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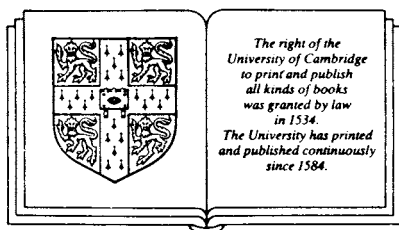
# Untying the knot

## A short history of divorce

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RODERICK PHILLIPS

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*To my mother  
and to the memory  
of my sister,  
Carol*

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0521423708 - Untying the Knot: A Short History of Divorce  
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[More information](#)

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## Contents

<i>Preface</i>	<i>page</i> ix
<i>Acknowledgments</i>	xv
1 Catholics and Protestants	I
2 Seventeenth-century England and its American colonies	28
3 Secularization, the Enlightenment, and the French Revolution	47
4 Formal and informal divorce in early modern society	64
5 The meaning and context of marriage breakdown	93
6 The nineteenth century: Liberalization and reaction	120
7 Divorce as a social issue, 1850–1914	164
8 The twentieth century and the rise of mass divorce	185
9 Explaining the rise of divorce, 1870s–1990s	224
<i>Conclusion</i>	252
<i>Index</i>	257

## Preface

One of the paradoxes of modern Western society is the simultaneous popularity of marriage and divorce. Even though marriage rates have fallen in some countries in recent years, marriage is, generally speaking, as popular today as it has ever been at any period in the past. In the nineteenth century and earlier, quite large proportions of men and women could not hope to marry, and never did; today in most Western countries almost everyone marries at some time in her or his life. What John Gillis writes in the introduction of his history of marriage in Britain, *For Better, For Worse*, holds true for the rest of Western society: “We live in a conjugal age, when the couple has become the standard for all intimate relationships. . . . Commerce panders to the conjugal ideal and municipalities zone in its favor. Children play at it; teenagers practice it.”

Children might not play at divorce explicitly – although they do so implicitly when their marriage games go sour and one party goes home because the other will not play nicely. Nor do teenagers practice divorce very often, although their marriages are particularly likely to end in divorce when they reach their twenties. Even so, divorce has become the common partner of marriage at the center of the Western marriage system, for divorce, too, has never been as widespread in the Western world as it has become in recent times. Even though divorce rates in some countries have stabilized in the early and mid-1980s, they did so at unprecedentedly high levels, and in other countries divorce rates continue to set records year after year. Precise statistical measurements of divorce, expressed as rates per thousand population or per thousand married women, demonstrate how divorce has increased during the twentieth century, especially since the early 1970s. More widely understood expressions of the increase have entered popular awareness as we are regularly told, depending on where we live, that one in every two, three, or four marriages ends in divorce.

The high divorce rates that have become characteristic of modern Western society have provoked various reactions. Some observers have interpreted them as indicating the decline, a prefiguring of the dis-

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appearance, of marriage and the family. Others construe them as part of an emerging marriage pattern in which many, perhaps most, men and women will marry twice or more often during their lifetimes. Divorce is perceived by some as a threat to social stability, while others insist that the Western family system can accommodate a high incidence of divorce. Many different reasons have been given for the increase in divorce over the long and short term. Prominent among them are a shift or decline in morality, the decreased influence of religion, the effects of the women's movement, married women's employment outside the home, and rising expectations of marriage.

This book is first and foremost a history of divorce, but it necessarily addresses some of the issues raised by divorce in modern times. The question most often asked about divorce – “Why is it so common today?” – is implicitly historical, for any answer to it must address the implied question of why divorce was so uncommon in the past. Similarly we must look to the past for a full appreciation of other aspects of divorce in the modern world. Divorce laws, popular attitudes toward divorce and toward divorced men and women, and prevailing secular and ecclesiastical policies toward divorce cannot properly be understood without some idea of their evolution over the long or medium term.

Recent scholarship has contributed a great deal to our knowledge of many aspects of the history of the Western family; books have poured forth, especially since the 1960s, on such important questions as historical trends in household size and structure, kinship patterns, sexual relationships, ages at marriage, premarital pregnancy rates, and the duration of marriage. Divorce and marriage breakdown, however, have generally been treated as tangential issues, poor cousins within the field of the history of the family. The major surveys of the development of the Western family make only passing reference to divorce, marriage breakdown, and separation. Lawrence Stone's ambitious survey of the English family (*The Family, Sex and Marriage in England, 1500–1800*) deals with divorce more systematically, but even there divorce and its associated issues are treated as of minor significance. John Gillis's magisterial study of British marriages deals overwhelmingly with the making, rather than the unmaking, of conjugal matches. Lawrence Stone's *Road to Divorce: England 1530–1987* appeared just as this book was going to press.

The relative neglect of divorce and marriage breakdown by historians of the family is understandable, for it reflects two realities. The first is that except for one or two specific periods, such as the revolutionary years in France, divorces were extremely rare in Western society until the late nineteenth century. Second, signs of marriage breakdown,

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apart from the infrequent divorces and separations, are generally sparse and inconclusive. There is evidence of desertions, bigamy, wife sales, and the like, and there is also a great deal of evidence of marital stress and violence that might or might not indicate marriage breakdown. Broadly speaking, however, the quality of the data is not encouraging for firm conclusions, and this, together with its treatment in histories of the family, tends to reinforce the image that marriage breakdowns and divorces were infrequent in the past.

Even so, the past twenty years have witnessed the growth of a solid body of research on the history of divorce. We now know a great deal more about the development of divorce laws and policies in many countries, historical attitudes toward marriage breakdown and divorce, the application and use of the divorce laws, and the characteristics of couples that divorced. Many of the studies have placed divorce within definite social, political, and cultural contexts.

This is not the place to catalog the many articles, monographs, unpublished papers, and chapters in more general works that make up modern scholarship on the subject. They are listed in the bibliography and footnotes of *Putting Asunder*, of which the present book is a shorter version. Only some of the more accessible works are cited here, in the “Suggestions for further reading” that follow each chapter. However, I wish to record again my debt to scholars whose research has illuminated such diverse topics as divorce in seventeenth-century Norway, divorce in eighteenth-century Connecticut, the role of divorce in Milton’s *Paradise Lost*, Thomas Jefferson’s studies of divorce, and the relationship of divorce to married women’s property legislation in nineteenth-century England.

In *Untying the Knot* I have attempted to provide a short, readable history of divorce in the Western world from the broadest perspective. The “Western world” here comprises North America, Western Europe, Scandinavia, Great Britain, and Australasia, although at times other areas, like the Soviet Union, are also discussed. Spread across half the globe, and disparate in many social, economic, and cultural respects, this Western world drew on common traditions of family law and policy. European, British, and Scandinavian legislation was influenced by Roman Catholic doctrine and canon law up to and beyond the Reformation, and marriage and divorce policies in America and Australasia were based, in turn, on European models. Such traditions give this broad Western world enough unity to enable us to consider it a coherent unit for the purpose of historical analysis. At the same time there are enough variations and divergences to make this a comparative study. Although general phenomena like the Protestant Reformation led to more or less dramatic matrimonial reform throughout



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Roderick Phillips  
Frontmatter  
[More information](#)

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Europe, in individual countries events as specific and diverse as the English Civil War, the American Revolution, the French Revolution, and the advent of national socialism affected the way divorce laws, policies, and rates developed.

For the most part this book proceeds chronologically from the Middle Ages to the present, although there are specific chapters on major questions such as the meaning and extent of marriage breakdown in the past. In this version, it should be noted, the nineteenth and twentieth centuries occupy a somewhat greater proportion of the book than they did in the original book. I have been sufficiently encouraged by the reviews of *Putting Asunder* that had appeared by the time this abridgment was prepared, not to make any significant changes in argument or interpretation. What is missing from this book is the footnotes and bibliography, and any reader interested in following up any of the points made more briefly here is referred to the original version for a fuller discussion with references.

As for the perspectives adopted by this study, several points might be noted. First, although the development of divorce laws is a central theme, I have tried to avoid a narrowly legal narrative and have attempted to place legal change within the broadest social, economic, political, and cultural contexts. It will become clear that changes in divorce law have often coincided with political change, so closely associated are doctrines of marriage and divorce with political ideology. A second major theme is the social history of divorce: Who divorced, why did they divorce, and why were divorce rates at any given time not higher or lower? A third theme is the distinction between marriage breakdown and divorce. A major question addressed in these pages is whether the rise of divorce in the past century indicates an increased tendency of marriages to break down or whether it means no more than that an increasing proportion of marriage breakdowns has been translated into divorce.

In short, this book seeks a comprehensive view of divorce in the Western world during the past thousand years. It is not exhaustive, however. To have listed all major legal changes would have been very tedious. It would have been equally tedious to have quoted the thoughts on divorce expressed by all the great and famous. Not only did Christ, Erasmus, Luther, Milton, Voltaire, Frederick the Great, Jefferson, Napoleon, Disraeli, Lenin, Mussolini, and Keynes all have something to say about divorce, but so did thousands of other men and women. Only a handful could be represented here. The subject of this book is a massive one, and the following pages represent only a distillation of current knowledge and an interpretation of it. The subject is an important one, however, for we cannot begin to understand current issues surrounding marriage breakdown and divorce in modern West-

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ern society until we appreciate their historical origins. I hope that this book contributes not only to a better understanding of this aspect of the history of the family, but also to a more informed discussion of modern social issues.

*Ottawa, July 1990*

## Acknowledgments

In the course of preparing the book of which *Untying the Knot* is an abridged version, I was privileged to receive a great deal of assistance of various sorts, and I am delighted to be able to express my thanks again.

The personnel of the research libraries and archives I used were unfailingly helpful. Principal among them were the British Library (London), Bodleian Library (Oxford), Cambridge University Library (Cambridge), Bibliothèque Nationale (Paris), Uppsala University Library (Uppsala), and the Riksarkiv (Oslo). Access to these and other resources was facilitated by support at various times from the University of Auckland, which granted me a leave of absence, the Queen's University Advisory Research Committee, which provided research funds, the Swedish Institute, which awarded me a fellowship at Uppsala University, and Brock University, which gave me support from funds provided by the Social Sciences and Humanities Research Council of Canada.

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[More information](#)

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embarrassing errors. I have also benefited over the years from the comments, criticisms, and suggestions that have followed conference and seminar papers I have given on aspects of my research. Among those to whom I owe gratitude in this respect are my friends who convene every two years for the George Rudé Seminars on French history, the members of the Cambridge Group for the History of Population and Social Structure, and the Social History seminar at the University of Essex.

As far as *Untying the Knot* is concerned, I wish to record several additional debts. The first is to my editor at Cambridge University Press, Frank Smith. He not only encouraged me to write the original book, but suggested (with some trepidation) that I then do this abridgment. He has been consistently patient, encouraging, and gracious, and no author could wish for a better editor in any respect. A second debt is to Carleton University for material help that enabled me to finish the abridgment far more quickly than I had expected.

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