites were more likely to come from the ranks of merchant population, rather than from crown administrators. The Church was also less influential than in Toulouse and it chose to remain neutral in 1789-1790, rather than oppose the revolutionaries.[8]

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[6] Lynn Hunt, *op. cit.*, p., 11.
[7] For the nobility and clergy, see Albert Babeau, *La Population de Troyes au Dix-huitième Siècle*, (Troyes, 1873), p.11
L. Hunt, *op. cit.*, footnote 5, p.150.

The cotton manufacturing trade was divided into several socio-professional categories in eighteenth-century Troyes. At the top of the ladder were the fifty merchants or *négociants* who invested in the importation of the raw materials. Originally, clothiers (*fabriquants*) played an important part in the production process. They bought the thread from the spinners and controlled its warping and weaving, but by the 1780s, their role had been greatly reduced. The merchant sold the raw material directly to the spinner, who sold the thread to the weavers, who in turn sold the finished cloth back to the merchants. The merchants then had the material bleached and exported it.[9] The majority of the population worked as simple weavers and spinners. The manufacture of cotton calicoes employed 12,000 workers, drapery employed 6,000 workers and the rest of those involved in cloth manufacture worked in the hosiery trade.[10] This gave Troyes its distinctive social and economic structure. At the top of the social and economic ladder were royal officials and the nobility, followed by the wealthy merchants, master artisans and shopkeepers, with the journeymen artisans and unskilled labourers at the bottom of the socio-economic ladder.[11]

Literacy levels in Troyes and the surrounding area were much higher than in the Toulouse. According to Maggioli's investigations and the further studies in Furet and Ozouf, literacy levels were significantly higher for all of the north and northeast of France than for the south and southwest.[12] These studies concentrate on departmental

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[8] *Ibid.*, p.129.
[9] *Ibid.*, p.21.
[10] *Ibid.*, footnote 9, p.151.
[11] The crisis in the textile industry meant that by October 1788, over 10,200 textile workers had been laid off in Troyes. 6,000 of the unemployed returned to their homes in the countryside, but over 4,000 remained in Troyes. This would cause further problems with the increase and scarcity of grain in the following year.
Ibid., p.40.
André Beury, *Troyes de 1789 à nos jours. I (1789-1830)*, (Troyes, 1983), p. 13.
[12] L. Maggioli, Ministère de l'Instruction Publique, *op. cit.*, p. CLXVI-CLXXIII.
François Furet & Jacques Ozouf, *op. cit.*

statistics for literacy, so it is difficult to gather an exact picture for literacy among the various social groups in the towns and cities, but a marked difference is nevertheless noticeable between Troyes and Toulouse. Between 1786 and 1790, 60% to 70% of men signed their *actes de marriage* in the department of the Aube, while 20% to 30% of women signed the *acte* for the same period. This contrasts with 10% to 20% of men, and less than 10% of women signing their *acte de marriage* in the department of the Haute-Garonne.[13] If we accept that literacy rates in the towns were higher than in the countryside and that, following on studies for Toulouse, all of the nobility and most of the middle ranks of society could sign their name, the higher proportion of literacy in Troyes must be accounted for by greater literacy among the popular classes.

Thus, Troyes was a busy industrial town relatively close to Paris, with a high rate of literacy and a high proportion of merchants, commercial workers, artisans, and journeymen. This contrasts Toulouse, far from the political and geographical centre. whose commercial society was smaller than that of Troyes, while its position as an administrative and judicial centre meant that Toulouse was endowed with many legal professionals and functionaries. Without a large manufacturing base, Toulouse was bereft of the large number of unskilled workers in Troyes. The town of Troyes enjoyed a high rate of literacy and a large commercial, artisanal and journeyman

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François Furet & Jacques Ozouf, *Lire et écrire : l'alphabétisation des Français de Calvin à Jules Ferry*, (Paris, 1977). Tome 2.
Ozouf and Furet investigated the study made by Maggioli, the link between literacy and the school, and augmented his investigations into literacy by the use of contemporary regional studies.

[13] Furet & Ozouf, *op. cit.*, p.49.
Studies subsequent to Maggioli's show that literacy levels in towns were generally higher than in the surrounding departments. Marie-Louise Netter's statistics for the *Haute-Garonne* display this phenomenon. Between 1786 and 1790, 26% of men and 10.6% of women in the department, including Toulouse, signed the marriage register. If Toulouse is not included, the literacy rate for men and women drops to 19.8% and 8.1% for the same period.
Ibid., p.322, n.20.

contingent, and these factors point towards the possibility of a relatively high proportion of divorce compared to Toulouse. This is because those most likely to divorce in Toulouse came from the artisanal or small business community and were literate. Analysis of divorce in Troyes will reveal whether this was the case.

(ii) The political landscape of revolutionary Troyes.

Troyes did not suffer the same early threats of violence from royalism or a counter-revolutionary Church as Toulouse, but it did suffer great municipal disturbance in the early years of the Revolution as members of the *Ancien Régime* municipal authority resisted demands for popular representation and poor relief. Food riots broke out on 18 July 1789 and the town council reacted to the persistent demands for arms and food by agreeing to the formation of an emergency committee to regulate the establishment of a militia and regulate the distribution of grain.[14] Troyes did not follow the example of Paris and other towns who invited the town deputies to join the committee. The town officials did not envisage the committee as part of a new development in local politicisation. Rather, it thought of the committee as a temporary mechanism designed to protect property against popular violence. Leaders of the food riots were arrested in Troyes. One man was hanged and two were sent to the galleys in perpetuity. These judgements only served to crystallise popular opinion against the town council and its committee. The workers were led by the magistrate Truelle de Chambouzon and the Chaperon brothers. Bread prices remained high throughout the summer and there was little relief for the unemployed. The town council continued its policy of repressing popular unrest and refusing demands for the formation of an

[14] The committee had twenty-five members and the occupation of twenty-three was recorded. There were three army officers, the chief police magistrate, seven town councillors, eight *baillage* magistrates and three *maréchaussée* officers.
Lynn Hunt, *op. cit.*, p.73.

elected committee. Public gatherings were prohibited by police ordinance but a secret gathering convened in a cemetery outside the town on 8 August 1789. The crowd marched to the town centre and took over a large hall in the courthouse where they demanded the reassignment of the regiment of the Royal Dragoons who had been in Troyes since 29 July 1789. Saint-Georges, the military commander agreed to this demand. The crowd them demanded lower food prices and the release of those arrested during the July riots. Saint-Georges refused, but the lieutenant of the *maréchaussée*, Cadot gave written consent for the release of the prisoners.

Further demands came for the election of a new committee to assist in the administration of the city but these were ignored until the need to organise a local militia became imperative. This came about because of the threat of popular violence in Troyes. Officers of the militia were elected on 16 August 1789 and opposition to the town council achieved a resounding victory. The officers immediately resigned and called for new, more democratic elections demanding that all heads of households be enfranchised. This was initially refused but new elections were held on 28 August 1789. Militia officers and sixty-four deputies were elected to form a General Committee that would organise the Citizen's Guard of Troyes.[15] At the suggestion of one of the militia districts, the deputies of the elected committee met with the full town council and pronounced themselves the "Provisional General Committee" The mayor and the aldermen of the town council accepted the formation of a committee composed of the sixty-four deputies of the elected committee and the twenty-three councillors of the original town council. The council was absorbed and outnumbered, and many of the councillors decided to withdraw from municipal administration.

[15] *Ibid.*, p.84-85.

The new committee was mainly formed of a coalition of merchants, professionals, artisans and shopkeepers. They had supplanted the non-noble royal officials who controlled town politics in the past. There were only three nobles and five clergymen on the committee. Truelle de Chambouzon, a magistrate was the principle leader of this new political group. He was assisted by the Chaperon brothers, one a police bailiff and the other a bailiff in the baillage court. These people mediated between the crowd and the town authorities during the months of July and August 1789. This new group achieved the election of a more democratic municipal administration; they also promised to lower food prices and guarantee peace in the town through the new militia. However, the committee never succeeded in exercising effective control over the National Guard or the crowd. This resulted in continuing civil unrest and the eventual lynching of the mayor, Claude Huez during an investigation into the supply of rotten flour to the town. Unable to control the crowd through the National Guard, the military took over this role and the baillage court suppressed the new committee on 29 September 1789.

The restoration of the old municipal order would not last as the law of 14 December 1789 provided for the establishment of new municipal councils. The elections for mayor and municipal officers took place in January 1790 and resulted in unequivocal success for the pro-revolutionary forces of the previous year's committee.[16] Eleven of the fifteen municipal officers were members of the committee and one other was a supporter of the committee's position. Thirteen of the thirty notables had been members of the same committee and only two notables held office under the *Ancien*

[16] *Ibid.*, p.117.

Régime. Fourteen notables were artisans or shopkeepers, ten were merchants or clothiers, two were clergymen, and there were two gardeners, one royal official and one bourgeois. The municipal elections of 1790 confirmed the desire of the town to follow the Revolution, electing men who had not previously held office, mainly composed of merchants, artisans and some professionals. These men would form the backbone of revolutionary administration in Troyes.

A Jacobin club was formed in Troyes in 1790 and Prignot (a municipal officer) edited a new journal, *Le Patriote Troyen*, which was established to combat the influence of the conservative *Patriote Français Cadet*.[17] The Jacobins would buttress the municipal authorities in the following years as the town remained resolutely in favour of the Revolution. Although the town followed revolutionary edicts, the Catholic Church seemed to suffer less in Troyes than in other areas. The churches were closed during the Terror and the cathedral was converted into a Temple of Reason by the *représentant-en-mission* Rousselin, but no revolutionary tribunal was established. [18] Possibly, this is because the royal officials and town councillors were perceived as the enemies of the Revolution. The Church was not as powerful as it was in Toulouse and the clergy helped their cause by accepting the Civil Constitution of the Clergy. 51% of clergy accepted the constitutional oath in June 1791, a much higher figure than Toulouse.[19]

The size, location and social composition of Troyes differed greatly from Toulouse. With its merchant classes, and urban textile workers the town contrasted with the

[17] André Beury, *op. cit.*, p.27.
Lynn Hunt, *op, cit.*, p.118.
[18] André Beury, *op. cit.*, p.46.
[19] Timothy Tackett, *op. cit.*, p.312.

administrative and ecclesiastical centre that was Toulouse. However, both municipalities shared a common political landscape. The municipal authorities of both towns remained steadfastly loyal to the central administration in Paris while attempting to avoid revolutionary extremism. The Jacobin clubs in Toulouse and Troyes dominated municipal government and facilitated the spread of republican legislation and ideals. This meant that divorce could be successfully introduced in both areas despite residual cultural and religious opposition.

(iii) Revolutionary commitment in Epinal.

Like other administrative centres without large industry, Epinal had a working population of administrators, functionaries and the legal professions, skilled artisans, traders and property-owning farmers in the middle ranks. Journeymen and unskilled labourers formed the poorer sections of the community. The population of Epinal, at 6,500, is the smallest of all the towns surveyed here, and the population remained stable throughout the period, rising to 7,500 by 1806.[20] In contrast to Toulouse in particular, and to a lesser extent, Troyes, literacy levels in Epinal were extremely high. For the department of the Vosges, literacy, judged by signature on the marriage register, reached 90 to 100% for men, and 60 to 70% for women between 1786 and 1790.[21] This level of literacy for the department suggests that literacy was even higher

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[20] The population of Epinal rose from 1,000 in 1660, to 5,000 in 1712. It only rose to 6,500 by 1789, remained at this level until 1794, then rising again by 1,000 over the following twelve years.
C. Higounet, J.-B. Marquette, P. Wolff (dir.), *Atlas Historique des Villes de France. Epinal*, (Paris, 1993).
Serge Bonin et Claude Langlois (dir.), *op. cit.*, 1995), p.74.
Bernard Lepetit, *op. cit.*, p.450-453.

[21] François Furet & Jacques Ozouf, *op. cit.*, p.49.
The department of the Vosges had one of the highest literacy rates in all of France for this period. *Ibid.*, p.26.

in the town of Epinal.[22] The population should have been aware of the divorce legislation due to their level of literacy.

The 1793 almanac for Epinal gives an insight into the municipal authorities attitude towards divorce and to the body's commitment to the revolutionary government.[23] The 1793 almanac praised the new divorce legislation and the principle of divorce.[24] The author of the work followed the liberal argument in favour of divorce to the letter, arguing that the law would facilitate happiness, *bonnes mœurs* and provide for liberty throughout revolutionary society. He emphasised the importance of liberty for all individuals and the need to end legal separations. He also insisted that divorce would provide freedom for those trapped in immoral or unhappy marriages:

> "La loi sur le divorce est la plus sage des lois, puisque, outre qu'elle maintient la liberté individuelle, elle facilite les moyens de secouer des chaînes que le vice rend insupportables; elle supprime tous les procès scandaleux qui avaient lieu autrefois pour les séparations..."[25]

This support for the principle of individual liberty as found in the divorce law and the same use of rhetoric as practiced by the early *divorçaires* and those deputies in favour of divorce legislation was not untypical of the town as its support the Revolution did not waver throughout the period under examination. Like Toulouse, it was close to foreign borders and theatres of war, and the real potential of hostile invasion served to reinforce the support of the municipal authorities for the prevailing powers in Paris during the republican period.

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[22] Literacy was normally higher in urban France than in rural areas in the eighteenth century. Furet and Ozouf dedicate a chapter to this phenomenon in their work on literacy in France. See F. Furet & J. *op. cit.*, ch.5.

[23] C. Thiebaut, *Almanach Civique du Département des Vosges pour l'année 1793*, (Epinal, 1793). *Almanach du Département des Vosges, an VII de la République*, (Epinal, an VII).

[24] "Sur le Divorce," in C. Thiebaut, *op. cit.*, p.77-80.

[25] *Ibid.*, p.77.

Revolutionary authorities received constant support from Epinal throughout the period. The municipal authorities issued declarations of loyalty to the nation and the king in 1790 and then to the new republic in 1792. A *société populaire* affiliated to the Jacobin club was formed on 3 April 1791.[26] In 1792, Epinal and the department of the Vosges showed their patriotism and their support for the Revolution by providing 14,500 men to defend France. This was proportionally more than any other department and earned the Vosges the congratulations of the Legislative Assembly.[27] In late 1794, the *société populaire* of Epinal consisted of 336 members, who represented many of the leading figures of the town. It contained many of the local administrators and representatives of the legal profession, but very few *cultivateurs* or *ouvriers,* who were more representative of the working population of the municipality.[28] Weymuller states that the population of Epinal was only concerned with two matters after 1795, economic stability and the success of the republican armies. For these reasons, as well as for its ideological commitment, the town continued to support the Revolution.[29] Indicative of this was the fact that around 200 citizens out of a population of 6,500 had purchased *biens nationaux* and wished to retain their new acquisitions. The purchasers of these properties were representative of the municipality. The majority of purchasers were *cultivateurs* and artisans. The legal professions also purchased the *biens nationaux*, along with administrators, businessmen (*commerçants, négociants, industriels*), six widows, one *rentière,* one abbot, and some canonesses who purchased properties confiscated from them.[30]

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[26] François Weymuller, *Histoire d'Epinal: des origines à nos jours*, (Le Coteau, 1985), p.184.
[27] *Ibid.*, p.184.
[28] *Ibid.*, p.189.
[29] *Ibid.*, p.189-190.
[30] In Epinal 245 hectares of land, 40 houses, one smallholding, an oil-works, five sheds or outhouses, one chapel, and four hermitages (retreat houses) were sold as *biens nationaux*. In *Ibid.*, p.191.

The attitude of the authorities in Epinal towards the Catholic Church was more lenient than in either Toulouse or Troyes. The nuns of the town were allowed to repurchase their confiscated properties, although the orders were officially expelled.[31] Adherence to the Constitutional Church was high, with 52% of clergy taking the oath by the summer of 1791 and no priests were arrested in Epinal during the Revolution.[32] Epinal shared a culture of support for the revolutionary government with the other urban centres under investigation. In contrast with Troyes, it was isolated and distant from Paris. Active *societies populaires* existed in Troyes, Toulouse and Epinal to facilitate the spread of republican *mœurs*. Therefore, the opportunity to avail of the divorce law existed in all three towns, but the rate of divorce varied. One reason for this may be the disparity in size between the municipalities. Epinal is the smallest surveyed and Dupâquier suggests that this would lead to a very low divorce rate. He ascribes an average percentage of divorce to marriage of 2% for small towns.[33] Analysis of the divorce record in Epinal will reveal the similarities or differences between Epinal, Troyes, and Toulouse. It shall also reveal whether Epinal conformed to the pattern for small towns.

2. Divorce Procedure and Practice: Troyes.

[31] François Weymuller, *op. cit.*, p.182.
[32] Timothy Tackett, *op. cit.*, p.362. The figure for the spring of 1791 is 55%.
Michel Bur (ed.), *Epinal*, (Paris; Editions Bonneton, 1991), p.97.
[33] Jacques Dupâquier, "Vers une statistique nationale des divorces sous la Première République." In *Etudes en l'honneur de François Lebrun, Populations et Cultures*, (Rennes, 1989), p.33.

Motive/Year	I	II	III	IV	V	VI	VII	VIII	IX	X	Total
Mutual consent	4	9	4	2	3	6	6	7	0	2	43
Incompatibility	2	5	12	8	13	8	14	8	14	9	93
Abandonment for over two years	0	4	4	2	3	1	1	0	0	0	15
Absence without news for over five years	4	4	13	9	2	2	0	0	1	0	35
Insanity	0	0	0	0	0	0	0	0	0	0	0
Criminal conviction	3	4	0	2	0	0	0	1	0	0	10
Dissoluteness of morals	0	0	0	3	0	0	0	0	0	0	3
Spousal violence (*sévices*)	0	0	0	0	1	2	0	0	0	0	3
Emigration	8	9	0	0	0	0	0	0	0	0	17
Conversion of a legal separation	1	0	0	1	0	0	0	0	0	0	2
Separation for over six months	0	1	2	0	0	0	0	0	0	0	3
Unspecified	0	1	0	0	0	0	0	0	0	1	2
Total	22	37	35	27	22	19	21	16	15	12	226

6.1 Divorce in Troyes.

(i) Mutual consent and incompatibility of character.

Between years I and X, forty-three divorces occurred in Troyes for the motive of mutual consent, making it the second most popular form of divorce.[34] This method of divorce was adopted quickly in Troyes and it was used consistently throughout the

[34] There were 226 divorces in Troyes up to the end of year X.

revolutionary period with the exception of year IX.[35] The first divorce by mutual consent in Troyes occurred on 28 February 1793. Edme Curtelle, a forty-two year old *marchand de bois*, and Anne Dumas had been married for twenty-one years before deciding to dissolve their union.[36] Unlike Toulouse, this method of divorce was adopted quickly in Troyes and became part of the framework of divorce in this town.

The average length of marriage before divorce by mutual consent varied from three months to thirty-five years in duration.[37] More marriages were terminated by mutual consent after less than one year than by any other form of divorce, while ten more marriages were terminated before they had lasted five years. This form of divorce was not only used by those who wished to divorce shortly after their marriage, as twenty-one divorces occurred after the couples had been married for over ten years. Jacques Aubry, a sixty-year old clothier (*fabriquant de toiles*) from Troyes, divorced Elizabeth Borgne, around fifty-eight years of age, also from Troyes after thirty-five years of marriage.[38] In the cases of divorce by mutual consent in Troyes, the wording in the divorce act was different from that of divorce acts in Toulouse and Epinal. Instead of stating that the divorce was provoked mutually (*par consentement mutual*), as in the example given by the National Convention, the more confusing wording, *de consentement mutual, pour cause d'incompatibilité d'humeur et de caractère*.[39] The wording indicates that the authorities in Troyes conflated divorce by mutual consent

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[35] The rhythm of divorce for mutual consent began at four divorces in year I, rising to nine in year II, four divorces in year III, and two, three, six, six, seven, none, and finally two divorces for the years IV to X.

[36] "Divorce entre Edme Curtelle et Anne Dumas, 28 février 1793." *Mariages, Troyes, Archives Départementales de l'Aube (ADA)*, 5 Mi 516.

[37] Jean Vivien, aged fifty-one years, and Nicole Charlot, aged fifty-five, divorced by mutual consent on 23 *frimaire* year VI, after marrying the previous *fructidor*. "Divorce entre Jean Vivien et Nicole Charlot, vingt-troisième de *fructidor*, l'an six de la république française, une et indivisible." *Mariages, Troyes, an VI, ADA*, 5 Mi 517.

[38] "Divorce entre Aubry et Borgne, 3 *messidor* an II." *Mariages, Troyes, ADA*, 5 Mi 517.

[39] See appendix IV (recommended wording for *actes de divorces* and examples from the three towns).

and by incompatibility of character, both no fault forms of divorce. Divorce by mutual consent spanned all age groups in Troyes and was not confined to those who wished to divorce immediately subsequent to an unsuccessful marriage.

Divorce by incompatibility of character was the most popular form of dissolution in Troyes with a total of ninety-three divorces. Like the mutual consent provision, this form of divorce was rapidly integrated into the divorcing pattern of Troyes. No proof was necessary for either method but they differed in that divorce by mutual consent was a relatively quick and simple process that required the support of both parties, whereas divorce for incompatibility, although more complicated and time-consuming, only required the determination of one party to complete this divorce process. No burden of proof was required, other than the desire to terminate the union. Apologists for divorce by incompatibility of character argued that various domestic disputes such as adultery or violence could be hidden from public view while still allowing the legal dissolution of marriage by one spouse.[40]

[40] This was the justification for divorce by incompatibility put forward by Félix Faulcon. It is impossible to discover whether this was exactly the case, but judging by the very low number of divorce on grounds of domestic violence against one spouse by the other (three divorces), one may forward the hypothesis that divorce by incompatibility was used as a mask to disguise divorces where the real cause was domestic violence or adultery. In contrast, there were many more divorces for *sévices* in Toulouse, and fewer divorces for incompatibility.

Year	I	II	III	IV	V	VI	VII	VIII	IX	X
Divorce by incompatibility of character	2	5	12	8	13	8	14	8	14	9
Divorce by incompatibility of character as a % of all divorces	9.1	13.5	34.3	29.6	59.1	42.2	66.7	50	93.3	75

6.2 Divorce by incompatibility of character as a % of all divorce: Troyes.

Unlike in Toulouse the rhythm of divorce for incompatibility of character was constant in Troyes.[41] It increased from two and five divorces in years I and II, and to twelve divorces in year III. The number of divorces for incompatibility never dropped below eight per year and rose to fourteen in the years VII and IX. The length of marriage before divorce for this reason varied from ten months to thirty-six years. The two couples who divorced ten months after marriage must have become disillusioned with their union very soon after they wed, as this form of divorce took at least six months to complete. Marie-Thérèse Michelin, thirty-eight years old, had been widowed before she married Jean-Antoine Barbier, a hosier, in August 1792. The public official in charge of registering births, deaths, marriages, and divorces dissolved their union on 20 June 1793.[42] Nicolas Jacquolliot, a fifty-nine year old

[41] The number of divorces for incompatibility in Toulouse was consistently lower than in Troyes even though it also increased as a proportion of all divorces in the southern city.
[42] "Divorce entre Michelin et Barbier, 20 juin 1793." *Mariages, Troyes, ADA*, 5 Mi 516.

manœuvrier, also in his second marriage, divorced Marie Mechin on 7 germinal year III.[43] Divorces for incompatibility of character were not restricted to marriages of a short duration as seventy-year old Françoise Petit divorced François Degoisse, a hat cleaner (*dégraisseur de chapeaux*), after thirty-six years of marriage.[44] In total, fifty-two of the divorces for this reason issued from marriages that lasted less than ten years, while the rest resulted from marriages that lasted for more than ten years. The average length of marriage (terminated by divorce by incompatibility), at 9.8 years was two years less than the overall average length of marriages ended by divorce in Troyes, but it is still difficult to believe the anti-incompatibility argument that these divorces were as a result of caprice. The procedure was lengthy, and the average duration of marriage only slightly less than the average for all divorces in Troyes.

Length of marriage in years	Less than 1	1 to 5	5 to 10	10 to 15	15 or more	Unknown
Number of divorces by incompatibility	2	29	21	14	24	3

6.3 Length of marriage of those who divorced on the grounds of incompatibility of character: Troyes.

[43] "Divorce entre Jacquolliot et Mechin, 7 *germinal* l'an III de la république française." *Mariages, Troyes, ADA*, 5 Mi 517.
[44] "Divorce entre Petit et Degoisse, 27 *pluviôse*, l'an second de la république française." *Mariages, Troyes, ADA*, 5 Mi 517.

The methods of divorce by mutual consent and incompatibility of character were quickly adopted by the divorcing population of Troyes. Together these forms of divorce were the most popular in Troyes, representing 60.2% of all divorces in Troyes. This indicates that the population of the town quickly grasped the utility of the divorce law for terminating unions with the minimum of publicity. Furthermore, these methods of divorce gradually became more significant as a proportion of all divorces as the years went by. In year I mutual consent and incompatibility of character accounted for 27.3% of all divorces, while this increased to 72.7% in year V. From year VI to X, mutual consent and incompatibility were almost the only method by which the citizens of Troyes divorced. In each of these years, there was only one other divorce for a different reason. The people of Troyes quickly accepted these methods of divorce, but they only became the preferred means of marital dissolution from year V. This was the same year that legislators became increasingly worried about the effects of divorce in general, and divorce by incompatibility in particular. However, those who wished to divorce continued to use the means most suited to their needs and wishes despite the concerns of writers, petitioners to the Council of Five Hundred and legislators.

Year	I	II	III	IV	V	VI	VII	VIII	IX	X
Divorce by mutual consent	4	9	4	2	3	6	6	7	0	2
Divorce by incompatibility	2	5	12	8	13	8	14	8	14	9
Mutual consent & incompatibility	6	14	16	10	16	14	20	15	14	11
Both as % of total number of divorces	27.3	37.8	45.7	37	72.7	73.7	95.2	93.6	93.3	91.7

6.4 Divorce by mutual consent and incompatibility as a % of divorce: Troyes.

(ii) Divorce by abandonment, absence and separation: Troyes.

Taken together, these forms of divorce were the second most common means of marriage termination after mutual consent and incompatibility combined. There were fifty-three divorces for these reasons between years I and X. In contrast to the no-fault divorces, these dissolutions were more widely availed of in the early years of the divorce legislation. As in Toulouse, it seems they were used in order to terminate marriages that had been over for some time. There were thirty-five divorces for absence without news for over five years, and the average length of marriage before divorce was 18.1 years. Twenty-three of these couples had been married for over

fifteen years while, in direct contravention to the law, one couple actually divorced for this reason less than five years after marriage. Nicolas Arnoult, a thirty-three year old gardener successfully divorced his wife, Anne Guerin, on the grounds of absence and abandonment for more than ten years. However, the divorce was pronounced on 6 June 1795, while the couple only contracted marriage on 25 October 1790.[45] This indicates that, while divorce usually followed the legal guidelines there were some exceptions to such obedience. Another explanation is suggested by the fact that the document used the wording for divorce by absence without news, while the intention was to divorce for abandonment of two years or more. It is unusual, however, that Arnoult did not apply for divorce on grounds of separation of over six months, which followed the same procedure as divorce by absence without news. This example is exceptional and the case of Vincent Adeline, a sixty-year old hosier, and Cathérine Gérard is more typical. Theirs was the first divorce in Troyes and the couple had been married for thirty-six years. Adeline successfully applied for divorce, as his wife had been absent for over thirty-three years, thus regulating a situation where the marriage had long been terminated. The following table illustrates the length of marriage in the cases of divorce on grounds of absence without news:

[45] "Divorce entre Arnoult et Guerin, dix-septième de *prairial*, l'an trois de la république française une et indivisible." *Mariages, Troyes, ADA*, 5 Mi 517.

Length of marriage in years	1 to 5	5 to 10	10 to 15	15 or more
Divorces (absence without news)	1	6	5	23

6.5 Length of marriage of those who divorced due to absence without news of one spouse: Troyes.

There were fifteen divorces on the grounds of abandonment for over two years and only three divorces for separation of more than six months in Troyes. Divorce by abandonment for more than two years was not as common as divorce provoked by absence without news. This may be because it was easier to attain a divorce for absence or separation of six months. These methods of divorce only required an *acte de notoriété* as proof, while the complainant was obliged to gather a *tribunal de famille* to proceed with a divorce for abandonment. Divorce for separation of six months or more was also rare in Troyes. This measure was very common in Toulouse, but there were only three divorces for this reason in the Champagne town. Those who wished to divorce in Troyes either used the more popular means of divorce by mutual consent or incompatibility, despite the fact that the separation method was very easy to pursue. Another explanation is that those who were separated chose to avail of the older absence and abandonment forms of divorce rather than use this novel and short-

lived device. In Troyes, the three forms of separation were sometimes treated as the same method of divorce. Marie Laurence Neuvieu divorced Edme de Bresse due to his;

> "...absence, abandon et séparation de fait...depuis environ deux ans, et notamment depuis six mois sans nouvelles..."[46]

Another reason for the lower figures for these forms of divorce in Troyes is that, having accepted the no-fault method of divorce, the people of Troyes preferred this method for its simplicity and lack of publicity. The pattern of divorce for the various forms of divorce points to this conclusion. The rate of no-fault divorces (incompatibility and mutual consent) increased throughout the revolutionary period, whereas divorces for absence and abandonment gradually decreased throughout the period. One reason for this is that couples who had been separated for some time before the introduction of the divorce law divorced in the early years of the legislation, creating a peak in years I to III. A second reason is that the population of Troyes developed a more sophisticated pattern of divorce, choosing to use the new forms of marital dissolution - incompatibility and mutual consent. The following chart shows the comparison between the two forms of divorce. Divorce by absence, abandonment and separation was common in years I to IV, as was no-fault divorce. However, there was a dramatic drop in the demand for divorce by absence and abandonment from year V, whereas no-fault divorce continued to be popular throughout the period, peaking in year VII.

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[46] "Divorce entre Neuvieu et de Bresse." *Mariages, Troyes, ADA*, 5 Mi 517. Michelin and Autiquet also showed some confusion over their preferred method of divorce. Although they had a *séparation de biens* since 20 March 1787, Autiquet divorced her husband for *son abandon de fait de la part de son dit époux d'environ six ans...*
"Divorce entre Autiquet et Michelin, 7 *frimaire* an III." *Mariages, Troyes, ADA*, 5 Mi 517.

Year	I	II	III	IV	V	VI	VII	VIII	IX	X
Absence, abandonment, separation	4	9	19	11	5	3	1	0	1	0
Mutual consent, incompatibility	6	14	16	10	16	14	20	15	14	11

6.6 Divorce caused by absence, abandonment, and separation compared to divorce provoked by mutual consent and incompatibility of character: Troyes.

Women normally availed of divorce by abandonment, absence, and separation. This was true for most of the divorce methods in Troyes, as women instigated 62% of all divorces. 19% of divorces in Troyes were on the grounds of mutual consent and men instigated 18.6% of all divorce cases.[47] The proportion of women taking divorce cases on the grounds of separation, absence, and abandonment in Troyes is slightly above the national average. Out of fifty-three divorces for these reasons, women provoked thirty-seven divorces or 69.8%. As in Toulouse, this predominance of women divorcing spouses who have abandoned them reflects an older pattern of male

[47] 62% of women initiated divorce proceedings, 18.6% of divorces were instigated by men, 19% of the divorces were carried by mutual consent, and in one instance (0.4%), both parties jointly pursued divorce by converting their *separation de corps et de biens*.
"Divorce entre Collot et Perthissot, 14 mars 1793." *Mariages, Troyes, 1793. ADA*, 5 Mi 516.
When divorce by mutual consent is excluded, 76.5% of women divorced their spouses, while 23% of men divorced their wives.

(adultery) and three divorces were granted for the motive of *sévices* (cruel treatment of one spouse by the other). Women instigated all divorces for adultery and ill treatment and there is evidence that their marital circumstances were, from the point of the complainant, unacceptable. This can be deduced by examining the respective length of marriage before divorce for these reasons and comparing this with the average length of marriage before divorce in Troyes. The average length of marriage before divorce for dissolution of morals was nine months. This compares with an overall average marriage length before divorce of 11.9 years. Of the three divorces for this reason, one divorce ended after seven months, another was terminated after eight months, and the other marriage lasted for one year before the couple divorced.[51] The average length of marriage before divorce on grounds of ill treatment was 5.3 years although this figure is distorted by the fact that one marriage lasted thirteen years.[52] The other two marriages lasted two years, and eleven months respectively. The comparative brevity of these marriages indicated the determination of the wives to end the unions that they had only recently contracted. Whereas individuals were obliged to wait a certain length of time before divorcing for desertion (five years, two years, or six months), these women used the law to end marriages that had not functioned from the outset, indicating their desire to use the divorce legislation for the practical considerations of self-protection and punishment for unacceptable marital behaviour.

"Divorce entre Jacob dit Carol et Salsevi, 18 *ventôse* an II." *Mariages, Troyes, an II. ADA*, 5 Mi 516; and "Divorce entre Dabiet et Ruelle, 25 *germinal* an X." *Mariages, Troyes, an X. ADA*, 5 Mi 518

[51] "Divorce entre Miley et Georges, 25 *vendémiaire* an IV." *Mariages, Troyes, an IV. ADA*, 5 Mi 517.
"Divorce entre Lasne et Miley, 29 *nivôse* an IV." In *Ibid.*
"Divorce entre Frottin et Pillard, 13 *pluviôse* an IV." In *Ibid.*
The divorces between the latter two couples were, according to the *actes de divorces*, caused by dissolution of morals *and* ill treatment.

[52] "Divorce entre Dautelle et Machon, 24 *fructidor* an V." *Mariages, Troyes, an V. ADA* 5 Mi 517.
"Divorce entre De la Croix et Goult, 21 *frimaire* an VI." *Mariages, Troyes, an VI. ADA* 5 Mi 517.

This behaviour reinforces the trend in Toulouse where women, despite the traditional attachment to Catholicism, and by extension, acceptance of the indissolubility of marriage, would use the secular divorce legislation to free themselves from unacceptable unions. It will also been seen that those who divorced came from the sectors of society associated with Jacobin and republican advocates of the revolution. This did not mean that women or men divorced because they were republicans, but the figures indicate that those who divorced came from the sectors of society most favourable to the revolutionary project. Through this measure, women in particular learned a form of participation in revolutionary culture through the mechanism of a secular law conceived to guarantee equality and liberty in society. Those women with a strong attachment to the Catholic Church would have to accept this secular law if they wished to legally separate from their spouses, as no other mechanism existed.

Divorces resulting from the criminal conviction of one spouse (*condamnation à des peines afflictives ou infamantes*) or for political emigration were more common than divorces on the grounds of the other determined motives, and the procedure for these divorces was relatively straightforward. In the case of criminal conviction, the divorcing spouse had to produce a copy of the judgement and the public official in charge of registering births, deaths, and marriages was then obliged to pronounce divorce. Any dispute over the validity of the divorce would be referred to the district court.[53] Those who divorced for the reason of emigration had to assemble a family tribunal to verify the facts of the case.[54] Emigration was different from the other motives for divorce as it was a political crime. Traer argued that this motive was both

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"Divorce entre Feuillerat et Velut, 3 *pluviôse* an VI." In *Ibid.*

[53] *Loi qui détermine les causes, le mode, et les effets du Divorce, du 20 septembre 1792. l'an 4 de la liberté*, article XVI, paragraphe II. See appendix II.

[54] *Ibid.*, articles XVIII, XVIV, paragraphe II.

used and abused by the wives of *émigrés* (in Troyes all those who pursued divorce for this reason were women) in order to protect family property from confiscation by the state.[55] However, as Phillips points out, this form of divorce was not absolutely necessary to protect property because the divorced wife was not only entitled to the return of her contribution to the marriage, she was also entitled to a lifetime pension drawn from the property of the husband for any of the fixed causes for divorce unless she remarried.[56] Both Phillips and Traer conclude that the act of divorcing from an *émigré* husband showed disapproval of his crime and illustrated a certain level of *civisme,* which could protect the *émigré*'s wife from suspicion of counter-revolutionary sympathies.[57]

Of the seventeen divorces for emigration, the occupation of the husband is known in sixteen cases. Six of the husbands were described as *ci-devant* military officers, ranging from two *généraux des émigrés* (Jalabert and Morel dit de Villiers), to one *ci-devant lieutenant*. Nine were described as soldiers or officers and there was one *notaire* (Guyot). Couples divorcing for this reason had been married for longer than the average in Troyes, as twelve couples were married for over ten years. It is clear that this political measure provoked politically motivated divorces, although one cannot definitively state whether these divorces were undertaken for reasons of patriotism, preservation of person and property, or marital unhappiness. However, it is reasonable to assume that, given the lengthy period of marriage before divorce and the military occupations of most of the divorced husbands, that at least some of these

[55] James F. Traer, *op. cit.*, p.132.
Jacques Godechot, *Les Institutions de la France sous la Révolution et l'Empire*, (Paris, 1968), p.247.
[56] Roderick Phillips, *Family Breakdown in Late Eighteenth Century France*, (Oxford, 1980), p.148.
[57] *Ibid.*, p.148. Traer, *op. cit.*, p.133.

divorces were provoked in order to protect the family property and to avoid accusations of counter-revolutionary sympathies.

Length of marriage in years	1 to 5	5 to 10	10 to 15	15 or more	Not available
Divorces (emigration)	1	2	6	6	2

6.7 Length of marriage of those who divorced on grounds of political emigration: Troyes.

Women provoked all ten divorces taken on grounds of criminal conviction of a spouse. The length of marriage varied from eleven months to twenty-eight years. The first divorce for this reason, between the fifty-three year old Marie-Claude Thomas and Pierre Cossard, a bailiff, occurred on 6 March 1793. Thomas had already separated from her husband, but then decided to avail of the 1792 divorce law. Instead of converting her legal separation to a divorce, she decided to use her husband's criminal conviction as the justification for divorce.[58] Both Pierre Lemuet, a *négociant*, and Pierre La Huproye, a former secretary, were deported to French Guyana and their goods were confiscated by the state.[59] No more information is available about their crimes, as the divorce hearing was not permitted to ask such questions, only to

[58] "Divorce entre Thomas et Cossard, 6 mars 1793." *Mariages, Troyes, ADA* 5 Mi 516.
The judgement of February 9, 1790 condemned Cossard *"à des peines infamantes."* No other details were provided.

demand proof of criminal conviction. One might ask why the petitioners for this form of divorce did not use the incompatibility clause to end their union. Divorce for criminal condemnation allowed the wife to draw an income from the property of the husband, even if the state wished to appropriate his goods (as they did in the case of Lemuet and Le Huproye). This method of divorce was also quicker and more straightforward than the more cumbersome incompatibility method. In Troyes, the facility of incompatibility was used to dissolve marriages that could have been ended by other causes (ill treatment, dissolution of morals, or insanity), or order to protect the privacy of the complainant. Divorce for criminal conviction was invoked because it was easier to prove than many of the other determined motives, as the conviction would be a matter of public record.

(iv) Profession of the divorced.

The occupation of the divorced in Troyes is known for 206 of the 226 divorced couples. Occupational groups have been divided as for Toulouse: professional or administrative occupations, commercial employment, property-owners, soldiers, agricultural occupations, artisans and small businessmen, unskilled labour, domestic servants, unspecified, and other occupations. Soldiers accounted for 10.6% of all divorcing occupations. Twelve men in professional and administrative employment divorced (5.3%), twenty-two business people divorced (9.7%) and three property-owners (1.3%) divorced. One farmer divorced (0.4%), fourteen unskilled workers divorced (6.2% of all divorces), and 128 artisans and small shopkeepers and businessmen divorced (56.4%). The occupation is unknown in twenty cases (8.9%)

[59] "Divorce entre Mauroy et Lemuet, 23 août 1793." "Divorce entre Noël et La Huproye." *Mariages, Troyes, ADA*, 5 Mi 516.

and three people (1.3%) of other occupations divorced.[60] As in Toulouse, the largest social group to divorce in Troyes was that of artisans and small businessmen, followed by soldiers, and other businessmen.

Occupation	Number of divorces	% of total	Adjusted % of total (not including unspecified occupations)
Professional/Admin.	12	5.3	5.8
Commercial	22	9.7	10.7
Property-owners	3	1.3	1.5
Soldiers	24	10.6	11.7
Farmers	1	0.4	0.5
Artisans	128	56.4	62.1
Unskilled	14	6.2	6.8
Other	3	1.3	1.5
Unspecified	20	8.9	—

6.8 Divorce per occupational group: Troyes.[61]

[60] The "other" occupations included a *joueur de violon, un prisonnier de guerre,* and *un cuttisatant.*
[61] Percentage figures have been rounded to one decimal place.

The pattern for Troyes reflects that of Toulouse, but also reflects the social composition of the town. More than half of the divorces involved artisans or small businessmen. If we include other businessmen, these groups account for 150 of the 226 divorces in Troyes, or 66.4% of all divorces between years I and X.[62] The most common trade for the divorced was that of weaver, representing twenty-eight divorces, followed by eighteen *marchands*, eleven *fabriquants de toile*, nine *bonnetiers*, and six wig-makers. It is not surprising that the majority of those who divorced were from the cloth trade, the major industry of Troyes. Nor is the spread of employment among those who divorced unusual. Weavers and hosiers were among the most numerous employments in the clothing trade.[63] What is striking is that Troyes, a town of 30,000 people, dependent on the cotton trade, in the north of France, should share a similar trait with Toulouse. The towns were of different size and social composition and reasons for divorcing the towns were different. Nevertheless, the main group who availed of divorce was the same in both municipalities. This group, more so than the wealthier classes of the rich and nobility and even more than unskilled workers (ten *manœuvriers* divorced) chose to avail of the divorce law. This was also the group most likely to attend or be memebrs of the *sociétiés populaires* in Troyes and Toulouse. They adapted the law to their own personal circumstances while still, at least superficially accepting the utopian rhetoric of the early divorce writers and legislators. The divorcing population of Troyes quickly adapted to the new law and in contrast to Toulouse, they quickly availed of the no-fault modes of divorce rather than use the determined motives that were reminiscent of the earlier legal separations.

[62] The other businessmen include eighteen *marchands* of no specific trade, two *négociants*, one *fabriquant* (clothier), and one *homme d'affaires*.

3. Divorce in Epinal and comparisons.

(i) *The practice of divorce in Epinal.*

Motive/Year	I	II	III	IV	V	VI	VII	VIII	IX	X	Total
Mutual consent	0	0	0	1	0	1	0	0	0	0	2
Incompatibility	0	1	1	0	0	0	0	0	1	0	3
Abandonment for over two years	0	0	0	0	0	0	0	0	0	0	0
Absence without news for over five years	0	0	0	0	0	0	0	0	0	2	2
Insanity	0	0	0	0	0	0	0	0	0	0	0
Criminal conviction	2	0	1	0	0	0	0	0	0	0	3
Dissoluteness of morals	0	0	0	0	0	0	0	1	0	0	1
Spousal violence (*sévices*)	0	0	0	0	0	0	0	0	0	0	0
Emigration	1	1	0	0	0	0	0	0	0	0	2
Conversion of a legal separation	0	0	1	0	0	0	0	0	0	0	1
Separation for over six months	0	1	0	0	0	0	0	0	0	0	1
Unspecified	0	0	0	0	0	0	0	0	0	0	0
Total	3	3	3	1	0	1	0	1	1	2	15

6.9 Divorce in Epinal.

[63] See Lynn Hunt, *op. cit.*, p.11 & footnotes 9,10, p.151.

The practice of divorce in Epinal differed enormously from that of Troyes and Toulouse, as there were very few divorces in Epinal during the revolutionary period. Between years I and X, there were fifteen divorces in the municipality of Epinal. For the same period, 624 marriages took place, giving Epinal a divorce rate of 2.4 divorces per hundred marriages.[64] Analysis of divorce patterns and comparisons with the other urban centres is therefore more difficult due to the low divorce rate. Before identifying the reasons for the low divorce rate in Epinal, therewill be an attempted examination of the conditions and practice of divorce in Epinal.

Apart from the small number of divorces, the pattern of divorce in Epinal resembled that of the larger towns. The rhythm of divorce illustrates this point. As in Toulouse, there were more divorces during the three years subsequent to the introduction of the divorce law on 20 September 1792 (see table 6.9). In the years I to III, Epinal witnessed nine divorces. In the following seven years, six married couples divorced. There were three divorces for each of the years I, II, and III. In years IV, VI, VIII, and IX, there was one divorce and two divorces took place in year X. In the first three years most divorces were for specific reasons: three divorces were taken as a consequence of the criminal conviction of the husband, there were two divorces as a result of political emigration by the husband and two couples divorced for incompatibility of character. The two remaining divorces occurred as a result of a converted legal separation and separation of more than six months. As the citizens of Epinal familiarised themselves with the divorces legislation, their method of divorce varied. Three out of the six divorces for the latter period were as a result of no-fault

[64] For the entire period of the 1792 divorce law, there were seventeen divorces in the municipality of Epinal.

dissolutions.[65] The other divorces were caused by the absence of one spouse for over five years (two divorces) and dissolution of morals.

In the latter period, as in Toulouse, no-fault divorce became the preferred option, while in years I to III the dissatisfied couples of Epinal chose to divorce for specific reasons. Two reasons may be advanced for this evolution in behaviour. The first lies in the nature of the causes for divorce in the early years of the Revolution. Seven of the nine divorces took place for reasons that were evident and also easy to prove.[66] The conversion of a legal separation required only the proof of marriage and separation, no family tribunal was necessary and the couple, in the eyes of the law, were only changing the nature of their separation, allowing for the possibility of another marriage.[67] In the case of criminal conviction of one's spouse, the divorce procedure was equally straightforward as one could obtain a divorce on production of proof of conviction of the spouse. Marie Ursule Termonia divorced Bernard Krominar, a *ci-devant* dragoon, due to his criminal activity. Her husband had recently finished a term in prison for disorderly conduct and the theft of furniture from the inhabitants of a nearby town. Termonia produced evidence of his conviction and secured her divorce.[68] The two cases of divorce for political emigration were also

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[65] Two divorces were provoked on the grounds of mutual consent, the other was caused by incompatibility of character:
"Divorce entre Marguérite et Mathieu, 19 *germinal* an IV." *Epinal, Divorces, an IV. Archives Départementales des Vosges (ADV)*, 5 Mi 162 R 12.
"Divorce entre Grandmontagne et Polon, 3 *vendémiaire*, an VI." *Epinal, Divorces, an VI. ADV*, 5 Mi 162 R 13.
"Divorce entre Maré et Honor, 3 *fructidor* an IX." *Epinal, Divorces, an IX. ADV*, 5 Mi 162 R 14.

[66] The two remaining divorces were due to incompatibility of character. See table 6.9
"Divorce entre Drouet et Martflose, 12 *fructidor*, an II." *Epinal, Divorces, an II. ADV*, 5 Mi 162 R12.
"Divorce entre Thouard et Boulanger, 15 *prairial* an III." *Epinal, Divorces, an III. ADV*, 5 Mi R 12.

[67] "Divorce entre Plerserot et Poignou, 15 *brumaire* and III." *Epinal. Divorces, an III. ADV*, 5 Mi 162 R 12.

[68] "Divorce entre Termonia et Krominar, 11 juillet 1793." *Epinal, Divorces, 1793. ADV*, 5 Mi 162 R 12. This divorce act is unique among those examined as it provides evidence of the crime of the husband. In all other cases, only the fact of criminal conviction and sometimes the sentence, was given.

straightforward, although the convening of a family tribunal was necessary to establish proof of emigration.[69] The divorce between Cathérine Pichard and Nicolas Desmimieux on grounds of Desmimieux's abandonment and separation from his wife for more than six months was an example of the easiest of all methods of divorce. Pichard showed the local public official the *acte de notoriété* attesting to her husband's absence and the divorce was then declared.[70]

The second reason for the evolution in divorce may be ascribed to increased knowledge of, and familiarity with, the divorce law. Although there were fewer divorces in absolute and proportionate terms in years IV to X than in years I to III, people understood how to use the divorce law to their advantage and stopped treating it as a modified form of legal separation.[71] Two of the divorces during this period were taken for the reason of mutual consent; one divorce was grounded on incompatibility of character. The only divorce in year VIII was grounded in the dissolution of morals of Julie Lefèbvre and there were two divorces in year X based on the absence without news of one spouse for more than five years. Due to the small number of divorces in Epinal, it is difficult to draw many broad conclusions, but it is evident that the general pattern of divorce in Epinal was similar to that of Toulouse; a brief (three year) period of comparatively high divorce rates, followed by

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The divorce law explicitly stated that the public official in charge of divorce could not ask what crime was committed. He only had the right to demand proof of conviction.

[69] "Divorce entre Roussel et Fabral, 26 décembre 1793." *Epinal, Divorces, 1793. ADV*, 5 Mi 162 R 12. "Divorce entre Lefebvre et Bollevin, 18 *germinal* an II." *Epinal, Divorces, an II. ADV*, 5 Mi 162 R 12.

[70] "Divorce entre Pichard et Desmimieux, 5 *fructidor* an II." *Epinal, Divorces, an II. ADV*, 5 Mi 162 R 12.

[71] During years I to III, there were nine divorces to 163 marriages, or the rate of divorce ran at 5.5% of all marriages for this period. Between year IV and X, Epinal experienced six divorces and 461 marriages. For this period, the divorce rate was 1.3% of marriages for the period. Under the *Ancien Régime*, only women attained legal separations. This measure did not permit remarriage but did allow the couple to live separately and exercise control over their own property and incomes. The specific marital offences that would justify the granting of a *séparation de biens* were: severe ill treatment, aggravated adultery, the conviction of the husband for attempted murder of his wife, and the conceiving of a deadly hatred of the wife by the husband. *1792-180*

normalisation, resulting in a steady divorce pattern that was not unduly affected by political factors.[72] Instead, the rhythm of divorce was contingent on the existence of marital breakdown and the desire of individuals to formalise this breakdown through the available divorce legislation. In this respect, the regularisation of marital breakdown through divorce was not a political act, but the willingness to avail of this law displays a certain acceptance of the secular and egalitarian nature of the law. The occupation of those who divorced in Epinal is indicative of this.

Occupation	Number of divorces	% of total	Adjusted % of total (not including unspecified occupations)
Professional/Admin.	2	13.3	18.2
Commercial	1	6.7	9.1
Property-owners	0	0	0
Soldiers	7	46.7	63.6
Farmers	0	0	0
Artisans	1	6.7	9.1
Unskilled	0	0	0
Other	0	0	0
Unspecified	4	26.6	—

See Roderick Phillips, *op. cit.*, p.4-5.

[72] In Epinal, a steady divorce rate meant one divorce per year, with the exceptions of years V, VII (no divorces), and X (two divorces).

6.10 Divorce per occupational group: Epinal.[73]

Due to the smaller population of Epinal and the limited number of divorces in Epinal, the occupational spread of the divorced is more limited than previously witnessed in Troyes or Toulouse. The largest occupational group was that of soldiers. Seven men involved in military activity divorced, or were divorced, in Epinal. Two were divorced by their wives for political emigration (one *gendarme* and one *ci-devant major*), two divorced for absence without news (one soldier, and one *major des dragons*), and two were divorced as a result of their criminal conviction (one *ci devant dragon* and one *fusilier au deuxième bataillon des Vosges*). One *général de brigade* divorced his wife on the grounds of incompatibility of character. The large proportion of divorcing soldiers in Epinal can be explained by the proximity of the border and the large number of volunteers mustered in Epinal.[74] Unusually only one artisan, a *forgeron*, divorced in Epinal, while one *greffier* and one municipal employee divorced. The business community was represented by the divorce of a *négociant*, while the occupation is unknown in four divorce cases. Neither property-owners, farmers, nor the unskilled were among the ranks that divorced in Epinal. This occupational pattern of divorce reflects that of Troyes and Toulouse with one exception - the under-representation of artisans and small businessmen among the divorced. This may be explained by the composition of the town. Epinal was a small town and an administrative centre with a large military contingent. It had no large industry, and unlike Toulouse, did not have the ecclesiastical or parliamentary wealth

[73] Percentage figures have been rounded to one decimal place.
[74] The town had no difficulty in raising the 120 men required of it to help raise the thirteen battalions of the Vosges in July 1792. Proportionally the department of the Vosges raised more volunteers than any other department.

to support a thriving artisanal community. Apart from the small number of artisans, the occupational groups who divorced in Epinal support the argument that those most affected by the divorce law came from the ranks of the population that were most encouraged by the reforms and rhetoric of the Revolution. Those groups who divorced were mainly those who supported the Revolution and had something to gain by it. There were exceptions, as the example of the two *ci devant* officers who divorced shows. However, those divorces resulted from the requests of their wives for divorce based on criminal conviction and political emigration, and thus the *ci devants* were not the instigators of divorce.

Although figures for literacy in Epinal are not available, the department of the Vosges recorded the highest level of literacy of all the areas under examination. If we accept that the level of literacy in Epinal was higher than in the surrounding countryside then it has the greatest literacy of the three towns. According to Maggioli's study, 90-100% of men could sign the marriage register in the department of the Vosges between 1786 and 1790, while 60-70% of women could sign during the same period.[75] This level of literacy is reflected in the literacy of those who divorced. On only two occasions was the person requesting divorce unable to sign the divorce register. On both of these occasions, the person unable to sign was a woman. Barbe Elizabeth Villame divorced her husband (occupation unknown) of eleven years as he had been sentenced to the galleys for life and Jeanne Elizabeth Fleurant divorced her husband of five years, a soldier, on the grounds of absence without news for five years or more.[76] On eleven other occasions, the person appearing to hear the divorce

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See F. Weymuller, *op. cit.*, p.183-184.

[75] François Furet and Jacques Ozouf, *op. cit.*, p.49.

[76] "Divorce entre Barbe Elizabeth Villame et Claude Nicolas Grange, 17 février 1793." *Epinal, Divorces. 1793. ADV*, 5 Mi 162 R 12.

could sign the register. In the two cases of divorce by mutual consent, both parties signed the divorce register. As in Troyes and Toulouse, those involved in divorce required a minimum of literacy in order to engage in the legal process. Due to the high literacy levels in Epinal this left the avenue to divorce open to almost all of the population, but the divorced remained in the ranks of the soldiers, administrative occupations, and the commercial classes.

(ii) General conclusions: Troyes, Toulouse and Epinal.

From the previous two chapters we can come to three main conclusions regarding the pattern of divorce in Toulouse, Troyes, and Epinal. Divorce was mainly an urban phenomenon; most of those who divorced formed part of the artisanal and small business classes (or *sans-culottes*); finally, women usually initiated divorce. Despite the many differences between the three towns, these facts remain constant. The small number of divorces in Epinal reflects the general pattern for France as described by the secondary material, while the higher than average percentage of divorces in Troyes (for a town of its size) can be ascribed to large population of artisans and apprentices employed in the cloth trade. The population of Troyes was quick to use the no fault methods of divorce, while in Toulouse and Epinal, it took some years before these forms of divorce became more popular. The high number of divorces for reasons of absence and abandonment for the early years of the divorce legislation attest to an attempt by many of these couples to regularise a situation of *de facto* separation that had existed before the introduction of the divorce law. This suggests a

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"Divorce entre Jeanne Elizabeth Fleurant et Jacques François Blaize, 21 *messidor* an X." *Epinal, Divorces. An X. ADV*, 5 Mi 162 R 14.

continuation of the traditional practice of male desertion as women availed of most divorces for abandonment and absence.

The study shows that revolutionary divorce was predominantly an urban matter. This finding supports the arguments of Jacques Dupâquier and Roderick Phillips.[77] Although couples in small towns such as Epinal (and in the countryside) might have wished to divorce, their social and economic situation made it almost impossible, particularly for the wife. In order to divorce, both parties needed to survive independently and for this the availability of waged labour and affordable accommodation were essential prerequisites. These were usually only available in large towns, so the divorced woman had to either travel to a town in search of accommodation or employment, or had to already reside in one.Thus, in Epinal, despite its similarities with Toulouse and Troyes, the divorce rate remained remarkably low. It was similar to Toulouse as both were administrative towns, distant from Paris, close to national borders and theatres of war. The *sociétiés populaires* were active and close to the municipal administration in the three municipalities and they all maintained loyalty to Paris through out the period. Epinal was exceptional only in its smaller size and low rate of divorce.[78]

The divorce figures show a disproportionately high number of artisans and small business people divorcing. This fact can only be explained by the nature of law itself and the culture and sympathies of this predominantly urban community. The law was conceived as a revolutionary measure, as a law that would help purify society of

[77] See Roderick Phillips, "Le Divorce en France à la Fin du Dix-huitième Siècle," in *Annales, Economies, Sociétés, Civilisations*, no.2, February-March 1979. Jacques Dupâquier, op. cit.

corrupt loveless marriages and instil liberty at the heart of society - in the family. It was an explicitly secular law, formulated not just to regulate marital breakdown (legal separation already did this), but also with the ideological goal of giving each individual the liberty to escape from an oppressive or unhappy marriage. Therefore, the law was not acceptable to devout Roman Catholics, or to those who opposed the general aims of the French Revolution. The social group of artisans and small business were, for the most part, favourable to the Revolution in Toulouse, Troyes, and Epinal and therefore believed in the ideological aims of the Revolution. These groups were also those most associated with the *sociétés populaires* and municipal admiistrations in the three urban centres.

Women were the main instigators of the divorce law and this was actually one of the intentions of the legislators and the early *divorçaires*. They believed that the legal, cultural and physical situation of women was inferior to that of men in marriage and believed that the threat of divorce would either serve to encourage husbands to treat their wives well, or give wives an escape route from brutal husbands. Although this had been one of the intentions of the law, by year V, legislators had become uncomfortable with the number of women who were initiating divorces, especially on the grounds of incompatibility of character, and some tried unsuccessfully to abolish this provision.

Summary of three urban centres: Toulouse.

[78] Scott and Godineau point to the availability of employment in eighteenth-century urban centres. See Joan W. Scott, "The Woman Worker," in Geneviève Fraisse & Michelle Perrot (eds.), *op. cit.*, p.402-405. Also see Dominique Godineau, *op. cit.*, p.67.

- Large urban centre (59,343 pop.), isolated from Paris and close to national frontiers.
- *Société populaire* associated with municipal authorities.
- Consistent support of central (Parisian) revolutionary authorities.
- 347 divorces between the years I – X.
- Divorce concentrated in *sans culottes milieux* (artisans and businesspeople).
- Administrative centre and *chef-lieu du département.*
- 29% of clergy swore the constitutional oath.

Troyes.

- Medium-sized town (29,782 pop.), close to Paris.
- *Société populaire* associated with municipal authorities.
- Consistent support of central (Parisian) revolutionary authorities.
- 226 divorces between the years I – X.
- Divorce concentrated in *sans culottes milieux* (artisans and businesspeople).
- Industrial, textile centre and *chef-lieu du département.*
- 51% of clergy swore the constitutional oath.

Epinal.

- Small town (6,500 pop.), isolated from Paris and close to national frontiers.
- *Société populaire* associated with municipal authorities.
- Consistent support of central (Parisian) revolutionary authorities.
- Fifteen divorces between the years I – X.
- Divorce concentrated among the military.

- Administrative centre and *chef-lieu du département*.
- 52% of clergy swore the constitutional oath.

Conclusions.

The issue of the introduction and practice of divorce during the French revolution reveals a complex relationship between the areas of revolutionary culture, society, and politics. It is my belief that the demands for revolutionary divorce show the interaction between social and political forces during the French Revolution. The discourse on divorce from 1789 to 1792 was informed by rational, secular Enlightenment ideas. The authors of the pro-divorce pamphlets, exemplified by Albert Hennet, succeeded in connecting the appeal for the introduction of divorce legislation with the revolutionary goals of liberty for the individual, and universal rights for all citizens. The *divorçaires* and pro-divorce petitioners never ceased to connect marital indissolubility with the influence of the Catholic Church and *Ancien Régime* degeneracy. They contrasted the negative influence of indissolubility with the potential benefits of a secular divorce law, accessible to all, on French society. They argued that a divorce law, would benefit women and anchor the idea of liberty and responsibility in every French home, which for them, was the foundation of the new revolutionary society. Divorce would liberate women from oppressive husbands, and allow loveless couples to stop tormenting one another. Central to this idea of divorce was the possibility of no-fault separation. As they believed that marriage was based on the affectionate love and a desire to bear and educate new citizens for the republic, couples that found themselves incompatible to each other should have the freedom to separate and form more loving and fecund ties. Underlying this argument was the belief that many marriages had been corrupted by the degenerate culture of the *Ancien Régime*, and that divorce would not be necessary after these "corrupted" marriages had been dissolved.

With the introduction of the revolutionary divorce law on September 20th 1792, the reality of divorce became apparent to the political elite and ordinary citizens alike. Divorce was no longer an abstract concept that would bring liberty to every corner of the republic; it was a law that dissolved marriages, those contracted before and during the French Revolution. The reality of divorce revealed a deep tension in revolutionary society. Proponents of liberal, no-fault divorce continued to argue that the law would benefit both the individual and the family. They also claimed that it would reduce the overwhelming authority of the husband in the family. This claim became a reality, as the majority of applicants for divorce (especially for incompatibility, desertion, and domestic violence) were women. This prompted a reaction among certain sectors of the revolutionary community. Authors like Guiraudet, Necker, and the deputy Favard argued for a more patriarchal conception of society. The availability of no-fault divorce undermined this concept of family and society. They feared that this loss of male authority would undermine the new society. Others like Félix Faulcon, while admitting that they reality of divorce and marital breakdown was unsettling, persisted with a principled and practical defence of the law. Although both parties to the debate believed the family to be the cornerstone of revolutionary society, they differed in their understanding of the institution. Those opposed to divorce in general, and those simply opposed to divorce by incompatibility feared the liberty afforded to spouses, particularly wives, by the 1792 divorce law. They could not, and did not resolve the tensions between their belief in the liberty of the individual, and the importance of the family as a rock of revolutionary society. Other objections to a secular divorce law came from the Catholic Church, but instead of engaging in a debate on the subject, it simply rejected secular marriage and divorce.

Arguments for divorce were made by and on behalf of women. The law was constructed in part to free women from the oppression of abusive husbands, and to give women a measure of equality in the domestic environment at least. This point was made by the most important advocates of divorce, both in the political and cultural sphere.[1] Female pamphleteers repeatedly forwarded this argument. They argued for divorce as a route to freedom from abusive husbands, but they also understood the cultural context of the debate on divorce. They assumed the language of liberty and rights, insisting that for the Revolution to succeed, women needed the equality that divorce would afford them in the domestic sphere. Few argued for direct political participation, but the majority of female petitioners and writers on the subject emphasised their attachment to revolutionary liberty when arguing for the introduction of divorce.[2]

The reality of divorce in Troyes, Toulouse, and Epinal confirmed the fears of opponents of divorce and also highlighted the cultural and ideological significance of the legislation. The majority of those who petitioned for divorce were women, and as they familiarised themselves with the mechanics of the legislation, they moved from fault-based forms of divorce (desertion, violence, abandonment) to the more opaque method of divorce by incompatibility.[3] Thus, the prophesy of the *divorçaires* was, in part, realised. In addition, the ideological content of the law, as a secular, revolutionary measure that would free unhappy couples from one another was born

[1] Hennet and Aubert-Dubayet emphasised the liberating and egalitarian potential of divorce for women in marriages traditionally dominated by the influence of a patriarchal husband.
[2] Olympe de Gouges is the most striking exception. She argued for the direct political participation of women and supported the introduction of divorce, as she believed that it would further the struggle for liberty.

out. The majority of those who divorced came from a similar social background, that of the urban, artisanal and small business community. I do not suggest that all members of this heterogeneous community supported the Revolution, but a significant proportion of them did. In fact, the social groups that tended to divorce were those who supported the *sociétiés populaires* and the revolutionary administrations in the three towns. In contrast to this, the formulation of the law as a secular measure that would promote the idea of individual liberty while also attempting to cleanse society of marriage corrupted by *Ancien Régime* degeneracy precluded the Catholic nobility, and other counter-revolutionaries from embracing this component of revolutionary legislation.

The question of divorce, and its introduction reveals connections between, revolutionary society, culture, and politics. The drive to introduce the secular divorce law came from society in the form of pamphlets, and petitions to the National and Legislative Assembly. They specifically argued for divorce because of its regenerative and liberating potential, and when political circumstances were conducive, revolutionary political actors introduced the law, broadly based on Hennet's proposals. The tension between the rights of the individual to freedom and the desire for stable marriages as a foundation for society soon became apparent, with advocates of a patriarchal family system demanding the revocation of divorce by incompatibility at the very least. However, neither revolutionary society nor the political actors could bring themselves completely deny the rights of individuals to divorce on an equal basis.

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[3] The pattern in Toulouse and Epinal illustrate this point. In Troyes, divorce by mutual consent and incompatibility of character was favoured from the beginning, but became proportionally more significant after the year V.

Appendix I.
Articles establishing the Institution of the Tribunal de Famille.[1]

Articles 12, 13, 14 of titre X establishing the bureaux de paix and the tribunal de famille.

Article 12.

S'il s'élève quelque contestation entre mari et femme, père et fils, grand-père ou petit-fils, frère et sœurs, neveux et oncles, ou autres alliés aux degrés ci-dessus ; comme aussi entre les pupilles et leurs tuteurs, pour choses relatives à la tutelle, les parties seront tenues de nommer des parents, ou à leur défaut, des amis et voisins pour arbitres, devant lesquels, ils éclairciront leur différent, et qui, après les avoir entendus et avoir pris les connaissances nécessaires, rendront une décision motivée.

Article 13.

Chacune des parties nommera deux arbitres ; et si l'une s'y refuse, l'autre pourra s'adresser au juge, qui, après avoir constaté le refus, nommera les arbitres d'office, pour la partie refusante : lorsque les quatre arbitres se trouveront divisés d'opinion, ils choisiront un surarbitre pour lever le partage.

Article 14

La partie qui se croira lêsée par la décision des arbitres, pourra se pourvoir par appel devant le tribunal de district qui prononcera en dernier ressort.

(Ces articles sont adoptés sans discussion).

[1] M.J. Mavidal & M.E. Laurent, *Archives Parlementaires de 1787 à 1860. Première Série (1797 à 1799)*, tome XVIII (12 août 1790 à 15 septembre 1790), (Paris ; Kraus reprint, 1969), p.89-90.

Appendix II.

1792 Law on Divorce.

Loi qui détermine les causes, le mode et les effets du Divorce.[1]

Du 20 septembre 1792, l'an quatre 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'assemblée nationale, après avoir décrété l'urgence, décrète sur les causes, le mode et les effets du divorce, ce qui suit :

Paragraphe Premier.

Causes du Divorce.

Article Premier.

Le mariage est 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, sévices, ou injures graves de l'un envers l'autre ; 4.° sur le dérèglement de mœurs notoire ; 5.° sur l'abandon de la femme par le mari ou du mari par la femme, pendant deux ans au moins ; 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 lois, notamment par le décret du 8 avril 1792.

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[1] Département de Seine et Marne, *Loi qui détermine les causes, le mode et les effets du Divorce. Du 20 septembre 1792, l'an 4 de la liberté*, (Melun ; chez Tarbé, 1792).
Also in Francis Ronsin, *Le Contrat Sentimental. Débats sur le mariage, l'amour, le divorce, de l'Ancien Régime à la Restauration*, (Paris ; Aubier, 1990), p.109-121.

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 et instances en séparation de corps non jugées, sont éteintes et abolies ; chacune des parties payera ses frais. Les jugements de séparation non exécutés, 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 désunis que par le divorce.

Paragraphe II.

Modes du Divorce.

Mode de Divorce par consentement mutuel.

Article Premier.

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

II.

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

III.

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

IV.

Les deux époux se présenteront en personne à l'assemblée ; ils y exposeront qu'ils demandent le divorce. Les parents ou amis assemblés leur feront les observations et

représentations qu'ils jugeront convenables. Si les époux persistent dans leur dessein, il sera dresser par un officier municipal requis à cet effet, un acte contenant simplement que les parents ou amis ont entendu les époux en assemblée duement convoquée, et qu'ils n'ont pu les concilier. La minute de cet acte, signée des membres de l'assemblée, des deux époux et 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 et sans droit d'enregistrement.

V.

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

VI

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

VII.

En cas de minorité des époux ou de l'un d'eux, ou s'ils ont des enfants nés de leur mariage, les délais ci-dessus indiqués, d'un mois pour la convocation de l'assemblée de famille, et d'un mois au moins après l'acte de non-conciliation pour faire le divorce, seront doublés ; mais le délai fatal de six mois après l'acte de non-conciliation, pour faire prononcer le divorce, restera le même.

Mode de 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 parents, ou d'amis à défaut de parents, 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 et heure indiqués par cet officier. L'acte en sera signifié à l'époux défendeur, avec déclaration des noms et demeures des parents ou amis au nombre de trois au moins, que l'époux demandeur entend faire trouver à l'assemblée, et invitation à l'époux défendeur de comparaître à l'assemblée, et d'y faire trouver de sa part également trois au moins, de ses parents.

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 comparaît, les représentations des parents ou amis à l'effet de les concilier. Si la conciliation n'a pas lieu, l'assemblée se prorogera à deux mois, et les époux y demeureront ajournés. L'officier municipal sera tenu de se retirer pendant ces explications et les débats de famille ; en cas de non-conciliation, il sera rappelé dans l'assemblée pour 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 défendeur, si celui-ci n'a pas comparu à l'assemblée.

XI.

A l'expiration des deux mois, l'époux demandeur sera tenu de comparaître de nouveau en personne. Si les représentations qui lui seront faites, ainsi qu'à son époux s'il comparaît, ne peuvent encore les concilier, l'assemblée se prorogera à trois mois, et les époux y demeureront ajournés : il en sera dressé acte, et 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 comparaître en personne, il ne peut être concilié, et persiste définitivement dans sa demande, acte en sera dressé, il lui en sera délivré expédition qu'il fera signifier à l'époux défendeur.

XIII.

Si aux première, seconde ou troisième assemblées, les parents 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 parents ou amis qu'il aura fait présenter aux premières assemblées ; et enfin l'officier municipal 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 et décès. Après les six mois, il ne pourra y être admis qu'en observant de nouveau les mêmes formalités et les mêmes délais.

Mode du Divorce sur la demande d'un des Epoux, 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 du paragraphe lier 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 jugements, comme dans les cas de séparation de corps ou de condamnation à 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 connaissance de cause. S'il s'élève devant lui des contestations sur la nature ou la validité des jugements représentés, il renverra les parties devant le tribunal de district, qui statuera en dernier ressort, et prononcera si ces jugements 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 Iier ci-dessus, le demandeur sera tenu de se pourvoir devant les arbitres de famille, en la forme prescrite dans le code de l'ordre judiciaire pour les contestations entre mari et 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, et jugé dans le mois.

Paragraphe III.

Effets par rapport aux Epoux.

Article Premier.

Les effets du divorce par rapport à la personne des époux, sont de rendre au mari et 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 et de caractère.

III.

Dans le cas où le divorce a été prononcé pour cause déterminé, la femme ne peut également contracter un nouveau mariage avec un autre que son premier 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 par rapport 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 était 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 paragraphe Iier ci-dessus, autre que la démence, la folie ou la fureur ; la femme en ce cas sera privée de tous droits et 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 et dans 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 à l'autre, ou qui ont pu être faits à l'un d'eux par les père, mère, ou autres parents de l'autre. Les dons mutuels faits depuis le mariage et avant le divorce, resteront aussi comme non avenus et sans effet, le tout sauf les indemnités 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, paragraphe Iier ci-dessus, celui qui aura obtenu le divorce sera indemnisé de la perte des effets du mariage dissous, et de ses gains de survie, dons et avantages, par une pension viagère sur les biens de l'un et de l'autre époux, laquelle sera réglée par des arbitres de famille, et courra du jour de la prononciation du divorce.

VIII.

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

IX.

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

X.

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

XI.

Tout acte de divorce sera sujet aux mêmes formalités d'enregistrement et publication, que l'étaient les jugements de séparation ; et le divorce ne produira à l'égard des créanciers des époux, que les mêmes effets que produisaient ces séparations de corps ou de biens.

Paragraphe IV.

Effets du Divorce par rapport aux Enfants.

Article Premier.

Dans les cas du divorce par consentement mutuel, ou sur la demande de l'un des époux, pour simple cause d'incompatibilité d'humeur ou de caractère, sans autre indication de motifs, les enfants nés du mariage dissous seront confiés, savoir, les filles à la mère, les garçons âgés de moins de sept ans également à la mère : au-dessus de cet âge ils seront remis et confiés au père, et néanmoins le père et 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 enfants seront confiés.

III.

En cas de divorce pour cause de séparation de corps, les enfants resteront à ceux auxquels ils ont été confiés par jugement ou transaction, ou qui les ont à leur garde et 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 enfants seront confiés.

IV.

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

V.

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

VI.

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

VII.

Les enfants conserveront leur droit de successibilité à leur père et à leur mère divorcés. S'il survient à ces derniers d'autres enfants de mariages subséquents, les enfants des différents lits succéderont en concurrence, et par égales portions.

VIII.

Les époux divorcés ayant enfants, 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 enfants.

IX.

Les contestations relatives au droit des époux d'avoir un ou plusieurs de leurs enfants à leur charge et confiance, celles relatives à l'éducation, aux droits et intérêts de ces enfants, seront portés devant des arbitres de famille : et les jugements rendus en cette matière seront, en cas d'appel, exécutés par provision.

AU NOM DE LA NATION, le conseil exécutif provisoire mande et ordonne à tous les corps administratifs et tribunaux, que les présentes ils fassent consigner dans leurs registres, lire, publier, et afficher dans leurs départements et ressorts respectifs, et exécuter comme loi. En foi de quoi nous avons signé ces présentes, auxquelles nous avons fait apposer le sceau de l'état. A Paris, le vingt-cinquième jour du mois de septembre mil sept cent quatre-vingt-douze, l'an premier de la république Française.
Signé Lebrun. *Contresigné* Danton. Et scellées du sceau de l'état.

Appendix III.
Amendments to the Divorce Legislation of September 1792.

Département de Seine et Marne. Décrets de la Convention Nationale, des 22 et 25 jour du 1ier mois de l'an second de la République Française, une et indivisible, (Melun ; Tarbé et fils, an II).

I Relatif à la Publication et à la Célébration du mariage.

II Qui autorise le conjoint demandeur en divorce, à faire apposer les scellés sur les effets mobiliers de la communauté.

Du 22ième jour du 1ier mois.

II Qui autorise le conjoint demandeur en divorce, à faire apposer les scellés sur les effets mobiliers de la communauté.

La Convention Nationale, sur la proposition d'un membre, décrète ce qui suit:

Article I:
En formant une demande en divorce, s'il existe une communauté, le conjoint demandeur pourra faire apposer les scellés sur tous les meubles et effets mobiliers dépendant de la dite communauté.

Article II :
Ces scellés ne pourront, soit dans le cours de l'instance, soit après le jugement définitif, être levés qu'en procédant de suite à l'inventaire des choses y comprises, à moins que les deux parties ne consentent à une levée pure et simple.

Signé Deforgues et contresigné Gohier.

Décret de la Convention nationale, du 8 nivôse, an II de la République Française, une et indivisible, (Melun ; chez le républicain Lamberté, an II).

Qui attribue aux tribunaux de famille la connaissance des contestations relatives aux droits des époux divorcés.

La Convention nationale, après avoir entendu son comité de législation sur la pétition de la citoyenne Lefebvre ; Considérant que la loi du 20 septembre 1792 (vieux style), attribue aux tribunaux de famille les contestations qui s'élèvent entre les époux après la prononciation de leur divorce, dans les cas prévus par les articles VII et VIII du paragraphe III ; que l'article IX du paragraphe IV renvoie aussi pardevant ces mêmes tribunaux les contestations relatives aux droits des époux d'avoir un ou plusieurs enfants, et celles relatives à l'éducation et aux intérêts de ces enfants ; qu'il est de l'esprit de cette même loi d'attribuer aussi aux tribunaux de famille les contestations que des époux divorcés peuvent avoir sur le règlement de leur droits, soit par rapport à la communauté des biens ou à la société d'acquêt, soit par rapport aux droits matrimoniaux emportant gain de survie ;

Considérant qu'il s'élève une foule de réclamations contre les lenteurs que mettent les tribunaux de famille à terminer les affaires soumises à leur décision par la loi du divorce, et qu'il arrive souvent que, pendant ces délais, celui des époux qui est maître de la communauté en abuse pour la dilapider et changer de nature les effets qui en dépendent ;

Considérant qu'il n'y pas de raison d'empêcher un mari divorcé de se remarier immédiatement après le divorce, et une femme dix mois après, lorsque le divorce n'a pas pour cause l'absence du mari ;

Que dans ce dernier cas, si l'absence du mari, de dix mois avant le divorce, est constatée, il n'y a pas non plus de motif pour empêcher la femme de se remarier immédiatement après le divorce ;

Considérant enfin que les dispositions de la loi du 20 septembre 1792 donnent lieu à cet égard à beaucoup de réclamations, décrète ce qui suit :

Article Premier.

Les tribunaux de famille auxquelles sont attribués les jugements des contestations entre maris et femmes, après le divorce, dans les cas prévus par les articles VII et VIII du paragraphe III de la loi du 20 septembre 1792, sur le divorce, et dans les cas prévus par l'article IX du paragraphe IV de la même loi, connaîtront aussi de celles relatives aux règlements des droits des époux dans leur communauté, et de leurs droits matrimoniaux emportant gain de survie.

II.

Ces tribunaux de famille seront obligés de prononcer sur ces contestations dans le délai d'un mois après leur formation.

Les époux, ou l'un d'eux, pourront porter l'affaire soumise à la décision des arbitres de famille, pardevant le tribunal du district, si ces arbitres ont négligé de prononcer leur jugement pendant ce délai.

III.

Le mari divorcé peut se remarier immédiatement après le divorce : l'épouse divorcée ne peut se remarier que dix mois après.

IV.

S'il est constaté que le mari ait abandonné dix mois son domicile et se femme, celle-ci pourra contracter un nouveau mariage aussitôt après le divorce.

Visé par l'inspecteur. Signé S. E. Monnel.

Département de Seine et Marne. Décret (no. 2329) de la Convention Nationale, des 4ième et 5ième jour de Floréal, an II de la République Française, une et indivisible, (Melun ; chez le républicain Lamberté, an II).

1ier Décret du 4 Floréal.
Contenant des dispositions additionnelles à la loi du 20 septembre 1792 sur le divorce.

La Convention nationale, après avoir entendu le rapport de son comité de législation décrète :

Article Premier

Lorsqu'il sera prouvé par un acte authentique ou de notoriété publique, que deux époux sont séparés de fait depuis plus de six mois, si l'un d'eux demande le divorce, il sera prononcé sans aucun délai d'épreuve, conformément à l'Article XVII du paragraphe II de la loi du 20 septembre 1792 : l'acte de notoriété publique sera donné par le conseil général de la commune ou par les comités civils des sections, sur l'attestation de six citoyens. L'époux qui demandera le divorce pourra, dans le cas d'une résidence de six mois dans une nouvelle commune, faire citer l'autre par-devant l'officier public de ce nouveau domicile. La citation sera donnée à la personne de l'époux défendeur, ou au dernier domicile commun, chez l'agent national, qui sera tenu de l'afficher pendant une decade à la porte de la maison commune.

II.

S'il est constaté par acte authentique ou de notoriété publique, que la séparation des époux a lieu par l'abandon fait par l'un d'eux du domicile commun, sans donner de ses nouvelles, l'époux abandonné pourra obtenir son divorce sur la seule présentation de l'acte authentique ou de notoriété, six mois après cet abandon, et sans avoir besoin d'appeler l'époux absent.

III.

Dans les cas prévus dans les deux articles précédents, les époux se pourvoiront dans la forme ordinaire, tant pour le règlement de leurs droits, que pour ce qui concerne l'éducation et l'intérêt de leurs enfants.

IV.

Les femmes des défenseurs de la patrie et des fonctionnaires éloignés de leur domicile pour le service de la République, ne pourront néanmoins, pendant l'absence de leur mari, demander le divorce que pardevant l'officier public de leur dernier domicile commun, ou par-devant celui de la résidence actuelle de leur mari.

Elles ne pourront réclamer pendant son absence que ce qu'elles ont apporté en mariage, et tous les règlements qu'elles seront faire de leurs droits, ne seront que provisoires jusqu'au retour de leur mari.

V.

Tous officiers municipaux qui ne voudront pas recevoir une action en divorce, ou qui refuseront de le prononcer dans les cas prévus par les articles Iier et II ci-dessus, seront destitués et pourront être condamnés à des dommages et intérêts envers les parties, sans préjudice des peines portées par l'article VIII de la section V de la loi du 14 frimaire, qui leur seront appliquées, s'il y a lieu.

VI

Le divorce ne pourra être attaqué par la voie de l'appel, s'il a été prononcé avant l'accomplissement des délais, on pourra le faire prononcer de nouveau après leur expiration.

VII

La femme divorcée peut se marier aussi-tôt, qu'il sera prouvé, par un acte de notoriété publique, qu'il y a dix mois qu'elle est séparée de fait de son mari. Celle qui accouche après son divorce, est dispensée d'attendre ce délai.

VIII

Les divorces qui ont été effectués en vertu du principe que le mariage n'est qu'un contrat civil, et qui ont été constatés par des déclaration authentiques faites par-devant des officiers municipaux, des juges de paix ou des notaires, depuis la déclaration de ce principe et avant la promulgation de la loi du 20 septembre 1792, sont confirmé

Visé par l'inspecteur. Signé Cordier.

2ième Décret du 5 floréal.
Relatif aux jugements de séparation non exécutés, ou attaqué par voie d'appel ou de cassation.

La Convention Nationale après avoir entendu le rapport de son comité de législation sur la lettre du ministre de la justice, en date du 17 ventôse dernier ; et sur les pétitions et mémoires du citoyen Étienne Simon et Louise Belle sa femme, rapporte le décret du 13 frimaire dernier, rendu sur la pétition de Louise Belle.
Et sur la question proposée par le tribunal du district de Romans, tendant á savoir si par ces termes de l'article VI du paragraphe 1ier de la loi du divorce. "Les jugements de séparation non-executés, ou attaqué par appel ou par voie de cassation, demeurent comme non avenus." La loi a voulu comprendre les jugements de séparation contre lesquels on s'est pourvu par requête civile.
Considérant qu'il est évidemment dans l'esprit de cet article de comprendre les jugements qui sont attaqués par des voies légales.
'Déclaré qu'il n'y a pas lieu à délibérer.'

Visé par l'inspecteur. Signé Cordier.

Loi du 14 messidor, l'an 2 de l'ère républicaine. No. 16 du bulletin.

Loi relative aux questions sur les contestations nées ou à naître entre les époux divorcés, et leurs parents.

La Convention nationale après avoir entendu le rapport de son comité de legislation sur la question proposée par le tribunal du sixième arrondissement de Paris, si les contestations nées ou à naître entre les époux divorcés, leurs parents ou alliés aux degrés fixés par l'article XII du titre X de la loi du 16 avril 1790 doivent être portés devant le tribunal de famille :
Considérant que le divorce fait cesser tous les effets de l'alliance entre les époux qu'il désunit quoique ses effets subsistent à l'égard des enfants du divorce.

Décrété qu'il n'y a pas lieu à délibérer. Visé par l'inspecteur, signé Mounet.

Loi du 24 vendémiaire, l'an 3 de l'ère républicaine. No. 74 du bulletin.

La Convention nationale décrète que celui qui poursuivant le divorce établira par un acte authentique ou de notoriété publique, que son époux est émigré ou qu'il est résidant en pays étranger ou dans les colonies sera dispensé de l'assigner au dernier domicile ; et le divorce sera prononcé sans aucune citation.

Extrait du Bulletin de la Convention Nationale séante du 15 thermidor, l'an 3ième de la République.

Décret.

1. La Convention nationale après avoir entendu son comité de législation décrète l'exécution des lois des huit nivôse et quatre floréal de l'an deux relatives au divorce demeure suspendue á compter de ce jour.
2. Le comité de législation est chargé de bléviser toutes les lois concernant le divorce, et de présenter dans le délai d'une decade le résultat de son travail.[1]

[1] The word "bléviser" is probably a misprint and should read "réviser".

Extrait du Bulletin des Lois de la République Française, no.147, (Melun ; Tarbé et Lefevre, an 5).

Loi relative aux demandes en divorce pour incompatibilité d'humeur. Du 1^ier^ jour complémentaire an 5 de la république.

Article Premier

Dans toutes les demandes en divorce qui ont été ou seront formé sur simple allégation d'incompatibilité d'humeur et de caractère, l'officier public ne pourra prononcer le divorce que six mois après la date du dernier des trois actes de non-conciliation exigés par les articles VIII, X et XI de la loi du 20 septembre 1792.

II

À l'égard des demandes en divorce formées pour la cause ci-dessus, après lesquelles les trois actes de non-conciliation auront eu lieu, l'officier public ne pourra prononcer le divorce que six mois après la publication de la présente.

III

La présente résolution sera imprimée.

Signé Vienot-Vaublanc pour le président ; Siméon, Henri-Larivière, Parisot, secrétaires.

Mariages et Divorces. Troyes. Divorce entre Vincent Aveline et Cathérine Gérard, le dix sept janvier 1793.

Aujourd'hui, dix sept janvier mil sept cent quatre vingt treize, l'an deuxième de la République française heure de trois après midy; par devant moy Jean Baptiste Porcherat Lombard, officier public de Troyes, ** ** (illegible) sont comparus Vincent Aveline bonnetier, âgé de soixante ans, demeurant rue Moyenne, sixième section de cette ville, lequel étoit assisté de Jean Baptiste Rondot perrruquier, âgé de soixante et cinq ans, demeurant rue Notre Dame, section quatrième de cette ville, de Jean Ponard tailleur, demeurant sur dit rue Notre Dame, même section, d'Antoine Valton fabriquant de bas, âgé de trente sept ans demeurant rue Moyenne, sixième section de cette ville, et d'Henry Philippe Buter, marchand épicier, âgé de trente cinq ans demeurant Grande rue , sixième section de la dite ville, tous quatre témoins du dit Aveline ; lequel Vincent Aveline m'a requis de prononcer la dissolution de son mariage contracté le dix neuf septembre mil sept cent cinquant huit, passé en l'état de *** (illegible) notaire au dit Troyes, vu par moy, l'extrait de l'acte du dixneuf septembre mil sept cent cinquante huit, qui constate que le dit Vincent Aveline, a été uni en mariage avec Cathérine Gerard, en la paroisse de Saint Nizieu de cette ville, et la déclaration des témoins sus dits, que la dite Cathérine Gerard a quitté son mari, et est absente depuis plus de trente trois ans, la quelle absence est constaté par acte de notoriété su six janvier dernier, par acte reçu de Dorgemont et Boncherot notaires en cette ville ; J'ai déclaré au nom de la loy, en vertu des pouvoirs qui me sont délégués que le mariage entre le dit Vincent Aveline et Cathérine Gerard, est dissous, et qu'il est libre de personne, comme il l'étoit avant d'avoir contracté mariage; et j'ai dressé le présent acte que les dits Vincent Aveline dissident et les quatre témoins, Jean Baptiste Rondot, Jean Ponard, Antoine Valton, et Henry Philippe Buter sus nommé, ont signé avec moy, le dit jours, mois et an sus dit.

Signatures of Aveline, witnesses, and the officier public. Cathérine Gerard not present.

Epinal. Divorces. An IV. Divorce entre Jean Baptiste Louis Marguérite Leclair et Marie Anne Mathieu.

Aujourd'hui dix neuf germinal, l'an quatre de la République française une et indivisible, à deux heures de l'après midi par devant moi Jean Baptiste Nicolas François Thiery, membre de l'administration municipale de la commune d'Epinal, chef lieu du département des Vosges; élu le deux nivôse dernier pour recevoir les actes destinés à constater les naissances, les mariages, et les décès des citoyennes; sont comparu en la maison commune, d'une part, Jean Baptiste Louis Marguérie Leclair, greffier en chef de l'administration municipale de cette commune, âgé de trente six ans demeurant au dit Epinal; d'autre part Marie Anne Mathieu son épouse, âgé de quarante deux ans et domicilié au dit Epinal, l'un et l'autre assisté de Joseph Jacquessin cultivateur, âgé de quarante trois ans, de Jean Joseph Egal marchand, âgé de cinquante trois ans, de Charles Hubert Paniquot pensionnaire e la République, âgé de quarante deux ans, et de *** *** (illegible name) *** (illegible occupation), âgé de vingt neuf ans, tous quatre domicilié à Epinal. Lesquels Jean Baptiste Louis Marguérite Leclair et Marie Anne Mathieu m'ont requis de prononcer la dissolution de leur mariage contracté le dix huit juin mil sept cents quatre vingt deux en ladite commune d'Epinal. Vu par moi les actes qui constatent que les dits jean baptiste Louis Marguérite et Marie Anne Mathieu ont observé les délais exiger par la loi sur le mode du divorce, vu l'acte de non conciliation que leur a été délivré le sept pluviôse dernier par leurs parents assemblés en vertu des pouvoirs qui me sont délégués, j'ai déclaré au nom de la loi que le mariage entre les dits Jean Baptiste Louis Marguérite et Marie Anne Mathieu est dissous, et qu'ils sont libre de leur personnes comme ils étoient avant de l'avoir contracté et j'ai dressé le présent acte que les parties dissidentes et leurs quatre témoins Joseph Jacquessin, Jean Joseph Egal, Charles Hubert Paniquot, et *** *** (illegible) ont signé avec moi dans la maison commune d'Epinal, le jour, mois, an, et heure cy dessus, le mot en interligne approuvé.

Signatures of the divorcing parties, witnesses, and the officier public.[2]

[2] The reason for this divorce is not specifically mentioned, but from the format of the act, (family assembly, one act of non-conciliation, the joint request for divorce), it is clear that this was for the motive of mutual consent.

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