

# DIVORCE IN NEW YORK FROM 1850S TO 1920S

by

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(Under the Direction of Allan Kulikoff)

## ABSTRACT

This paper focuses on analyzing three New York divorce cases from the 1850s, 1860s, and 1920s. By studying these cases, this paper will endeavor to answer the following questions: First what was the nature of the public perception of marriage and divorce in New York as reflected in these three cases respectively, and how did the public view change since the antebellum era? Second, what was the public and social perception of gender, specifically, the changing perception of gender roles and virtue defined by the marital bond as shown in these cases?

INDEX WORDS: Women, Divorce, 19<sup>th</sup> century, New York, Men

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## DEDICATION

I dedicate my thesis to my parents.

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## CHAPTER 1

### INTRODUCTION

The thesis, an examination of “Divorce in New York from the 1850s to the 1920s” will focus on three New York divorce cases from the 1850s, 1860s, and 1920s. By studying these cases, this paper will endeavor to answer the following questions: First what was the nature of the public perception of marriage and divorce in New York as reflected in these three cases respectively, and how did the public view change since the antebellum era? Second, what was the public and social perception of gender, specifically, the changing perception of gender roles and virtue defined by the marital bond as shown in these cases?

In June 2010, the New York State legislature passed a No-fault divorce law, making New York the last state to end fault based divorce legislation. Until Governor Patterson signed the law, the fault-based New York divorce law had existed since 1787. Albeit falling far behind the other states, this final stretch of divorce law reform was a significant milestone for lawmakers, legal professionals, and social reformers to bring New York’s antebellum divorce law into the twenty-first century.<sup>1</sup> Under New York’s antebellum fault based divorce law, divorce was difficult to obtain because couples had to prove at least one of them was at fault to gain a divorce. Even

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<sup>1</sup> Most American states’ legislature started reforming divorce law reform and started introducing no-fault divorce laws into the legislatures in the 1970s.

worse, from the late eighteenth century to the nineteen sixties, adultery had been the only grounds for divorce in New York. That is to say, though adultery was difficult to prove because it involved a third party, citizens of New York managed to divorce one another for nearly two hundred years.

Consequently, couples and their attorneys tried every means to divorce in New York or out side of the state. Some forged evidence of adultery, often assisted by their attorneys; wealthier couples would travel to another state or even a foreign country to get a divorce. After staying out of New York for a required amount of time, they could file a divorce as a lawful resident of the other state or country. Other couples settled for separate bed and board, a partial divorce. New York's 1966 divorce law reform added three new grounds to the fault based divorce law--cruel and inhuman treatment, abandonment for a continuous period of three year or more, and imprisonment for more than three years subsequent to the marriage. Forty-four years later, in 2010, the New York divorce law finally added a new ground of "irretrievable breakdown" (no fault), which states if the relationship between husband and wife has broken down irretrievably for a period of at least six months, they could file for divorce.

Why had New York's divorce law retained its rigidity for nearly two centuries? Probably because divorce was difficult to obtain in the state, divorce trials gained constant public attention in New York from the day its fault based divorce law was established. Especially when the penny press flourished in the nineteenth century, the public was fascinated with the private details of marital disputes in divorce court, namely, those divorces that involved adulteries. In order to provide a comprehensive understanding of the changing public attention and opinions on divorce



and to answer the proposed questions of divorce in New York, this paper selected three famous divorce cases from three different periods of time. Newspapers meticulously reported the antebellum divorce of the Walkers, and after the trials ended, the public eagerly bought an illustrated trial transcript. As trial reports show, people flooded to the courtroom to witness trials that involved the couple's adultery accusations against each other. The Roaring 20s divorce case was more widely known and caught more national attention. The great age difference between the 1920s real estate tycoon and his teenage bride drew national attention to their marital dramas. The continuous coverage on the details of their marriage even annoyed some readers so that they asked the newspapers to stop reporting on them.

### Divorce Cases

#### *The Walker Divorce Case of 1854*

In 1854, Mrs. Catherine F. P. Walker (accompanied by a male companion) sued her husband Mr. Wildes P. Walker for divorce and the custody of her three daughters on the ground of a series of adulterous relationships he had committed since 1851, not only with prostitutes but also with married women; moreover, a number of adulteries took place in his jail cell when he was in prison for financial fraud. In response, Mr. Walker accused Mrs. Walker of adulterous relationships with several other men. The notoriety of this case, which dragged on for six months, attracted much public attention. Legal authorities and professionals were divided in their support for Mrs. Walker and Mr. Walker respectively.

There were seventeen open court sessions of the Walker divorce case. During the trial, the judge and lawyers called a number of witnesses, including those suspected of having committed

adulterous affairs. The correspondence between the husband and the wife were released as evidence in court. Bitter debates on the wife's virtue and the husband's moral standards ensued in the courtroom while lawyers tried very hard to prove whether their adulterous relationships existed. For example, while Mrs. Walker's lawyer accused Mr. Walker of having "ravished the virtue of every women in New York", his lawyer, defended Mr. Walker by stating that the discovery of Mrs. Walker's adulterous affairs was the last discovery a man wanted to make, and it was true that after moral conviction reached "absolute certainty" he accused Mrs. Walker as a "wanton woman."<sup>2</sup> These court session reports provide a lens into the social perceptions of virtue and morality of that era as well as the discussion women's proper role in marriage and public. The jury members, with one exception, agreed that Caroline Walker was innocent and her husband was at fault.

#### *The Stevens V. Strong divorce Case*

Another nineteenth century divorce in 1865 also drew wide public attention to its open trials. Compared to the Walker divorce case, the Stevens Vs. Strong divorce dispute was between a couple with an even more prestigious background. Mary Strong, daughter of John Austin Stevens Jr., chairman of the Sons of the American Revolution; Mr. Stevens Jr. was the son of John Austin Stevens, a banker who served as the secretary of commerce in New York's Chamber of Commerce, and as the president of the Bank of Commerce. Mary Strong's husband, Mr. Peter Strong, was a prominent lawyer and a member of the New York Bar Association. He married Mary Stevens in 1853. They had been happily married with three daughters until

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<sup>2</sup> *A Full and Accurate Report of the Celebrated Trial of Walkers vs. Walker. New York: C. C. Childs, 1854. Pg 41.*

Mr. Strong's brother Edward Strong came to live with them after his wife died in 1860. In 1862, Mrs. Strong confessed to Mr. Strong that she had been keeping an adulterous relationship with her brother-in-law. Immediately after her confession, Mr. and Mrs. Strong separated but lived under the same roof with their daughters. But they never had marital relations after the confession. Meanwhile, Mr. Strong stayed away and avoided Mrs. Strong's society. In order to protect their reputation and also their family's reputation, Mr. Strong did not bring the suit for divorce for two years. But in 1863, Mrs. Strong took their daughter Alice away and started demanding full custody of the said child. Though Mr. Strong still could contact Mrs. Strong through her family members, he did sue Mrs. Strong for divorce on the ground of adultery and to get full custody of his three daughters. However, Mrs. Strong also accused Mr. Strong of adultery while they were separated. The trial of this divorce case started in November 1865 and ended on the last day of that year. The case ended with a hung jury that believed that Mr. Strong did not commit the adultery.

#### *The Peaches Browning Divorce Case*

Even in the 1920s, when reformers, feminists, and flappers challenged traditional Victorian concepts of marriage, gender relations, and gender roles, adultery remained the sole ground for divorce in New York. Every year in the 1920s, New York's upper and upper middle class couples travelled to Nevada or even Paris to get easy divorces. Newspapers followed these divorces and reported the cases. However the most notorious case happened and ended in New York—the Peaches Browning divorce case.

Edward West Browning, a successful New York real estate tycoon, had been divorced once and gained the custody of an adopted teenage daughter named Dorothy (Sunshine) Browning. Mr. Browning advertised for another teenage girl to adopt to accompany his daughter after his divorce in 1925. He received thousands of applications from all over the country, but he was frustrated after he adopted a new girl who claimed that she was 16 but it turned out she was 21. After annulling the first failed adoption, Mr. Browning started sponsoring high school sorority balls to find a better candidate. In that role, he preferred to be called Daddy Browning. In the same year, he met Frances Heenan (who became Peaches Browning, after marriage), a 15-year-old high school girl at one of the balls he sponsored. According to them, their affair was love at the first sight. In 1926, against considerable public pressure and doubt, Mr. Browning, already in his fifties, married the 16-year-old high school girl. New York and national newspapers chased every detail of their marriage and divorce disputes. One politician from California wrote several times to the *New York Times* stating that readers would be happy if newspapers would get a divorce from reporting the Peaches Browning marriage affair. The Browning marriage lasted only six months. Peaches Browning and her mother moved out of Mr. Browning's residence and refused to appear in public. After a long and anxious wait for her to return home, Mr. Browning filed for separation and without alimony for Peaches. But Peaches appealed and sued Mr. Browning for divorce. The divorce case was finally settled outside the court with Peaches winning a significant amount of alimony. Mr. Browning died in 1934 and Peaches Browning, remained a well-known socialite in New York until her death in the 1950s.

This study of the history of New York State divorce builds on a small but significant historiography, that provide a model for research. The gendered power relation in marriage has been one of the most intriguing topics for historians to pursue. Moreover, historians have linked the private experience of marriage and family relation to public life. Historians who have reconstructed the experience of American divorce in the nineteenth century emphasize the influence of national politics and the changing judicial rules on marriage and divorce. These historians believe that American society has always viewed the morals and virtues in the family unit as the foundation of the society, whose stability in turn would influence the moral standards of the country. They emphasize that the integrity of the matrimonial contract, viewed by the American public, resembled that of the social contract of republican government of the republic.

Gender historians such as Nancy Cott and legal historians such as Michael Grossberg are the leading scholars in this field of marriage and gender relations; together they examine the history of marriage in America since 1800. Historians such as Norma Basch and Grossberg specifically discuss divorce in nineteenth century America while Glenda Riley and J. Herbie DiFonzo have focused on the history of divorce in twentieth century America. Glenda Riley's *Divorce: An American Tradition* portrays divorce legislation as sporadic and responsive to changing social pressures. DiFonzo traces the coming of age of no-fault divorce in America. She argues that divorce law itself is an active force in shaping private relations and public perspectives.

In *Public Vows: A History of Marriage and the Nation*, Nancy Cott argues that those seeking divorce sought to break away from marital tyranny; in so doing, they mimicked the Declaration of Independence. As a result, many states legitimized divorce in the ensuing years of the

revolution to respond to the republican egalitarian ideals. On the other hand, Michael Grossberg emphasizes the “republican family” ideal that more explicitly defined the gender roles and responsibilities of family members. Grossberg attributes much of the effort of reinforcing the republican family ideal to the “restructured” judicial power in the new republic. He argues that the more independent judiciary power protected by the Constitution had fostered the so-called “legal patriarchy” of judges to define, reframe, and moderate the conception and principles of the republican family. He points out that although within their judicial power, judges were able to expand women’s rights such as child custody for mothers who were the “injured” party in divorces. In fact, the judges had endeavored to establish the legal tradition that put the children’s benefit in the center of custody disputes, rather than expanding women’s rights; since they believed that the domain of women was at home, and their responsibilities were in the household, they could provide better care for their children. In other words, this was an example of how the legal patriarchy had shaped and limited women’s role through their decisions on divorces and custody disputes.

In addition, Norma Basch and Michael Grossberg also contributed to the historiography of marriage with their focused effort in researching American divorce in the nineteenth century. Basch’s *Framing American Divorce* echoes Cott’s argument that the revolution had changed the public and private conception of marriage and brought matrimonial contracts to a new height of importance. Also, Basch argues that the analogy made by the revolutionaries between matrimonial relations and the government had encouraged the emergence of divorce legislation in the new republic. Basch also claims that establishing divorce laws was a method of expedient

social control. Since there were many extralegal ways of dissolving marriages during and after the revolution, judges and politicians supported and implemented divorce laws to choose the lesser evil of the two. Moreover, Basch studies the public and literary representation of divorce in her section on the newspaper report and especially the divorce fictions that flourished during the middle of the nineteenth century. Thus, her analysis illustrates the public attention of divorce and how divorce had served as a medium to bring the private crisis of divorce to public scrutiny.

The first chapter focuses on the antebellum New York divorce case, the Walker vs. Walker, in which husband and wife accused each other of adultery, ran for seventeen open court sessions that lasted more than six months. Moreover, the trial focused especially on the discussion of women's virtue that allowed exploration of the gender dynamic in antebellum New York in an era defined by the Victorian notion of separate spheres. In addition, this case also shows how divorce proceedings exposed the private affairs of the couple especially when the couples' correspondences were read in the court sessions.

The second chapter focuses on the Strong divorce case that caught New York's public attention after the Civil War. It highlighted both the problem of adultery in divorce conflicts and the battle for child custody. Therefore, both the Walker and Strong divorce cases exemplify the major fissures in nineteenth-century New York divorce trials—while couples sought to prove each other's adulterous affairs, they fought for child custody. In addition, the full coverage of the divorce reports and the wide public attention these cases had garnered show that middle class divorce trials were especially popular topics in nineteenth century New York.

The third chapter concerns the marriage and divorce affairs of the notorious Peaches Browning divorce case. The marriage of a rich middle-aged New York real estate tycoon and a teenage girl working in a department store had already become popular national gossip long before their marriage fell apart. The newspaper coverage of the details of their daily life shows how marriage of the rich and the famous became public. The prolonged divorce and the public criticism it received also show that the divorce law was still very strict in New York even under the so-called liberated cultural and social trends of the roaring twenties. The fifth chapter, an epilogue, discusses the New York divorce law reform in 1966, it also presents an overview of gender history through the lens of the history of New York divorce.



## CHAPTER 2.

### WALKER DIVORCE CASE

After the first New York divorce law was enacted in 1787, the divorce law remained the same through the nineteenth century.<sup>1</sup> Adultery was the only grounds for couples to gain a complete divorce in the state of New York, thus making divorces difficult to obtain for citizens of this state. On the one hand, adultery was hard to prove and evidence was hard to find. On the other hand, for couples of an unhappy marriage with no adulterous conduct, divorce was simply impossible according to the law and often frowned upon by Victorian social mores.

In the mid-1800s, the ideal of Victorian motherhood and the concept of separate spheres were dominant social norms in American society. Victorian motherhood required women to be chaste daughters before marriage, preferred married women to stay at home taking care of children and making their home sphere a safe haven for working husbands to return to. Because the social norms of the time deemed the outside world a decayed and corrupting place for women to enter, virtuous wives became the caretakers of a better and purer home sphere. The concept of separate spheres also reinforced the gendered social roles: women belonged to the home sphere while men

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<sup>1</sup> After its enactment in 1787, New York divorce law experienced only one reform in 1963. The fault – based divorce law continued into 21<sup>st</sup> century, which was replaced by a non-fault based law in August 2010. The 1787 law reads: “In addition to allowing the chancellor to dissolve marriages on the ground of adultery and providing that any remarriage by the adulterous party would be void, the act permitted the other party to remarry as if the party convicted was actually dead. Law of New York, March 1787, ch 69, 494, 495. “

belonged to the public sphere. While these social norms turned the home into a haven from a heartless public world spheres, middle class divorce trials opened a window for the public to see the private misfortunes of divorcing rich couples who were also the bearers of popular social norms and values.

In mid-century 1800s, divorce trial reports became very popular in newspapers, and a book appeared on one New York divorce case trial of an upper middle class couple. This case, *Walker V. Walker*, not only presented the essential drama of middle class divorce resulting from adultery, but the intricate elements of this case also revealed gendered power relations and the dynamics. For example, the husband, the defendant in the case, committed adultery with more than one woman while he was confined in a debtor's jail. Some of these women were prostitutes and some were married. In the meantime, he counter-charged his wife with adultery.<sup>2</sup>

The prolonged and celebrated trial of the *Walker V. Walker* divorce case opened in January 1854, and it attracted many spectators to the courtroom.<sup>3</sup> Mrs. Catherine Walker, the plaintiff, was originally from Bath, Maine, a daughter of a rich gentleman said to be the "wealthiest" man of the state.<sup>4</sup> She was seeking divorce and custody of her three daughters from her husband, Mr. Wildes P. Walker. She hired an elite legal team, including a former attorney general of New York and a state attorney.<sup>5</sup> Mrs. Walker was from a privileged class that could afford such a five-person legal team, while Mr. Walker could only afford a small law firm and two lawyers. Her

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<sup>2</sup> *The Full and Accurate Report of the Celebrated Trial of Walker vs. Walker*, New York, C C Childs, 89 Naussau Street. The analysis of this chapter is based on this published 150-page report.

<sup>3</sup> *The Full and Accurate Report of the Celebrated Trial of Walker vs. Walker*, 3.

<sup>4</sup> *Ibid.*, 4.

<sup>5</sup> *Ibid.*, 3.

strong legal team contrasted sharply with that of her husband. Mr. Walker's lawyer used this class distinction to gain sympathy from the jury.

The couple married in 1840 at Mrs. Walker's father's residence in Bath. Mr. Walker owned a growing business dealing with East India Company goods. The Walkers had three daughters during their fourteen years of marriage and had lived in Boston and New Jersey. Unfortunately, in 1850, Mr. Walker was arrested for fraudulent transactions in New York; he was then put in a debtor's jail on Eldridge Street.<sup>6</sup> In nineteenth century America, the debtor's jail confined people of minor financial faults and people who were unable to pay their debts. A debtor's jail, which had relatively loose rules, was different from prisons housing those guilty of felonies. Those who had means, even confined to the jail cells, could manage to live a comfortable life. Mr. Walker's experience in the jail was not dreary and harsh, but on the contrary, quite comfortable and full of sensual pleasure. The plaintiff's lawyers charged Mr. Walker of having several adulterous relationships with women who visited him, not to mention prostitutes he visited in a brothel on Broadway. It was confirmed later in the testimony of the jailors that Mr. Walker had managed to get out of the jail by paying them money. Mr. Walker's series of adulterous encounters lasted from the fall of 1850 to the spring of 1853.

However the husband's pleasure-seeking jail life was not the only drama in this divorce case. The defendant's lawyer charged the plaintiff, Mrs. Walker, of having an adulterous relationship with a doctor named Mr. Heartwell and Mr. Evans, an ex-senator and Maine's present attorney

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<sup>6</sup> Ibid.,4.

general.<sup>7</sup> Thus, the key element in defending Mr. Walker in this case was to prove the adulterous conduct of his wife. If the adulterous conduct was not based on the fault of one party of the marriage but mutual, according to the state's divorce law, Mrs. Walker would be unable to get a divorce from her husband.

In the first half of the trial, testimonies and depositions focused on Mr. Walker's fidelity and his years spent in Eldridge jail; ex-jailors Robert Rue, William Birch, and Henry Smith, testified and deposed that Mr. Walker had visited brothels and had female visitors going into his cell. Moreover, by revealing 20 letters written by Mr. Walker to his lawyer and to his best friend Col. William M. Bobo, the plaintiff's lawyer not only was able to prove Mr. Walker's handwriting, but also revealed Mr. Walker's strong desire for female visitors at the cell, especially that of his intimate relationship with Mrs. Malcolm, who had been a recurrent subject in his letters to his friend.

Although Mrs. Walker only visited Mr. Walker twice when he was in jail in winter 1850, Mr. Walker's jail life was anything but lonely. He not only had male friends, but also had female visitors. Col. Bobo, who was his best friend during the jail years, brought all the female visitors to him as he wished. When Mr. Walker went out during late summer and fall 1850, he frequently visited a confectionary store on the northeast corner of Grand Street and Mercer Street. Several police officers testified that the upstairs of the confectionary store was indeed a brothel. Witnesses all confirmed that when Mr. Walker did not go out, he developed his own way to

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<sup>7</sup> Ibid.,4.

communicate with people outside of the jail.<sup>8</sup> He wrote many letters to his friends and lawyers, and learned the trick of “dumb and deaf” language. By teaching his visitors this trick, he was able to communicate with Mrs. Warner and Miss Pell, who lived across the street, by tapping his fingers through the bars of his window. Mr. Walker was quite open when talking about his visitors and his visits to the brothel. He expressed his longing for Mrs. Malcolm in letters to Col. Bobo; he bragged to the turnkey Birch, and even invited the jailors to visit the confectionary store with him.<sup>9</sup>

At the beginning of the trial, lawyers briefly focused on checking the facts of Mrs. Walker’s stay in New York and how she managed to pay for her rent. Mr. Busteed, Mr. Walker’s lawyer, argued that since Mrs. Walker just moved to the city before the trial began, she did not have the right to sue her husband for divorce in New York. Also, Mr. Busteed asked Mrs. Walker’s landlord if she had male visitors during her stay in the city, but to his disappointment, Mrs. Walker rarely had any visitors.<sup>10</sup>

Then a jailor named Robert L. Rue revealed details of Mr. Walker’s years in jail. Rue was at the jail overseeing Mr. Walker from 1850 to February 1853. His deposition shows that the rules in the Eldridge street jail were quite loose especially when treating prisoners with money. At the beginning of Walker’s stay at the debtor’s jail, he would pay Rue five dollars every time he went out with his friend Bell Smith, but the money shrunk to three dollars after a certain time when Mr. Walker’s money ran out.

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<sup>8</sup> Ibid., 8.

<sup>9</sup> Ibid., 25.

<sup>10</sup> Ibid., 6.

Mr. Rue rarely went out with Mr. Walker, but every time Walker went out he would send another jailor named William Birch to go along with Walker. According to Rue, Walker and his friends would “go out as early as 9 or 10 in the morning, and return as late as 5 to 8 in the evening.”<sup>11</sup> Rue did go out with Mr. Walker once that fall to the confectionary store, and he provided the most detailed description of Walker’s visit to the store. On a “cold and rainy” October afternoon, they had stopped at the confectionary store to have refreshments and to see a friend of Mr. Walker, but the friend was not there. To Mr. Rue’s surprise, a young woman ran in while they were sitting in the store waiting for refreshments and threw her arms around Mr. Walker, saying that they had had a great time last night. Though Mr. Rue was not sure whether Mr. Walker had kissed her back or not, he was sure that Mr. Walker knew this young woman. Contrary to the young woman’s exciting welcome, the landlady was quite cold to them. She came in and asked the woman to go upstairs and complained to Mr. Walker that there had been enough noise in the house and asked them to come another time. Mr. Rue asked Mr. Walker why the landlady was in such a bad temper, Mr. Walker said that he and his friends had supper at the house the other night, and one of their friends said he would give a dollar to the old lady if she would go upstairs and let him play on her belly. Shocked by the fact Mr. Walker provided, this exertion left a remarkable impression on Birch.<sup>12</sup>

Mr. Rue also gave details about Mrs. Walker’s visit to the jail: she came before Mr. Walker’s visit to the confectionary store and stayed for more than ten days living in the cell with Mr.

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<sup>11</sup> Ibid., 7.

<sup>12</sup> Ibid., 26.

Walker. The evidence showed that debtors' jail in mid-nineteenth century was quite humane and had lax rules that allowed prisoners' wives to live there. But after Mrs. Walker left Mr. Walker, he started to frequent the confectionary stores while having the company of suspicious female visitors in his cell.<sup>13</sup>

Not only did Mr. Rue's deposition show that the confectionary store Mr. Walker liked to visit in 1850 was a "house of ill fame," a police deposition confirmed it. A police captain sworn in as a witness confirmed that the house was occupied by men and women when he visited there as an officer, and women in this house aged between 18-25 and were of "loose characters,"<sup>14</sup> while male visitors were middle aged and older. When cross-examined by Mr. Busteed, the captain said that he had seen men and women attend the store; the store sold refreshments and ice cream on the first floor; and they were open until midnight.

In addition to Rue's description, William S. Birch, an ex-turnkey of the Eldridge Street jail testified about Mr. Walker's jail days and provided more details and sensational evidence. According to Birch, Mr. Walker not only openly bragged about his finger telegraph system of communication with Mrs. Warner and Ms. Pell, but also invited Birch to "go around amongst some of the girls tonight." Further, Walker had told Birch that Ms. Warner's sister Mrs. Warner had a child of her own, and "if he could get a chance he would make one for Miss Pell." Walker often paid Birch to help him deliver pamphlets and letters to his friend Col. Bobo and female visitors, and he also asked Birch to help him escape from the jail to go to a ball with Ms. Pell.<sup>15</sup>

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<sup>13</sup> Ibid., 7.

<sup>14</sup> Ibid., 25.

<sup>15</sup> Ibid., 26.

The most revealing and sensational account made by Birch was his observation of a visit Mrs. Malcolm paid to Mr. Walker. Although later Mrs. Malcolm asserted that she only visited Mr. Walker six to eight times, to Birch's memory, it was fifteen to twenty times. And one time he observed:

*"I remember on one accession, I was outside the window and saw Walker and her sitting on the bed, side by side; Walker had his arm around her neck; they were close together, Mrs. Malcolm sitting on the edge of the bed, with one foot across the other; ...She looked rather flushed, and her hair was disturbed; it was a warm day, her dress seemed somewhat wrinkled, and she commenced smoothing it."*<sup>16</sup>

Later, when Mr. Walker learned that Mrs. Walker was seeking a divorce from him and accusing him of adultery, he begged Mr. Birch to make an affidavit for him. Mysteriously, the affidavit was missing, regardless of the fact that Birch was made to swear that he had never let any female visitors go to Walker's jail cell.<sup>17</sup>

Both jailors' accounts document that Mr. Walker was quite open and blatant about his private life and intimate relationship with the women he frequented. And this was also shown in the letters he wrote. Walker wrote letters to his friend and used dumb and deaf language to communicate with his female visitors. These letters revealed that Mr. Walker was a passionate and prolific writer. He wrote letters every day and discussed his case and also talked about current politics and his other friends' affairs. Mr. Walker was also quite open about discussing

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<sup>16</sup> Ibid., 26.

<sup>17</sup> Ibid., 27.



his views on women and relationships; he advised his friend Bobo on pursuing a woman and asked him to bring female visitors to him. Among all his visitors, Mrs. Malcolm was Mr. Walker's favorite. She appeared in more than ten letters in the twenty-two letters introduced as evidence. Mr. Walker never hid his affection and longing for this married woman. He often wrote to Bobo asking him to arrange for Mrs. Malcolm to come to the jail, "Though I did ask Malcolm how she is, and why she did not call and see me, I know you can arrange that for me."

<sup>18</sup>And later in that letter, after addressing several other topics, Mr. Walker reminded Bobo that what he wanted most from him was to bring Malcolm,

*"Then as to Malcolm, I always feel grateful for even the raising of my spirits in the anticipation of the event so devoutly wished for. Now, I reckon she will come, when told how to manage and how much happiness will be conferred by the operation...and to Malcolm say that my happiness is in her hands, and I trust to the charity that may be vouchsafed to be exercised towards."*<sup>19</sup>

Once when Mrs. Malcolm failed to fulfill the promise to visit, Mr. Walker was so disappointed and wrote "Malcolm did not come yesterday as promised, or today, much to the disappointment of all concerned; will it do for me to drop her a line, to know if I may expect to be honored by a visit?" But when Mrs. Malcolm paid her visit, Mr. Walker's anxiety of expectation was replaced by simple pleasure, "Well. 'M.", looked sweetly, and no mistake, and has made such inroads in my estimation, that I must be permitted to pronounce her par excellence. My regards to both, and

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<sup>18</sup> Ibid., 19.

<sup>19</sup> Ibid., 21.

especially obliged am I, for the ray of sunshine which I have had the pleasure of basking in this P.M.”<sup>20</sup>

Yet since Mrs. Malcolm denied any intimacy with Mr. Walker, one can piece together the details of their relationship only through Mr. Walker’s letters. Although Mr. Walker was most fond of Mrs. Malcolm, their relationship was not “exclusive.” Mr. Walker had other female visitors too, and he was determined to please them as well. Mrs. Williams and her sister Ms. Pell living just across the street of jail also visited him. In addition, Ms. Lima visited Mr. Walker only a few times. Mr. Walker was passionate about his female visitors as well as kind to them. Though it was unknown if he had paid them to come, he had mentioned every one of them in his letters, and he even asked Bobo to bring a vase and flowers for him to put on his window to please Ms. Pell. Walker’s visitors sometimes would come together in pairs, and when Mr. Walker favored one over the other, problems would occur. Once he wrote to Bobo to complain,

*“ I was honored by a call from M and L., and it proved an unpleasant one, inasmuch as M. got offended that I gave her a book, while I was paying more attention to L than she deemed courteous---that we talked in a low tone---she said that she was not to be made a tool of...M. was vexed, and I made all the apologies that I knew how to, and all that; yet she would not say forgiven, not exactly, though I hope she harbored no resentment, as no unkindness was intended---yet it broke up the good time I have always had. L, too was vexed that she should be when no cause seemed to be apparent. ”*<sup>21</sup>

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<sup>20</sup> Ibid., 22.

<sup>21</sup> Ibid., 17.

Although Mr. Walker had never intended for his letters to be read in court and later published in a newspaper's court report, these letters revealed intimate details that gave the public a candid picture of his life in jail.

Despite all this concrete evidence, Mr. Busteed, the lawyer for Mr. Walker, presented lengthy and sentimental speeches denying the charges as well as pointing out that Mrs. Walker was also guilty of adultery.<sup>22</sup> Towards the end of the trial, another twenty letters were introduced and read to the court and jury, letters Mr. Walker had written to Mrs. Walker. Mr. Walker stopped writing to his wife early in 1851 and only resumed writing many letters to her after learning the fact that she was seeking the divorce.

Mr. Busteed stated several key points of the defendant's counter charges to the plaintiff. First of all, he believed that since Mrs. Walker only started to reside in New York in December 1853, she was not a lawful citizen of the state to file for divorce. To support his argument he cited the state law that required a married wife's domicile to be with the husband, but since Mr. Walker was in jail, Mrs. Walker could not be with him, so her violation of the state law made her lawsuit invalid. However, Mr. Blunt argued by quoting the revised state legislation, "If a married woman, at the time of exhibiting a bill against her husband...shall be deemed an inhabitant thereof, although her husband may reside elsewhere."<sup>23</sup> That was to say Mrs. Walker had the full right to file her lawsuit in New York against Mr. Walker.

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<sup>22</sup> Ibid., 31.

<sup>23</sup> Ibid., 31.

Although the argument based on separate domicile lost its credibility in court, Mr. Busteed fervently went on attacking Mrs. Walker for her unwomanly conduct as a wanton woman. First, he portrayed the marriage of Mr. Walker and Mrs. Walker as a fairytale that challenged the rigid genteel social hierarchy because Mrs. Walker was born Catherine F. Patten, the daughter of the wealthiest man in Maine. Along with her fine education and fortune, she was worthy of a wife of a European aristocrat. But Mrs. Walker fell for Mr. Walker, a man of little fortune with only \$5000 by the time of their marriage. Busteed portrayed Mrs. Walker as chaste, virtuous, and beautiful, and crowned her with the best character of all wives in his description of their first several years of marriage. But then, he turned to say that “the timid and girlish bride has transformed herself into an unyielding, imperious and exacting plaintiff” after she was determined to gain a divorce. And these former traits were indeed what society expected for a wife. The lawsuit then turned the lady that “perished all the hopes and loves of that hour of her marriage, so it destroyed the bliss which it promised,” and became “a wife we cannot save.” Further Mr. Walker made Mrs. Walker seem more fierce to the jury: “she talks not love but law-- --speak not sweet vows, but fierce anathemas----challenges us not as the troth she pledged but the throne of justice.”<sup>24</sup> From his portrayal, one can discern that married women were expected to remain private and timid at home rather than go out waging a war toward her marital vows. According to Mr. Busteed, all that Mrs. Walker did had broken the esteemed image of the perfect wife she had earlier presented. Thus, In his speech depicting Mrs. Walker’s change, Mr. Busteed manipulated the notion of gender and class well. He praised Mrs. Walker for her virtue and her

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<sup>24</sup> Ibid., 33.

belief in love and affection when she married Mr. Walker, who had little fortune at the time of the wedding. But he also blamed Mrs. Walker for not being loyal to her marital vows and for going to court because it was inappropriate and unwomanly. Women of her class, who had always been viewed as the role model for women, should remain at home and protect the family rather than bring a family dispute to the public eye.

Further, Mr. Busteed introduced to the court the notion of condonation. According to the rule of condonation, which is widely used in fault based divorce cases, In marriage, the voluntary pardoning by an innocent spouse of an offense committed by his or her partner conditioned upon the promise that it will not recur. He argued that since Mrs. Walker had said that she forgave Mr. Walker's wrong doings at the brothel in December 1850, what happened before that should not be charged. Moreover, Mr. Busteed countercharged Mrs. Walker for adulterous conduct with Doctor Heartwell at Harpswell in Maine as well as with the attorney general of Maine, Mr. Evans. He said Mrs. Walker only sought divorce because of the insidious influence of the villain, Mr. Heartwell. Following his charges of Mrs. Walker's "unwomanly conduct," Mr. Busteed promised the court the following testimonies of the defense's witnesses would provide evidence of Mrs. Walker's extreme familiarity with the gentlemen from Maine.<sup>25</sup>

Thus, by portraying Mrs. Walker's change from a sweet and caring wife to an unyielding wanton woman, Mr. Busteed tried to defend his client by denying all the charges and trying even harder in tarnishing Mrs. Walker's reputation and character. Mr. Busteed certainly hoped to

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<sup>25</sup> Ibid., 35.

influence the jury by making Mrs. Walker look like someone exactly opposite to the preferred image of women.

Not only were the jailors questioned in court, Mrs. Malcolm and the women who visited Mr. Walker also took the witness stand. However, compared to the details in the jailors' observations of Mr. Walker's Eldridge jail experience, Walker's female visitors presented very few details of their visits to Mr. Walker's cell. Baffled and embarrassed at the case and facing public scrutiny in court, these women all denied that they had had any familiarity with Mr. Walker. In addition, they denied that they had gone to the jail alone, stating that they either had gone to the jail in each other's company or with Mr. Bobo. As for their reasons for visiting the jail, Mrs. Malcolm said that she visited Mr. Walker out of sympathy, and Miss Pell went out of curiosity.<sup>26</sup>

Mrs. Malcolm originally lived with her husband Francis Malcolm in Brooklyn, she used to buy bonnets from Mrs. Walker, and that's how she heard about Mr. Walker. Malcolm stated that there she only went to the jail eight to ten times. She remembered there were three chairs in Mr. Walker's jail, and she sometimes would sit on one of them but never sat on the bed. The only refreshment she had brought to jail was a can of pickle and a pineapple. Ms. Pell denied that she made daily contact with Mr. Walker by finger telegraphing on the window, but she said she only used this method to discuss the weather with Mr. Walker two to three times. Moreover, despite the fact that Mrs. Malcolm was not living with her husband during the days of the trial, she claimed that she would tell her husband every time she visited Walker.<sup>27</sup> Although Mrs. Malcolm

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<sup>26</sup> Ibid., 43-44.

<sup>27</sup> Ibid., 43.

claimed to be innocent of the charges against her virtue and morality, Mrs. Walker's lawyers later questioned Mr. Malcolm. He confirmed that Mrs. Malcolm never told him about her visits to the jail and he knew nothing about Mr. Walker. Later, Mrs. Malcolm's neighbors and police in her new Brooklyn neighborhood confirmed that Mrs. Malcolm often brought male visitors to a Mrs. Coffin's house in the late night, and the house was a house of ill fame. Therefore, the cross examination of females that visited Mr. Walker drew to an end with the court learning the fact that Mrs. Malcolm was not honest and hid her real profession as a prostitute.<sup>28</sup>

Although with little hope of success, in an effort to make Mr. Walker look more like an affectionate husband than a pleasure seeking disgraceful man, Mr. Walker's lawyer asked the female visitors whether Mr. Walker had mentioned his wife and daughters to them. The answer was that he had showed the daguerreotype of his daughter and wife to the female visitors as well as to a jailors' wife.<sup>29</sup> However, Mr. Busteed's attempt to change Mr. Walker's negative impression to the jury was in vain because the letters Mr. Walker wrote to Bobo had already been read to the court. These letters became the most revealing and strongest proof of Mr. Walker's thoughts and his conduct with these women.

Although the trial focused on Mr. Walker's jail experience and proved his adultery, Mr. Walker himself never testified. But the women with whom he consorted took the stand and faced detailed questions about their private lives. They faced the public and the jury in the most direct and humiliating manner, except that their deeds and profession had already tarnished their

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<sup>28</sup> Ibid., 81.

<sup>29</sup> Ibid., 46.

reputation. They were called by the lawyers and police as women of “loose character” and worked in a “house of ill fame,” which indicated that society at that time emphasized women’s virtue and viewed family as the foundation of that time. Therefore, the court showed little sympathy and respect for their conditions. On the other hand, though Mr. Walker had committed all these wrong doings, his lawyers still defended his honor, and blamed these women and jailors of perjuring evidence, only because they had been of questionable character and were from a considerably lower class.

The latter half of the trial focused on checking Mrs. Walker’s fidelity by questioning the witnesses that doubted her conduct with Dr. Heartwell and Mr. Evans, the former senator of Maine and by the time of the trial, the attorney general of the state. A public house owner named Eaton testified that from 1847 to 1848, on several instances, Mrs. Walker had visited the public house he ran either with her husband and family or without her husband. On the occasions without Mr. Walker present there, as observed by the witness, Mrs. Walker became too “familiar” with Dr. Heartwell, who was also Mr. Walker’s friend. Mr. Busteed had asked questions such as “how familiar were the two of them?” and “How long and how often did they go for a ride together?” However, although it seemed that Mrs. Walker often rode, walked, and talked with Dr. Heartwell during her stay at the public house, and Dr. Heartwell had paid more attention to Mrs. Walker than other ladies, the public house owner could not attest that any more illicit relationship had occurred between the two. Later, Mrs. Eaton claimed that she saw Dr. Heartwell place his arm around Mrs. Walker several times at the public house, and she believed that the extent of their familiarity was beyond appropriate.



However, witnesses for Mrs. Walker testified that her conduct with Dr. Heartwell was only “ordinary exchange.”<sup>30</sup> A woman named Mary White, who was also boarding at the public house in August, 1847 stated that she had sat just opposite to Mr. Heartwell at the dinner table at the public house and Mrs. Walker was not sitting next to Dr. Heartwell. Besides, she also stated that Dr. Heartwell was by then “very devoted to his sister, Miss Heartwell,” and he had “ put his arm around her waist” at the public house, which indicated that Mrs. Eaton might have been mistaken with Miss Heartwell and Mrs. Walker. In addition to Mary White, other guests who were also presented at the public house when Mrs. Walker and Dr. Heartwell were also there, testified and said Mrs. Walker’s demeanor was proper when treating Dr. Heartwell.<sup>31</sup>

Perhaps the most distinguished witness of this case was Mr. Evans. He stood in the witness stand on the ninth day of the trial. On the day Mr. Evans took the witness stand, the courtroom was as crowded as usual; everyone seemed to expect some juicy details of Mr. Evans and Mrs. Walker. However, the questioning of Mr. Evans was quite ordinary and brief. Before Mr. Evans, a Mr. Elias Pearce was first questioned. Mr. Elias was a friend of Mr. Walker and he also knew Mr. Evans by sight. He testified that in 1848, he once saw Mrs. Walker and Mr. Evans on a steamboat sailing from Boston to Maine. According to Elias, Mr. Evans not only sat on the deck close to Mrs. Walker, but also placed his arm around Mrs. Walker’s waist while accompanying her going into her room and spent some time in the room. This was the foundation of defense’s charge of Mrs. Walker’s adulterous relationship with Mr. Evans; the defendant’s lawyer also said

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<sup>30</sup> Ibid., 70.

<sup>31</sup> Ibid., 72.

that Mr. Evans and Mrs. Walker after arriving in Maine had ridden in a carriage “face to face” all the way to Mrs. Walker’s house. The questioning of Mr. Evans was brief but also meticulous: they checked the dates and hours of Mr. Evans’s encounter with Mrs. Walker, they even asked about when their carriage arrived at the Walkers’ house, what was Mr. Walker wearing when opening the door, and which window of the carriage he opened to see his wife. However, answering these questions with short but firm response, Mr. Evans denied and clarified his relationship with Mrs. Walker in court. He told the court that before he met Mrs. Walker, he knew Mr. Walker to a certain extent but not as friends. It was because Mrs. Walker’s health was in a weak condition that Mr. Walker asked Mr. Evans to take care of Mrs. Walker on the boat. Therefore, Mr. Evans was merely fulfilling the task of taking care of Mrs. Walker and he remembered that he did place his arm around Mrs. Walker because she was too weak to walk. After their first encounter, Mr. Evans did see Mrs. Walker several other times but had not met her in private. Also, the lawyer for Mrs. Walker brought witnesses from Boston to show that Mr. Pearce’s “character of integrity and truth” was not of a good reputation, which indicated his testimony under oath was not true.<sup>32</sup> The trial examining the credibility of Mr. Pearce’s testimony had involved more than ten witnesses.<sup>33</sup> It showed to the people of nineteenth century society that honor and virtue were crucial to a man’s character. If he was viewed as an untrustworthy man, his testimony would be ruled as false. Well aware of this fact, the lawyers for Mrs. Walker had questioned a number of witnesses to show that Mr. Pearce was not trustworthy.

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<sup>32</sup> Ibid., 88.

<sup>33</sup> Ibid., 88-92.

On the other hand, Mr. Evans brief testimony showed that the words of a well-respected attorney general had more credibility in the court, and his testimony upheld his honor.

As the trial drew to the end, 18 letters that Mr. Walker had written to Mrs. Walker were read in court. Mr. Walker had been writing quite often to his wife from November 1850 to June 1851. The letters became scarce from June 1852, but upon learning Mrs. Walker was seeking a divorce from him, Mr. Walker started writing to his wife again expressing his despair in facing the charge.<sup>34</sup> In most of his letters written from 1850 to 1851, Mr. Walker often discussed the process of his bail and asked Mrs. Walker to keep in good spirits and have faith in their future. He did not ask Mrs. Walker to go to the jail and visit him but expressed affection to his wife and children. He also asked Mrs. Walker to see if her father, one of the wealthiest men in Maine, would agree to help with his condition. But it seemed his father-in-law showed no sympathy to him. In the last letters he wrote to Mrs. Walker, he begged her to come and visit him in jail, because he would want to have a face-to-face meeting with her and explain the charges to her. But Mrs. Walker never showed up. Desperately, he accused Mrs. Walker's family and friends in persuading her to seek the divorce, saying that she had been under the "influence" of her affluent and powerful family, and had already forgotten the good time they had.<sup>35</sup> Although Mr. Busteed read these letters in court to show that Mr. Walker was an affectionate husband, his earlier letters to Col. Bobo were powerful evidence to prove his adulterous intercourse with his female visitors and prostitutes.

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<sup>34</sup> Ibid., 98.

<sup>35</sup> Ibid., 102.

It took the court three days to end the trial and for the jury to reach a verdict. In the first two days, the lawyers for both the defendant and the plaintiff made closing statements. Compared to Mr. Jordan's more reserved tone in summing up the case on behalf of Mrs. Walker, Mr. Busteed gave a lengthy speech that was both sentimental and vigorous, which was just like his mid-trial speech, but more intense. At the very beginning of his speech he attacked the rank and status of the group of lawyers for Mrs. Walker, directly implying that their prestigious status in general would influence and pressure the judgment of the court and jury; he also blamed Mrs. Walker as an unqualified wife who failed to fulfill her wifely duty that had left Mr. Walker alone in jail and exposed to the seduces of the prostitutes. In addition, based on the earlier testimony of John Hull, he also restated the concept of condonation to the jury so that the charges over Mr. Walker's visits to the No.119 Mercer Street were invalid. According to the law of condonation, if one party had forgave the marriage dispute. As for the other side of this case, Mr. Jordan delivered a less sentimental but meticulous summary that reminded the jury and the court of the evidence of Mr. Walker's adulterous intercourse as well as answered the questions Mr. Busteed had raised in his summary.<sup>36</sup>

However, no matter how hard Mr. Busteed tried to rebuild Mr. Walker's image by emphasizing the countercharge against Mrs. Walker, the jury, except for one dissent, voted that Mrs. Walker could get a complete divorce from Mr. Walker and gain the custody of her children.<sup>37</sup>

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<sup>36</sup> Ibid., 123.

<sup>37</sup> Ibid., 140.

The Walker divorce case was both a typical and unique nineteenth century New York divorce. The prolonged trial showed that even for privileged upper middle class couples, to gain a complete divorce was a painful toil. Moreover, the trial also presented the gender paradigms and dynamics of nineteenth century through the meticulous examination of people's virtues. The case was especially unique because of the large number of people involved and questioned, and for the mixed array of people from different layers of the social hierarchy. While defending their clients, the lawyers of both sides exemplified the middle class ideal and mores of a Victorian America in the mid-1850s. The language they used, the focus of their speech, and questioning in the court echoed the social trends of the time.

The Walker divorce case was unique especially for the contrast of the gendered images and concepts the trial presented----affectionate husband and pimp, virtuous wife and wanton women, genteel women and women of loose character (prostitutes), women of the middle class and women from the lower rank of the society, respected statesman and perfidious businessmen. Mr. Walker's lawyer portrayed Mrs. Walker as a wanton women and unqualified wife, and emphasized women's duty as the "angel and guardian of the home,"<sup>38</sup> thereby blaming her for Mr. Walker's wrong doings in jail. Mr. Busteed's arguments showed the social expectations for women and the overwhelming duty of Victorian womanhood. On the one hand, society expected women to be virtuous and loyal to family and husband, mandating they keep the harmony of the home. On the other hand, society would blame women of suspected character faults with cruel

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<sup>38</sup> Ibid., 113.

language. However the lawyers for the plaintiff presented a more restrained temper in this case, and most of their arguments in their summary were based on facts and testimonies.

Through the trial, Mr. Walker only briefly testified once regarding the jailor Birch's affidavit in late 1853. Mrs. Walker never testified for herself. It was hard to know how she reacted and how she felt through the trial, especially facing the charges and attacks the defendant's lawyer fired at her. In 1854, divorce was very hard to obtain in New York. It was six years after Susan B. Anthony gave her speech in the same state demanding suffrage for women.<sup>39</sup> Also in 1854, Susan B. Anthony spoke to the New York legislature, demanding that the state grant women the right to vote and especially asked for the legislature to improve women's rights as daughters, wives, and widows. She criticized the common law tradition that rendered married women's property rights and other rights under the coverture of husbands, and she also demanded women's legal rights to represent themselves and to introduce female jury members into the jury. Though her demands and expectation were nothing but cries for equality, they were unfulfilled until 1919. Thus, although progressive women demanded equal rights for women, Mrs. Walker, one of the upper middle class women, well-educated with a flawless upbringing, could only sit in the court in silence and be represented by a family friend.

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<sup>39</sup> *Address to the Legislature of New York*, Elizabeth Cady Stanton, 1854, <http://www.nps.gov/wori/historyculture/address-to-the-new-york-legislature-1854.htm>

## CHAPTER 3.

### STRONG DIVORCE CASE

In 1865, ten years after Mrs. Walker successfully divorced Mr. Walker, New York State's divorce law remained the same. Despite the fact that the growing feminist movement of the latter half of the nineteenth century had begun addressing the issue of white married women's rights; and Elizabeth Cady Stanton had addressed the New York legislature demanding a more liberal divorce law in 1854, New York divorce law remained intact as it was in 1787.<sup>1</sup> While other states such as Indiana and Nevada had already begun to lead the first wave of divorce law reform in this country, unhappy couples in New York still needed to go through a painful process to get divorced.

In March 1865, the report of another celebrity divorce case started appearing in the pages of the *New York Times*, and it gradually caught the attention of the newspaper's readers as reports grew more and more detailed and longer. In November 1865, when the trial of this case had officially begun, the *New York Times* provided full coverage of the case. The social ranks of the couple and their prestigious social relations made this case especially intriguing to the public. Mrs. Mary Strong was born to a wealthy family that was well known and respected for

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<sup>1</sup> "The Strong Divorce Suit," *New York Times*, March 17, 1865, <http://www.proquest.com>.

generations; Peter Strong was a prominent lawyer in New York. Mr. Peter R. Strong, the husband and plaintiff in this divorce case, sued for divorce based on his wife Mrs. Mary Strong's adultery with his brother Edward Strong. He claimed that Mrs. Mary Strong had committed adultery with Edward strong after Edward became and widower and moved to live with the couple. Then, after this illicit relationship lasted for nearly two years, Mrs. Strong confessed to her husband in January 1862, and they began living separately. After a while Mrs. Strong took their youngest daughter away to live with her family and never returned. Outraged, Mr. Strong charged Mrs. Strong with adultery for divorce. However, Mrs. Strong's lawyers countercharged Mr. Strong of aiding a Mrs. Potter in running a secret abortion practice and might had an adulterous relationship with her.<sup>2</sup>

Unlike the Walker divorce case in 1854, in the Strong divorce case the wife committed the adultery, and this adulterous relationship lasted for nearly two years under the same roof in which the adulterous couple shared with Peter Strong. In addition, the trial put many letters and confessions Mrs. Strong had written to relatives and family friends into evidence, which revealed her thoughts on her adulterous conduct. However, in order to protect her dignity, Mary Strong was never present at the court; she was represented by her father and brother throughout the whole trial.<sup>3</sup> Nevertheless, Mrs. Strong never denied her adultery with Mr. Strong's widowed brother Edward Strong. She had confessed her sin as the "tempter" and asked for forgiveness from her husband and his family. Another difference the Strong divorce was the report of the

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<sup>2</sup> "The Strong Divorce Suit," *New York Times*, March 17, 1865, <http://www.proquest.com>.

<sup>3</sup> "The Strong Divorce Case: First Day's Proceedings," *New York Times*, November 24, 1865, <http://www.proquest.com>.



case became more comprehensive than the reports of the Walker divorce case ten years earlier. Instead of only recording trial session details, the reports began providing analysis and summary of the day's trial at the beginning of the reports. In fact, this was a trend that was influenced by the popularity of divorce reports and divorce literature at this time in the nation. When the New York Times was reporting this case, newspaper in other states also gave brief coverage to this case and introduced the family affairs of this New York couple to the public to the rest of the country.<sup>4</sup>

The trial of the Strong divorce case lasted for over a month from November 28 1865 to the first day of 1866. The earlier court sessions focused on cross-examining witnesses testifying against Mrs. Strong. During these sessions, family teachers, maids, relatives, and even colored coachmen of the Strong household were questioned about their observations of the alleged intercourse between Mary Strong and Edward Strong.

The concepts of women's virtue and men's honor were at the center of the trial. Both sides manipulated these two notions to argue for their clients. The Strong household testified in court to point out that despite the fact that Mary Strong was a devoted religious woman, she gave up her virtue to the sin of adultery. On the other hand, although it was difficult to argue against the powerful proof that Mary Strong had confessed her adultery, the defendant's lawyer argued that Mary Strong was ruined by her husband's neglect and her brother-in-law's temptation. Furthermore, in order to show that Peter Strong was responsible for his own dishonor, the

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<sup>4</sup> In addition to New York Times that followed the case closely on a daily bases, other newspapers such as the Washington Post and other local newspapers also reported the news of this case.

defendant's lawyer not only accused him of the neglect of his wife but also charged him with adultery.

The majority of witnesses of the Strong divorce case came from the Strong family and household.<sup>5</sup> Most of them confirmed that Peter Strong had been away from home on a routine basis, but Edward Strong stayed at home most of the time after moved in to his brother's house as a widower. In addition, both Edward Strong and Mary Strong were devout church members who were said to have "good standing" in the community and their church.<sup>6</sup> In fact, they became intimate through their church meetings and finally became an adulterous couple betraying their strict religious ideals. In order to prove adultery, a diagram of the Strong mansion was presented in court. With the rooms of Mary, Peter, and Edward marked on the diagram, each witness had pointed out the locations of where they had spotted the intimacy between Mary and Edward.<sup>7</sup> Witnesses confirmed that Peter and Mary had lived separately after she confessed her adulterous relationship with Edward in 1862. Moreover, probably due to the anxiety of confession and tortured by guilt, Mary suffered a miscarriage in spring 1862, and she confessed that she was quite relieved about the loss of the child, because she was not sure who the father of the child was.<sup>8</sup>

Ms. Matilda Mussehl, a family teacher, introduced the first significant evidence of the adultery in court. She testified that she had worked as the teacher of the Strong children from

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<sup>5</sup> "The Strong Divorce Case. Evidences of Mrs. Bedell, and A Fourty Year Servant." *New York Times*, November 29, 1965, <http://www.proquest.com>.

<sup>6</sup> Ibid.,.

<sup>7</sup> Ibid.,.

<sup>8</sup> Ibid.,.

October 1860 to April 1862. She had witnessed Edward Strong and Mary Strong “used to be always together, riding, eating, and walking to the church together.”<sup>9</sup> But what made her believe in the adulterous relationship was when she found out Mary and Edward had used her room for sex. She discovered her bed was a mess after witnessing the couple leaving her room, and she insisted that the servant would make her bed every morning. Another witness Fanny Strong, the sister-in-law of Mary and wife of Mr. Peter Strong’s other brother Benjamin witnessed the similar intimacy between Mary and Edward. She not only saw the adulterous couple spending a lot of time together, but she also saw Mary making signs for Edward to follow her to certain rooms of the mansion, and she believed that was the sign that the couple wanted to hide from the family.<sup>10</sup>

More revealing evidence came from the confession Mary Strong made to an old family nurse, Julia Bedell.<sup>11</sup> In her confession, Mary admitted her sin of adultery and confessed that she was the tempter in the relationship. Mary confessed that for a long time, she hadn’t felt any improper emotion toward Edward until “one evening her hand touched his and a thrill of emotion went through her frame.” She was attracted to his attention while he “reciprocated” hers. Then, after a little while they went down together “in the course of sin.” According to Bedell, Mary had expressed her great anxiety about her duty to her husband and children, and she had been living under the fear that he would leave her, take her children, separate from her, and eventually get a

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<sup>9</sup> “Strong Divorce Case: Testimony of Miss Mussell, the Governess.” *New York Times*, November 28, 1965, <http://www.proquest.com>.

<sup>10</sup> Ibid..

<sup>11</sup> “The Strong Divorce Case. Evidences of Mrs. Bedell, and A Fourty Year Servant.” *New York Times*, November 29, 1965, <http://www.proquest.com>.

divorce. But Mary also claimed that their love and Peter's affection to her had died out before she fell into sin. Under these clouds of anxiety and guilt, Mary asked Edward to end the adulterous relationship, and she had written to him after her confession to Peter Strong claiming that, " ...my husband knows everything of our sin, every detail of it, ...but now my love is again all Peter's." However, Edward refused to end the relationship.<sup>12</sup>

Most of these confessions had been made mainly through conversation and unfortunately, Mrs. Bedell had destroyed all the letters Mrs. Strong had written to her to protect the family honor and the couple's privacy. Therefore, Mary Strong's lawyer argued that this hearsay evidence did not prove the adultery; they even argued that because in the Episcopal Church there was no priestly confession, "people confess to one another." Mary's confession, made "in the course of religious discipline" could not count as evidence. Suffering from the guilt caused by her sin and the fear of divorce, Mary Strong, also wrote to her sister in law to confess her adultery. These letters were read in court and the handwriting style was proved to be Mrs. Strong's.

At last, on January 6th, 1862, Mrs. Strong wrote to Peter Strong and confessed her adultery as well as writing to Edward Strong to break their adulterous relationship. These letters not only became the most powerful proof of Mary Strong's adultery, but also showed how religion had played a strong part in her confession and how religion had shaped her way of life. In her confession she wrote: "The following is truly given to an injured husband by a loving wife...I made, in the bitterness of my soul, on the evening of Jan 4<sup>th</sup> 1864, a full and true

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<sup>12</sup> Ibid.,

confession of a course of guilt which tainted my life and extended over a period of two years.”

Religious influence also played a crucial part in her confession; she attributed her courage to confess, though two years late, to God, “God’s merciful judgment has shaped the cord of iniquity and his strength has enabled me to confess the crime to him I had wronged. And relieved my conscience of the heavy weight of concealment.” At last, she vowed to shoulder all the consequence her adultery had caused, “If my husband sinks beneath the blow, and is driven to destruction, I wish to bear the blame; I wish it to be known to all, that he may be excused and shielded from reproach.” Finally, she begged for forgiveness from God, “May God avert the dreadful issue----send peace to his heart---grant to me a sincere repentance and forgive me.”<sup>13</sup>

After the family members and maids of the Strong household testified in court against Mary Strong, the defendant’s lawyer made a motion for the court to dismiss the case based on the lack of concrete evidence. In order to gain support and sympathy from the judge and the court, the lawyer addressed the court and jury as “husbands, brothers and fathers.” With this gesture, he hoped to win their support and sympathy from the gendered responsibility they bore as the protector of their wives, sisters, and daughters. Though the motion was denied, the lawyers’ speech to propose the motion showed how the lawyers had manipulated and used the notion of women’s virtue and preferred gender roles to defend Mary Strong. Although it her adultery appeared fully proven through her confessions, her lawyer denied the charge anyway. And they argued that “even if it was true,” Mary Strong was fully forgiven by her husband because of the

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<sup>13</sup> “The Strong Divorce Case: Written Confession in Mrs. Strong’s Handwriting.” *New York Times*, December 1, 1865.  
<http://www.proquest.com>.

fact that they had been living together after her confession had established a true condition of condonation.<sup>14</sup>

Mary Strong's lawyer argued that since both Mary Strong and Edward Strong were avid church members and were devoted to the church of their community, for people of such strong religious pursuit, it was impossible for them to "go down the course of sin." But paradoxically, the lawyer also blamed Edward Strong for not being able to resist temptation. This time, through the gendered paradigm and religious perspective, Mary Strong's lawyer blamed Edward Strong more for their falling into adultery—men should take the blame for not resisting temptation and ruining a chaste wife.

Aside from arguing that her weak health after suffering a miscarriage had rendered Mary Strong's confession unreliable, her lawyer also portrayed Mary as a victim of her husband's neglect. He claimed that since Mr. Strong was often away from home on business, he was unable to take care of his wife and fulfill his duty as the husband. Therefore, in addition to defending Mrs. Strong's chastity through her religious pursuits, her lawyers also used the gender paradigm of preferred manhood in nineteenth century to accuse Mr. Strong: "Every husband is considered to be the guardian of his own honor, it maybe compromised as much by his neglect as by his example; and if in a total disregard of his own and the reputation of his wife—if forgetful of the duty owing to himself and to society—it appears that he has failed to exercise that prudent vigilant which the law requires at his hands, and by a gross and palpable neglect has exposed his

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<sup>14</sup> "The Strong Divorce Case: Mr. McKeon's Opening." *New York Times*, December 7, 1865. <http://www.proquest.com>.

wife to the temptation under which she has fallen, such a husband may be held to be immediately instrumental in his own dishonor and preclude from the usual remedy of adultery.”<sup>15</sup>

Thus by portraying Mr. Strong as the man who destroyed his own honor as well as ruined his wife’s reputation and life, the lawyer hoped to gain the pity of the jury by saying that women’s virtue should be protected by men.

After making this unsuccessful motion, Mrs. Strong’s lawyers waged a war to tarnish Mr. Peter Strong’s reputation and honor. First, they took on the issue of the class distinction between Mr. Strong and Mrs. Strong. They blamed Peter Strong for marrying Mary Strong for her father’s fortune, and accused him of being cold to his wife after learning that her father would not give them Mary’s inheritance immediately after marriage. They thus made Mary a true believer in love and affection who had married down to Mr. Strong, but was ruined by her husband’s neglect. This may also echo the growing number of upper class women who married down to lower class men and who suffered marital disputes and unhappiness afterwards in this period. In addition, the testimony of Mrs. Strong’s sister made Peter Strong a cruel husband who threatened to kill his wife by saying, “you deserve to die,” after learning about her adultery and the fact that the father of the child was unknown. They even blamed Peter Strong for his pursuit of divorce, saying that divorcing would only destroy the reputation of the family and the well being of the children. They believed that Mr. Strong should have taken the high road and forgiven Mrs. Strong, which

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<sup>15</sup> Ibid.,

would have made him a noble and generous man. In sum they felt “deep regret that the difficulty of the divorce would go public.”<sup>16</sup>

In addition, they also charged Mr. Strong with the alleged crime of renting part of his house to a Mrs. Potter and help her with her secret abortion practice at his property. Moreover, towards the end of the trial, the lawyers even accused Mr. Strong of performing an abortion on his wife, saying that as a result of a medical examination, the dead infant was perfectly healthy.

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Mrs. Mary Strong’s relatives also testified and tried very hard to use Mrs. Strong’s femininity and her weak physical being to argue for her. Mr. Stevens, the father, testified first and gave a review of the couple’s relationship. He accused Mr. Walker of failing to treat his daughter well because he did not give her the dowry every daughter received at marriage. He also denied that Mary had specifically confessed her adultery with Edward to him, claiming that she only said she had fallen in “sin” but not stating exactly what it was. Also he blamed Peter Strong for the lack of care Mary received after the miscarriage. Mrs. Hecksher, Mary Strong’s sister then testified against Mr. Strong. She stated that Mr. Strong treated Mary rather coldly and harshly after her confession, and after Mary demanded the custody of one of their daughters, he threatened her and called a “liar.”<sup>18</sup> She also told the court that Mary had suffered several miscarriages while she was traveling and living with Peter in Europe; she blamed these miscarriages on Mr. Strong for his lack of care for her sister. Thus, these incidents of neglect led

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<sup>16</sup> “The Strong Divorce Case: Mrs. Hecksher’s Deposition.” *New York Times*, December 14, 1865, <http://www.proquest.com>.

<sup>17</sup> “Strong Divorce Case: Evidence of Two Doctors, One Nurse.” *New York Times*, December 13, 1865, <http://www.proquest.com>.

<sup>18</sup> “The Strong Divorce Case: Mrs. Hecksher’s Deposition.” *New York Times*, December 14, 1865, <http://www.proquest.com>.



to the weak health of her sister, led to her seeking comfort while Mr. Strong was not at home, and finally led to her sin of adultery. To Mrs. Hecksher, after Peter learned about the adultery, he threatened bodily harm to Mary, an act neither respectable nor honorable. Later, Mary Strong's brother also testified that Mr. Peter Strong had married for their father's money but not for the love of his sister. He blamed Peter Strong for not being a respectable and noble man, because he turned down Steven's family's offer to get a settlement and stay in the marriage. The brother, as the broker of the family, had for many times met with Mr. Strong to persuade him "not to bring the tragic matter to the public" for the good of his wife and children, and for his own reputation. But Peter Strong persisted. Therefore, the Steven's family blamed Peter Strong for the tarnished reputation, the separated children, and especially Mary Strong's ruined health and reputation.

In addition to blaming Peter Strong for pursuing divorce at the price of Mary Strong's reputation and his daughters' happiness, the defendants' lawyers also introduced witnesses to testify on the two countercharges they had for Peter. First they brought in nurses working with Mrs. Potter at the medical institute to testify that they had seen Mr. Strong frequently visit the institute and had seen him place his arm around Mrs. Potter's neck. Moreover, they even claimed that they had seen Peter Strong in bed with Mrs. Potter. But Mrs. Potter's husband contradicted this charge, claiming he claimed he was the man who was in bed with Mrs. Potter.

However, the defendant's lawyers did not give up in making Mr. Strong a cold-hearted criminal in the court. They provided testimonies from several doctors who treated Mary Strong to show that when she was having the miscarriage, the dead infant was healthy, thus accusing Peter Strong of having performed a secret abortion on his wife, since he had been acquainted with Mrs.

Potter and had access abortion tools. But these countercharges did not persuade the judge and jury because Mrs. Strong's confessions were the most powerful evidence of her adultery.<sup>19</sup>

The trial of the Strong divorce case drew to an end as the New Year came. Before publishing the long speeches of lawyers for both sides, the New York Times even ran a summary of each day's trial in advance to provide the readers with a comprehensive review of the case. There were few new findings in the summary provided by the defendant's lawyers except that they accused Mrs. Bedell, the sister of Mr. Peter Strong of having a tainted reputation that made her testimony of Mary Strong's confession invalid. These last-minute charges were argued against and dismissed. In the end, the jury granted Peter's divorce petition and gave him custody of his children.

## Summary

When the five-week trial of the Strong divorce case ended, one commentator wrote in the New York Times that he assumed the public would be happy that "Finally! It was ended!" He said in addition to the major scandal of an adulterous relationship, the readers of the newspaper had to bear through the revelations of the "private history" of the Strong-Stevens case, the perjury, the abortion, and the bribery of witnesses. It is true that compared to the Walker divorce case of almost a decade earlier, the Stevens-Strong divorce case was more complicated. And just like Walker divorce case, not only due to the gender power relation it revealed but also because it brought the concept of public and private spheres to the center of attention.

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<sup>19</sup> "Strong Divorce Case," *New York Times*, December 28, 1865, <http://www.proquest.com>.

At the core of the gendered power relation within the Strong divorce case was the manipulation of the concept of women's virtue that directed the strategy of both sides. Married women's virtue was viewed as the core character that governed the hearth in the nineteenth century American family; married women themselves should become the guardian of the family sphere, committed to family and household affairs. A woman's virtue represented her own honor as well as the honor of her family. It protected and kept intact and harmony of the private sphere of the home, and it also bonded with the honor of her husband, the man who represented the family in the public sphere. However, men were not exempted from the responsibility of protecting their family. Men needed to show the character of chivalry and to protect the honor and harmony of their family. Especially for women, even in the last half of the nineteenth century, the common law tradition of coverture still bestowed upon men the responsibility and rights to represent wife's rights. Man was seen as the owner of his wife as well as her protector.

Thus, the plaintiff's lawyer, based his argument on Mary Strong's confession, argued that even though she had been physically suffering from bad health, she was a misguided woman. Not only had she broken and tarnished the hearth, but by her adulterous relationship and her abduction of her child, she had betrayed her God and destroyed her husband's honor. The defendant's counsel also used the notion of women's virtue and honor to argue against the charges she faced. For them, they blamed Mr. Peter R. Strong for his neglect of his wife's well being and for his selfishness that led to the ruin of her reputation and the children's happiness. They argued that since men are the protector of their own honor and their wives', Peter was responsible for Mary's fall. Since Peter was too busy with his business, he neglected his weak

and lonely wife, which made her susceptible to temptation and finally led to adultery. Therefore, Mr. Strong should be ashamed both for his wife and his brother, and the defendant's lawyers even implied that he should be responsible for their sin. In addition, although Mary confessed her adultery to Mr. Strong, they argued that since the couple had lived under the same roof after her confession, Mr. Strong had forgiven Mary according to the law of condonation. Therefore, Mr. Strong's pursuit of divorce and custody of his children would be a violation of condonation that would lead to the ruin of his own honor as well as that of his wife's. In other words, by making the case that Mary was destroyed by her husband, the defendant's lawyer used her virtue and honor to show her transformation from a well educated, chaste wife born into a prestigious family, to a disgraced wife, misguided by temper and neglected by her husband. As a result, to them, Peter Strong should take the blame for his wife's wrongs as well as for his own dishonor.

In addition to the concept of women's virtue that had served as a major tool to develop their argument, the defendant's counsel also used the concept of public and private spheres. The notion of public and private was also essential to Victorian social values. Since family affairs in the home sphere should be kept private, the gentry often believed that revealing the details of family disputes in public disgraced the family. Thus, the Stevens family had tried every means to stop Mr. Strong from bringing the case to court. At first, they had sent family members to negotiate and persuade Peter to consider the honor of his children, wife, and himself; they would deeply "regret" if the family affair reached the public.<sup>20</sup> The reputation of the family and the

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<sup>20</sup> "Strong Divorce Case," *New York Times*, December 26, 1865, <http://www.proquest.com>.

image they presented to the public were the most important things to defend. Then after this soft strategy failed to work, they accused Mr. Strong of adultery to tarnish his reputation in public.

Why did the Stevens family try to persuade Mr. Strong to withdraw from pursuing a divorce when the marriage was already broken? In the social climate of the 1860s, divorce remained unacceptable to middle class American society. While New York was the only state that allowed divorce on the sole grounds of adultery, and South Carolina was the only state that forbade divorces completely, other states had more liberal divorce laws. Even within New York State, where the Catholic Church remained as the strongest force against divorce law reform, legislators had brought the issue of divorce law reform for discussion in the late 1850s. Especially after 1859, when the Indiana State legislature had expanded the grounds for divorce, and states such as Ohio and Nevada followed the trend, there had been discussions on the expansion of divorce laws in New York by then. However, even in 1869, ten years after the Indiana divorce law had become the most modern in the country, commentators still wrote to the *New York Times* opposing divorce law reform.

In fact, both the supporters and the opponents of the divorce law all agreed that marriage was the foundation of society because it cemented social union that held men and women and their family unit together. However, paradoxically, supporters believed that more liberal divorce laws would lead to a better society; while opponents feared that the growing number of divorce cases and “lax” divorce laws would lead to the “degradation” of the society.<sup>21</sup> In 1859, while several senators were asking for divorce law reform in New York, a reader wrote to the *New*

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<sup>21</sup> “Law of Divorce.” *New York Times*, June 01, 1858, <http://www.proquest.com>.

York Times and commented that New York should not follow Indiana and other states to expand its grounds for divorce, because the “laxity” in divorce law would harm social morals.<sup>22</sup>

Ten years later, a clergyman also wrote to the New York Times about marriage and divorce.<sup>23</sup> He argued that the “infidel character” of modern marriage had harmed the sacred union of Christian marriage. Even though the law authorized clergymen of the state to certify marriages, it was not enough to make the marriage a sound and lasting one. He argued that in order to make marriage more sacred and solid, first, the number of authorized clergymen should be reduced; second, he insisted that for marriages to be sacred and lasting, marrying couples should provide to the clergymen and the magistrate the proof of parental consent. As to the concept of divorce, he believed that it was dangerous to society if divorce became prevalent. But if the above measures could be implemented as preconditions for marriage, marriage without consent could be reduced, and there would be fewer divorces. Moreover, he continued that because the modern concept of marriage was based on compatibility, and this concept was below the moral standards of even the “heathen society,” and anyone who sought divorce based on incompatibility would be immoral.

As early as in 1859, one commentator had already written in the New York Times claiming that marriage was the foundation of the society that held the society together, divorce was immoral and would “corrupt” the society.<sup>24</sup> He raised the example of the Roman Empire to prove his point. Since Roman law allowed divorce, it led to the corruption of the society and the

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<sup>22</sup> Ibid.,

<sup>23</sup> “Marriage and Divorce,” *New York Times*, March 18, 1869, <http://www.proquest.com>.

<sup>24</sup> “Remonstrance of Changing Our Divorce Laws,” *New York Times*, February 02, 1859, <http://www.proquest.com>.

degradation of social morals and finally led to the fall of the Empire. While the common law system set strict rules on marriage and divorce, it made sure that societies followed the common law tradition to avoid the destruction of them. Therefore, reducing divorce and preventing the expansion of the divorce laws were the most sensible choices for governments.

However, reform-minded legislators and legal professionals in Indiana argued that it would make society more “sincere and true” if divorce grounds were more liberal. A lawyer from Indiana pointed out that it was very harsh and inhumane for unhappy couples in South Carolina to stay in a broken marriage because most of them would live a life of unhappy celibacy. And even a judge in South Carolina joked that since divorce was unavailable in this state, the legislature tried to enact laws to regulate “what amount would be sufficient for the husband to pay to his concubines.”<sup>25</sup>

In general, the social climate in the late 1850s and 1860s detested divorce. Preventing the grounds of New York divorce laws from expanding was the pursuit of many conservative legislators and clergymen. These writings and comments created a harsh environment for New York State’s progress in liberating the grounds for divorce and ultimately praised New York’s holding onto its rigid divorce law. They linked social morals and societal stability to the number of divorces; for them, allowing easier divorces would harm the sacred union of marriage and corrupt society. In the meantime, couples in New York sought divorce anyway, despite the fact that evidence of adultery was hard to prove and divorces were often scorned upon by mainstream society.

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<sup>25</sup> Edwin A. Davis, “The Indiana Divorce Laws not Changed.” *New York Times*, May 26, 1869, <http://www.proquest.com>.

## CHAPTER 4

### “PEACHES BROWNING” DIVORCE CASE

New York’s divorce law remained the same even into the twentieth century. After 1919, when female suffragists successfully promoted the nineteenth amendment, the New York divorce law still allowed divorce only for adultery. Celebrities and rich couples often sought divorces outside the state or the country, while less affluent couples tried forging their divorce documents. In the roaring twenties, although society was filled with new pleasures brought about by the new pop culture of the era, newspapers still ran divorce news and stories and the public interest remained high. One marriage and divorce scandal in the roaring twenties dominated the *New York Times* in this period; the “Peaches Browning” divorce case caught the attention of New Yorkers as well as the nation.<sup>26</sup> A divorced real estate tycoon in his 50s married a working class girl of 15. It was already a story more thrilling than a real life Gatsby affair, and 90 years later, *New York Magazine* in 2012 selected it as one of New York’s top scandals in the city’s history.<sup>27</sup>

In 1925 in Manhattan, Edward W. Browning was one of the most eligible bachelors whose fortune was estimated at \$300 million by today’s standard.<sup>28</sup> Divorced after his first young

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<sup>26</sup> Not only *New York Times* followed the details of the Peaches Browning marriage disputes, the *Washington Post* and even *Atlanta Journal Constitution* also published reports of this marriage dispute.

<sup>27</sup> Dan P. Lee, “Peaches: Who’s Your Daddy?” *New York Magazine*, April 01, 2012.

<sup>28</sup> *Ibid.*,



wife deserted him and ran off to Paris, he threw himself into looking for a new adopted daughter to accompany his already adopted favorite daughter Sunshine Browning. However, although he had reviewed more than 3000 applications for the adoption, he was tricked by a girl who claimed she was 16 years old, but in fact she was 21. After this incident, Mr. Browning devoted himself to charity and held large balls for high school and sorority girls in the city, which made him famous as “Daddy Browning.” At one of his parties, he met Frances (“Peaches”) Heenan, a girl working as a clerk in a local store and who was raised by a poor working class family. And the couple claimed that their encounter was “love at first sight.”

Ever since they had decided to get married, their marriage had been full of drama, and the newspapers in New York and other places in the country presented tawdry and detailed reports of their relationship. After their wedding, Peaches lavished herself with hundred of clothes and jewels, and large crowds followed her as she visited her former work place to gloat. The public attention this marriage had attracted resonated with some of the features of the Roaring 20s. The rise of mass culture through the development of commercialism attracted girls and young women to work in the city with the expectation that the cult of money and wealth would bring happiness. Thus, this story of young gold digger and her rich and famous sugar daddy appealed to the general public.

Although stories of rich old men and young girls often made it to newspapers, the sharp contrast of Peaches and Edward’s age and social rank made it one of the most famous marriage disputes of the 1920s. The public expected the marriage to be dramatic, and the Brownings never disappointed them. The love between Peaches and Edward only lasted for six months before they

separated. Peaches left Edward four months into their marriage, leaving with her mother and refusing to return to Edward.<sup>29</sup> After waiting for one month, Mr. Browning filed for a separation while Peaches demanded alimony from him.<sup>30</sup> In order to win the case and to gain alimony, Peaches even accused Mr. Browning of riding in the same car with two other single girls, which indicated infidelity.<sup>31</sup> However, the judge decided in favor of Mr. Browning and believed that Peaches' accusations toward her husband were unsubstantiated and wrong.<sup>32</sup> Peaches filed for divorce again in 1930, but her suit for divorce was also denied. Before she died at 46 in the early 1950s, Peaches had been married to three different men and divorced four times. Because divorce was still hard to gain in New York, she often visited Reno, Nevada to get her other divorces.<sup>33</sup>

Although the New York divorce law they faced were the same, but the social background of the Peaches Browning marriage dispute had a very different and strong character of the roaring 20s. Not only that the reports on their marriage and separation become more detailed and sensational, but with the development of technology, newspapers published photos of the dueling couple. In this case, the sharp contrast of the class and age intrigued the public: Peaches, a poor teenage clerk working in a store living with a single mother, married Mr. Browning, one of the wealthiest men in Manhattan with an interest in dating young women.

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<sup>29</sup> "Peaches Tell How Daddy Wooed and Won Young Bride: Love at First Sight." *New York Times*, April 17, 1926, <http://www.proquest.com>.

<sup>30</sup> "Peaches Weeps Telling Life as Mrs. Brwoning." *New York Times*, January 26, 1927, <http://www.proquest.com>.

<sup>31</sup> "Browning Wins, Get Separation, No Funds for Wife." *New York Times*, March 22, 1927, <http://www.proquest.com>.

<sup>32</sup> "Peaches Case Ends." *New York Times*, February 02, 1927, <http://www.proquest.com>.

<sup>33</sup> Daddy Browning died in 1934. "Peaches Dies at 46." *New York Times*, August 24, 1956, <http://www.proquest.com>.

Peaches' popularity also showed the changing gender roles of women. Images of women became more diverse in the 1920s thanks to the economic development of urban culture. Due to the development of consumerism and mass culture in the first two decades of the twentieth century, more and more young urban women started working as saleswomen, clerks, and secretaries. These women bought the majority of mass culture products, for example, manufactured clothes and accessories as well as the dime novels. Although they were working in low paying jobs, they were independent in the society and hoped to get married after a few years of work.

Women only belonged to the private sphere, they became working girls by day and bobbed haired flappers by night, but marriage was always their goal. That's why when Mr. Browning published his call for adopted daughter applications, he received more than 3000 applications nationwide and he ended up to be fooled by a 21 year old working girl claiming that she was 16.<sup>34</sup> Also, that's why the newspapers called Mr. Browning the "Cinderella Daddy" after he married Peaches, which indicated that he was the aged prince that saved Cinderella from the drudgery of a working girl's life. In fact, large numbers of youths of Peaches' social class, men and women, followed the couple during their every public appearance. They followed the couple or just Peaches to see how dramatically her life had changed. Thus, the gender and class element of the Peaches Browning case made it different from the Walker and Strong divorce case. It not only attracted public attention during the marriage dispute, it attracted such attention before the

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<sup>34</sup> "Browning Girl is 21; He Sends Her Away." *New York Times*, August 9, 1925, <http://www.proquest.com>.

wedding and lasted even after their separation until their death. The class and gender stereotypes of their relationship made them popular figures rather than victims of a marriage dispute.

#### Class stereotypes

One of the most important characteristics of the “Peaches Browning” marriage dispute was how the couple’s sharp class distinction had drawn wide public attention. From the beginning of their wedding to the judge’s decision on their separation, class and wealth had played a crucial role in shaping their marital relationship as well as how the public viewed them. This sharp class difference between Edward and Peaches made her subject to the patronizing power of “Daddy Browning,”<sup>35</sup> which finally led to her leaving him because her demand for luxury was denied.

When the newspapers reported their marriage, Peaches was just 15 years old, and their marriage license could only be obtained with her parents’ consent. The newspapers depicted the wedding with details like the present day reports of celebrity weddings: Peaches was marrying her “elderly” and “wealthy” daddy wearing “a blue ensemble, obviously new; Browning was attired in business clothes, a blue sack suit, spats and derby.”<sup>36</sup> After the wedding they resided in Cold Springs in Browning’s newly rented mansion of 15 rooms. Ironically, at the time of her wedding, Peaches still faced a hearing in children’s court to bar her from getting married. Since the wedding, Peaches referred to Edward Browning as Daddy Browning, and called him a father-sweet-heart, a title that fully showed the gendered power relation in this unusual marriage.

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<sup>35</sup> Edward West Browning won the nick name of “Daddy Browning” by his advertisement for adopted girls.

<sup>36</sup> “Peaches’ Heenan Weds Edward West Browning.” *New York Times*, April 11, 1926, <http://www.proquest.com>.

For Peaches, a working-class Bronx girl, who had married into wealth, the next step after the wedding was not going on a honeymoon but returning to where she formerly worked. Six months before her marriage with Daddy Browning, Peaches was working as a clerk at a fashion store on 45<sup>th</sup> West 34st, where she earned a weekly salary of \$12.<sup>37</sup> Then soon after she quit her job and returned to high school, she met Browning at one of the balls he sponsored and married him a few months later. As she went back to her former workplace, she was followed by a crowd of hundreds waiting outside the store to catch a glimpse of her. Four policemen were stationed outside the store to handle the traffic from the pressure of the fans waiting to see Peaches. The newspaper called it a “triumphant” return of Peaches although it may have been sarcastic. The reporter said that she was going back to gloat at her friends who were not as lucky as she was to marry into wealth. Indeed, her return was a satisfaction to her vanity; her former colleagues all claimed that they had been friends with her before and they all started their anecdotes of Peaches with, “I knew her when...”<sup>38</sup> The warm welcome she received showed that society in general worshiped wealth and celebrity at the time, and even for a poor girl married into wealth, her change of class made her a star for people to chase and look up to. Those girls who claimed that they had been friends with her may also have dreamed for a marriage like hers.

Peaches not only won a warm welcome when she returned to her former workplace. Everywhere she went, she would face dozens of reporters who could be viewed as the roaring 20s version of paparazzi, and she also had to pose for cameras and for her fans who chased her

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<sup>37</sup> According to measuringworth.com, \$12 in 1926=\$156 to \$306 in 2012\$.

<sup>38</sup> “Peaches’ Returns In Triumph To Store Where She Clerked.” *New York Times*, April 15, 1926. <http://www.proquest.com>.

and blocked traffic. During her marriage, she shopped a lot buying hundreds of dresses and even more jewels. One day when she went to a hat store in Manhattan, she received “thousands of persons” to witness her coming and going outside of the store. Traffic was blocked, and she had difficulty reaching her car when the 25 foot walk from the store to the car was blocked by fervent fans that not even the police could control. After this incident, Peaches was interviewed on her buying habits and about her relationship with Daddy Browning. She told the reporter, “Daddy Browning encourages me to go shopping...and he has an eye for cut and fit and color” and she boasted that there was “one fault to find in him, he is too generous!” Browning had bought her a \$125 dress and said, “it’s no problem” to have it, because the dress is cheap. Feeling lucky and grateful, Peaches vowed to “live up to daddy’s expectation.” And she added that she would start private tutoring to learn the manners of high society. She was very excited at the fact that “it isn’t easy to remember that every girl can’t have a father-sweet-heart like mine. I am so sorry for all the rest.”<sup>39</sup>

Although Peaches claimed that the love between Daddy Browning and her was love at first sight, and she was very happy being with Mr. Browning, Daddy Browning’s extravagant generosity could not buy her lasting love for him nor could Daddy Browning’s love satisfy her growing greediness. At last, in early October of 1924, only six months into their marriage, after Daddy Browning turned down her request to buy a \$2000 piece of jewelry, Peaches ran away with her mother, never to return.

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<sup>39</sup> “Browning and 'Peaches' Bride Followed by Jeering Crowds.” *New York Times*, April 14, 1926, <http://www.proquest.com>.

Daddy Browning petitioned for a separation after waiting for six weeks for Peaches to return. When the separation trial began, Peaches surprised the reporter and audience in the courtroom with her maturity, her good English, her choice of words, and the ability to define her meanings. It seemed to the reporter and the public that for a girl with lower class origins she would most probably using “crude and slangy” language. However, the occasions that she used such language were rare.

In the end, when the judge granted the couple a separation but no alimony for Peaches, he reflected the class stereotypes of the time. Despite the fact that Daddy Browning might have sought some eccentric pleasures from his “girl wife,” he “married the defendant under the circumstances which existed that he endowed her with his property, lifted her out of poverty and gave her everything up to the very day she left him.”<sup>40</sup> The judge mentioned that Browning was kind and generous to Peaches and he bought everything she asked for including a \$1500 ring; it was only when her request for an expensive jewel, an automobile, and a house was turned down, Peaches and her mother left Browning. Thus, he viewed Mr. Browning as an innocent victim of the plotting and greedy daughter and mother.

In addition to class distinctions, the gender stereotype and gendered power relation were the foundation of the Peaches Browning marriage dispute. First of all, before marrying his “girl wife” Francis Heenan (Peaches), Edward Browning became famous due to his real estate business, his first marriage, and his advertisement for a “Cinderella girl” to accompany his lonely adopted daughter. Edward Browning had established an image of a successful businessman, a

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<sup>40</sup> “Browning Wins Suit, Wife’s Alimony Ends.” *The Washington Post*, March 22, 1927, <http://www.proquest.com>.

divorced single father, and a man spending a fortune on children's charity as well as in throwing parties hosting teenage girls. Although his interest in young girls seemed as peculiar as a pedophile, his wealth and success overshadowed this eccentric side of this tycoon. As a result, his rich and manly image became so popular that it made his search for a Cinderella daughter receive thousands of applications. But the women in Mr. Browning's life sharply contrasted with his fatherly Daddy Browning image. These women were adopted, young, and from poor class origins; they represented the majority of women in the society who aspired for protection, marriage, and wealth. That is to say, even though the economic scene of the 1920s had changed, many women had sought jobs outside the home, and feminists had succeeded in getting the vote, young women still preferred to get married and find a man to protect them. Working class women more desperately sought such protection, which explained the number of applications that flooded Mr. Browning's mailbox and why girls as young as Peaches would suffer the peculiar habits of Daddy Browning to live a better life.

During their short period of marriage, Peaches became a plaything of Mr. Browning and also became an object to exhibit to the paparazzi. She had to accept all the "odd and gaudy" presents Daddy Browning brought to her and had to sleep with giant dolls in her bedroom. She was ordered to walk naked in front of Mr. Browning as well as to pose for all the tabloid cameras that he invited to his home.<sup>41</sup> It seemed that Peaches had become a young feminine trophy of Mr. Browning, a property for him to protect, to spoil, and finally to manipulate.

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<sup>41</sup> "Browning's Wife Tells Her Story." *New York Times*, January 26, 1927, <http://www.proquest.com>.



In addition, the reports of the trial in the Peaches Browning marriage dispute showed the gender and class bias of the time. Despite the fact that the judge acknowledged Mr. Browning's peculiar habits, he blamed Peaches for not being chaste before her marriage because she had dated several other men before she met Daddy Browning. Also, the judge blamed her for being plotting and greedy under the guidance of her mother. He claimed that they had exaggerated Mr. Browning's peculiar habits and had plotted to blame Mr. Browning for the mysterious acid attack she suffered a week before their wedding.<sup>42</sup> Most importantly, the court viewed them as inferior, weak, and poor women who were not grateful for Mr. Browning's generosity, but grew even greedier for his wealth. The court's position showed that women of lower class who married up did not have an equal status in marriage.

## Conclusion

Though the Peaches Browning marriage dispute was based on the changing dynamics of the society of the roaring 20s, the general climate for divorce and marriage hadn't changed much since the Victorian era. Mainstream society feared divorce believing it was the evil that might crumble the foundation of family and society. In New York, the divorce law remained unreformed with only one added ground for divorce—five years of desertion.<sup>43</sup> But the women's suffrage movement had indeed brought the feminists' opinions on marriage and married

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<sup>42</sup> Ibid.,

<sup>43</sup> By passing the "Enoch Arden" bill in 1922, New York State legislature expanded the grounds of divorce to include five years of desertion as a ground for divorce. See "Enoch Arden Law called evil here." *New York Times*, April 22, 1922, <http://www.proquest.com>.

women's rights in divorce cases to public attention, which to some extent influenced people's views on marriage and divorce. The debate and discussion on divorce law reform often centered on the following issues: whether to have a federal law on marriage and divorce that unanimously regulated marriage and divorce; whether to forbid or to recognize out of country or out of state divorce; and other more specific issues such as alimony and custody.

Despite the fact that major divorce law reform was still difficult to achieve in New York State and opposition remained strong, while other states developed more liberal grounds for divorce, national level legislators tried to enact stricter laws regulating marriage and divorce in the 1920s. In January 1923, Senator Arthur Capper from Kansas introduced a bill designed to “prevent hasty marriage and to make divorce more difficult.”<sup>44</sup> The next year, with the support of the General Federation of Women's Clubs, he proposed a constitutional amendment to legalize federal marriage and divorce laws. He and his supporters advocated this bill because they believed that the number of divorces was rapidly increasing due the abusive use of divorce laws. As a result, stricter marriage and divorce laws would prevent “feeble-minded” people and young lovers to get married without legal and parental consents—the better the marriage ties, the fewer divorce petitions. Furthermore, they believed that making marital ties stronger and making divorces more difficult through federal law would help improve social morals. Senator Capper argued that a national divorce law was necessary for the country because different states' divorce

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<sup>44</sup> “Capper Marital Bill Presented.” *The Atlanta Constitution*, January 24, 1923, <http://www.proquest.com>.

laws were not effective in combating the rapidly increasing “divorce evil” and different standards would cause confusion of whether or not to recognize divorces outside of the states.<sup>45</sup>

In the remaining years of the 1920s, Senator Capper kept lobbying for his bill, and heated debate on uniform divorce laws was renewed with the opening of every term of congress.

Although the bill never passed, the Capper bill had drawn support from both conservatives and liberals of the country. Capper’s supporters included veteran judges from Illinois who were alarmed by the increasing numbers of divorces in this state and who feared and opposed divorce. One of the judges, Harry A. Lewis was even more outspoken and harsher when treating women who sought divorce by claiming that he would not grant alimony for women who were healthy but had no children.<sup>46</sup> In addition, a judge from New York said that a uniform divorce law would better help protect women’s rights nationwide, because the grounds of this uniform law included all the sins married women faced in unfortunate marriages.<sup>47</sup> When discussing the increasing number of women petitioning for divorce, 958 women filed for divorce while only 308 men filed for divorce in 1923 in New York State. The judge sympathized with women by saying that he believed that women by nature were more “sinned against than sinning” in marriage and they would not seek divorce if they were not hard pushed, because they were also by nature the guardian of the home. Also, in opposing divorce, he attributed the increasing number of divorce cases to World War I that “set the society unrest,” and more fundamentally, he believed that it

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<sup>45</sup> Ibid.,

<sup>46</sup> “Veteran Judges Backs Federal Divorce Bill,” *The Washington Post*, January 24, 1926, <http://www.proquest.com>.

<sup>47</sup> “Divorce Judge Favors Strict Divorce Law,” *New York Times*, February 24, 1924, <http://www.proquest.com>.

was the “quick accumulation of wealth” and the rich people’s pursuit for “extreme pleasure” that led to the mischief of divorce.<sup>48</sup>

Opponents of the Capper bill claimed that a federal law on marriage and divorce intruded on states’ rights and was immoral for a federal law to force different states to accept the same morality of divorce of one particular community. In addition, though the divorce law was supported by the General Federation of Women’s Clubs, many feminists argued that passing a uniform divorce law would limit women’s rights in seeking divorce.<sup>49</sup>

In fact, long before the uniform divorce law bill was introduced to Congress, suffragists had already had split views on women’s rights in marriage and divorce. For example, the very liberal and radical feminist Crystal Eastman claimed, “no self-respecting women would accept alimony.” If she accepted alimony, “It would be her self-confession that she could not take care of herself.”<sup>50</sup> Her argument had offended many feminists and suffragists who argued that denying alimony would be denying women’s rights in marriage. But feminists and reform-minded judges, by and large, believed that the increase of women as plaintiffs in divorce cases was an “optimistic sign” that women had become more and more independent in supporting themselves, which allowed them to seek higher standards in marriage.<sup>51</sup> Therefore, since they could better support themselves, it was not a problem for them to seek divorces.

Although the Peaches Browning case was to some extent detached from the mainstream discussion on divorce and women’s rights of the 1920s due to its eccentric characteristics, it also

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<sup>48</sup> Ibid.,

<sup>49</sup> “Uniform Divorce Laws,” *New York Times*, October 13, 1923, <http://www.proquest.com>.

<sup>50</sup> “Women! Don’t Give Up Your Alimony,” *The Washington Post*, March 5, 1916. <http://www.proquest.com>.

<sup>51</sup> “Divorce Lauded as Good Symptom,” *The Atlanta Constitution*, January 8, 1911. <http://www.proquest.com>.

confirmed the judge's opinions that the increasing number of divorces and marriage disputes was due to the rich people's pursuit of extreme pleasure. Moreover, economic development of the time did bring changes to people's varied views on divorce and women's rights. Compared to the nineteenth century, a step forward was taken in that under the influence of feminists and the suffrage movement, reform-minded feminists and judges could openly discuss women's rights in marriage. They believed that economic independence improved women's self-respect and advanced their expectation of marriage. Thus, when their needs were not satisfied or their rights were harmed in marriage, more and more of these women sought divorce to break from the unhappy knot. On the other hand, opposition to divorces was still staunch and strong. With the Catholic Church always at the front criticizing and blocking divorce from reform, even reform-minded judges who welcomed improvements in women's rights believed divorce was still an evil. Divorce, just as it was feared in the 1860s, with the social unrest of the 1920s, was still viewed as an evil that would crumble the foundations of society.

## CONCLUSION

From the mid-1800s to the 1920s, divorce reports and divorce literature had been popular in America society while the mainstream views on divorce remained the same despite the fact that divorce cases increased and legislatures passed more liberal divorce laws. In mid-1850s, divorce reports of upper middle or privileged classes couples became popular because they opened a window for the Victorian public to see private conflicts and the juicy details of the lives of the rich New York divorce disputes revealed in court. Ten years after the Walker divorce case, and after Indiana reformed its divorce law, New York commentators and clergymen urged the state to hold on to adultery as the single ground for divorce. They believed the fewer divorces the less likely society would fall apart, because marriage was the sacred institution that constituted the foundation of society.

In 1922, the New York State legislature finally passed the “Enoch Ardent” law that allowed divorce based on five years of desertion. The 1920s witnessed the rapid increase of divorce cases in America and in New York, with women filing more divorces than men. In addition, divorce reports became less detailed about middle class cases, and newspapers shifted their focus from reporting on middle class marriage disputes to tracing the increasing number of out of state celebrity and upper class divorces. Since divorce was hard to obtain in New York, singers, actresses as well as the rich sought divorce from Paris and Nevada most of the time.

Although the Peaches and Daddy Browning did not divorce during their first round of marriage disputes, the eccentricity of their marriage and the sharp contrast of the bride and the groom's class, age, and wealth caused a fervent following of their detailed life style. The reports of their marriage disputes marked a change of public attention of divorce cases; the public not only expected revelations of their private life, but they also expected drama and entertainment.

From the 1850s to the 1920s, women and women's virtue had always been at the center of court trial debate, and no doubt that since these trials constantly appeared in newspapers, they also had greatly influenced society's views of marriage, divorce, and women's virtue. Lawyers manipulated women's virtue to its extreme in court. In the nineteenth century, they argued that married women should be the virtuous guardians of home; they should be loyal to their husband and his honor; they should be the role model and care taker of their children. Their virtue had always been closely watched, and once their deeds crossed the line of propriety, they would be seen as women of loose characters. Moreover, nineteenth century society preferred women to be soft and quiet rather than outspoken and brave. After all, influenced by the common law tradition of marriage, women under coverture notion metaphorically became the property of their husbands. However, men also had responsibilities to their wives. They should protect their virtue and chastity, making them loyal to his honor; otherwise, the man would be viewed as a failing husband that failed to protect his own honor.

In addition, stereotypes of class also played an important role in divorce trials. Upper class or middle class women were often viewed as having good manners and character. Even when their deeds tarnished their honor and virtue, their lawyers defended them anyway and

blamed their fall on the environment or their husbands. But lower class women, no matter in the nineteenth century or in the 1920s, were viewed with suspicion. Of loose character, they had improper manners and used slang language. Their testimony was doubted, and their pursuit for marrying up was viewed as greediness.

Admittedly, the general social attitude towards divorce was unfavorable; many politicians and statesmen at the top of the male dominated social hierarchy—who set the rules for the society— still viewed divorce as evil. New York divorce law remained rigid into the twentieth century without major reforms. But changes, albeit slow and gradual, did take place. With the fast development of the market economy and urban culture, more and more women chose to work independently before marriage. Feminists' voices were heard through their growing publicity and through the suffrage movement and other progressive goals. More and more women had set better goals and expectations for their marriage, and when the marriage did not support or satisfy them, they sought divorces. Women's organizations began arguing for greater women's rights in marriage and divorce. Some judges and lawyers welcomed more liberal divorce laws while openly stating that they supported the advance and protection of women's rights. Nevertheless, despite this progress, the New York State divorce law remained the same until the Civil Rights era.



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