

# **“The White Life for two” : The Defence of Marriage and Sexual Morality in Canada, 1890-1914\***

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*The two decades immediately preceding World War I witnessed a growing concern regarding social and sexual morality in Canada. This paper examines one aspect of that concern, marriage breakdown. Worried that the family as an institution was becoming unstable and that marriage, the basic bond of every family, was being undermined by increasingly lewd and improper behaviour, reformers acted to defend marriage and to enforce a rigid standard of sexual morality. This defensive reaction was particularly concentrated in the reformers' use of the state: laws were tightened or expanded, new statutes enacted or rejected, all to protect marriage. The result was an active reform movement which fits into the broader social purity movement in Canada and was related to the various child-centred reform movements, all of which aimed at strengthening and stabilizing the family.*

*Il y eut au Canada, au cours des deux décennies précédant immédiatement la Première Guerre mondiale, un souci grandissant des questions de morale sociale et de morale sexuelle, en particulier. Parmi les problèmes envisagés figurait la rupture d'unions matrimoniales, question qui fait l'objet du présent article. Irrités de voir l'instabilité menacer l'institution familiale, et des comportements jugés de plus en plus inconvenants ou impudiques miner le mariage, fondement de la famille, des réformateurs ont pris des mesures visant la sauvegarde du mariage et l'observance d'un rigoureux code d'éthique sexuelle. Cette réaction de défense se manifesta plus spécialement par un recours à l'État: la législation a été resserrée et son champ d'application étendu; de nouvelles lois ont été mises en vigueur; d'autres sont restées à l'état de projet, tout cela en vue d'assurer la protection de l'institution du mariage. Ce vif mouvement de réforme s'inscrit d'ailleurs dans un plus vaste courant visant à restaurer l'intégrité sociale au Canada. Il est également relié aux divers mouvements de réforme centrés sur l'enfant, et dont l'objectif commun était de renforcer et de stabiliser la famille.*

The years before World War I witnessed a rising fear that the family and the home, the central institutions of the social order, were experiencing increasing pressures and showing signs of considerable tension.<sup>1</sup> Indeed, there is strong evidence that, as a result of such phenomena as industrialization, rural depopulation and urbanization, the character of the family and of the home was changing markedly in the second half of the

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<sup>1</sup> N. SUTHERLAND, *Children in English-Canadian Society* (Toronto: University of Toronto Press, 1976); T. R. MORRISON, "The Child and Urban Social Reform in Late Nineteenth Century Ontario" (Ph.D. dissertation, University of Toronto, 1971); A. JONES and L. RUTMAN, *In the Children's Aid: J. J. Kelso and Child Welfare in Ontario* (Toronto: University of Toronto Press, 1980).

nineteenth century. It is not surprising that these changes created serious strains within the nuclear family and that one manifestation of these strains was breakdown in marriages among Canadians. As a result of such breakdowns, and even more as a result of fear of disintegration of marriages, reformers and leaders in Canada began to act, especially after the turn of the century, to reinforce the institution of marriage. In particular, Canadian leaders pressed for a stronger role by the state in defending marriage and in punishing any deviations from the moral code and social order associated with marriage.

The anxieties apparent regarding marital and sexual morality were a product of much broader concerns regarding society in general. A recent history of the anti-prostitution movement in the United States during this time period argues convincingly that prostitution was "a master symbol, a code word, for a wide range of anxieties engendered by the great social and cultural changes that give the progressive era its coherence as a distinct historical period"; the perceived crisis regarding prostitution represented really a much more extensive crisis in sexual and "civilized morality".<sup>2</sup> In Canada, it can be argued, marriage breakdown operated as a similar, negative symbol. Marriage represented a code of moral and sexual behaviour which was felt to have long ordered society; marriage breakdown, on the other hand, symbolized a wide variety of conduct that was considered immoral, anti-social, and unacceptable. This link between marital conduct and sexual morality was reinforced by the fact that (with one minor exception) adultery was the only recognized ground for divorce in Canada.

Marriage, including by definition proper or moral sexual activity, was considered to be a legitimate and fit subject for consideration by the state and by leaders of society. The institution of marriage represented the divinely ordained method of ordering the home, of controlling and legitimizing passion and sex, of structuring relations between males and females, and of procreating and nurturing the future generation. As the legal cornerstone of the home and family, marriage was a basic means by which the state might influence the character of and conduct in the home. By examining some of the fears and anxieties articulated by middle-class spokesmen it is possible to gain insight into attitudes toward sexuality, views of male and female character and social roles, and perceptions of the home and the family.

## I

It is clear that the number of divorces in Canada was rising. During the 1890s the number of divorces changed little, averaging just twelve per year. Early in the new century, however, a gradual increase set in, so that in the first decade of the twentieth century there were 26.3 divorces per year, on average. In the first five years of the second decade the rise con-

<sup>2</sup> M. T. CONNELLY, *The Response to Prostitution in the Progressive Era* (Chapel Hill: University of North Carolina Press, 1980), pp. 6-10.

tinued, there being an average of 54.6 divorces per year. Compared with the number of divorces in other countries or with what was to happen in later years in the Dominion, the Canadian divorce rate was extremely low. In relative and local terms, however, it was increasing. Given that the average number was more than doubling each decade, it is understandable that articulate Canadians were concerned.<sup>3</sup>

Far more difficult to deal with in numerical terms is desertion. For a variety of reasons, abandonment of home and family was the "poor man's divorce". But it is one of those social phenomena which generally goes unreported. Social reformers and church leaders at the time certainly thought that desertion was a significant social problem. Petitions (more often than not from members of the working class) to the Department of Justice represented desertion as a major form of marriage breakdown, on an individual basis. Law reports give numerous specific examples of desertion, usually involving cases of bigamy or of criminal non-support, or in petitions for alimony. General statistics, however, are more difficult to come by. In 1912 a police magistrate in Montreal estimated that he dealt with four or five cases a day concerning husbands' non-support of their families, but how many of these cases involved desertion? The number of children admitted to the care of the Children's Aid Society of Winnipeg because of desertion by parents rose markedly in the years prior to World War I: in 1911 and 1912 sixty-two children (representing thirteen percent of the total wards in those years) had come to the Society because of parental desertion. This figure represents, presumably, only those cases where both parents had abandoned the home, though not likely at the same time; how many deserted children were left at home with the remaining parent?<sup>4</sup>

While to the modern eye these numbers do not appear very great, nevertheless many people at the time certainly thought they had sufficient proof to stir leaders in Canadian society to action. Marriage and the family were perceived to be weakening, undermined by general causes such as urbanization but also by an increasing immorality as demonstrated by such "sins of the flesh" as prostitution, adultery, and cohabitation outside marriage and by a diminishing sense of responsibility on the part of individuals as shown by non-support, desertion, and divorce.<sup>5</sup> A major method of dealing with these problems and of reinforcing the institutions of marriage and the family was to call on the power of the state. If old-fashioned respect for the sanctity of the sacrament of marriage and for long-standing standards of moral conduct was no longer sufficient to maintain the integrity of the marital home, then various facets of the law should be employed to put a halt to the disintegration of Canadian marriages.

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<sup>3</sup> The annual number of divorces is listed in the *Canada Year Book 1921* (Ottawa: Dominion Bureau of Statistics, 1922), p. 825. By way of contrast the Canadian population as a whole increased by 11.1 percent in 1891-1901 and 34.1 percent for 1901-11.

<sup>4</sup> Public Archives of Canada (hereafter PAC), Records of the Department of Justice, Central Registry Files, RG 13, A 2, vol. 178, p. 514, S. C. Leet to C. J. Doherty, Montreal, 16 March 1912; *ibid.*, statistics of the Children's Aid Society of Winnipeg, 1903-12.

<sup>5</sup> See, for example, C. S. CLARK, *Of Toronto the Good* (Montreal, 1898).

The state was already directly involved in the granting of divorces. In all but three provinces (Nova Scotia, New Brunswick, and British Columbia) divorces could be obtained only by act of the Dominion Parliament on an individual basis; the federal legislature thus directly controlled divorces for the vast majority (82.8 percent in 1911) of the population. The parliamentary process was lengthy (over a year) and expensive (at least \$1,000), and presented parliamentarians with serious philosophical and moral problems. A few "voices in the wilderness" argued before the House of Commons for the establishment of divorce courts across the country in order to reduce the cost and the time involved, to enforce a strictly judicial procedure, to reduce individual publicity, and also to rid Parliament of a troublesome and touchy issue. Such arguments were generally met with hostility. Instead, it was strongly felt to be in the national interest that divorce remain difficult to secure. Writing on behalf of the Conservative Government in 1896, Sir Charles Tupper defended the prevailing parliamentary method of divorce:

There has been a very general feeling among our public men of both sides, that, notwithstanding individual cases of hardship which cry for immediate redress, divorce should not be made too easy to obtain. That is why the Government of Canada has not established a divorce Court, and the same reason will I think continue to operate in the same direction.<sup>6</sup>

This policy was maintained by succeeding governments.

During the first decade of the twentieth century a scattered number of backbenchers in the House of Commons raised the question of establishing divorce courts. The arguments presented to defeat such a proposal (such motions never came to a vote) were quite consistent. In 1901 Prime Minister Laurier commented that there was no public support for the passage of a divorce law in Canada, likely because of the bad example set by the United States where, he said,

divorces are not to be desired. For my part I would rather belong to this country of Canada where divorces are few, than to belong to the neighbouring republic where divorces are many. I think it argues a good moral condition of a country where you have few divorces, even though they are made difficult — a better moral condition than prevails in a country where divorces are numerous and made easy by law... I am glad to say that as a rule they [divorces] are not favoured, that they are discouraged, and that fact speaks well for the moral condition of our people.<sup>7</sup>

The absence of any federal Canadian legislation dealing with divorce was thus argued to be a healthy sign, proof of the stability of the Canadian family. The same attitude was manifested by Senator James Gowan, the long-time Chairman of the Senate Divorce Committee. Congratulating Sir Wilfrid Laurier on his prompt action to crush any move toward the establishment of divorce courts, Gowan (himself a retired County Court judge of good reputation) asserted:

<sup>6</sup> PAC, Sir Charles Hibbert Tupper Papers, MG 27, I D 16, vol. 16, p. 7725, Tupper to W. Hull, (n.p.), 8 April 1896.

<sup>7</sup> CANADA, PARLIAMENT, *House of Commons Debates*, (hereafter *Commons Debates*), LIV, 1 (1901): 1422-23. See also *ibid.*, LVIII, 1 (1903): 573-74.

the establishment of Divorce Courts in my judgement would be fraught with peril to the morals and best interests of our Country — the home and the family being the very essence of a healthy community, the sacredness of marriage [is] scarcely to be over estimated. I had the great satisfaction when in the old Country of being able to boast the fact that divorce was *no part of the laws of Canada*.<sup>8</sup>

Section 91 (26) of the British North America Act gave the Dominion Parliament exclusive jurisdiction over marriage and divorce. Reasoning such as that demonstrated by Laurier and Gowan, however, resulted in the deliberate absence of any Dominion legislation regarding divorce in general. The first minor legislation on the subject was not passed until 1926, and it was not until 1968 that the first general divorce law was enacted in Canada.

In the meantime parliamentary divorces were defended as right and proper. Perhaps most articulate of this general sentiment was E. A. Lancaster, a lawyer and Conservative member of Parliament for Lincoln, Ontario, 1900-1916. Divorce was a serious issue and had "a bad effect on the country", he claimed.

Where will this country come to in twenty-five years if we are going to grant divorces simply because some woman has been disappointed in regard to her husband, and comes here and asks for a dissolution of her marriage because she made a mistake when she married? The whole social fabric of the country would go to pieces.

Anyone asking Parliament for a divorce was seeking a special privilege, rather than the enforcement of a basic right, Lancaster continued. Therefore it was incumbent on the petitioner "to show something in the interest of the state, not in the interest of herself or of her husband only".

We may build all the Grand Trunk Pacifics we like, we may debate free trade or protection, we may grant autonomy to all the provinces from Vancouver to Halifax, we may pass all the laws on a business basis we like, but if we interfere unnecessarily or recklessly in the relations between man and wife, we will go a long way towards undermining the morality of this country, and if our laws tend to produce such a result and break up homes we had better repeal them and build up a system of laws more suited to a sound condition of public and private morality.

To grant divorces for anything but the most serious causes would have the effect, Lancaster alleged, of instructing the youth of Canada that there was no longer anything sacred in the marriage tie. The only acceptable ground for divorce was "that the continuance of the marriage would be a scandal and an injury to the community". To dissolve a marriage on any other grounds was "doing great harm to the country, setting a very bad example and causing a very bad state of affairs".<sup>9</sup>

There were many people both in and out of Parliament who agreed with Lancaster.<sup>10</sup> The moral fabric of Canada was considered to be vitally

<sup>8</sup> PAC, Sir Wilfrid Laurier Papers, MG 26, G, vol. 5, pp. 1576-80, J. R. Gowan to Laurier, Barrie, Ontario, 28 March 1903 (PAC reel C-799).

<sup>9</sup> *Commons Debates*, LXXII, 4 (1905): 6276, 6283, 6347-49, 6357; *ibid.*, LXXVI, 3 (1906): 5447-52, 6043; *ibid.*, CII, 5 (1910-11): 8977-78.

<sup>10</sup> See, for example, *Canada Law Journal*, XLII (1906): 56, 259; *Commons Debates*, LXXII, 4 (1905): 6279, 7623-24, 6364; *ibid.*, XCII, 4 (1909): 6071-73; *ibid.*, CII, 5 (1910-11): 8971-73.

at stake in the relations between husband and wife. The extent to which these relations could be controlled and maintained on a lofty plateau reflected the moral character of the country. The maintenance of individual marital bonds thus symbolized the preservation of virtue and rectitude in all Canadians and upheld the model for intersexual relations, a beacon in a world all too darkened by sin and selfishness.

In short, the restrictive system of parliamentary divorces offered considerable advantages. The parliamentary procedure allowed divorce for those few people with enough money and influence (who might otherwise exert real pressure for divorce reform) while maintaining the marital bonds of the overwhelming majority of the population. Divorce through individual legislation made it easier to avoid having any general divorce act. The net result of all this was a very small number of divorces and thus apparent proof of the stability of Canadian marriages and of the morality in Canadian homes. Legislative divorce (as opposed to judicial divorce) was defended as being restrictive and highly supportive of marriage and morality.

Yet even those advocates of divorce reform often argued that change would be more restrictive and more conducive to public morality. One member of Parliament claimed that a federal divorce law would establish uniform conditions and would thus potentially be more restrictive. Another reasoned that judicial divorces would result in reduced public exposure of individual sins, as opposed to the parliamentary process in which the cleaning staff each night avidly read the minutes of the Divorce Committee and took some of the papers home where the children might be exposed to the lurid details. Finally, a legal journal asserted that costly divorces effectively permitted immoral husbands or wives "to sin with practical impunity", whereas inexpensive divorces would inhibit adultery and promote morality.<sup>11</sup> What change was contemplated was often aimed at restricting divorce or at making it less attractive. For example, Senator Cloran, an Irish Catholic from Montreal, introduced the Evils of Divorce Restriction Bill in 1913, designed to give Parliament the right in a divorce case to restrict the guilty spouse from remarrying.<sup>12</sup>

In such a setting it is no coincidence that the divorce jurisdiction of the Supreme Court of British Columbia came under direct challenge. The Court's jurisdiction had in fact been in doubt for a number of years. In 1877 the Chief Justice of the province, in a dissenting opinion (*Sharpe v. Sharpe*), had held that the Court had no authority to deal with divorce, but two fellow judges ruled otherwise. Fourteen years later the Court's power to hear divorce cases was reaffirmed (*Scott v. Scott*), only to be brought into question again in 1896 (*Levey v. Levey*). In none of these cases was there an appeal beyond the province's boundaries. Finally, in 1907 Mrs. Mary Watts petitioned for a dissolution of her twenty-nine-month-old marriage. Judge Clement directed counsel to argue before him as to the power

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<sup>11</sup> *Ibid.*, LIV, 1 (1901): 1421-22; *ibid.*, LVIII, 1 (1903): 575; *Canada Law Journal*, XXXV (1899): 530-31.

<sup>12</sup> L. COBON, "The Senate's Select Committee on Divorce, 1888-1914: An Unintentionally Progressive Body" (Honours Thesis, University of Guelph, 1982), p. 31.

and jurisdiction of the Supreme Court to grant a divorce. Counsel for the appellant, for the respondent, and for the Attorney-General of British Columbia appeared, and all argued that the Court did indeed have jurisdiction. Nevertheless, Judge Clement held otherwise, dismissing the case for want of jurisdiction. This time the decision was appealed directly to London, where the Judicial Committee of the Privy Council set aside the judgement, thus confirming the Court's jurisdiction.<sup>13</sup> The challenge to the judicial divorce process had thus failed, but it is one more indication of the tendency toward a restriction of divorce.

Indeed, in divorce procedure no change had occurred at all in the two decades preceding World War I. There had, however, been an increasing discussion of divorce as the number of legal dissolutions of marriage rose both in Canada and elsewhere. This discussion served simply to entrench the restrictive and defensive philosophy regarding divorce. The interests of society at large were more vital than those of the individual and thus the state had every right to impose its own attitudes and values concerning divorce, even though, as Sir Wilfrid Laurier put it, individuals might suffer.

Although no change took place regarding divorce in Canada, considerable effort was exerted in the area of criminal law in order to inhibit various factors associated with marriage breakdown. Two major developments helped to establish the character and focus of this effort. The codification of Canadian criminal law in 1892 gave interested persons a visible target. Equally important was the decision during the 1890s that Parliament, rather than the courts, would be the principal source of ongoing change in the criminal law. Reform groups thus were provided with, as they saw it, a vehicle for social change (the Criminal Code) and a means to put their ideas into law (Parliament). When combined with a basic belief that "positive social goals could be achieved by negative means, that is, by prohibiting certain kinds of behaviour",<sup>14</sup> the stage was set for strengthening of marriage and the family through an attack on marital and sexual misconduct. As one leading reformer, D. A. Watt, put it: "the public conscience is, for the most part, created and maintained by statute law, and by scarcely anything else."<sup>15</sup>

Indeed, during the drafting of the original Code the Department of Justice was subjected to rather intensive pressure from the Society for the Protection of Women and Children with a view to including various sexual

<sup>13</sup> *Canada Law Journal*, XXXII (1896): 139-41, 319-22; *Watts v. Watts, Appeal Cases* (1908): 573-79. Judicial divorce was commonly considered to be a process permitting more divorces; it is thus possible to see the challenge to the Court's jurisdiction as a move to restrict the number of divorces.

<sup>14</sup> R. C. MACLEOD, "The Shaping of Canadian Criminal Law, 1892 to 1902", THE CANADIAN HISTORICAL ASSOCIATION, *Historical Papers 1978*: 64-75. In this and several other respects the reform discussed in this article follows the pattern of "coercive reform" suggested in J. R. GUSFIELD, *Symbolic Crusade* (Urbana: University of Illinois Press, 1963).

<sup>15</sup> D. A. WATT, "The Canadian Law for the Protection of Women and Girls, with Suggestions for Its Amendment and for a General Code", in *The National Purity Congress: Its Papers, Addresses and Portraits*, ed.: A. M. POWELL (New York: American Purity Alliance, 1896), p. 437.

offences in the new legislation. The Society, led by D. A. Watt, printed and distributed two pamphlets, while Watt and his colleagues wrote to the Minister and Department nineteen times between 1889 and 1892. Making use of social purity and criminal code literature from the United States and the United Kingdom, the Society pointed to the social evils present in Canadian cities and argued that there was an important need to protect young girls and immigrant women from seduction and abduction, and to crush the operation of brothels and the procurement of underaged females. As a result of this pressure, "Canada's Criminal Code of 1892 had and retains the most comprehensive system of offences for protecting young women and girls from sexual predators."<sup>16</sup>

Social purity advocates did not rest content, however. In the two decades following passage of the Criminal Code, reformers both in and out of Parliament pushed repeatedly to buttress existing sections, to expand others, and to make more severe the penalties attached to offences linked to marriage and sexual morality. The original Code contained many clauses which might be associated with marriage breakdown. Bigamy and polygamy were obvious sections, but they attracted only limited interest and only minor alteration. In 1892 the Code extended Canadian courts' jurisdiction over bigamous marriages by making anyone who had committed bigamy outside the Dominion liable to conviction if the person, being a British subject and a Canadian resident, had left Canada with the intent of such a commission. This extension of the Code to cover extra-territorial acts was upheld by the Supreme Court of Canada in 1897. Writing with the majority, Justice John Gwynne held that control over such affairs was essential if the central government was to have a meaningful role within the Canadian constitution. Furthermore:

Bordering as Canada does upon several foreign States, in many of which the laws relating to marriage and divorce are loose, demoralizing and degrading to the marriage state, such legislation as is contained in the above sections of the Criminal Code seem[s] to be absolutely essential to the peace, order and good government of Canada, and in particular to the maintenance within the Dominion of the purity and sanctity of the marriage state.<sup>17</sup>

Even the judiciary was caught up in the defence of marriage.

Related to these marital offences were the broader issues of adultery and extra-legal cohabitation.<sup>18</sup> According to Canadian law, cohabitation was illegal when it involved conjugal union with a person who a) was married to someone else or b) lived or cohabited with someone else in a conjugal union. Even if this section were enforced across the country, it would not prohibit two otherwise unattached adults of opposite sex from living

<sup>16</sup> G. PARKER, "The Origins of the Canadian Criminal Code", in *Essays in the History of Canadian Law*, ed.: D. H. FLAHERTY (Toronto: University of Toronto Press, 1981), p. 268.

<sup>17</sup> *In re Criminal Code Sections relating to Bigamy, Supreme Court Reports*, XXVII (1897): 481. See also *Canada Law Journal*, XXXVII (1901): 805; CANADA, *Statutes*, 63-64 Victoria, c. 46, s. 3; PAC, RG 13, A 2, vol. 169, p. 1362.

<sup>18</sup> Extra-legal marriage is defined here as a man and woman living together as though they were married but without actually having gone through a legal form of marriage.



together. There was no law in the Dominion prohibiting adultery, except in New Brunswick where an old pre-Confederation statute remained unrepealed though seldom used.<sup>19</sup>

Adultery and extra-legal marriage were felt to be all too frequent in turn-of-the-century Canada. As a factor in divorce cases and in unofficial divorce petitions,<sup>20</sup> adultery was dominant — although since adultery was the only recognized ground for divorce, this is to be expected. A number of spokesmen felt, as well, that extra-legal marriages were increasingly common. A clergyman in the Niagara Peninsula wrote to his member of Parliament regarding “wrongful co-habitation and open adultery”:

You undoubtedly know, from knowledge of conditions in your town, as I do of similar conditions here, how widespread and growing is the above evil. And not only in our respective communities, but all over the Dominion, this evil is making inroads upon our moral system, and standing out as a degrading object lesson to our young people.<sup>21</sup>

Some reformers, such as Sir Robert Borden’s Minister of Justice and a Presbyterian minister in Port Arthur, Ontario, linked the problem to groups of recent foreign immigrants.<sup>22</sup> Another Ontario cleric’s complaint gives a good indication of the character of the reformers’ concerns:

Heres [*sic*] a case. A man has a double house. He lives alone in one half, a woman whose husband is alive but absent has rented the other half. It is a common thing to see her in his half alone with him, and even she is admitted into his apartments late at night. Must clean living persons endure the stench of such conduct? It is commonly known and admitted that their relation is bad.<sup>23</sup>

Although the offending couple conformed at least to some of the outward forms demanded by society in that they had separate accommodation, local social leaders were outraged by their conduct. The state had a clear right and duty to intrude into the bedrooms of the nation.

As of 1904 there were demands to have the Criminal Code deal with these matters. A County Court judge in Ontario drafted a clause to broaden the application of the bigamy section and to include extra-legal marriage within the definition of bigamy. The Presbyterian Church called for inclusion of “adultery and lewd cohabitation” as punishable offences within the Criminal Code; supporting resolutions came in from several synods and presbyteries. Branches of the Women’s Christian Temperance Union and the Young Women’s Christian Association, the Police Magistrate of Winnipeg, the Moral and Social Reform Council of Canada, and the Plenary Council of the Roman Catholic Church all joined in the chorus clamouring

<sup>19</sup> CANADA, *Revised Statutes*, 1906, c. 146, s. 310 (b); PAC, RG 13, A 2, vol. 160, p. 303; *ibid.*, vol. 1920, p. 348.

<sup>20</sup> Various archival collections of government ministries, officials and representatives contain a large number of letters from a wide variety of Canadians seeking dissolution of their marriage or permission to remarry. I refer to these as unofficial divorce petitions.

<sup>21</sup> PAC, RG 13, A 2, vol. 157, p. 1330, Rev. F. C. Walling to F. R. Lalor, Cayuga, Ontario, 8 November 1909.

<sup>22</sup> *Ibid.*, vol. 150, p. 204, Rev. S. C. Murray to the Minister of Justice, Port Arthur, Ontario, 30 January 1908; *Commons Debates*, CXI, 5 (1912-13): 10073.

<sup>23</sup> PAC, RG 13, A 2, vol. 1915, p. 892, Rev. F. J. Clarke to the Minister of Justice, Cardova, Ontario, 16 June 1908.

for punishment of adultery and extra-legal marriage. The pressure was such that the Department of Justice did look into the possibility of legislating in this regard.<sup>24</sup> Wisely, however, the Government forswore passage of what would surely have been an unenforceable law.

There were, however, some legal changes which could be made. In particular, punishment for various sorts of sexual immorality could be reinforced, thus attacking adultery indirectly and giving strength to the belief that only within the institution of marriage was sexual activity morally acceptable. Some demand was heard for an expansion of the definition of incest to include step-parents and step-children, but no changes in the legislation were made.<sup>25</sup> Many of the pleas regarding punishment of adultery also asked for legislative action against "the social evil" or "white slavery" — prostitution.<sup>26</sup> In 1913 section 216 of the Code was rewritten, expanding the definition of procuring to include any female and dropping the previous exclusion of "common prostitutes" and of women "of known immoral character". Also the punishment for procuring was dramatically increased: in 1909 the potential term of imprisonment was raised from two to five years, and this was raised again in 1920 to ten years; in 1913 whipping was added as an additional penalty for second or subsequent convictions. That same year the definition of a keeper of a "disorderly house" was expanded to include employees, being a "found in" became a criminal offence, and landlords or tenants became liable if premises under their control were used for purposes of prostitution.<sup>27</sup> That such changes were part of a movement to defend the institution of marriage was made clear by Rev. J. G. Shearer, founding secretary of the national Moral and Social Reform Council. In an American tract on white slavery, Shearer described a married man in Vancouver "who — untrue to the solemn marriage vows taken upon him — continually resorted to a den of vice, regardless of his sacred duties owed his wife or children". It was sad to say, he continued, "but "there are thousands of married men who, like this one, soon forget their pledges at the marriage altar."<sup>28</sup> If Shearer and his fellow reformers had their way, such men would be forced back to the conjugal bed.

<sup>24</sup> Ibid., vol. 130, p. 185; ibid., vol. 150, p. 204; ibid., vol. 157, p. 1330; ibid., vol. 160, p. 303; ibid., vol. 1920, p. 348; PAC, Laurier Papers, vol. 593, pp. 160902-3 (PAC reel C-881), Rev. S. D. Chown to Laurier, Toronto, Ontario, 14 October 1909; ibid., vol. 598, pp. 162111-12, 162183-85, 162257-58 (reel C-882); ibid., vol. 599, pp. 162517-18, 162522-23, 162665 (reel C-883). The involvement of temperance-related organizations is natural, given their long-standing emphasis on alcoholism's negative impact on the family.

<sup>25</sup> PAC, RG 13, A 2, vol. 130, p. 185, C. W. Colter to C. Fitzpatrick, Cayuga, Ontario, 19 February 1904.

<sup>26</sup> See also ibid., vol. 179, p. 729.

<sup>27</sup> CANADA, *Statutes*, 8-9 Edward VII, c. 9, s. 2; ibid., 10-11 George V, c. 43, s. 18; ibid., 3-4 George V, c. 13, ss. 9-13. Punishment of an inmate or habitual frequenter of a common bawdy house had been defeated in 1903; see *Commons Debates*, LX, 3 (1903): 7490. Also reflective of the rising concern regarding prostitution was that the annual criminal statistics in 1910 began to record the charges and convictions for procuration and that immigration authorities were trying to deport landed immigrants who had been convicted of being an inmate of a disorderly house; see *Re Margaret Murphy, Canadian Criminal Cases*, XVII (1910): 103-07.

<sup>28</sup> Rev. J. G. SHEARER, "The Canadian Crusade", in *Fighting the Traffic in Young Girls*, ed.: E. A. BELL (Chicago: National Bible House, 1911), p. 356.

Legislative action was also taken to protect young women from men's lust. In 1900 several sections were changed or added to the Criminal Code. The crime of seduction had always applied only to females "of previously chaste character". Now the accused male was required to shoulder the onus of proof of previous loss of the seduced female's chastity. As well, the legal term "guardian" was explicitly and broadly defined, particularly regarding responsibilities to females under a guardian's charge: the minimum legal age for carnal knowledge of a girl was raised from sixteen to eighteen; and the section protecting females suffering from imbecility or insanity was broadened.<sup>29</sup> At the provincial level several legislatures acted to facilitate civil suits for seduction. Manitoba in 1892 and the North West Territories in 1903 adopted a pre-Confederation Upper Canadian statute to this effect; in Prince Edward Island in 1895 failure to comply with the judgement in such a suit became punishable by up to nine months' imprisonment.<sup>30</sup>

Over one particular section of the Criminal Code regarding seduction there was extended debate. Section 183, dating from 1892, declared it a criminal offence for an employer or manager in a factory, mill or workshop to seduce or have "illicit connection with" any female under age twenty-one and of previously chaste character who was under his direction. For the next twenty years pressure was exerted to widen the places of work named in the law. Shops or stores were proposed for inclusion in 1896, and were added in a rewriting of the section in 1900.<sup>31</sup> More vocal were pleas for the inclusion of domestic servants, one of the most vulnerable groups of female employees. However, the reformers met with considerable opposition from the legislators. Members of Parliament and senators were concerned lest any such law leave the employers of female domestics open to invidious blackmail, despite the fact that section 684 of the original Code made corroborating evidence mandatory in seduction charges. Worried more about the reputations of middle- and upper-class males than with the abuse of young females, the politicians dismissed demands for such a reform.<sup>32</sup>

These efforts and new legislation represent the various attempts to use the law to circumscribe extra-marital sexual activity.<sup>33</sup> Any opportu-

<sup>29</sup> CANADA, *Statutes*, 63-64 Victoria, c. 46, s. 3 (regarding ss. 183A, 186A, 187, and 189).

<sup>30</sup> ONTARIO, *Revised Statutes*, 1887, c. 58; MANITOBA, *Statutes*, 55 Victoria, c. 43; ALBERTA, *Consolidated Ordinances*, 1915, c. 117; SASKATCHEWAN, *Revised Statutes*, 1909, c. 139; PRINCE EDWARD ISLAND, *Statutes*, 58 Victoria, c. 5.

<sup>31</sup> CANADA, *Statutes*, 63-64 Victoria, c. 46, s. 3; *Commons Debates*, XLII, 2 (1896): 6499-6500.

<sup>32</sup> *Ibid.*, XLVI, 1 (1898): 2886-87; *ibid.*, LII, 2 (1900): 6321-22; *ibid.*, CXI, 5 (1912-13): 10072, and 6 (1912-13): 11605-7, 12138; CANADA, PARLIAMENT, *Senate Debates*, 1913: 1003-4. The House of Commons alone did pass such a change in 1913; the clause, dropping all restriction as to specific places of work, eventually passed into law in 1920 (CANADA, *Statutes*, 10-11 George V, c. 43, s. 5).

<sup>33</sup> Other sorts of state coercion were also developed at this time and in this regard. Among the grounds for which film censors of the four western provinces agreed in 1919 that movies should be condemned was: "Scenes showing men and women living together without marriage, and in adultery". (See, D. F. BOCKING, "Saskatchewan Board of Film Censors, 1910-1935", *Saskatchewan History*, XXIV [1971]: 59).

ity for sexual activity outside marriage was regarded not only as sinful on an individual basis, but also as a destructive force within society as a whole. If both the opportunity and the attractiveness of extra-marital sex could be reduced, then men would be persuaded to expend their sexual energies in their homes and with their wives.

It remains to examine attempts to coerce husbands more directly to stay at home and to accept their responsibilities as "bread-winners". Evidence of considerable concern regarding desertion and non-support does not appear until 1908-9, but over the following years much attention was directed to these problems. Some legislation was already in place: it was, for example, a criminal offence to fail to provide the necessities of life for one's wife or children under age sixteen, if the negligence resulted in death, danger to life or permanent injury. As well, in Ontario — but in no other provinces — there was a Deserted Wives' Maintenance Act, first passed in 1888. The measure allowed a deserted wife for the first time to apply on behalf of herself, with or without a family, for a court order requiring her husband to pay up to five dollars a week in support payments. In 1897 the definition of a deserted wife was enlarged to include a wife living apart from her husband because of his refusal or neglect to support her.<sup>34</sup>

There were obvious deficiencies in these measures, and reformers were quick to point them out. Neglect or non-support in and of themselves were not criminal offences; to become so they had to entail death or danger or permanent injury.<sup>35</sup> What about desertion where such results did not occur, where the husband deserted and repudiated his familial responsibilities but his wife and children were able, though barely, to struggle on? What about the husband who allowed charitable societies or city welfare agencies to assist his family while he avoided his duties? What of the husband who refused to work or who removed himself from the local court's jurisdiction, and thus could or would make no support payments? Finally, what of the husband who sat in jail, fed, clothed and sheltered, while his wife and children suffered the cruelties of climate and poverty in this country?

To deal with these weaknesses in the law, reformers pressed the federal government vigorously. The Associated Charities of Toronto established an interdenominational committee to examine the problem and to propose reforms. The committee met a number of times, secured legal and expert advice, consulted both the federal and provincial Attorney-General's departments and the local police department, and submitted proposed amendments to the Criminal Code, which the committee then urged the federal government to adopt.<sup>36</sup> The work of the committee

<sup>34</sup> CANADA, *Revised Statutes*, 1906, c. 146, s. 242; ONTARIO, *Statutes*, 51 Victoria, c. 23; *ibid.*, 60 Victoria, c. 14, s. 34; R. N. KOMAR, "The Enforcement of Support Arrears", *Reports of Family Law*, 1st series, XIX (1975): 165-69.

<sup>35</sup> See, for example, *the King v. Wilkes*, *Canadian Criminal Cases*, VI (1906): 226-31.

<sup>36</sup> PAC, RG 13, A 2, vol. 178, p. 514: S. Arnold to A. B. Aylesworth, Toronto, Ontario, 28 October 1910, and enclosures; E. Bayly to the Minister of Justice, Toronto, Ontario, 27 January 1911; S. Arnold to C. J. Doherty, Toronto, Ontario, 27 November 1911; "Desertion and Non-Support"; and *passim*.

quickly attracted attention elsewhere. The Local Council of Women and the National Council of Women, the Charity Organization Society of Montreal, the Associated Charities of Saint John, the Brandon Charity Organization, several court officials and politicians, and the Associated Charities of Winnipeg all came to the support of the Toronto committee's work. The Winnipeg society was particularly active, sending its General Secretary, J. H. T. Falk, to Ottawa and elsewhere on at least two occasions and generally pressing hard to have the Code amended. Other major groups, such as the Moral and Social Reform Council and the Methodist Church's Department of Temperance and Moral Reform, argued for similar legislation.

The pressure worked. In the Department of Justice the pleas fell on sympathetic ears. One official noted on a request submitted by the Associated Charities of Winnipeg: "These outside gentlemen do not realize that in no place is the heart more wrung with the sufferings of the innocent wives & children... than in this Department."<sup>37</sup> In 1913 the Criminal Code was amended in a major way. The definition of non-support was considerably extended by omitting any reference to death, danger, or permanent injury; mere failure to provide the necessities of life was now sufficient for conviction. As well, cohabitation was defined as *prima facie* evidence that the man was lawfully married to the woman involved; if a man had in any way recognized children as being his own that would be *prima facie* evidence that they were his legitimate children. Both of these changes tended to force responsibility for support on the common-law husband. Finally, summary conviction for non-support was now made possible.<sup>38</sup>

Reformers viewed the changes as a great step forward, although the law was still not all that they sought. The Government had not, for example, accepted the proposal that a husband convicted of non-support be set to work while in jail and that the proceeds from that work be used directly to support his family. Nevertheless, any "wife-deserter" could now be readily punished for his sins. As well, in some provinces deserted wives' maintenance legislation, similar to that in Ontario, had been adopted: in British Columbia in 1901 and Saskatchewan in 1910. J. J. Kelso, the long-time Ontario Superintendent of Neglected and Dependent Children, arranged for the printing of a flyer publicizing the new changes in the Criminal Code. Under a picture of Britannia protecting little children behind her shield, Kelso declared: "As this amendment to the Code was granted at the urgent request of many officials and social workers, its enforcement should not be neglected. The preservation of the home is the foundation principle of all social endeavour."<sup>39</sup>

<sup>37</sup> Ibid., J. H. T. Falk to F. H. Gisborne, Winnipeg, Manitoba, 6 May 1911.

<sup>38</sup> CANADA, *Statutes*, 3-4 George V, c. 13, s. 14; *Commons Debates*, CXI, 5 (1912-13): 10072-73. Also, in 1911 the Ontario Deserted Wives' Maintenance Act was amended, facilitating court action and raising the maximum support to ten dollars weekly. See ONTARIO, *Statutes*, 1 George V, c. 34, s. 2.

<sup>39</sup> PAC, RG 13, A 2, vol. 256, p. 307; SASKATCHEWAN, *Revised Statutes*, 1920, c. 154; BRITISH COLUMBIA, *Statutes*, 1 Edward VII, c. 18; KOMAR, "Enforcement", p. 168.

This rising concern over non-support and the changes in the law were reflected in the criminal statistics. Charges for non-support, which averaged 131.2 per year during 1900-9, jumped dramatically to 196 in 1912, a 49.4 percent increase, and then to 531 in 1913, a 170.9 percent increase over the previous year, before settling back to around 174 charges per year. The number of convictions followed a similar pattern, rising 33.3 percent to 68 convictions in 1912, and then in 1913 vaulting to 394, a 479.4 percent increase over the previous year before falling to around 100 convictions per annum in the years immediately thereafter.<sup>40</sup>

What of the international boundary? Associated with the movement to amend the Criminal Code regarding desertion and non-support was a desire to make these extraditable offences. An Order-in-Council to this effect was approved in April 1915, but the Convention involved was not ratified by the American Senate.<sup>41</sup>

One further attempt was made to control the behaviour of men. Not only were they to stay at home and expend their sexual energies "properly", they were also not to beat their wives, a problem which some social leaders considered to be serious. No man should be allowed physically to mistreat a female. In a discussion of whipping as a form of corporal punishment, members of the House of Commons in 1909 castigated wife-beaters; there was considerable support for, as the Prime Minister put it, giving a "man... a taste of his own medicine". In Ontario in 1897, legislation was amended to include within the definition of a deserted wife any woman living apart from her husband because of repeated assaults or other acts of cruelty. To cope with the problem nationally the Criminal Code was amended. Section 292 dealing with indecent assault was expanded in 1909 to punish any male who "assaults and beats his wife or any other female and thereby occasions her actual bodily harm".<sup>42</sup> Since assault causing bodily harm was already dealt with elsewhere in the Code and entailed harsher punishment, the value of this new legislation is doubtful. However, the desire to protect wives and to specify proper behaviour between husband and wife is significant.

## II

Regulation of marital and sexual conduct at this time is part of a broader theme discussed by other historians. Angus McLaren has recently indicated the repressive tendencies of the state and of social leaders regard-

<sup>40</sup> Calculated from CANADA, DEPARTMENT OF TRADE AND COMMERCE, "Criminal Statistics, 1912-1915", Appendix to the *Report of the Minister of Trade and Commerce* (Ottawa: King's Printer, 1913-16).

<sup>41</sup> PAC, RG 13, A 2, vol. 178, p. 514; *ibid.*, vol. 256, p. 307.

<sup>42</sup> *Ibid.*, vol. 152, p. 833, Rev. R. H. Murray to A. B. Aylesworth, Halifax, N. S., 2 June 1908; *Commons Debates*, LXXXIX, 1 (1909): 561-70; CANADA, *Statutes*, 8-9 Edward VII, c. 9, s. 2; ONTARIO, *Statutes*, 60 Victoria, c. 14, s. 34. See also PAC, RG 13, A 2, vol. 169, p. 1362; University of Western Ontario, D. Mills Papers, box 4287, Letterbook II (1898-99), p. 451, J. D. Clarke to M. Marshall (Secretary, Society for the Protection of Women and Children, Montreal), (n.p.), 21 January 1899.

ing abortion and has pointed out how this repression coincided with apparently changing societal practices. In an important paper in 1970 Michael Bliss opened up a new area of research for Canadians in a stimulating analysis of turn-of-the-century attitudes toward sexuality: Bliss revealed a widespread concern among leaders within Canadian society for control over sexuality and for repression of extra-marital or "unnatural" sexual activity.<sup>43</sup> Canadians working for "social purity" were concerned enough about the negative developments within society to organize, in 1905-6, the Canadian Purity-Education Association. This organization was simply a manifestation of an existing and rising concern for the moral and social "hygiene" of Dominion society. The Association complemented such existing groups as the Montreal-based Society for the Protection of Women and Children and paralleled in time and in character similar developments in the United States.<sup>44</sup> Both Americans and Canadians noted signs that moral and sexual attitudes and codes of conduct were altering, along with much else in society. In an attempt to maintain some stability and to gain reassurance as to traditional values and behavioural codes, articulate members of North American society were speaking out and acting against any change.

Yet the very reaction revealed change. The public discussion of sexuality and of sexual conduct contributed meaningfully to "the breakdown of the conspiracy of silence" regarding sexual matters.<sup>45</sup> In the open debate of such issues, the sacramental or religious character of the questions was weakened and their secular aspects became more important. As well, by articulating a code of moral and sexual conduct these reformers were setting up an ideal type which was not always compatible with the parallel ideal of a happy marriage in which mutual obligations and responsibilities were fully respected. Indeed, a rationale was being developed and legitimized for marital dissolution, a rationale which would come to be increasingly adopted in the future. What would happen when one was forced to choose between maintenance of a marriage in which at least one of the partners was guilty of immoral conduct and the dissolution of that marriage in order to demonstrate that such conduct could not properly be tolerated within marriage? In the following decades in Canada, as ideals of sexual, moral and marital conduct came increasingly to be articulated, the possibility of acceptable marital dissolution would come, albeit slowly, to be legitimized.

It was in the courts of the land where the conflict between these two ideals first became apparent. While politicians and social reformers could

<sup>43</sup> A. McLAREN, "Birth Control and Abortion in Canada, 1870-1920", *The Canadian Historical Review*, LIX (1978): 319-40; J. M. BLISS, "'Pure Books on Avoided Subjects': Pre-Freudian Sexual Ideas in Canada", *THE CANADIAN HISTORICAL ASSOCIATION, Historical Papers 1970*: 89-108.

<sup>44</sup> *Ibid.*, pp. 105-07; Toronto District Women's Christian Temperance Union, *Reports and Directories, 1895-96 to 1914-15*; Rev. C. W. Watch, "Social Purity Work in Canada", in POWELL, *Purity Congress*, pp. 272-78; WATT, "Protection of Women", *ibid.*, pp. 437-51; J. C. BURNHAM, "The Progressive Era Revolution in American Attitudes toward Sex", *Journal of American History*, LIX (1972-73): 885-908; D. J. PIVAR, *Purity Crusade: Sexual Morality and Social Control, 1868-1900* (Westport, Conn.: Greenwood Press, 1973).

<sup>45</sup> CONNELLY, *Response to Prostitution*, pp. 18-19.

discuss various principles in the abstract, the courts were forced to apply the resulting laws to specific cases. The consequence, in the early twentieth century, was much ambivalence, as the judiciary tried to cope with the conflicting pressures. On the one hand, adulterous conduct could be enough to relieve the other spouse of marital obligations, as for example in Montreal in 1902. Mrs. H. applied for a judicial separation and moved out of the matrimonial home. In receipt of alimony from her husband, she took up residence elsewhere in the city and became "the kept mistress of a married man". On learning of this, the husband discontinued the alimony and his wife sued, but the courts eventually supported the husband because of the wife's improper behaviour.<sup>46</sup> On the other hand, a wife's neglect of some of her marital obligations was not sufficient to absolve the husband of his duty to maintain her. One Mr. Karch, a machinist in Hespeler, Ontario, was considered by the court to be an industrious, good man who, while living at home, had provided properly for his family. Over time Mrs. Karch had shown evidence that she generally neglected her husband (for example, by not preparing his meals) and "was not as considerate as a wife should be of her husband's welfare". While Mr. Karch tolerated this conduct for many years he eventually left his home in 1911 "because of her lack of interest in him and her nagging and scolding", particularly over monetary matters. The court's ambivalent attitude was clearly indicated in the judge's conduct of the case and in his decision.

At the trial I urged the parties to make a further effort to bring their differences to an end, so that the home should not in any sense be broken up, and I intimated that I would withhold judgement for a time to see if they could effect a reconciliation. I have not heard that this has been accomplished. The case is an unfortunate one, happening as it does between people possessed of all the possibilities of making a comfortable home.

The wife had done nothing to abrogate her right to support payments, and in the separation she was awarded alimony of five dollars weekly. At the same time the judge made clear his assessment that the fault in this marriage breakdown lay largely with the wife, to whom he recommended a "self-examination... [of] her own behaviour". "I do not think that this is a case where great liberality should be displayed in making her an allowance", he commented, and then went on to award to the husband both custody of the two children and possession of the marital home.<sup>47</sup>

The courts of the land were thus very much involved in applying and in reacting to the attitudes and values articulated by the social reformers. The sanctity of the marital contract and the incumbent responsibilities were repeatedly upheld, as for example in the refusal to recognize foreign divorce decrees or in the refusal to claim jurisdiction in annulment.<sup>48</sup> The question of whether a spouse was willing to resume cohabitation in the

<sup>46</sup> *H. v. H.*, *Canadian Criminal Cases*, VI (1902), pp. 163-66. cf. *Moon v. Moon*, *Dominion Law Reports*, VI (1912), pp. 46-47.

<sup>47</sup> *Karch v. Karch*, *Dominion Law Reports*, IV (1912): 250-52.

<sup>48</sup> See, for example, *Prowd v. Spence*, *Dominion Law Reports*, X (1913): 215-16; *Re Chisholm*, *Dominion Law Reports*, XIII (1913): 811-13; *the King v. Woods*, *Canadian Criminal Cases*, VII (1903): 226-39.



marital domicile was frequently a critical test in awarding alimony.<sup>49</sup> Desertion or adultery or some other form of unacceptable conduct could be ground for denial of important rights, such as dower rights.<sup>50</sup> At the same time there seems to have been a rising tendency in the courts, in the years leading up to World War I, to define laws and procedural or evidential rules in such a way that conviction for sexually related criminal offences became easier.<sup>51</sup>

This activity by the courts was paralleled by increased attention elsewhere. The arrest and conviction rates for crimes involving marital or sexual misconduct were rising steadily throughout the period; in many cases the conviction rate was outstripping the increase in arrests and the overall rate of population growth. Much of this increase can be explained by two factors. First, the courts and Parliament by widening the law had facilitated prosecution. Second, public concern and a stronger articulation of public standards of morality were becoming more evident, as reflected in social gospel and moral reform movements of the time. When one examines the reported criminal statistics in detail, this factor becomes more apparent, as the geographical incidence of charges laid is so consistently disproportionate that cultural values and perceptions must be used to help explain the distribution.<sup>52</sup> Similarly, a recent study of prostitution in Calgary found in the immediate pre-war year a distinct increase in public concern and police action aimed at removal from the city both of the prostitutes themselves and of those who made use of their services.<sup>53</sup> Thus it was that the courts, police forces and public attitudes all combined to create a more punitive environment regarding offences against marriage and sexual morality.

Not only did punishment of extra-marital sexual activity become more severe and more certain, but in the courts and elsewhere there was a general sense that more basic problems were even more crucial. Marriage was believed to be in trouble; the home was in need of protection. "A true home", asserted a Methodist report, "is the result of two spirits blending and becoming one. It is a spiritual union rather than otherwise. The Christian home is an atmosphere."<sup>54</sup> That atmosphere was perceived by many

<sup>49</sup> See, for example: *Karch v. Karch*, *Dominion Law Reports*, IV (1912): 250-52; *Standall v. Standall*, *Dominion Law Reports*, VII (1912): 671-74; *Ney v. Ney*, *Dominion Law Reports*, XI (1913): 100-4; *Brizard v. Brizard*, *Dominion Law Reports*, XVI (1914): 55-60.

<sup>50</sup> See, for example, *Re Auger*, *Dominion Law Reports*, V (1912): 680-86; *Re S.*, *Dominion Law Reports*, III (1912): 896; *Ney v. Ney*, *Dominion Law Reports*, XI (1913): 100-4; *Miller v. Miller*, *Dominion Law Reports*, XVI (1914): 557-58.

<sup>51</sup> It would be interesting to know whether the terms of conviction became any harsher at the same time. See T. L. CHAPMAN, "Sexual Deviation in British Columbia: A Study of Offences Against Morality and Chastity, 1890-1920", paper presented at the B.C. Studies Conference, Simon Fraser University, October 1981.

<sup>52</sup> For non-support over the fifteen years, 1900-1914, Ontario accounted for fully 80.7 percent of the charges laid and York County (including Toronto) alone for fifty-one percent of the national total; by contrast, the province of Quebec accounted for 8.2 percent and Montreal for three percent. In the case of indecent assault, 55.4 percent of the total charges were laid in Ontario (seventeen percent in York County) while ten percent were laid in Quebec (3.4 percent in Montreal).

<sup>53</sup> J. BEDFORD, "Prostitution in Calgary 1905-1914", *Alberta History*, XXIX (1981): 1-11.

<sup>54</sup> METHODIST CHURCH OF CANADA, DEPARTMENT OF TEMPERANCE AND MORAL REFORM, *Principles, Problems, Programme in Moral and Social Reform* (n.p., 1911), p. 35.

observers to be threatened by a variety of problems, for which there were several convenient symbols. Late in 1911 the Ontario Women's Christian Temperance Union in convention passed a resolution attacking "Mormonism" and recommending:

That violation of the marriage laws be made punishable under the Criminal Code and that we entreat the Legislators to so safeguard this country in all matters of marriage and Divorce that the purity & sanctity of the home may remain inviolate.<sup>55</sup>

Given the fact that Mormon practices of "plural marriage" had been specifically prohibited within the Criminal Code as early as 1892 (section 278), what these women and others like them seem really to have wanted was a reassertion of the basic values and practices associated with marriage and the home. The defensive attitude regarding the home which the resolution displayed was widespread. Little or no attempt was made to understand marriage breakdown. Apart from occasionally mentioning immigration or specific ethnic or religious groups, no basic social factors (apart from class) were discussed, much less analysed. Instead, it was simply taken for granted that all breakdowns were wrong and sinful, destructive of the family and the home. Therefore all evils which might lead to marriage breakdown must be subject to punishment. As one Canadian purity reformer put it, "'The White Life for two' has to be insisted upon."<sup>56</sup>

Canadians certainly did not ignore marriage breakdown, but they did refuse to believe that, or to consider whether, part of the problem might lie in the institution itself. Instead, influential leaders sought simply to suppress or to punish any deviations from "acceptable" practice. Canadians were able to admit that there was a problem but were unable to deal with it positively. As the incidence of marriage breakdown rose during the twentieth century, this inability to deal realistically with the problem became increasingly important. Possibly this relatively unthinking response by Canadian leaders was a reflection of the continuing sensitive character of sexuality as a topic. Repression and punishment were easy because they demanded little or no thought. Rather than seek the varied causes of marital breakdown, which would have opened up an issue with which Canadians were not yet ready to cope, they simply reinforced existing values and standards.

Not surprisingly, given the prevailing stereotypes of males and females, there was a strong sexist bias in the attitudes and legislation regarding marriage breakdown and sexual morality. Adultery was relatively tolerated as a male vice and this was reflected in divorce legislation. While a husband was required to prove only adultery on the part of his spouse, a wife had to prove both adultery and either desertion or cruelty. In other areas of law as well men were seen to be the more sinful element, and the

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<sup>55</sup> PAC, RG 13, A 2, vol. 169, p. 1362. The annual reports of the Methodist Church's Department of Temperance and Moral Reform echoed in these years the concern that Mormon teachings and practice of polygamy "have become a menace to Canada and Canadians"; see *Principles, Problems, Programme*, p. 38.

<sup>56</sup> WATCH, "Social Purity Work in Canada", p. 278.

criminal statistics appeared to bear out and reflect such a perception. Desertion was more often than not referred to as "wife desertion"; the Criminal Code punished husbands who neglected their families, but not wives. Physical abuse of wives was punishable in law, but the possibility of physical abuse of husbands was a matter for joking in the House of Commons.<sup>57</sup> The result was that complaints and legislation tended to deal with causes as they related to males and results as they related to females. The consequent imbalance in concern and awareness was entrenched in law and attitudes.

As well, there was a distinct class bias to the perceptions and legislation dealing with marriage breakdown. Desertion and non-support were attacked so vigorously because they were felt to be particularly prevalent among the lower class. Workers, it was feared, had not fully accepted such middle class concepts as familial responsibility and husband-as-breadwinner. It was therefore necessary to employ the broader powers of the state to impose these concepts. Similarly, some of the legislation reflected class bias. In most of Canada, divorce was available only for the upper strata of society; legal dissolution of marriages remained unavailable to the lower strata that could not be trusted to use such a "privilege" wisely. Another example of such class distinctions was the debate over seduction of female domestics.

The movement to defend marriage and sexual morality originated as a response among the increasingly assertive middle class to the social and economic turmoil and disruption of the late nineteenth and early twentieth centuries, when so much of what was valued in society seemed to be threatened. In particular, that central institution of civilization, the family, was felt to be in jeopardy. Spokesmen for the middle class articulated traditional values regarding the family and morality, using a new vehicle (or at least an existing vehicle in a relatively new way) — the state — to enforce and entrench those values. The movement was similar, for example, to prohibition, which by the end of the nineteenth century had moved from temperance to total abstinence and which now sought to employ the power of the state much more forcefully. No longer could the ideals of marriage or sexual morality or sobriety be left simply as ideals. Instead an articulate and aggressive middle class, making use of new-found experts such as J. J. Kelso or J. H. T. Falk, set out to assert and enforce through the power of the state the values felt to be essential if modern society were to cope successfully with the new forces and problems which it faced. The evidence suggests not only that the movement to defend marriage and sexual morality was successful in strengthening the law, but also that the police forces and the courts responded positively to the new laws and the basic values and ideals therein. The defence of marriage and sexual morality in the period 1890-1914 went hand in hand with such child-centred reform movements as those associated with public health, juvenile courts, children's aid, and "new" education. All were part of a massive thrust to stabilize and strengthen the institution of the family.

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<sup>57</sup> *Commons Debates*, LXXXIX, 1 (1909): 565-67. Similarly, it was held in 1913 in Alberta that only females could be convicted of being inmates of bawdy houses; see: *the King v. Knowles*, *Canadian Criminal Cases*, XXI (1913): 321-22.