

at the asylums temporarily or permanently. They had a stake in making such institutions as livable as possible.

The influence of the alternative institutions stemmed not so much from the numbers of female inmates housed—a handful in one city, a few hundred in another—as from their structural and symbolic importance. Distinctly different from the ad hoc measures taken in the Middle Ages to shelter needy females, the early modern asylums were, rather, formal societal institutions recognized as existing for this purpose. The asylums had long-term significance: they spawned new sorts of secular residential communities for females in the form of schools and conservatories, and the *madmarriage* houses represented a novel way of criticizing and sidestepping marriages. . . . For several centuries, until secular divorce won acceptance in most Catholic societies, the *madmarriage* houses with their institutionalization of marital grievance served as the Catholic alternative to divorce. . . .

Jeffrey R. Watt

The Impact of the Reformation and Counter-Reformation

. . . Protestants introduced a number of changes that seem at first glance to have been positive for women. Luther, Calvin, Zwingli, and other reformers preached the spiritual equality of men and women. Moreover, the exaltation of marriage, the rejection of celibacy as the ideal state, the introduction of divorce and remarriage, the rejection (at least in theory) of a sexual double standard, all appear on the surface as progressive for women. . . .

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In other respects, however, Protestant reformers did little to change medieval Catholic attitudes toward women. They accepted without question the view, embraced by medieval scholastic thinkers who had drawn inspiration from Aristotle, that women were by nature inferior. Citing the apostle Paul, Protestant reformers believed that women were supposed to be silent in church. On this issue, Calvin stood out from other reformers by noting that this stemmed from tradition rather than from divine commandment. Although he thought women might eventually be allowed to preach, he certainly made no effort to effect change in this area.

All . . . reformers, [Protestant and Catholic,] continued to believe that women should be subject to . . . their husbands and fathers. Luther clearly believed that a woman's place was in the home and that her role as breeder was fundamental: "Women are created for no other purpose than to serve men and be their helpers. If women grow weary or even die while bearing children, that doesn't harm anything. Let them bear children to death; they are created for that." He further preached that God intended wives to be subject to their husbands because of their inherent inferiority: "The female body is not strong—it cannot bear arms, etc.—and the spirit is even weaker; according to the normal course of events, it follows [that] . . . woman is half-child. Let everyone who takes a wife know that he is the guardian of a child. . . . She is thus a wild animal; you recognize her weakness of mind." Calvin too stressed female inferiority and, citing Paul, insisted that a wife is to the husband as the body is to the head.

In the later sixteenth century, Lutheran Germany witnessed the publication of numerous pamphlets that described the proper relationships between husbands and wives. These works were part of a new literary genre, "household literature," which included various pedagogical publications, most notably sermons, that dealt with marriage and the family. Since Protestants viewed marriage as the normal state, they presumed that women were destined for the roles of wife and mother and were less tolerant than Catholics had been of women who were not under the authority of a male. With many references to Scripture, Protestant literature displayed a strong abhorrence of such "masterless" women. Moreover, some misogynist Protestant literature offered instructions on wife-bearing, ridiculed henpecked husbands, and condemned domineering wives as a violation of nature. By and large, Protestant and Catholic writers of the Reformation era agreed that wives were supposed to be obedient, pious, and silent.

Protestants eliminated many avenues of religious expression that had been important to women in pre-Reformation Europe, most notably the nunnery. Although this had been an option only for the well-to-do, Protestantism provided no opportunity for women to hold any church office or to live so independently of men. While some nuns welcomed the opportunity to leave convents and get married, others strongly resisted and expressed resentment that practitioners of the new faith placed no value on the religious life. In Germany, some nunneries managed to survive long after the territory in which they were situated had rejected Catholicism, a testimony to the tenacious persistence of the sisters. Protestants also disbanded lay confraternities, including those solely for women, which oversaw charitable acts, provided for members in need, and offered a useful outlet for lay piety. They did not replace these institutions with any other all-female groups. Finally, the elimination of the veneration of the Virgin Mary and the saints meant that one could no longer pray to a female figure or celebrate holidays in honor of special women. Clearly prayers to the Virgin Mary and the female saints had been a particularly important part of popular piety for women; women comprised the overwhelming majority of those convoked by Geneva's Consistory for adoration of the Virgin. . . .

[Historians have paid special attention to the control of marriage in Catholic and Protestant areas, analyzing (among other things) the impact of Protestants' acceptance of divorce, as opposed to annulment or separation, and subsequent remarriage.] All of the main Protestant reformers recognized the possibility of divorce and subsequent remarriage under certain circumstances. . . . A general theme among reformers was that divorce was possible only in cases of matrimonial fault—that is, one of the spouses had to be the guilty party, the other the victim. Divorce was not considered a remedy for marital breakdown *per se* but as “a punishment for a matrimonial crime and as a relief for the victim of the crime (the innocent spouse).” Protestants held that the Catholic . . . separation [which did not allow remarriage,] was a travesty of marriage. Since the married state was appropriate for most people, it was deemed immoral to subject individuals to indefinite separations which forbade remarriage. . . . Under certain circumstances, Protestants therefore viewed divorce as an appropriate solution to marital dysfunction.

Most prominent among the grounds for which one could file for divorce was adultery, the only ground found in all divorce doctrines and legislation among continental Protestants. Protestant reformers gave far

more importance to adultery as a ground for divorce than had Catholics as a reason for separation. For Catholics, adultery was simply one of a number of possible reasons. The increased significance accorded it by Protestant was a result of their emphasis on the Bible as sole authority. Adultery was the only ground for divorce clearly and unequivocally mentioned in the Bible: “I tell you, then, that any man who divorces his wife for any cause other than her unfaithfulness, commits adultery if he marries some other woman” (Matthew 19: 9). . . .

While they universally recognized adultery as a legitimate reason for divorce, many Protestant reformers and matrimonial courts recognized other grounds, most prominently desertion. The principal justification for divorce for desertion or prolonged absence was that after a certain period of time, one could assume that the absent spouse was dead. In many ways, divorce in these cases resembled a “substitute death certificate” for the absent spouse. Significantly, this manner of dissolving a marriage had not been unknown before the Protestant Reformation. . . .

If the laws passed in Protestant areas in Reformation Europe set an important precedent in allowing divorce and subsequent remarriage, they did not lead to widespread instability in sixteenth-century households. Throughout the Protestant world, divorces remained rare in the sixteenth and seventeenth centuries, despite contemporary moralists' claims to the contrary. According to archival documentation of matrimonial litigation, no European state experienced an annual divorce rate that even reached one per 1,000 residents. (By comparison, the US rate in 1980 was 5.2 per 1,000 people.) In Zurich, for example, the *Ehegericht* [Marriage Court] awarded 28 divorces for the years 1525–1531, which represents 0.74 divorces per 1,000 people per year. In Reformation Basel (1525–1592), 374 people received divorces, equivalent to a divorce rate of 0.57 per 1,000 residents. Research on marital litigation in states such as Augsburg, Württemberg, Neuchâtel, Zweibrücken, and Geneva reveals that divorce was considerably less frequent than even these meager rates.

The large majority of divorces awarded by Protestant courts in Reformation Europe were based on the grounds of adultery or desertion. Although a person who received a divorce for reason of absence resembled a widow or widower, Protestant tribunals referred to this procedure as a divorce, not a declaration of widowhood. Moreover, although Roman Catholic canon lawyers had recognized the possibility of dissolving a marriage after a spouse's extended absence on the presumption of death, Catholics had not developed a coherent policy with

respect to the abandoned spouse, and ecclesiastical courts were generally reluctant to permit remarriage without proof of the absent spouse's death. Nevertheless, because of precedents in canon law, some sixteenth-century Protestants who obtained divorces for abandonment might have received permission to remarry even if they had remained Catholic, a further indication that the Protestants' introduction of divorce did not cause a revolution in the institution of marriage.

People seeking divorce on the ground of desertion generally had to wait a long time before filing suit. Whether it be the malicious desertion of the household or the absence of a husband who left the country on business, tribunals ordinarily would not hear a case unless the spouse had already been absent for several years, usually seven, the term set by canon law. In the absence of evidence of the spouse's death, courts strictly observed this long waiting period before granting divorces for desertion, generally requiring the same delay both for male and for female petitioners. (The large majority who filed suit on this ground were women, since men were much more apt to travel long distances as merchants or mercenaries.) Neuchâtel's matrimonial court was even known to require spouses of banished criminals to wait seven years before awarding divorces. Such a case began in 1597 when Isabelle Callandre asked to be divorced from Jean Bedaux, who had abandoned her and fled the country in September 1596 after having severely beaten his mother and left her for dead. Although she produced affidavits of the sentence of banishment rendered against Bedaux, Callandre was required to wait the full seven years since his departure, the divorce being granted only in October 1603.

In light of the Protestant reformers' diatribes against the celibate life—they asserted that the majority of humans were incapable of such rigorous abstinence—it seems cruel and inconsistent to force someone to live chastely for years and wait patiently to see if the absent spouse will return. This is particularly so in cases such as Callandre's inasmuch as her husband's crime seems to the modern observer to be reason enough for a divorce. Rarely, however, did the courts make exceptions to the usual waiting period.

Those who filed for divorce because of adultery received divorces more quickly. In dealing with divorce cases based on adultery, members of Protestant tribunals almost invariably exhorted the innocent party to forgive the adulterous spouse and preserve their married life. If the evidence of adultery was beyond question and the plaintiff persisted, however, he or she was almost guaranteed success. Among those suits that

were rejected were those of people who were guilty of complicity by allowing their spouses to carry on extra-marital affairs or who had unwittingly forgiven their spouses' infidelity: borrowing a notion from canon law, the courts held that if a person had sexual relations with his or her spouse despite knowing that he or she had committed adultery, the coitus was viewed as a sign of forgiveness and the innocent party no longer had grounds for divorce. [Apart from such rare cases, however, if there was ample proof that a person had committed adultery and the innocent spouse refused to forgive this infidelity, the latter almost surely could have a divorce.]

For a combination of reasons, adultery was more often cited against wayward wives than unfaithful husbands in divorce cases. One factor was the nature of the proof of adultery. If the concrete products of adulterous affairs were illegitimate children, then a woman whose husband was absent for a lengthy period would have a difficult time concealing a pregnancy. If, on the other hand, an unfaithful husband did not actually get caught in the act of coitus, he ran the risk of being discovered only if his partner revealed his name. Moreover, women generally had more economic deterrents to divorce than men; women who lived without the support of their husbands encountered more financial difficulties than did men who lived without the support of their wives. Social mores also played a role. Prior to the Reformation, adultery in Germany was defined as the sexual union of a married woman with any man other than her husband; a married man who had an affair with a single woman was not subject to prosecution. By contrast, in the sixteenth century married men comprised the majority of those convicted of adultery in some German Protestant and Catholic states, but adultery nonetheless was more often used against women in divorce litigation. In Reformation Europe, men undoubtedly continued to view their spouses' adultery as a greater affront to their honor than did most women. In Zurich from 1525 to 1531 men initiated nearly 60 percent of divorce cases based on adultery, and more than twice as many men as women were plaintiffs to such suits in Augsburg during the period 1537–1547. In Reformation Neuchâtel, among plaintiffs who sought divorces for reasons of adultery, males outnumbered females by two to one. During the time of Calvin, twenty men, but only six women, received divorces in Geneva from adulterous spouses.

Few divorces were awarded on grounds other than a adultery or desertion. Throughout Europe only the Reformed courts of Neuchâtel and Basel regularly granted divorces on other grounds. Even in these states

the absence or adultery of a spouse was the basis for over three-quarters of the divorces awarded. Other complaints occasionally alleged as grounds for divorce were illness and sexual dysfunction. Terminating a marriage because of impotence was nothing new. Since canon lawyers put so much emphasis on procreation and the sexual aspect of marriage, they understandably denied the right to marry to those incapable of having sexual relations. Consequently, Pope Gregory IX (1227-1241) declared impotence an impediment to marriage, and any marriage that an impotent person contracted would be null. Rarely, however, was impotence cited in divorce cases in Reformation Europe, and plaintiffs to divorce cases based on sexual dysfunction enjoyed far less chance of success than those grounded on the infidelity or prolonged absence of spouses. Divorce for sexual dysfunction generally involved marriages that had not been consummated after several years of cohabitation, unions which might have been annulled in pre-Reformation Roman Catholic courts. Significantly, sexual dysfunction ceased to be a ground for divorce once the marriage had been consummated. In addition to cases of impotence, a few other divorces were initiated for medical reasons. Here again, the courts clearly hesitated before granting divorces because of illness. For example, in 1552 a man in Valengin, a semi-independent seigneurie within the Principality of Neuchâtel, sought a divorce from his leprous wife. Despite the fact that she had been sick seven years and showed no hope of recovery, the judges declared that the man was "still to live for a while abstaining from marriage, judging that he must not receive a marriage separation until God calls his wife to him." For this couple, marriage was to endure in sickness and in health till death did them part. Simply put, neither impotence nor illness was a significant basis for ending a marriage in Reformation Europe.

Conspicuously absent among recognized grounds for divorce was cruelty. Like Catholic authorities before them, Protestant magistrates deplored excessive domestic violence and sought to minimize it. Tribunals not infrequently convoked couples for domestic discord, urging them to mend their ways. Protestant judicial authorities, however, virtually never awarded divorces for cruelty alone. That cruelty did not constitute grounds for divorce is aptly demonstrated by a case heard by Geneva's Consistory. In August 1542, Calvin and the other members of the Consistory convoked a lumberjack who had beaten his wife so severely that he put out one of her eyes. . . . The Consistory admonished the man to be more gentle with his wife, but also ordered the woman to obey and

live peacefully with her husband and not to provoke him. At no point was divorce even mentioned as a possible solution. While such police actions against domestic violence were not uncommon, only rarely did courts in any state allow divorce suits based [only] on cruelty to be heard. The marriage court in Reformation Augsburg did hear five divorce cases based on cruelty, but none of the requests was granted.

Throughout Europe, both Protestant and Catholic couples who could not tolerate each other might simply separate without receiving judicial permission to do so. Although such separations were illegal both before and after the Reformation, communities and magistrates often preferred to turn a blind eye to such separations rather than force unhappy couples to live together. Moreover, although reformers had criticized judicial separations, some Protestant courts did allow couples to separate in cases of extreme cruelty. Notwithstanding his overall opposition to [judicial separations] . . . Luther favored separation rather than divorce in such cases. By contrast, Calvin went so far as to say that a Protestant wife must not leave her physically abusive husband unless her life was actually in danger. Since putting out an eye was not reason enough, the degree of abuse that merited a separation was obviously extreme. Indeed, only once during Calvin's time did Geneva's Consistory award even a temporary separation for cruelty or abuse. In 1553 the Consistory convoked Bertin Beney and his wife Loyse Lefort because they were illegally separated. Testimony revealed that Loyse left Bertin after he had repeatedly beaten and threatened to kill her. Bertin's own father, himself a member of the Small Council, [Geneva's chief governing body that also served as a criminal court,] testified that he saw Bertin draw his sword and threaten to stab Loyse. For his misbehavior, the Small Council sentenced Bertin to a week in prison and allowed Loyse to live with her mother until he learned to behave. They remained legally separated until 1555, when Loyse obtained a divorce because Bertin had committed adultery.

This temporary separation, however, was the exception that proved the rule. In tightly knit Reformed areas, such as Geneva and Neuchâtel, authorities had the means and the will to force married couples to live together. For Protestants, divorce was supposed to replace the judicial separation. Barring the very limited grounds for divorce—basically adultery and desertion—married couples had to live together till death did them part. In short, although Protestant reformers and magistrates deplored domestic violence, they believed that cruelty, unlike adultery,

did not affect the principal ends of marriage which they still identified to a considerable extent with sexuality—that is, with procreation and the quenching of the sexual impulse through monogamous intercourse. Simply put, the introduction of divorce did not cause disruption in European families as divorce remained quite rare throughout the Reformation period. Although its introduction in Protestant areas set an important precedent, centuries would pass before divorce became common anywhere in Europe. . . .

In both Protestant and Catholic areas, on both the continent and in England, matrimonial courts in Reformation Europe generally heard more suits pertaining to the formation rather than the dissolution of marriages. Suits to enforce marriage contracts tended to be the most common form of litigation. In handling cases of disputed contracts, Protestant judicial authorities consistently recognized as valid only those marriage promises that had been contracted in the presence of witnesses and, in the case of minors, with parental permission. Although they rejected the tenet of canon law that consent was the sufficient condition for contracting a marriage, Protestants certainly viewed freely given consent to marry as a necessary prerequisite for contracting binding promises, requiring the presence of witnesses merely to ensure that consent had been given. The majority of litigants who tried to enforce disputed marriage contracts failed in their suits, primarily because they did not provide sufficient evidence that binding promises had been made. [Significantly, most studies of court records further reveal that men actually comprised the majority of plaintiffs to enforce marriage contracts.]

Judicial authorities in Reformation Europe took the betrothal very seriously. If both parties were legally capable of contracting promises and had freely agreed to marry in the presence of others, they were generally expected to execute their engagements. In the [English] diocese of Ely in the sixteenth century, breach-of-promise cases were more often initiated by the church courts than by one of the parties themselves; couples in Ely could not simply dissolve a marriage contract at their own volition. In Reformation Neuchâtel, there were cases in which neither party wanted to honor an engagement but were obliged to do so. . . . [since judges viewed] marriage vows as indissoluble. . . . [Protestant judicial authorities] began showing greater flexibility in the seventeenth century, yet tended to follow canon law tradition, deeming marriage contracts binding from the moment of consent, not from the consecration of marriage in church.

In determining the validity of disputed marriage contracts, courts showed a certain flexibility, at times deviating from the letter of the law. In a few cases, courts in Protestant and Catholic areas ruled in favor of pregnant female plaintiffs to contract disputes even though there were no witnesses to the alleged marriage promises. In these cases, the male defendants typically acknowledged having had sexual relations with their accusers but emphatically denied that they had made marriage promises.

In a legal tradition that goes back to Roman law, a couple might be judged married simply by the way they acted in public and interacted in their daily lives. If a couple spent much time together and the man treated the woman as a man behaves toward his wife, courts in exceptional cases might recognize them as married even if they had not celebrated a wedding or betrothal in the presence of witnesses. Courts made such decisions, however, only when the women in question enjoyed an impeccable reputation and were of comparable social status to the men they accused. . . . [I]n early modern Holland, women had very good chances of winning suits involving men of comparable status. By contrast, female servants who were debauched by their masters might be able to secure a dowry from their seducers but had virtually no chance of convincing the courts to order a marriage between persons of such disparate backgrounds. This effort to ensure that spouses were of comparable status was certainly not initiated by the Reformation. It was the continuation of a long tradition, the roots of which can be found in Roman law.

All told, Protestant tribunals did not mark a radical break with Roman Catholic traditions with regard to the control of marriage. Evidence from matrimonial litigation reveals more continuity than change in the formation and dissolution of marriages. . . . [Moreover, in light of these findings, it is very difficult to sustain the view that the Protestant Reformation enhanced the position of women through the control of marriage. The rejection of cruelty as a ground for divorce and the preponderance of male plaintiffs in marriage contract litigation and in divorce suits based on adultery indicate that there were limits to the degree of support that women could expect from Protestant matrimonial courts.]