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# UNPLIGHTED TROTHS

## CAUSES FOR DIVORCE IN A FRONTIER TOWN TOWARD THE END OF THE NINETEENTH CENTURY

C. ROBERT HAYWOOD

“Welcome to Dodge City, the biggest, wildest, wickedest little city on the continent,” was the exuberant greeting given out-of-town visitors to Dodge’s Fourth of July celebration in 1883. The assessment projected was a self-congratulatory one shared and frequently envied by the rest of the United States. Dodge was enjoying the peak of its cattle-town fame and prosperity as the quintessential frontier boom town, unrestrained by convention, the “very embodiment of waywardness and wantonness.” Few communities seemed more at odds with the

national social values and mores that later generations would label Victorian. As a mecca for free-spending cowboys it was a place to let off steam, live high, and have fun. For the merchants, gamblers, joint operators, and cattlemen it was a time to fleece the unwary, reap handsome profits, and grow respectably rich.<sup>1</sup>

But not for everyone. Mary Sawyer needed a divorce—desperately needed to be free of the marital trap she found herself in. She was confined to a sick bed in a dugout where the damp, crumbling walls provided shelter “little better than living outside.” Her husband swore at her, falsely accused her of adultery, refused to provide adequate food or fuel, and neglected her at the most critical point of her illness. For Mary Sawyer, the crucial questions relating to Dodge City were would the local courts in this male-dominated setting where women were seen in the courtroom only in the dock or on rare occasions in the spectator’s gallery, provide a remedy for her plight? And, if so, on what grounds?<sup>2</sup>

For the rest of the United States, contradicting the stereotypical conception of ironclad marriages and compliant, even beleaguered, Victorian wives, divorce rates rose rapidly in the last half of the nineteenth century, jumping

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almost eighty percent in the United States in the decade of the 1870s. Mary perhaps knew that the West led the other sections in this increase and Kansas ranked well up among the leading states.<sup>3</sup> Kansas supported liberal statutes and generous judicial interpretations of what constituted grounds for divorce. The earliest divorce law in territorial Kansas made provisions for nine causes of dissolution, which included such open, catch-all phrases as "shall offer such indignities to the person . . . of the other as shall render his or her condition intolerable."<sup>4</sup> The statutes applying during the last quarter of the nineteenth century had expanded to ten the causes for granting a divorce. Although omitting the nebulous "intolerable condition" clause, the newer statutes replaced it with an equally flexible expression, "gross neglect of duty."<sup>5</sup> District courts could and did grant divorce for any one or any combination of the ten reasons. Ford County, with Dodge City the county seat in 1874, was served by the Sixteenth District Court and, like more than three hundred other citizens of the town and its environs between 1874 and 1900, Mary Sawyer brought her petition to the District Court.<sup>6</sup>

The rapidly rising national divorce rate was not initiated by the changing laws, however, but was, like the laws themselves, a reflection of society's changing understanding of the duties of marriage partners. Women's rights were expanded during this period and women took advantage of changed attitudes to free themselves from unfortunate unions. Approximately seventy percent of all divorce cases in the United States were initiated by women (70.3 percent in the Dodge City district). These spiraling numbers, according to Robert L. Griswold, were "an accurate barometer of rising marital expectations" on the part of women. Men found the causes women used in seeking dissolution of marriages equally serviceable justifications for ending their own untenable unions. Perhaps Mary Sawyer would have sought the court's remedy earlier if she had known that female petitioners were usually favorably received by these all-male bastions of justice. Nationally, women received approximately two-thirds of

the divorces granted, 34.2 percent for husbands to 65.8 percent for wives. In Dodge women did even better, winning 69.5 percent of the cases.<sup>7</sup>

The new perception of family life saw marriage as involving mutual love and respect in what was to be an economically and sexually compatible partnership to undergird procreation and shared child-nurturing. A husband in such an arrangement was obligated to be a caring and considerate companion who provided for the physical comforts of wife and children; the wife's reciprocal role was to provide moral guidance for all in the family, nurture the children, look after the home, and cheerfully submit to the husband in all reasonable demands in other matters.<sup>8</sup> Although the bargain seemed tipped in the husband's favor, the woman's position of moral superiority over men made her, as one western Kansas newspaper put it, "the inspiration of all good works,"<sup>9</sup> and, consequently, the recipient of great respect and discreet behavior from the husband in and away from the home, even though public life clearly reflected male domination.

The details of what this domestic relationship ought to be were often hammered out, not in the glorifying, ethereal rhetoric of women's magazines and other uplifting literature, but in the bitter, even nasty confrontations of the divorce court. *Godey's Lady's Book* could describe the moral and spiritual infusion of the mother as the "light of the home," a loving, caring, and calming companion, but when John H. Cane, in the district court held in Dodge City, charged his wife, Sally, with being "a woman of temper, of a cold and cruel disposition . . . easily provoked and angered, which caused him to leave home to keep from bearing her abuse" while she was "twitting him" and "aggravating him," the court might agree that her behavior was "outrageous," but it was not a deviation so far from the norms of her duty as to justify divorce. On the other hand, when John used "profane and indecent language in the presence of the children," beat his wife with a broomstick, and failed to provide decent housing when he had the opportunity, the court found he had not fulfilled his duties as a

husband and granted Sally a divorce that provided an equitable division of land and property (3770).<sup>10</sup> It was from such distinctions, aired in public, that the weighing of wifely and husbandly duty was spelled out with full legal and societal sanctions behind them. The District Court in Dodge was to have ample opportunity to deal with the distinctions.

Divorce came to the citizens of Dodge during the last half of the nineteenth century like the common cold, respecting neither class nor financial standing. The two leading merchants, Robert M. Wright and Charles Rath, and their wives found themselves in court, as did many men and women who were so poverty stricken they could not travel even short distances to contest the proceedings. The wives of the lawyers, real estate men, and physicians—men possessing the best education the community could boast (for example, Frederick T. M. Wenie, C. S. Williams, and Harry E. Gryden)—had the same dubious honor of being divorcees as did Tinnie Dibrow, who signed her petition with an X. Most divorce cases concerned obscure “little people,” but Dodge City’s most noted or notorious woman, Dora Hand, lost her life in a much publicized accident when she came back to Dodge in quest of a divorce from her adulterous husband.

Of 224 petitions filed between 1874 and 1900 that are available for review, the records show that 139 cases were acted upon in favor of the plaintiff, six for the defendant, and seventeen were continued or dismissed, including one case involving a common law marriage (3657). As for the rest, the record is unclear. In making these decisions the plaintiffs and the courts dealt primarily with five of the ten causes provided for in the state constitution.

As listed in Article 28, Sec. 6258, the grounds for divorce were the following.

“*First*, when either of the parties had a former husband or wife living at the time of the subsequent marriage.” No cases on record.

“*Second*, abandonment for one year.” This cause was cited in 54.4 percent of cases and was the sole cause in thirty-six. The one-year absence requirement was a liberalization of the

two-year requirement provided in the original statutes adopted in 1855. The hardship suffered by a spouse and family during an extended absence and the improvement of transportation on the frontier, making travel easier and quicker, indicated that a change in the law was needed. But even more important was the alteration of society’s domestic ideology to stress the joint obligation of husband and wife to a marriage. When the prescribed duties were broken, as they most surely were when a spouse deserted the family, divorce became a benign remedy to be applied as soon as reasonably possible.<sup>11</sup> If there was a question of return or reconciliation, the court did not hesitate to place limits on the conditions for granting the final decree, and, by statute, the decree would only become “absolute and take effect” at the end of six months.

As was true for the rest of the United States, abandonment was the ground most frequently cited by Dodge City plaintiffs. Between 1867 and 1886 in the United States, 75,191 women and 51,485 men indicated desertion as cause for divorce; in Kansas the difference was much greater, 4974 women to 2217 men.<sup>12</sup> Usually other instances of the breakdown in roles were cited, but abandonment was the one cause for divorce that usually was met by a sympathetic court and the one that most frequently stood alone. Obviously an absent husband or wife could not fulfill the acceptable Victorian role. Once the absence was proven, or uncontested, the only matters in contention were determining if the plaintiff were at fault in causing the desertion, the allotment of alimony, the assignment of the custody of children, the restoration of prior names, and the division of property.

Generally the plaintiff had only to demonstrate that the guilty partner had not been present in the home for more than twelve months. Noah Newland went for a visit to Ohio and never came back (3264); C. C. Christal, in failing health, came West in search of a more salubrious climate and could not persuade his wife to join him (3197); and J. W. Coleman “fled the country” to escape charges of incest (3723). Other cases were not so clear: at least two railroad men claimed they were forced by

their job to move frequently and could not get home. Emmet Sherwood's use of that defense was judged spurious, however, when he also confessed he had sent no money home for over a year (3813). The court granted his wife the divorce plus a \$1000 single alimony payment and eventually garnished his wages to pay court costs. Lettie Sugg and Amanda Adams successfully defended themselves from the charge of abandoning their husbands when they demonstrated that they had been forced to return to their families to escape their husbands' abuse (3318, 2843).

The court's sympathy was clearly with any woman whose husband had neglected his role as provider, but a wife's abandonment of her husband was also considered gross neglect of duty. The plight of the wife and family with no provider, however, was many times heart-rendingly desperate and the court took cognizance of the fact.

Women's citations of abandonment, curiously in light of present-day understanding of a wife's right to employment and a career, were accompanied by a litany of complaints regarding the husband's failure in his major duty as provider, which "forced," "compelled," or "necessitated" the wife to become gainfully employed, frequently outside the home. Sarah Foster spoke for a number of wives when she complained that after her husband left her she was "compelled to take in washing" (3732). But even if the husband did not stray, wives who were required to work felt abused if they were forced to neglect household duties. Mary Ann Kimmel and the court found "extream cruelty" in being forced to work in the family laundry "from 6 o'clock in the morning until 11 o'clock at night" to the near total neglect of her duties and, to add to the harm, to have her husband appropriate the money earned (2313). Others found it necessary to take in boarders, do sewing, serve as nurse, or "go out to service." A husband's failure to provide subsistence not only rendered the family destitute but put the woman's chances of succeeding as wife and mother in jeopardy when she had to assume the husband's rightful role as well. There was no

instance when a wife's working was by itself alone considered cause enough for divorce, but many women used a description of the hardship involved to prove the marriage's failure.

"Third, adultery." The charge of adultery was part of the divorce proceedings in 17.5 percent of the cases and was the only cause cited in eight cases. The pattern for the rest of the United States during the 1867-86 period was not quite so clear with 38,184 husbands charging adultery while 29,502 wives made the same complaint. In Kansas the pattern gave a better than two to one edge for husbands making the charge.<sup>13</sup> Just as the proof of abandonment was the quickest and most certain path to a successful divorce for women, men found that proof of adultery brought the same sure and rapid decision. During Dodge's early years as a roistering cattle town, men more frequently used the charge than they did in the 1890s, and the husband was more readily believed, as was Israel La Montaine when he declared his wife was "practicing the nefarious business of a whore" (142), Thomas Cooper, who reported that his wife "for over one year last past [was] a common Harlot [in a Dodge City brothel] committing adultery with many persons at diverse times" (161), and Daniel Knox, who reported his wife to be a "notorious prostitute in one of the Dance Halls" (166). Such cases took little of the court's time.

Adultery, however, was usually committed in less public places and, consequently, the charges carried greater detail as to where, when, and with whom (86, 113, 189, 225, 3089). Depositions from neighbors or the adulterer's partner apparently were not difficult to secure, and in those instances where the defendant did not appear before the court, the statements of the plaintiff alone were accepted as proof. One long-suffering husband presented nothing more than his statement that he had not seen his wife for "four years preceding the birth of a child," thus neatly tying abandonment with adultery (197).

Wives did not charge adultery as often as men and in only one case was it the only cause a woman cited—even then the petitioner noted

that because of her husband's actions he had given her a "loathsome disease" (968). Most named names, dates, and places and the most distressing petitions were those in which the episodes occurred in the plaintiffs' homes (43, 211, 968, 3722). When the wife listed the cause as a major contention, the court rarely failed to grant her a divorce or to restore her maiden name and custody of children.

Society considered falsely charging a wife with adultery particularly degrading and the courts deemed it the worst form of mental cruelty, destroying health as surely as any physical disease.<sup>14</sup> Victorian concepts of the "true woman" placed high value on married virtue, and for a man to impugn his wife's character falsely was particularly damning. A Texas judge stated: "Of all the treasures cherished by a woman, her reputation for chastity is the dearest. 'It is the immediate jewel of her soul'; and when an attempt is made by her husband, who should be her protector, to rob her of it; cruelty has reached its utmost limit."<sup>15</sup> By further implication, a woman wrongly accused might be placed in harm's way since lustful men might be encouraged to act on the allegation, and, on a more prosaic level, the woman in question and those associated with her could suffer personal and financial loss because respectable people would shun them. Jobs could be lost and other economic opportunities denied. All of these possibilities were aired in the Dodge City court.

Sultina J. Averill alleged that the false accusations of adultery made by her husband were designed to force her to leave the community so that he could control their lands and lumber yard (3375). In a cross petition Emma Alter claimed her husband, "a stingy and miserly" man, had bribed her own brother to spy on her and then falsely accused her of being an adulteress in order to defraud her of her property by forcing her to return to Ohio (3756). Amanda Adams was also able to free herself from such a charge by proving she had left her husband only temporarily to aid a sister. She had intended to return and was never involved with any other man (2843). The court awarded the divorce to

her along with custody of the children and the requirement that her husband pay court costs and the legal fee of \$10.00 (2843). When William Ingram presented a counter petition reiterating his charges of unfaithfulness after his wife had condemned his false accusations, the court supported her description of his "insane jealousy" and awarded her a substantial property settlement (3543).

On a number of occasions the husband's false charges included incest, which the courts judged to be even more cruel. Jennie M. Zwich's account of her husband's false charge that she had had sexual intercourse with her father was deemed to constitute both physical and mental cruelty since both she and her father suffered public shame, disgrace, and physical collapse. Adultery and incest were charges that could easily backfire without ample proof and even then the court's reaction was uncertain. One judge found the provable charge of "a dissolute character" of a wife keeping a bawdy house in Wichita no cause for divorce because the husband "knew the woman's character when he married her" (3827). A local newspaper, in one of its rare comments on divorce proceedings, praised the judge's action as an endorsement of "the sanctity of the marriage vows."<sup>16</sup>

With that strange double standard of the time, newspapers rarely mentioned divorce litigation except to list the case. Editor Nicholas B. Klaine of the *Dodge City Times* admitted that his paper avoided reporting on trials that had too many "racy features" because a "moral paper" ought not "shock the readers with details."<sup>17</sup> Such sensitivity, however, was not shown in reporting other instances of the peccadilloes and high life of Front Street. In Dodge City society appeared to condone the necessity of divorce but regretted the unpleasantness of sexually explicit discussion in public of what people already were gossiping about in private. The untarnished, morally superior wife in the home was the very foundation of the Victorian social order, and official reporting avoided blemishing the image.

"Fourth, impotency." There is no instance of this condition being used as even a minor cause

by a plaintiff. In spite of the blatant display of advertisements in the papers for nostrums designed to cure the condition, leading a reader to speculate that impotency had reached epidemic proportions, attorneys and their clients found it of little use as a cause for divorce.

"Fifth, when wife, at the time of marriage, was pregnant by another than her husband." This was one of the rarely used statutory causes for divorce. Mattie Stein in her petition admitted to being pregnant at the time of marriage but condemned her husband for making a false charge that the child was "a bastard child" which caused her "great mental agony and distress." Apparently to strengthen her case, she added adultery to the charge (3744). Bertha E. Butts provided an interesting twist in admitting she was pregnant at the time of her marriage. Since she was under age of lawful consent, her husband married her to "escape criminal prosecution" and had reviled her, calling her a "G— D— D— whore," which caused "great mental and physical suffering" and a miscarriage (3524). Without a confession from the wife, prior pregnancy by another man was hard to prove and attorneys apparently advised using other more common grounds for action.

"Sixth, extreme cruelty." Next to abandonment, cruel or abusive behavior was the most frequent cause appearing in women's petitions. It was at least one of the causes cited in sixty-one cases and the sole cause in eight. Most descriptions of a husband's cruelty were straightforward enough: the husband choked, struck, kicked; beat with fists, sticks, clubs, or other handy household articles; and threatened murder, occasionally with gun in hand. With the changes by mid-century of society's understanding of family and gender roles, duties, and acceptable behavior, women's charge of mental cruelty gained a more sympathetic hearing in the courts.

The "true woman," it was believed, ought not be subjected to brutish behavior, excessive or aberrant sexual demands, indecent language, ridicule before strangers, or other action that might trigger nervous disorders. Women's

reaction to such stressful conditions were lumped under the medical term neurasthenia, which had by 1890 become "a part of the modern medical landscape." Although an ill-defined ailment, associated particularly with middle-class women in modern, urbanized settings, it was considered physically debilitating, and if unchecked, deadly. Nervous exhaustion from whatever cause was understood to have the power to destroy health and in effect become a physical disorder.<sup>18</sup> The courts in Dodge City reflected this changed understanding, and women as plaintiffs increasingly included mental cruelty in their petitions. In describing the effect of such behavior, women and, on rare occasions, men, used such terms as "causing . . . great mental agony" (3744), "great mental pain" (3732), "mental distress before friends" (3722), and "suffering nervous prostrations" (3797). Vile and abusive language was particularly noted as a nerve-shattering offense. Victoria Mills charged her husband with "never having a kind word" for her and said he often called her vile names such as "damned bitch" (3711). Edward R. Steward brought similar charges against his wife, who called him vile names, hit him with an iron rasp, and threatened him with "a 40-4 revolver" (3730). Both men and women petitioners cited vile and profane language and name-calling as evidence of the breakdown of a marriage. Apparently Dodge City believed that the roles of both spouses called for civility and respect and that offensive language indicated that the relationship had been irreparably lost.

The Kansas Supreme Court in 1883 (*Carpenter v. Carpenter*) reversed the previous court's position that specific proof had to be presented to show alleged mental cruelty had caused physical suffering, and the use of the term in divorce petitions increased.<sup>19</sup> Justice Daniel N. Valentine, the presiding judge, criticized older interpretations that had "taken too low and sensual a view of marriage relations," and he called for courts to move to "a higher plane, and to consider it [marriage] as a mental and spiritual relationship, as well as physical relations." His response paralleled society's demand that

men ought to be aware of women's keener domestic, religious, and moral position and treat wives accordingly. Extreme cruelty, whether physical or mental, had reached the front line attack in most women's petitions by 1900. Men, too, apparently on the assumption that what is good for the goose is good for the gander, sometimes included the charge in their petitions, as did Charles L. Clemons who "suffered great mental anguish . . . which affected him mentally and physically" (3182, see also 3422). Abandonment, adultery, drunkenness, and failure to perform the duties of a spouse were all coupled with accusations of extreme mental cruelty and generally were met by a sympathetic court.

"*Seventh*, fraudulent contract." This was another of the rarely used causes for granting a divorce. There was only one clear use of the seventh cause. Mattie Hoard claimed that she had been "induced to enter into marriage by reason of fraud" when her husband concealed from her how many children (six) he still had from his first marriage (3611). Helen Hubbell told the court that her husband had claimed before their marriage that he owned a business but he did not, and she had been forced to work as a servant to survive. She did not rely on this circumstance as a major contention in her case, however, but, like most others, fell back on "mental distress, . . . gross neglect of duty; [and] extreme cruelty" (3710). Lavina Shortridge, who was barely sixteen when she married Ira, age forty-four, might have pled a flawed marriage contract when, shortly after their wedding, he brought what he claimed was his own illegitimate child into the house, but she also called on the same old reliables that Helen Hubbell had listed (3722). The seventh cause was largely ignored because of other clearer, more useful grounds.

"*Eighth*, habitual drunkenness." Instances of liquor and habitual drug use were frequently cited by petitioners but drunkenness was rarely used as the only cause for the suit. The emotional response stirred by the temperance movement made drunkenness a statutory cause for divorce in Maine in 1838. In Dodge, an open-

saloon town long after Kansas was legally dry, the fact that a person was at "divers times . . . under the influence of liquor" was used in a successful petition for divorce as early as 1875 (34). In most courts habitual drunkenness was seen as a clear threat to the wife's moral guardianship, a corruption of family values, and an abasement of marriage roles.<sup>20</sup> Henrietta Collins reported her husband came home "on divers times" drunk, "misused and abused" her but she did not charge habitual drunkenness, using his drinking as only an example of his failure to conform to the acceptable role of husband (34). Others did use the term *habitual* to describe an intolerable condition. The use of drugs, particularly morphine, was cited in a number of cases as the reason for the dissolution of the marriage. In one of the most shocking cases, Carrie DeVoe Wright, after barely a year of marriage, petitioned the court for divorce on many grounds but included the charge that Robert M. Wright was "a habitual user of drugs, such as morphine, bromidia and chloral" (3702). Since Wright was one of the foremost citizens of the town, the outcome of the trial must have been sensational, but no mention of the nature of the trial appeared in the newspaper, and the judge, in explaining his decision in favor of the plaintiff, alluded only to adultery and neglect of duty.

"*Ninth*, gross neglect of duty." This rather nebulous and undefined phrase was cited as cause in fifty-seven cases. If the term on the surface appears to lack clear definition, society had worked out the general limits of the duties for husband and wife by 1875. Philosophically, the line was so clearly drawn that women were said to occupy a "separate sphere." Actual day-to-day living was less separated than the ideal would suggest; still, the domestic model was clear enough that husbands and wives brought suit defending the accepted domestic standards. Because the home was considered the very foundation of the Victorian social order, its preservation was assumed to have paramount importance.<sup>21</sup> Courts, even in cattle towns, took seriously the obligation of maintaining the institutional family, a task that recognized the



powerful ideological prescriptions of roles and duties.

The plaintiff had to establish that he or she was well aware that both partners in a marriage held obligations that, if broken, would result in dissolution of marriage. The standard form of the plaintiff's petition began by stating the fact of a marriage and proof of residence within the court's jurisdiction, followed immediately by a declaration that the plaintiff had fulfilled the proper duties of the union, using such expressions as "performed all and singular duties . . . as a faithful, obedient and loving wife" (99) or a "dutiful, good and loyal husband" (87). These validations of the right to contest the marriage were in turn followed by a listing of specific causes for the action. A counter suit followed the same pattern of professing adherence to proper role and contradicting charges to the contrary. The cause or causes for divorce had to be of such severity that, as Arilla Steel said of her union, the marriage was "just the opposite of what law and society created it for" (3089), and thus must be abolished.

The details of neglect were usually presented to the court in the individual's own words rather than some formalized phrase supplied by an attorney. Women were charged with neglecting the duties of motherhood: "a wicked and corrupt woman . . . unfit to have care . . . of young children" (3089), "the child [was] running around the streets" unattended (87); of being extravagant or foolish in the use of money and always "after him" with "demands for large sums of money" (3280, 3523); of refusing to do the normal housewifely tasks of cooking, cleaning, and sewing because she was "away gadding around town" (3797); of persisting in "sexual denial . . . for more than three months refused to have sexual intercourse" (3280); and of failing to provide a supportive, warm, and caring relationship by being "neglectful, cold, cross, unkind and cruel" (2843). Men were charged with being "cross, irritable, cursed and swore" (2395); of failing to provide the necessities of life when he "refused to pay any debts contracted for necessities, [and] warns merchants not to [give me] credit" (3702); of demanding excessive

and "beastly" sexual conduct when the wife was "forced to submit to intercourse 2 or 3 times a day" (3747); and refusing to provide protection when "he hired witnesses to swear against her and ruin her reputation" (3702).

Gross neglect proved to be a bottomless pit of complaints. When combined with other causes a dreary picture of domestic quarrels and hatred emerges. Obviously, both male and female egos suffered in telling of their inability to achieve the idealized harmony the Victorian family model required, but by the time events had forced a public dissolution, battered egos long since had been dealt with, and individuals had braced themselves for unpleasant social reaction.

"*Tenth*, the conviction of a felony and imprisonment in the penitentiary therefore subsequent to the marriage." There are no recorded instances of the use of this cause in the Dodge City court.

Mary Sawyer's venture into legal depths pitted her against a man with considerable property who hired the town's three leading attorneys to defend his interests.<sup>22</sup> Her attorney, Harry Gryden, known as the champion of the underdog, made certain that due process was observed. Summonses were delivered, depositions taken, and testimony examined and cross-examined. When Mary failed to secure what she considered a just alimony, the case was reviewed a year later. As plaintiff, she was finally granted a divorce, custody of her child, and a small, lump-sum alimony. Justice? Perhaps not pristine, but in light of the parochial nature of the court and the local resources marshalled against the petition, Mary Sawyer's mild victory appears remarkable.

Mary might have been more willing to turn to the local court if she had known that her child's welfare would be a serious concern of the court, and, furthermore, that she had an excellent chance of receiving custody of her child. Nationally, women were granted custody three times as often as husbands, and in Dodge City the chances were even greater. The judges generally seemed satisfied that the child's future was secure when placed in the custody of the

more stable of the marriage partners, regardless of gender, not infrequently with child support included. Husbands were required in a number of instances to make monthly payments of fairly significant sums, \$10 or \$15 a month, usually with a time or amount limitation (3318). On rare occasions both parents were involved in the child's future through visitation rights and other arrangements (3616, 3626, 3374). Occasionally, elaborate instructions were given for the care and education of a dependent child, as it was in the case of the infant son of Clara C. and Theodore Von Burgh. In that instance, guardianship was equally divided through six months stays with each parent until the child was of an age to choose one or the other parent, or until one parent remarried, when all rights to "Companionship and Guardianship" would be forfeited. The boy was not to be sent "to any school, academy, or institution of learning, under the Auspices of any religious denomination or where he would be so trained" (2643). In a few cases child custody was given to a third party when both parents were considered unfit (3525).

By 1900 the status of child custody decisions in the district court in Ford County was consistent with Michael Grossberg's summary of the situation in general throughout the United States:

American custody law over the course of the nineteenth century thus had rearranged spousal rights. Mothers gained new powers as custody and guardianship rights became part of the new legal domain of married women. Through the best-interest-of-the-child doctrine and its offshoots, women won the right to go to court, fight for, and often obtain their children. The attorney Charles Savage took note of the trend in the 1883 *American Law Register* when he postulated that in all areas of the law, "the irresistible movement is in the direction of the most perfect legal equality of the married partners, consistent with family unity." The caveat, however, hinted at boundaries of the newly constructed maternal legal sphere.<sup>23</sup>

As for the wife's welfare, the district court in Ford County made alimony, child support, and property settlements when warranted, although alimony was not requested in most cases, and, when granted, payments were generally limited to \$10 or \$20 a month, or to a lump sum of \$200 to \$300. Considering that day laborers averaged around \$35 per month, the amounts were substantial enough to at least provide for a child's well being until the mother could become established in a job or other living arrangement. (The court did not always make a distinction between payments of alimony and payments of child support.) More affluent clients were frequently required to make more substantial single payments (806, 3281). A case in point was Carrie Rath's divorce from Charles Rath, reputedly Dodge's wealthiest entrepreneur. Charles Rath initiated the suit, paid Carrie \$4500 at the time the petition was drawn, and was directed to pay \$2500 more when the divorce was granted, as well as \$35 a month child support until the child reached age fifteen (1064).

When property was involved, judges usually provided for distribution of land, lots, and goods. In cases involving homesteaders who could show that the family's property was the result of joint effort, provisions were made for the wife and husband each to receive some land, livestock, and household furnishings. Sultina Averill received \$240 "permanent alimony" and a quarter section of land (3375), Carrie Philips was awarded thirty head of cattle and two horses (807), and Ernestina Wilson, a town wife, received \$750 and three lots (3749).

The financial settlements that stirred the greatest bitterness did not favor women to the same extent shown in the granting of divorces and custody of children. Still, wives were not always left destitute or on their own resources if there was property to be claimed.

The protection extended to Mary Sawyer and other female petitioners by male judges in a clearly male-dominated society that prided itself on being freer and less regimented than settled Eastern communities reflects an enlightened and perhaps unexpectedly advanced perception of individual rights. The very nature

of local judicial proceedings, however, was a liberalizing influence in interpreting the state's bare-bones provisions for divorce. When all the cases in the Dodge City court are reviewed, the trend toward expanding the rights and duties of all members of a family is apparent. Even more remarkable, the judges assumed an almost unlimited patriarchal control of family relationships once they came under the court's authority.<sup>24</sup>

Throughout the Victorian period, some people saw the growing authority of local courts as endangering family stability. "We do not recognize the Family at all in our National Constitution," lamented the Reverend Samuel Dike, a leading advocate of uniform divorce codes. "We are purely individualistic. . . . The perils of democracy in the domestic institutions are part of the price we pay for our political system."<sup>25</sup> In the matter of *Sawyer v. Sawyer* and other contested divorces, the persistent localism that resisted national codes was changing the conception of the family. Husbands retained the greater share of assets, probably because in their role as family providers they had managed and controlled the various holdings. In at least one instance the husband was given the option of purchasing property awarded the wife (3490). The male domination of local courts may have affected these financial decisions. Male judges seemed far more interested in seeing women removed from unfortunate, unsuccessful, and unacceptable marriages than in punishing husbands through material awards to the freed spouse. Preserving Victorian roles of husband and wife apparently weighed heavily in judicial decisions.

As I have noted elsewhere: "The law of any community comes to represent just about what society considers convenient, proper, or profitable at the moment."<sup>26</sup> For Dodge Citians, the liberalizing pressures of societal conscience regarding gender roles and responsibilities had brought changes and new protections to the individual members of a family. The piecemeal decisions of local courts codified grassroots expressions of values and familial duties in the creation of *the family* as a collection of distinct

legal personalities, including women and children, with enhanced rights as well as responsibilities. What was true for the rest of the United States, especially in the West, was true for Mary Sawyer in Dodge City and reflected the unexpected sophistication of a region many Americans considered scarcely civilized and certainly isolated from Eastern judicial niceties.

#### NOTES

1. [Dodge City] *Ford County Globe*, 10 July 1883.

2. *Sawyer v. Sawyer*, Ford County District Court Cases, Civil Case No. 86, Ms. Box 806, Kansas State Historical Society.

3. By 1900, the United States had the second highest divorce rate in the world. Department of Commerce and Bureau of the Census, Special Reports: *Marriage and Divorce, 1867-1906* (Washington: Government Printing Office, 1909) 1: 11, 26-27, 64-67; Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge: Cambridge University Press, 1988), p. 462. Dodge Citians knew and some lamented the high divorce rate in Kansas. Nicholas Klaine noted the growth in the *Dodge City Times*: "Married unhappiness in Kansas is sooner gotten rid of than elsewhere, as there are more divorces according to the population than in any other state in the union." Another editor praised a judge who refused to grant a divorce and added "if courts would show less partiality . . . perhaps there would be less divorce cases. There might be fewer incompatible marriages." *Dodge City Times*, 29 August 1882; *Dodge City Globe-Republican*, 17 May 1900.

4. *Statutes of the Territory of Kansas, 1855*, p. 310.

5. *Compiled Laws of Kansas, 1876-1901*. See for example the 1885 statute, p. 757.

6. The total number of cases, as is true of other statistical figures in this study, is not complete. Extant records of the District Court for the years under discussion are in some disarray and by no means complete. The number 224 represents all cases available, even partially noted in case files, appearance dockets, judges' journals, and newspapers. I assume from the available documents that at least seventy-five other cases were brought.

7. Robert L. Griswold, "Anglo Women and Domestic Ideology in the American West in the Nineteenth and Early Twentieth Century," in Lillian Schlissel, Vicki L. Ruiz, and Janice Monk, eds., *Western Women: Their Land, Their Lives* (Albuquerque: University of New Mexico Press, 1988), p. 22. This data needs the added explanation that cases

dismissed, continued, or terminated for other reasons were usually those initiated by women (76.5 women; 23.5 men). About one in every ten cases was dropped, dismissed, or continued without resolution. An interesting study would be to attempt to discern why women's cases fell into this category more often than men's.

8. Carl N. Degler, *At Odds: Women and the Family in America from the Revolution to the Present* (Oxford: Oxford University Press, 1981), pp. 167-68; Harvey Green, *The Light of the Home: An Intimate View of Women in Victorian America* (New York: Random House, 1946), p. 21.

9. *Wichita Beacon*, 12 April 1876.

10. Numbers indicate case numbers on file at Boot Hill Museum, Dodge City, or on microfilm of Kansas State Historical Society, Topeka.

11. Phillips, *Putting Asunder* (note 3 above), p. 404.

12. Bureau of Census, *Marriage and Divorce*, (note 3 above) p. 169.

13. Bureau of Census, *Marriage and Divorce* (note 3 above), p. 169.

14. See Robert L. Griswold, "Law, Sex, and Divorce in Victorian America, 1840-1900," *American Quarterly* 38 (Winter 1986): 721-45.

15. *Jones v. Jones*, 60 *Texas Reports*, 1883, p. 460.

16. *Dodge City Globe-Republican*, 7 June 1900.

17. *Dodge City Times*, 5 July 1879.

18. For a discussion of the malady see Robert L. Griswold, "The Evolution of the Doctrine of Mental Cruelty in Victorian Divorce, 1890-1900," *Journal of Social History* 20 (Fall 1986): 132-36.

19. 30 *Kansas Reports* 1883, p. 744.

20. Phillips, *Putting Asunder* (note 3 above), pp. 497-98.

21. Griswold, "Anglo Women and Domestic Ideology" (note 7 above), p. 26.

22. Divorce cases could be quite complicated, involving considerable litigation, especially if there were large sums of money and property in conflict. When Arabella Sheperd sued Elmer P., the case dragged on for eight months and included consideration of change of venue, counter petition, orders to the district court clerk to direct the sheriff to sell property, eighteen depositions (one of which ran to twelve legal-size pages), and a surviving file two inches thick containing sixty-three items (2395).

23. Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1985), p. 281.

24. *Ibid.*, p. 303.

25. Quoted in *ibid.*, p. 305.

26. C. Robert Haywood, *Cowtown Lawyers: Dodge City and Its Attorneys, 1876-1886* (Norman: University of Oklahoma Press, 1988), p. 240.