We also note the recent words of Lord Justice Wall on 25th August 2006, [Neutral Citation Number: [2006] EWCA Civ 1199; Case No: B4/2006/0785/PTA; B4/2006/0522PTA; B4/2006/0931/PTA; B4/2006/0931(A)/SLJ. In his own words he may be seen as 'biased and timeserving' and the next day, he publicly went to say ; ''Divorce laws 'are destroying marriage' Independent Robert Verkaik, Legal Affairs Correspondent Published: 26 August 2006.''

The cheap and quick divorce laws in England and Wales are undermining the institution of marriage and need to be reformed to help prevent acrimonious break-ups, a senior Court of Appeal judge has warned.

The call for a change in the law comes from Lord Justice Wall, one of Britain's foremost family law judges, and follows a string of bitter and high-profile divorce battles. Under the antiquated divorce laws of England and Wales, couples have to blame each other if they want a quick divorce, which is usually granted within six months.

In an interview with The Independent, Lord Justice Wall called for an end to fault-based divorces and the introduction of a system that puts the needs of children and financial provision at the heart of the process. He said: " I do believe strongly in the institution of marriage as the best way to bring up children and that's one of the reasons why I would like to end the quick and easy divorces based on the fault system. I think that it actually undermines marriage."

The judge, who was a member of the Court of Appeal which heard the recent case of Miller v Miller in which the former wife of a wealthy businessman was awarded a £5m settlement after a three-year marriage said that big-money divorces which grabbed the headlines distracted attention from the misery of thousands of ordinary divorces which take place each year. " Fault has become almost entirely irrelevant to financial claims post- divorce, yet conduct remains the most important peg upon which to hang a decree," said the judge.

Last night, the family law reform group Resolution welcomed Lord Justice Wall's intervention. Jane McCulloch, the vice-chair of Resolution, said: " We are behind the principle of no-fault divorce because we would like to see an end to couples having to make allegations about each other's behaviour."

Just over 300,000 people were married in 2004, compared to 350,000 20 years ago. But most recent figures show that almost 170,000 people were divorced last year, making Britain the capital of Europe when it comes to marital separation.

In the past few months a number of very public divorce battles have shown how the law has helped to stoke the fires of acrimony in divorces involving the rich and famous. "Divorce has become very easy so that it is a box-ticking exercise, something administrative dressed up as a quasi-judicial function," said Lord Justice Wall, whose view is known to be shared by other senior members of the judiciary.

Lord Justice Wall says the courts are not adequately equipped to deal with the social and emotional consequences of divorce, which he says rarely leave anyone unscathed and can often destroy lives. "People who divorce often simply don't know what they are letting themselves in for and the family courts are not well geared-up for dealing with the bitter battles which follow, particularly over children," he said. "I am only sorry that the Government did not pursue non-fault-based divorce when the seeds had been sown for a change to the post-separation consequences of divorce."

In 2001, Labour abandoned plans to scrap fault-based divorces on the ground that parts of the scheme, which sought to encourage mediation, were thought not to be working. But Lord Justice Wall says he "did not buy" this explanation, although he accepts that the Law Commission's original proposals had been "mauled" by a series of amendments in Parliament. "I still think the Family Law Act would have helped make couples think seriously about the care of their children and proper financial provision," he said. "But divorce is very emotional and people often bring unfinished business from the broken relationship into court; their positions become polarised and, particularly in disputes over children, they sometimes think of using the courts to seek revenge.

"For many people, the fact that, for example, one spouse ran off with someone else remains of paramount importance. But it is not relevant to the issues the court has to address. I do believe in getting rid of fault because it should have nothing to do with the divorce process and shouldn't affect the result.But it will be difficult because people actually don't like not being able to blame someone in a divorce.

"They will say fault is what matters 'He's gone off with someone else, he's broken the contract. Why do I have to give her or him more money'. Mr Miller was saying the same thing 'Why should I give this woman more money? I don't think she was a very good wife'."

Earlier this year, the House of Lords ruled in favour of Mrs Miller and said that fault was irrelevant in financial divorce

settlements. Now Lord Justice Wall says fault should be removed completely from the divorce process. He says that the system has become "cynical and utilitarian" and not fit for the purpose for which it is now intended.

The architects of our first divorce laws, which influence the rules today, designed the legislation to reflect society's disapproval of a breakdown in a marriage which often had a negative social consequence for women.

But Lord Justice Wall argued: "That's all changed since the war. Now a divorced woman has no social stigma, so I would welcome an initiative that got rid of fault. Under the abandoned Family Law Act, couples had to think about the consequences of their actions by ensuring that they had made provision for their children and their finances before they would be granted a divorce. Now it looks like we will have to wait another generation for reform of the divorce laws."

A judicial reformer

Nicholas Wall's judgments often attract the unwanted attention of fathers' groups whose members have posted his name on the internet and sent him hate mail. But Lord Justice Wall, 61, is in the vanguard of a reforming movement in the judiciary which has helped pave the way for open justice in the family courts. Called to the Bar in 1969 before taking silk in 1988, his forward thinking on family law has propelled him to the upper echelons of the judiciary. Three years ago he was appointed a judge in the Court of Appeal where he has sat on some of the most important divorce cases of recent years.

Celebrated splits

THE McCARTNEYS

Sir Paul McCartney filed for divorce in July in the hope of a quick settlement with his estranged wife, Heather. Both had hoped for an amicable split, for the sake of their two-year-old daughter, Beatrice. Sir Paul's petition for the break-up of the four-year marriage is understood to have cited Lady McCartney's "unreasonable behaviour". The singer was said to have described his wife as "argumentative" and "rude to staff". Lady McCartney has hit back by saying she would be filing counterclaims in British and American courts. Sheis reported to be claiming £200m but most lawyers believe the final pay-out will be much less.

THE MILLERS

In May the House of Lords upheld a ruling that Melissa Miller should receive a £5m divorce settlement from her husband, Alan Miller, who is worth more than £17m.

Ms Miller had argued that one reason she was entitled to a larger share of her husband's assets was that he had committed adultery. But the law lords, in a ground-breaking ruling, said fault should not help determine how much a spouse receives in a divorce settlement.

Instead, Ms Miller won her case because the courts decided Mr Miller had earned large sums during the marriage and that she was entitled to think her financial position would last for life.

THE LINEKERS

The former England footballer and TV presenter Gary Lineker and his wife, Michelle, were divorced after 20 years of marriage earlier this month. Mrs Lineker was granted a decree nisi on the grounds of her husband's " unreasonable behaviour". In documents, she said the 45-year-old Lineker's behaviour caused her "stress and anxiety". They separated in April when she moved out of their £2m mansion in Berkshire. Mr Lineker, said to be worth £30m, did not defend the petition. Neither attended the hearing in the Family Division of the High Court before District Judge Caroline Reid.

The cheap and quick divorce laws in England and Wales are undermining the institution of marriage and need to be reformed to help prevent acrimonious break-ups, a senior Court of Appeal judge has warned. **The call for a change in the law comes from Lord Justice Wall, one of Britain's foremost family law judges, and follows a string of bitter and high-profile divorce battles. In an interview with The Independent, Lord Justice Wall called for an end to fault-based divorces and the introduction of a system that puts the needs of children and financial provision at the heart of the process. He said: " I do believe strongly in the institution of marriage as the best way to bring up children and that's one of the reasons why I would like to end the quick and easy divorces based on the fault system. I think that it actually undermines marriage." [Yet here is LJ Wall undermining with**

the aid of the media the whole basis of marriage in England and Wales].

Lord Justice Wall says the courts are not adequately equipped to deal with the social and emotional consequences of divorce, which he says rarely leave anyone unscathed and can often destroy lives. "People who divorce often simply don't know what they are letting themselves in for and the family courts are not well geared-up for dealing with the bitter battles which follow, particularly over children," he said. "I am only sorry that the Government did not pursue non-fault-based divorce when the seeds had been sown for a change to the post-separation consequences of divorce."

"For many people, the fact that, for example, one spouse ran off with someone else remains of paramount importance. But it is not relevant to the issues the court has to address. I do believe in getting rid of fault because it should have nothing to do with the divorce process and shouldn't affect the result. But it will be difficult because people actually don't like not being able to blame someone in a divorce.

"They will say fault is what matters 'He's gone off with someone else, he's broken the contract. Why do I have to give her or him more money'. Mr Miller was saying the same thing 'Why should I give this woman more money? I don't think she was a very good wife'."

Yet to most people someone who commits adultery, breaking the contract of marriage should not be rewarded for their actions. Wrongdoers should not be rewarded for their wrongdoing, yet are not only rewarded but encouraged. It is the judiciary whose destruction of the nuclear Family and marriage aided and abetted by State institutions that are creating a morass of problems for the future.

Once the Governments realized there was little effective resistance then they began the attack within the adoption industry and now we have a climate where men and women are pitted against each other with the old divide and rule ethic working to destroy families and social cohesion.

British divorce research concluded that with the introduction of no-fault divorce legislation the number of divorces will finally increase by at least 25% (according to conservative calculations).

The Effect of Divorce Laws on Divorce Rates in Europe

University of Sheffield Economic Research Paper Series; SERP Number: 2006003; March 2006. D*epartment of Economics, University of Sheffield*

This research paper analyzes a panel of 18 European countries spanning from 1950 to 2003 to examine the extent to which the legal reforms leading to “easier divorce” that took place during the second half of the 20th century have contributed to the increase in divorce rates across Europe. We use a quasi-experimental set-up and exploit the different timing of the reforms in divorce laws across countries. We account for unobserved country-specific factors by introducing country fixed effects, and we include country-specific trends to control for time-varying factors at the country level that may be correlated with divorce rates and divorce laws, such as changing social norms or slow moving demographic trends. We find that the different reforms that “made divorce easier” were followed by significant increases in divorce rates. The effect of no-fault legislation was strong and permanent, while unilateral reforms only had a temporary effect on divorce rates. Overall, we estimate that the legal reforms account for about 20 percent of the increase in divorce rates in Europe between 1960 and 2002.

Conclusions

This paper analyzes a panel of 18 European countries spanning from 1950 to 2003 to examine the extent to which the legal reforms leading to “easier divorce” that took place during the second half of the 20th century have contributed to the increase in divorce rates across Europe.

According to the Coase theorem, unilateral divorce should not affect divorce rates since it simply reassigns existing property rights between spouses. However, some previous studies for the US found significant increases in divorce rates following reforms that introduced unilateral divorce. We find that countries allowing unilateral divorce experienced significant increases in divorce rates in the years following the reform. However, the effect of the reforms seemed to have taken place during the first few years following the legal change, fading over time so that divorce rates were back to their previous levels a few years after the reforms were implemented.

On the other hand, the effects of introducing no-fault divorce legislation (unilateral or not) seemed stronger and more permanent. The combined effect of all the legal reforms that took place in Europe between 1960 and 2002, including the reforms that moved from fault to no-fault or that introduced (implicitly or explicitly) unilateral divorce, amounts to about 20% of the increase in divorce rates in Europe during that period, according to our most conservative estimates. These results support and extend the findings of previous studies that used US data to address the effect of divorce legislation on divorce rates, such as Friedberg (1998) and Wolfers (2006). Like Wolfers (2006), we find that unilateral reforms appear to increase divorce rates only temporarily. **But we also show that what really seemed to have a permanent effect on divorce rates was the generalization of no-fault grounds for divorce.** Hence, while it seems clear that family law has a potential effect on marriage dissolution, unilateral divorce cannot be blamed for the generalized increase in divorce rates across countries during the second half of the 20th century.

The only solicitors we know of specializing in fathers provided an affidavit on the situation regarding divorce process, which we have copied below; ADRIAN J.G. PELLMAN, LL.B. SOLICITOR. London, September 2, 1993

Dear client

You asked me to set out shortly, for your meeting with (name), a summary of what has happened in Divorce Law since 1970, to lead to the present state of affairs.

Essentially, what has happened is that the Courts have virtually turned the Law upside down, contrary to the express intention of Parliament, and created a situation whereby people can break up marriages and obtain the same financial benefits as would only have been received had the other party broken up the marriage. Since actions may be taken without consequences, there is no incentive to refrain from those actions.

Prior to 1970, the position was quite simple. Divorce could only effectively be obtained for cruelty (i.e. very unreasonable behavior causing injury to health), desertion or adultery. There was no liability in law to maintain the other party if they deserted, or if a Court had found them guilty of cruelty or adultery. This was a very real constraint in that somebody who was bored with their marriage had to consider the consequences. If the they walked out they lost their maintenance. They therefore had to make a value judgment as to what to do.

Parliament, in passing the 1969 Divorce Reform Act., which became the 1970 Act, and is now the 1973 and 1984 Acts, made absolutely clear its intentions, as shown in the House of Commons Committee Report from the Bill. What Parliament contemplated was the following:

I. Cruelty would be replaced by unreasonable behavior to deal with the common situation of somebody who was subject to cruel behavior but was not affected in their health.

2. Those who wished to bury their marriage by agreement without proving the matrimonial offence could do so on the basis of two years separation and Parliament clearly contemplated that

that would be in the vast majority of cases. This was in fact not so.

3. Those who formerly could not obtain a divorce because they had no grounds could enforce a divorce after five years separation provided proper financial provision was made for the innocent party.

The conduct provision remained, so that if a party had committed cruelty or adultery they could not expect to be maintained, and the common law rule that a party in desertion had no right to claim maintenance also was unaffected. An attempt was made by the “Reformers” to overturn this in the Committee stage, but it failed.

The Courts proceeded to turn this upside down. The language of the Act in relation to conduct was virtually the same as it had been since the 1857 Act, and there had been no changes by way of developments in case law which altered in any way the statement of the law that I have set out above. Notwithstanding this, the Courts made two fundamental changes in the Law which have brought about the wave of divorce.

The first of these was to apply a subjective and not an objective test to unreasonable behavior, so that behavior which the average man or woman would not regard as unreasonable was treated as unreasonable if the party claiming it said that they found it unreasonable. This opened a floodgate of petitions n grounds which Parliament never contemplated, and this round became by far the most popular ground for divorce whereas it had been the least used (under the name of cruelty) before the 1970 Act.

The Courts were supported by the Law Society in this, which proceeded to grant legal aid to bring contested divorces but to refuse legal aid to those who had defended upon the ground that the marriage must have broken up or there would not be a petition. If Parliament had intended divorces not to be defended it would have provided for them not to be defended. Effectively the Courts brought in divorce on demand in express defiance of Parliament.

The second development was a 1974 case in which it was held that ‘conduct’ was no longer relevant unless it was “gross and obvious” and effectively the Courts rarely hold any conduct to be relevant, or if they do, pay lip service to it and otherwise ignore it. If the wife broke up the marriage the Courts would treat her in the way as if it had been her husband who had broken up the marriage. Whereas if the husband did break up the marriage he could rely upon being treated with greater harshness.

The other subsidiary development was that the Courts announced that they would not enforce their own access Orders. The affect was rather like saying that in future burglars would not be prosecuted. You get a wave of burglaries. The specious ground for this was that if the custodial parent was upset the child would be upset. You might say to the contrary that the image to the child not seeing the non custodial parent would be much more serious.

We tried to keep this as short as possible. Essentially what it boils down to is that:

The Courts have quite willfully frustrated the intentions Parliament. I was actually present at a seminar when the 1984 Act, which was supposed to have altered things, had just been produced and an eminent Barrister said that “it was the opinion of the judiciary that nothing should change”.

Just as courts had turned the 1970 Act upside down they simply denied the spirit of the 1984 Act.

Since the Courts take the view that wives may break up their marriage without any consequence, it is not surprising there is more of divorce. My own observation of the “unreasonable demeanor

petition” is that the vast majority are thoroughly bad and reflect no more than boredom with the marriage, and more so the majority of cases what triggers off the divorce is the arrival of the boyfriend hidden in the background.

Sincerely.
ADRIAN J.G. PELLMAN, LL.B. SOLICITOR

The Pellman Brief

CHAPTER 2 THE DIVORCE LEGISLATION OF 1971-1996. RETROSPECT AND PROSPECT.

Introduction.
As a divorce practitioner with many years experience I find that most clients come to mc in a state of total bewilderment and astonishment over what happens to them in divorce proceedings.

Injustice in Secret Courts
What astonishes them is the perceived injustice, the abandonment of any generally recognized principles of justice and morality, and the hostility to men, which characterize the divorce courts. The bewilderment results from a widespread lack of public understanding – until themselves involved - in the way in which the Divorce Courts (not the weasel words ‘Family Courts” for courts which exist to break up families) have, over the past 25 years, deviated from the laws as Parliament intended and expected them to be applied, and from the generally held views of men and women as to justice and fair play.

This bewilderment is found whatever the degree of education of the client. Its prime cause is the conspiracy of silence in which only a distorted and limited picture emerges from the closed doors behind which matrimonial cases are heard - in secret courts such as have not been seen in Britain since the days of the Star Chamber. Behind closed doors, and with closed eyes and ears, the legal and social work professions operate in an “invented world”, where it is assumed that their actions are fair and just, and will be so regarded and approved of by right-minded people, and the general public. it also results from the approach of the media, who tend to accept without question the smooth and misleading picture put to them by the lawyers and social workers and, with a few honorably exceptions. tend to suppress any alternative view.

This deviation from justice began with the 1969 Divorce Reform Act and the 1970 Matrimonial Proceedings and Property Act. For a number of years pressures had built up from various influential quarters for what was described as ‘reform” of the divorce laws. The public and Parliament were sold the idea that there were many people who could not obtain divorces although they had lived apart for many years, who ought to be free to do so, and many others who wanted a divorce without the need to allege a matrimonial offence against the other. This seemed just on the face of it. just, which was why there was so little opposition to proposals for change.

The Church of England further muddied the waters by its call for easier divorce but with an inquest into the causes of each marital breakdown. The divorce activists, working to a hidden agenda, used the Church to gain its support, but made sure it got something very different from what you hoped for.

The Activists for ‘Reform”

Among those most actively pushing for changes in the divorce laws. principally the divorce lawyers and senior judges, and the upper intellectual and professional classes, there were a range of motives but. among the lawyers particularly, a hidden agenda. The intellectual and professional class, as in many other fields, suffered from the bizarre belief that, if the machinery of conflict were removed or minimized, people would resolve their differences in a civilized mariner. Tame (1) wrote in the 19th Century. that the principal cause of the French Revolution had been that the governing classes were moved, above all oilier things. by an extreme horror of conflict and violence, and preferred the lives of maniacs and malefactors to the maintenance of order. Corelli Barnctt (2) wrote a few years ago that the educated classes of Britain not only
thought the world ought to be a place where civilized people settled their differences over tea in the drawing room, a noble ideal, but in an extraordinary delusion really thought it was such a place,. They believed, and still profess to believe, that if the causes of divorce and the parties behavior were excluded from discussion conflict and bitterness would cease They entirely failed to realize that people in marital conflict are fighting over the most important matters in their lives, their children, and all they have worked for, and that such fundamental issues can usually only he resolved by conflict. They also failed to realize that there is no greater bitterness than that caused by injustice. In a word, they thought that weapons cause war, not that war causes
weapons, and **failed to understand that most people of any spirit prefer conflict to submitting to injustice**.

The Naiveté of the Educated Classes
On the whole, the educated classes, except where they themselves have been involved in divorce, still naively believe they have a civilized divorce law, and the serious press is constantly full of letters from well-meaning people who say that those in divorce need sympathy and help in “fairly distributing their property and helping the children. They fail to realize that for the bulk of the population there is not enough property to distribute, fairly or otherwise, and that all, whether rich or poor. regard their property as theirs and not something to be taken from them or. as one eminent judge described it, “redistributed within the family.’’ A woman solicitor even wrote to the legal press saving we should develop a system in which all Court Orders were Consent Orders! This is the fear of conflict of which Taine wrote. In the real world, however, two nations who wanted the same piece of land fought for it, and in the domestic sphere two people who
wanted the same house or custody of the same children also do. **This is blindingly obvious to all but the ‘civilized' classes.** People in the real world continue to believe that it is ‘their” child and ‘their' house, and will not accept that the Olympian disposal of their child and house to someone else is some how “fair” and thus to be meekly accepted with a pat on the back from the social workers.

In the invented world of the lawyers and social workers, however, the holding of such
views is seen as mad or bad or both, and is guaranteed to incur judicial hostility. **I have even heard one woman lawyer say how much she admired the ‘moderation and reasonableness” of men who voluntarily gave up all contact with their children because their wife objected to it.** What I suspect underlies the desire of the lawyers, the social workers and the ‘well meaning' classes to avoid conflict in divorce is the delusion that their anti-male attitudes are shared by the general public and that, if the machinery of conflict were somehow removed everybody would happily accept the diktats of the divorce courts.

Behind the scenes were other forces, most strongly represented in the legal and social science professions, who had a fanatical belief in feminism in the widest sense. They wanted a system in which women had no obligations or duties in marriage, but unqualified rights regardless of conduct. I well remember being told by a lady barrister in a well known divorce chambers that most of the men in her chambers, Eton and Oxford types, considered that any woman who married, however

briefly, should he entitled to be kept in comfort for the rest of her life without working,. regardless of her conduct. The rise of this element, always strong among the lawyers, was compounded by the growth since the war, as a result of widespread university education, of a large arts graduate intelligentsia, whose views on social and moral issues had come to depart radically from those held by the general public.

The Debate in Parliament

All these various elements made their big effort in the House of Commons Committee stage of the 1970 Act when they attempted to have conduct deleted as an issue in maintenance and capital orders. Until then the law had been clear for generations, adultery. desertion, and cruelty were a bar to any claim of maintenance and therefore a heavy deterrent to breaking a marriage. If a woman was “bored” with her marriage or ‘fancied” somebody else. or “needed space”, she had to make a value judgment before breaking up her marriage. Was it so unacceptable that she was prepared to forgo the financial benefits?. The Committee threw this out with great firmness and a reading at the records of the Committee in the House of Commons is a salutary exercise. The Committee thought outrageous that conduct should be irrelevant, and pointed out that such move would only lead to widespread divorce and injustice.

One other move by the “reformers as I shall now call them, was also defeated, although actually introduced by the government a statutory requirement for the courts to seek by financial orders, to maintain the financial position of the wife only, but not that of the husband. The ‘reformers” had been defeated. But this defeat was short lived.

The 1970 -73 Legislation

The 1970 Divorce Act preserved conduct, and the only significant chance in that respect was that cruelty as a ground for divorce was replaced by unreasonable behavior, the difference being that the element of injury to health was no longer required. There was no suggestion in Parliament that the test of acceptable behavior should change.

Further legislation followed in the form of the Matrimonial Causes Act of 1973 that was, in many ways, a consolidating Act for the 1970 Act, and the associated legislation that had taken place immediately before and after it. These Acts had answered the pressures of the ‘reformers' by adding two additional grounds to the existing three grounds for divorce The existing three had been adultery, desertion, and cruelty (i.e. behavior plus injury to health). The two additional grounds were: two years separation in the case of consent by both parties to divorce, or five years separation if one parties did not consent. The two years separation plus consent ground catered for the more sensitive elements of the educated classes who, in the case of genuine mutual consent, were repelled by divorce petitions containing allegations against the other party and wanted to do everything “by consent". The five years separation ground catered for those caught
in the position where they could never obtain a divorce for lack of grounds. It was quite apparent that Parliament contemplated three classes of divorce: 1) a compulsory divorce after five years separation, 2) a consensual divorce after two years separation in which people could make their own arrangements, and 3) a non-consensual divorce where one party did not want a divorce, or in the case of adultery, desertion unreasonable behavior (i.e. cruelty, without the need to prove injury to health). It was naively anticipated that most divorces would be by consent. This never proved to be the case. The financial provisions rested, as to the criteria for making orders, on a more detailed reiteration of the provisions, based on conduct, which had been in the original1857 Divorce Act. The courts had to make such order as was just “having regard to the parties conduct.”

Parliament’s Intentions Frustrated

The excesses of the reformers had apparently been frustrated by Parliament, but the Courts proceeded immediately to undermine Parliament’s intentions in a devastating manner. First, they

ruled that the test of unreasonable behavior was subjective as opposed to objective, so that conduct which an ordinary reasonable person would find insufficiently unreasonable to justify divorce was nevertheless to be held sufficient if the petitioner claimed to find it so (3). This opened the gates to the ridiculously weak “behavior” petitions of the past twenty years, and led to a widespread practice of anybody (particularly a man) who sought to defend a weak “behavior” petition being subjected to hostile assault by judges. In addition, such litigants received extreme pressure from their own banisters and solicitors, who would tell them that there was no purpose in defending, since the marriage had broken down. Legal aid was usually refused although sometimes granted to women. The Courts themselves, in defiance of Parliament, had brought about the “divorce on demand” which most of the 1awyers and academics favored.

The Removal of Conduct

The second and fatal step was for the Family Division. in the case of Wachtel (4) to hold that conduct was usually irrelevant in the case of financial matters. This was only partially stalled by the Court of Appeal, which ruled that conduct was relevant if it was gross and obvious. Soon afterwards, the Court of Appeal, differently constituted, held in the case of Rogers (5) that the Wachtel decision was plainly wrong and contrary to the expressed intention of Parliament. This decision, although it appeared in the law reports, was virtually kept out of the legal press, and most lawyers are unaware of it. Wachtel was followed by the courts, and not Rogers, although each were of equal authority. This was a period in which the legal press tended to give great publicity to the views of those who supported the anti-conduct trends, and to ignore the views of those who opposed them. We now know from the recent memoirs of a Judge that this decision resulted from a private meeting of the Judges who decided this policy approach in secret, over twenty years ago. This revelation has received little publicity beyond an admiring comment in The Times, which seemed to fail to realize what it was saying. In practice it became rare for the courts to find anything ‘gross and obvious or on the fairly rare occasions when it did, to do anything about it. Judicial hostility to raising conduct, at least against wives, became the norm. Finally the Courts abandoned the age old rule that a deserting wife was not entitled to maintenance.

The Courts were required under Section 25 of the Matrimonial Causes Act of 1973 to put the parties in the some position as prior to the divorce so far as possible having regard to their conduct”, and in doing so to consider a number of factors including that of ‘need'. However, despite Parliament having thrown out the reformers attempts to have “need” apply specifically to wives only, “need” became the only consideration that the Courts took seriously. ‘Need was interpreted as meaning getting wife absolute security to the extent that this could be squeezed out of the husband. Whereas, the widow of a Falklands war hero was left to a meager pension, the adulterous wife was showered with sympathy and held to be entitled to the utmost security for the rest of her life. As shown in Wachtel, the orders of the court were made “without having regard to their conduct,” In direct contravention of the Act. The Courts ignored all other statutorily required considerations that involved merit as distinct from need, and in so doing ignored all considerations of justice, “need being the only consideration that involves no “merit”.
A common approach was to give the wife (and her boyfriend) the house on the grounds that they “needed” it to bring up the husband's children. In contrast the husband without wife or children was then told that a bed-sitter met his needs.

The “Weak” Behavior Petition

The net effect of these developments was to create a pattern in which spouses, mainly wives, brought weak behavior petitions when they became bored with their husbands or found somebody else. Husbands were then pressured not to defend themselves and found they were stripped of their assets and children by hostile Courts applying a quasi-Marxist interpretation of ‘need' and a Court of Appeal determined to decide any question in favor of the wife if it possibly could, under the leadership of the same judge who had decided the Wachtel case before it went to appeal.

The Ousting of Husbands from the Home

The “reformers" had thus succeeded in fooling Parliament into passing legislation and then using that legislation to achieve the very opposite of what Parliament had intended, without the public ever being aware until it hit them, and usually not even then. The situation was reinforced and worsened by the domestic violence legislation, coupled with an extremely wide interpretation of its provisions. The Courts made use of a claimed inherent jurisdiction to oust husbands at the slightest pretext, the commonest one being that the wife suffered distress husband to arrive at court to Find his own barrister pressing him to leave those lawyers, like myself, who came along and announced that the husband was not leaving, found themselves the subject of the most indignant and outraged pressure from courts and wives' lawyers alike.

The Courts Held to be Acting Without Lawful Authority

Significantly, in 1984, in the case of Richards (6), the House of Lords held that the Courts had wrongly assumed an inherent jurisdiction arid had been issuing ouster orders for many years without, in many cases, any lawful authority whatsoever. Ouster became much less frequent after that with considerable restrictions being placed on it by the Courts. The bulk of ouster cases I encountered for some years were ones where the pressure came not from the Court, but from the husband's own lawyers. The situation has gradually resumed to the pie-Richards position and the l990 Act, with its absence of references to justice, is highly likely to worsen the position, as most judges are eager to restore the Richards position of ouster on wife’s demand, Indeed, the recent case of the Portsmouth headmaster, ousted from his home, is likely to be the precursor of many more.

Public Bewilderment

All of these developments took place without being realized or understood outside the ranks of those involved in divorce, and it was widely assumed that divorce was as it had been but merely easier to obtain. Those involved in divorce did not really realize what had hit them until it did. Many could not believe what had happened to them, let alone understand it.

Bizarre Processes of Reasoning.

In order to justify their approach, bizarre processes of reasoning were adopted by the Court, which an eminent student of those developments, Dr John Campion, has, as part of the wider picture, summarized in the phrase ‘the invented world. By this he meant a world in which the weird views of the “family" lawyers and social workers were regarded as the only normal approach to human relations, so that anyone who objected to being stripped of their home, property and children, in a way they would not be if they had committed a grave crime, was assumed to be mad or bad. It was a world in which it was normal, right and proper that men who had committed no crime could be stripped of everything, in which the Courts refused to enforce their own orders against wives if they chose not to obey them, in which it was “in the best interest of the family” for children to be deprived of their fathers, and to see their fathers stripped and humiliated, and in which husbands/fathers were not only expected to work to support or at least house their former spouses living with their Children and a new lover, but actually regarded as mad or bad if they raised any objection. There was no hesitation about throwing them into
prison if they did not comply with the Court’s order. It was a world in which several very senior judges proclaimed that there was no significance in the “blood tie” between father and child, but only in that between mother and child.

Bogus Principles of Social Behavior.

A number of quite extraordinary principles of social behavior were put forward by the cowls to justify their reasoning, in response to the sense of moral outrage that began to develop among the public. A bizarre view was put forward by the judges that the husband was the “cock out feathering his nest while the wife was sitting at home on the nest, and that the husband could not have feathered his nest were the wife not sitting on it. This has been uncritically repeated throughout the

legal profession and the law reports, although even momentary examination reveals it to be manifestly) absurd. The man who has regularly worked would, in most cases, have acquired his property, whether married or not. A possible exception is in the case of the man pushed on by an ambitious wife, but then for every man pushed on by an ambitious wife there is likely to be one held back by an unambitious one. Indeed, it should further be pointed out
that the wives who have acquired houses and property would, had they not married, have been unlikely to acquire such property, or even own any property, because of the lower pay of women.

Injustice Better than Conflict.
It was argued that, by stripping husbands of their property without investigating the causes of the marital breakdown, Courts were sparing the parties the distress of conflict and the bitterness which would have resulted from that conflict. If the victim protested, or expressed bitterness at being "stripped", or pointed out that it was being "stripped" rather than conflict to which he objected, judges regarded and treated him as mad or bad. The lawyers would patronizingly boast that they had spared the husband the distress of a Court battle by stripping him at the courtroom door.

Wilful Confusion of Reasoning.
It was said that relationships broke down for complex reasons, and that the Courts could not investigate these reasons in depth. Often true, but irrelevant. What should matter, and to the ordinary member of the public did matter, was who broke up the marriage and that they had objectively substantial reasons, not what the feelings were in a relationship. If this were not so, then, in the eyes of the Courts, marriage as an institution is of less importance than other relationships, including cohabitation. It is the contract of marriage, and its breach, upon which Parliament intended the courts to adjudicate, not a 'relationship'.

The Underlying Prejudice Against Men.
The reality was that the Courts did not wish to investigate the facts, mainly because investigation might reveal matters adverse to the wife, and partly from an Olympian distaste for conflict. The same factors were involved in the reluctance of the Courts to hear the views of children as to where they wished to reside. **They might hear what they did not want to hear, children saying that they wished to live with their father**. Again., it was said that it was best for the children to see a difficult marriage broken up, and the wife in secure accommodation, preferably with her new "man" to form a new "family". Why the children should benefit from losing a father, seeing him impoverished, probably losing contact with him, and a decline in their living standards, was not explained. It was only explicable on the ground that the judicially and the bulk of the legal and social work professions saw fathers as figures of no significance. Indeed there many judges, and many more lawyers, quite prepared to say that they were not in the least concerned with what happened to the husband/father, and often that the 'blood tie" between father and child was of no significance. The Courts wholeheartedly embraced this view, ruling that, when the parents divorced, there is a new family consisting of the wife, children and the new man. The old family,i.e., the husband, had ceased to exist, except for maintenance, where the courts did not hesitate to say that the husband "ought to be supporting his family", even if not allowed to see the same family of which the same courts no longer regarded him as part.

New Principles to Justify Prejudice.
The Courts justified their prejudice by developing principles ad hoc, whenever they were necessary to place the wife in a favorable position. If the property was in joint names it was said that the wife was entitled to her half, regardless of the merits and issues, because her name was on the deeds, in accordance with the law relating to land, whereas the husband was stripped of his half share, despite his name being on the deeds, on the grounds of the wife's "needs". The "principle" which caused the greatest outrage was that adultery by wives could not be criticized because "it took three to commit adultery" - yet another absurd generality without foundation which, significantly, applied only in favor of wives. I remember being in the Court of Appeal, in a case in

which a most senior judge, then a household name, who had repeatedly said that wives' adultery was of no consequence, remarked “Your client [a man] has committed adultery”. My clients woman Counsel replied “Conduct is not in issue”, whereupon the Judge replied “I am not saying conduct is in issue. I merely remarked that your client has committed adultery. My client then found himself going downhill, castigated for adultery, with remarkable speed! Public outrage over these attitudes became so widespread that a Lord Chancellor, in the face of this public outrage over the exclusion of conduct, started to talk about punishing adulterous husbands, while making no apparent mention of punishing adulterous wives at all.

New Judges - Increased Prejudice.
These views persisted and intensified and the practices which resulted became the subject of a rather sick joke in the 1970's; men committed more crime than women because the man who wanted £50,000 had to hold up a bank, whereas the woman had only to take a man with £50000 to the Register Office.

Not only did those views persist but the new breed of liberal judges upheld them much more vigorously. The occasional maverick, brought up in a non ‘family law' background or in an older tradition of justice, is dying out. We now have judges who have carried on most of their career in the post-1970 environment. They know nothing different; their attitudes generally are such that it would not occur to them to challenge the injustices which they daily administer, let alone to see them as injustices. and they are further inhibited both by the general tendency of English lawyers to conform and by the national tendency not to think too hard. An illustration of the attitudes of the ear, from which most judges are drawn, was contained in a recent article in a law journal, where comment was made that it was useful that solicitors could appear in the new Patent County Court as barristers appeared to have “problems” about cross-examining female witnesses.

Judges Provide Incentive to Divorce.
Applied to everyday situations, all this meant that the law as Parliament intended it pre-1974 had gone. Prior to then, a wife who deserted her husband was disentitled to maintenance at common law, and could be divorced without maintenance after three years, and an adulterous or cruel wife was divorced usually without maintenance. in none of these cases did she have a capital claim against any property not hers in law. Until only a few years before there had been no maintenance for the child if with a mother in a state of desertion. This was a powerful deterrent to desertion. Those who planned to ditch their husband without good cause had to make a value judgment. If they went off with the boyfriend they received no maintenance and no capital. In the new situation the judges said ”if you want to ditch your husband and take a boyfriend we will support you and see that you do not lose out. You can have your husband’s money and your boyfriend.” They then proceeded to express surprise and even puzzlement at the huge rise in the divorce rates, to become the highest in Europe, without in the faintest degree seeing that they were the cause. Those that did understand it seemed not concerned. If easy divorce without consequences was what women wanted, women should have it.

The Corrupting Effect of Injustice on the Lawyers.
The development of judicial attitudes was accompanied by a corresponding corrupting effect on the legal profession. Judges who cease to do justice according to law, themselves come to be indifferent to legal principles, and ordinary principles of justice. Lawyers become similarly infected. The basis of all professional relationships is a duty to the client, the duty in the case of a lawyer being to do his best on behalf of a client, impartially to advise the client, and then to put the clients case and wishes to the best of his ability, subject to the general limits of professional conduct and keeping within the law.

It soon became obvious that many divorce lawyers (who began hypocritically to call themselves ‘family lawyers”) were not acting in the interests of male clients. Attitudes to male clients often

ranged front the openly hostile through the plausible sell-out approach to hopeless defeatism. The quality of advice was frequently poor, helpful case law frequently ignored, and serious attempts to resist or answer claims were not frequently made. A general attitude developed of find out what she'll take and give it to her. So accustomed were wives' lawyers to meeting no resistance that I found that, if resisted, they either treated the resistance as some type of joke or pretense to impress the client, or exploded with outrageous indignation. One significant consequence of this was that fewer and fewer really able lawyers did divorce work. The quality of divorce lawyers markedly deteriorated.

The Effect on the Clients.

The hostility of the judges reinforced by the unwillingness of lawyers to stand up to judges, and the prejudices and failings of the lawyers led to clients frequently not being advised of their rights or their case not pressed in the Courts. What also happened was that Courts often made orders quite beyond their powers if they felt they could get away with it. That is to say, if they felt the lawyers in front of them would do little about it, as was usually the case. Such attitudes spread throughout the profession to such an extent that some firms in London boasted that "We only act for wives". Solicitors at Law Society conferences called for lawyers to cease to be obliged to act in their client's interest but, in a new and ominous phrase "to act in the interests of the family". This was a code word for acting in the interests of the wife, and has become general usage among family lawyers. It became common practice, particularly among barristers, for them to get together and 'settle' the case usually to the husband's disadvantage. The process of indoctrination began at an early stage. Exam papers with a dozen questions on Family Law contained as many as eleven saying 'advise the wife". The tendency of the Englishman not to think; had enabled a small and highly motivated minority in brainwash a profession into unthinking acceptance of its views.

The So-Called "Interests of the Family".

The absurdity of the expression "acting in the interests of the family" is shown when one actually examines it. The only person in Court who is there to act in the interests of the family is the Judge. His function is to do justice between the parties. This is something which they now proudly boast of not doing, saying their function is to protect the wife and children, not to do Justice. The "family" clearly does not include the father. The function of the lawyers is to put forward the interests of their women not the interests of the so- called 'family'. The other principal member of which in any event will have another lawyer. Indeed, the matter goes beyond that, since if the lawyers "act in the interests of the family" as they think they are doing, all they are doing is acting in what they think are in the interests of the family. **They may be wrong, and thus do damage to the family.** The ultimate line became "putting the child first" which really meant putting the mother first, and this has become the all-embracing excuse for all manner of injustice. Indeed, putting the child first appears to have been the basis of the recently reported case of in re:B (Times Law Report, 9th July,1997) in which a father was barred from seeing his child after the step father threatened to leave the mother if contact were granted. This seems a questionable view of the child's interests, since continued contact with its father would seem of more importance than any short tem distress of the mother caused by departure of the stepfather, indeed this law appears to regard fatherhood as of no great significance.

Public Outrage

Increasing public outrage led, by 1979, to the formation of organizations such as Campaign for Justice in Divorce. Vigorous bombardment of the Press and Parliament began to lead to awareness of something being wrong, even though the precise nature of it was not understood. The casualties of the matrimonial battlefield appeared in social gatherings like disabled men after the First World War. In l982 three hundred and fifteen MPs signed a motion to investigate the position. The pressure for change became so intense that the legal establishment decided that something had to be done. What happened, though was that then effectively seized control of the

legislation and through skillful selection of the Committee, and vigorous control of the voting in Parliament, ensured that Parliament never really understood what was being complained about and, what went through was relatively innocuous. The establishment skillfully conned Parliament and was disastrously helped by many of the leaders of the initial organizations, who went along with what was happening, apparently jollied along by the civil servants involved.

The Failure of the First Men's Organizations: the Conduct Issue.
In my view it was an unfortunate feature of those attempting to end the abuses that they failed to accept that, in order to get public opinion going with them, they would have to accept that middle aged and elderly ladies could not be seen to be left for young women and not provided for. This was a major cause of the failure of the husbands groups to achieve wider support. Because the husband's groups failed to push the "conduct" issue, which was the cause of most outrage among ordinary people, and campaigned instead for the total ending of all maintenance, they alienated a larger body of public opinion which would not support this. I cannot over-emphasize that conduct is the key to everything because conduct is the issue that outrages ordinary people, and it is the abolition of conduct, together with the various invented "principles of social behavior, which has made divorce so easy and tempting to wives, in essence, wives have been told by the Courts that it is right and proper to say, "I don't want him, but I want his money".

What Is Conduct?
What do I mean by conduct?. The Courts will tell you that they have not the time to go into nit-picking issues of conduct and that, in any case. usually one person is as bad as another. The lack of time is a quite extraordinary argument, because the implication is that the Courts are far too busy doing injustice on a production line scale to have the time to do justice on an individual scale. But, importantly, conduct does involve nit-picking issues. To most people, conduct means adultery, extreme violence and desertion and similar matters. Neither men nor women see why the adulterous or deserting wife receives maintenance or is allowed to strip the husband of his assets. More subtly, though, the real issue relating to conduct is who brought an end to the marriage itself and for what reason. Thus, if a wife breaks up a marriage for no good reason, there is no reason why she should receive maintenance other than her capital contribution to the marriage. It is quite wrong that a wife should be free to say she does not like her husband yet still wishes to have his money.

The current approach to conduct is to exclude it in nearly all cases, unless it is the man's conduct. One other approach has been to limit conduct to the consequences of financial misconduct e.g., dissipation of assets, and then to top up the award so as to cancel the effect of that conduct. This, at least on paper, has been limited by the 1996 Act provisions which make clear that conduct is not limited to financial misconduct, in practice the courts are likely to ignore Parliament's intentions, and lawyers will continue to reject conduct as an issue.

The First Men's Organizations Collapse.
The failure of the men's organizations to achieve anything in the 1984 legislation, reinforced by their leaders support of this useless legislation, led to a decline in their membership for some years. Exemplifying the tendency of men's organizations the world over to split and even to litigate between themselves

The Revival.
By the 1990's the men's organizations were beginning to revive under new leadership. The new organizations, of which the United Kingdom Men's Movement was the most significant, had a better grasp of what had happened in the past, and had more defined policies on how to deal with the problem. They understood the conduct issue more clearly. I had written the original version of this paper in 1988 to create an understanding, precisely because I had watched the men's

organizations. for many of whom I had acted, floundering. in the dark, railing against the system without understanding its causes. I concluded that I needed to update it to meet the challenge of the 1990's.

The Prospect of Change.
So powerful however, had become the habit of the establishment thinking in this field combined with a lack of public and Parliamentary understanding of its cause - the lawyers – that the prospect of change in the foreseeable future seemed low Change began to come from unexpected sources.

The first was the increasing concern generally, and in the academic field about the breakdown of the family in this country. Second was the Government's desire to save money on Legal Aid.

Social breakdown led to the increasing publication of articles on the breakdown of the family and the injustices in the Courts by outstanding writers such as Martin Mears in the Sunday Telegraph, and other writers in the Daily Mail. Only Martin Mears, however, grasped the importance of the conduct issue and that the attitude of the Courts and lawyers as the cause of the breakdown of the family. The others tended to see the cause as moral decline and the remedy as education in marriage and the seeking of reconciliation in mediation. They failed to realize that if you tell people that they can dump their spouses, and still take their money, all the social workers in the world will not hold them back.

It might have taken many more years for these truths to sink in, and the pressure to do something todevelop, but for the Government's desire to save money.

Here two factors came together, the Government wanted to save money, and the family lawyers, ad apparently the lawyers who advised the Government, wanted to realize their dream – divorce on demand. This led to the 1996 Family Law Act put forward by the Lord Chancellor.

The Government Proposal.
The Lord Chancellor's proposals, in effect, were for divorce on demand. mediators to solve the financial issues and save Legal Aid money, and a widened power of ouster which was to extend to cohabitees, thus reducing marriage to mere cohabitation. Upon all the evidence, much of the Cabinet did understand what was happening and certainly did not want it, but a small and powerful element did, and forced it through the Cabinet.

Parliament's Reaction.
When Parliament, concerned by social breakdown, considered the legislation, it, as a result of an outstanding campaign by pro family campaigners, indicated that it was beginning to understand a little of what had been happening. All honors are due to the Daily Mail in particular for the way it mobilized opposition so that a strong opposition developed and the situation reached the point where the legislation was threatened with failure. A desperate Government made many concessions which for the first lime may drive in beginnings of a wedge into the present system. Despite us now having divorce on demand, conduct is supposed to be taken into account to a greater degree than in financial and child issues. It is my belief that the Courts will continue to defy Parliament's intention. I remember hearing a barrister, now a High Court Judge, claim at a lecture on the 1984 Act that they would ignore it. Nevertheless the continued social breakdown and the further flagrant defiance by the Courts, of which a wider public understanding is developing, will continue to arouse further Parliamentary and media concern.

The Child Support Act.
Another factor which had contributed to social breakdown was the Child Support Act, sold to Parliament as a means of saving the Exchequer from the cost of so-called "dead-beat dads" who

were not supporting their families, in particular, the unmarried fathers.

It was later admitted by the Child Support Agency chief that the real target, however, was the middle class married father with means. In other words, once again there was a hidden agenda.

The whole concept was fundamentally flawed from the beginning. The burden of the Child Support Agency exactions was so heavy that, for 95% of fathers, it would mean working at subsistence level. If it be subsistence level they might as well as give up work anyway. Indeed, if they did carry on working, they would not be left with sufficient means themselves to found a family. Thus, a further under-class would be created of impoverished men who could not afford to support a family, and of women who, in consequence, could not find a husband with whom to form a family. The obviousness of this seemed entirely to elude the Government in so far as it was concerned about it all. In reality, despite the expenditure of nearly two billion pounds, the new Agency has recovered far less than the DSS did under the old liable relative system, and the position is worsening. Two thirds of all persons who receiving a Child Support Agency Assessment give up their employment within six months. Every form of falsification of figures disguises the non-recovery and arrears continue to rocket by hundreds of millions every year. The cost in Social Security for the men who have given up work is phenomenal By depriving men of the family, the incentive to work, the system was accelerating the move to the matriarchal society that now dominates the American inner cities and many of our industrial areas - a world of unemployed single fathers and of fatherless children running wild. Feminists boast that stone age societies were matrilineal - that is why they remained primitive.

The Pension Issue.

One other development in recent years has been the successive Acts of Parliament, first providing for maintenance out of pension provision, and then (1996 Act) providing for the pension to be treated as an asset and divided, so that a wife who has remarried will many years later be collecting a chunk of her ex husband's pension.

There is a false logic in the whole pension issue. Pensions are being treated as a capital asset when they are not. A pension is a contingent income dependent on many factors. Splitting it could lead to the absurd and unjust situation where; on retirement, the ex husband has a proportion of his pension and his ex wife, by now married to somebody else, has the rest of his pension as well as her own and her 'new' husband's. Previously, the principle had been that pensions are really only relevant if maintenance liability continued beyond retirement age. Once again the so called "reformers" had pushed through Parliament a provision the implications of which were not understood by MPs. Another encouragement to easy divorce had been created.

The Solution.

I wrote in 1988, and still hold, that the logical consequence of any situation which sought justice was that there should be three classes of divorce. The first would be where the parties agree both to have a divorce and on financial and related matters. The second would be where one party that wanted a divorce for good and substantial reason, such as grave misconduct by the other party, i.e., adultery, desertion, or serious (in the pre-1970 sense) behavior, objectively assessed as justifying termination of the marriage. The third, and perhaps the great majority of cases, would be where one-party-only wants a divorce, and could not show such misconduct by the other party. In the first case, no dispute would arise. In the second, the payment of maintenance to the innocent party would be appropriate in some cases, particularly where the petitioner was a middle aged or elderly lady. In the third case the party wanting the divorce should effectively be put to their election. Either they continue with the marriage and its obligations, or repudiate the marriage and its obligations and thereby forego the right to receive any financial benefit from the marriage which they had unjustifiably broken up. "I do not want him, but I want his money is a morally unacceptable position (even prostitutes provide services for their reward), and one which has led to Europe's

highest divorce rate. I have no doubt that if this approach were adopted there would be a radical reduction in the number of divorces. The “principle” invented by the Courts, that both parties are at fault in the termination of a marriage, results from a mixture of blind
prejudice and deliberate intellectual muddle, and has led to Courts effectively determine marriage as a state in which the wife should have no obligations of any kind yet should have financial rights far greater than those of a widow, regardless of her terminating the marriage for no good reason. The justifiability of the termination of the marriage should be the key issue. There is no reason why someone should expect to break a contract arid still benefit from it.

The Future.
it is clear from the content of the debates in Parliament that a substantial number of MPs are beginning to understand what has happened. The change of Government and the influx into Parliament of a mass of feminists and pro-feminists strongly suggest, however, that only slow progress will be made in this Parliament.

However, the first floodgate likely to collapse is the Child Support Agency. Its ever increasing cost, and decreasing recovery rate, plus the reported billion plus bill to replace its computers, will make it increasingly insupportable. It is also likely that litigation over pensions will greatly increase the volume and bitterness of litigants in the courts, and bring home the scale of the disaster to more members of the public.

Getting the Truth to MPs

The only way forward is to get home to MPs the message in this article which clearly sets out the true case of the divorce disaster: the way the Courts have overridden the intentions of Parliament and the way in which the divorce lobby have conned Parliament and the media.

Laws to Override Judicial Prejudice.
An essential aspect of any ultimate reform must be to have laws drafted in sufficient detail that the Courts, in their decisions, are unable to fly in the face of the intentions of Parliament. Courts who are prepared to order a man to maintain a wife who is living with somebody else and see nothing wrong with this (7), or to maintain an ex-wife from a short, childless marriage who cannot work because she has become pregnant by another man subsequent to a divorce (8), cannot be entrusted with wide discretions.

Financial Orders: Fundamental Changes of Principle.
There is considerable scope for the law on financial entitlement to be far more clearly defined. In particular, it is quite wrong for the Courts to act as if there were an actual right to maintenance. There is no right as such, either in common law or statute, only a right to apply. This is as it should be. Maintenance should then only be awarded to mothers while with young children and to middle aged and elderly women, and then, only if they have not broken up the marriage without good reason. Equally, as a late 1980’s Law Society paper pointed out (9) there is no justification for matrimonial courts, when dividing assets, to take away property inherited or received from relatives or friends or owned before the marriage. This outrageous aspect of present practice, unique to the English Courts, amounts to giving the Family Division a general
power of appointment over one’s property, and is effectively taking money from the divorced person’s relatives.

Further Legislation Called For.
I do not believe that it will be possible for those who seek reform to achieve that reform through the gradual development of cases in the Courts (which will be barred by the defiance of the lawyers). Further legislation is called for by stripping the courts of their wide discretionary powers, and that

legislation will not be effective unless Members of Parliament actually under stand the real issues and the part the Courts have played in the social disintegration of our society.

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The Pendulum of fathers v mothers swings with the fad of the moment. In times gone by the father had almost absolute authority over his children until they attained majority. A rather remarkable example of such authority being upheld by the court was in re Agar-Ellis (1883) 24 Ch.D. 317 which was much relied on by the Court of Appeal.

The father in that case restricted the communication which his daughter aged 17 was allowed to have with her mother, against whose moral character nothing was alleged, to an extent that would be universally condemned today as quite unreasonable.

The attitude of a Victorian parent towards his children was very different to now. He expected unquestioning obedience to his commands. If a son disobeyed, his father would cut him off with a shilling. If a daughter had an illegitimate child, he would turn her out of the house. His power only ceased when the child became 21.

If the father died the children went to live with the uncle. The absolute rule of the father as Guardian of his children has now been replaced with the mother as the gatekeeper on matters related to children.

The children’s Act 1989 states;

2.— (1) Where a child's father and mother were married to each other at the time of his birth, they shall each have parental responsibility for the child.

(2) Where a child's father and mother were not married to each other at the time of his birth—

(a) the mother shall have parental responsibility for the child;

(b) the father shall not have parental responsibility for the child, unless he acquires it in accordance with the provisions of this Act.

(3) References in this Act to a child whose father and mother were, or (as the case may be) were not, married to each other at the time of his birth must be read with section 1 of the [1987 c. 42.] Family Law Reform Act 1987 (which extends their meaning).
(4) The rule of law that a father is the natural guardian of his legitimate child is abolished.

The Report of the Committee on the Age of Majority [Cmnd. 3342, 1967], stated that ‘’the legal right of a parent to the custody of a child ends at the 18th birthday: and even up till then, it is a dwindling right which the courts will hesitate to enforce against the wishes of the child, and the more so the older he is. It starts with a right of control and ends with little more than advice."

Blackstone Commentaries, 17th ed. (1830), vol. 1, p. 452, states "The power of parents over their children is derived from ... their duty." The proposition is also consistent with the provisions of section 1 of the Guardianship of Minors Act 1971 as follows:

"Where in any proceedings before any court ... (a) the custody or upbringing of a minor; ... is in question, the court, in deciding that question, shall regard the welfare of the minor as the first and paramount consideration, and shall not take into consideration whether from any other point of view the claim of the father, or any right at common law possessed by the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father."

From the parents' right and duty of custody flows their right and duty of control of the child, but the fact that custody is its origin throws but little light on the question of the legal extent of control at any particular age.

The Children Act 1975 section 85(1) provides that in that Act the expression "the parental rights and duties" means "all the rights and duties which by law the mother and father have in relation to a legitimate child and his property," but the subsection does not define the extent of the rights and duties which by law the mother and father have. Section 86 of the Act provides: "In this Act, unless the context otherwise requires, 'legal custody' means, as respects a child, so much of the parental rights and duties as relate to the person of the child (including the place and manner in which his time is spent); . ."

In the Court of Appeal [1985] 2 WLR 413 Parker LJ attached much importance to that section especially to the words in brackets. He considered that the right relating to the place and manner in which the child's time is spent included the right, as he put it, "completely to control the child" subject of course always to the intervention of the court. The learned Lord Justice went on at p. 423:

"Indeed there must, it seems to me, be such a right from birth to a fixed age unless whenever, short of majority, a question arises it must be determined, in relation to a particular child and a

particular matter, whether he or she is of sufficient understanding to make a responsible and reasonable decision. This alternative appears to me singularly unattractive and impracticable, particularly in the context of medical treatment."

Contrary to the ordinary experience of mankind, at least in Western Europe in the present century, to say that a child or a young person remains in fact under the complete control of his parents until he attains the definite age of majority, now 18 in the United Kingdom, and that on attaining that age he suddenly acquires independence is not up-held by the judiciary.

In practice most parents relax their control gradually as the child develops and encourage him or her to become increasingly independent. Moreover, the degree of parental control actually exercised over a particular child does in practice vary considerably according to his understanding, intelligence and family beliefs.

In Reg. v. D. [1984] AC 778. Dealing with the question of whether the consent of a child to being taken away by a stranger would be a good defence to a charge of kidnapping, at p. 806:

"In the case of a very young child, it would not have the understanding or the intelligence to give its consent, so that absence of consent would be a necessary inference from its age. In the case of an older child, however, it must, I think be a question of fact for a jury whether the child concerned has sufficient understanding and intelligence to give its consent; if, but only if, the jury considers that a child has these qualities, it must then go on to consider whether it has been proved that the child did not give its consent. While the matter will always be for the jury alone to decide, I should not expect a jury to find at all frequently that a child under 14 had sufficient understanding and intelligence to give its consent."

That expression of opinion seems to me entirely contradictory of the view expressed by Cockburn C.J. in Reg. v. Howes (1860) 3 E. & E. 332, 336-337:

"We repudiate utterly, as most dangerous, the notion that any intellectual precocity in an individual female child can hasten the period which appears to have been fixed by statute for the arrival of the age of discretion; for that very precocity, if uncontrolled, might very probably lead to her irreparable injury. The legislature has given us a guide, which we may safely follow, in pointing out 16 as the age up to which the father's right to the custody of his female child is to continue; and short of which such a child has no discretion to consent to leaving him."

The parent’s authority is now viewed as a dwindling right.

In J. v. C. [1970] AC 668 Lord Guest and Lord MacDermott referred to the decision in Agar-Ellis, 24 Ch.D. 317 as an example of the almost absolute power asserted by the father over his children before the Judicature Act 1873 and plainly thought such an assertion was out of place at the present time: see Lord MacDermott at pp. 703-704.

In Reg. v. D. [1984] AC 778 Lord Brandon of Oakbrook cited Agar-Ellis as an example of the older view of a father's authority which his Lordship and the other members of the House rejected. The view of absolute paternal authority continuing until a child attains majority which was applied in Agar-Ellis is so out of line with present day views that it should no longer be treated as having any authority, merely as a historical curiosity.

As Fox LJ pointed out in the Court of Appeal [1985] 2 WLR 413, 439D, the Agar-Ellis cases (1878) 10 Ch.D. 49; 24 Ch.D. 317 seemed to have been regarded as somewhat extreme even in their own day, as they were quickly followed by the Guardianship of Infants Act 1886 (49 & 50 Vict. c.27) which, by section 5, provided that the court may:

"upon the application of the mother of any infant [whether over 16 or not] make such order as it may think fit regarding the custody of such infant and the right of access thereto of either parent, having regard to the welfare of the infant, and to the conduct of the parents ..." (Emphasis added).

Once the rule of the parents' absolute authority over minor children is abandoned, the solution to the problem can no longer be found by referring to rigid parental rights at any particular age. The solution depends upon a judgment of what is best for the welfare of the particular child.

In re P. (A Minor) (1981) 80 LGR 301 in which Butler-Sloss J. ordered that a girl aged 15 who had been pregnant for the second time and who was in the care of a local authority should be fitted with a contraceptive appliance because, as the learned judge is reported to have said, at p. 312:

"I assume that it is impossible for this local authority to monitor her sexual activities, and, therefore, contraception appears to be the only alternative."

Children have now been given the green light to become teenage pregnant with the State only interfering by giving contraceptive advice and free contraceptives which is against many, if not, most parents wishes.

Indeed children can now have abortions without parental knowledge or consent and against their wishes.

Persons based In European countries have the alleged protection of the European Convention on Human Rights endorsed and jointly prepared by the UK in 1950's yet article 19 puts the obligations on the State to sort out their own system. Yet we have cases where ECtHR have refused cases without giving reasons and refused cases where the facts are indisputable. Yet again we find lip service paid to the Conventions.

As a reminder in the case of GÖRGÜLÜ v. GERMANY JUDGMENT2004

43. Article 8 requires that the domestic authorities should strike a fair balance between the interests of the child and those of the parents and that, in the balancing process, particular importance should be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parents. In particular, **a parent cannot be entitled under Article 8 of the Convention to have such measures taken as would harm the child's health and development** (*Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 169, ECHR 2000-VIII, *P., C. and S. v. the United Kingdom*, no. 56547/00, § 117, ECHR 2002-VI).

45. **The Court recalls its case-law, which postulates that where the existence of a family tie with a child has been established, the State must act in a manner calculated to enable that tie to be developed** (see *Keegan* cited above p. 19, § 50, and *Kroon and Others v. the Netherlands*, judgment of 20 September 1994, Series A no. 297-C, p. 56, § 32). Article 8 of the Convention thus imposes on every State the obligation to aim at reuniting a natural parent with his or her child (see *K. and T. v. Finland* [GC], no. 25702/94, § 178, ECHR 2001- VII, *Johansen v. Norway*, judgment of 7 August 1996, *Reports of Judgments and Decisions* 1996-III, p. 1008, § 78, and *Olsson v. Sweden (no. 1)*, judgment of 24 March 1988, Series A no. 130, p. 36, § 81). **In this context, the Court also notes that effective respect for family life requires that future relations between parent and child not be determined by the mere passage of time** (see, *mutatis mutandis, Sylvester v. Austria,* nos. 36812/97 and 40104/98, § 69, 24 April 2003, and *W. v.*

the United Kingdom, judgment of 8 July 1987, Series A no. 121, p. 29, § 65).

46. **The Court recalls in this respect that the possibilities of reunification will be progressively diminished and eventually destroyed if the biological father and the child are not allowed to meet each other at all, or only so rarely that no natural bonding between them is likely to occur** (*K. and T. v. Finland*, cited above, § 179).

47. In the light of the above, the Court finds that there was a violation of Article 8 of the Convention.

iii. Decision-making process

52. The Court recalls also that, whilst Article 8 of the Convention contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to ensure due respect of the interests safeguarded by Article 8. The Court must therefore determine whether, having regard to the circumstances of the case and notably the importance of the decisions to be taken, the applicant has been involved in the decision-making process, seen as a whole, to a degree sufficient to provide him with the requisite protection of his interests (see *W. v. the United Kingdom* judgment of 8 July 1987, Series A no. 121, p. 29, § 64; *Buscemi v. Italy*, no. 29569/95, § 58, ECHR 1999-VI, and *Elsholz*, cited above, § 52).

58. The Court reiterates that its duty, according to Article 19 of the Convention, **is to ensure the observance of the undertakings of the Contracting States to the Convention**. In particular, it is not its function to act as a court of appeal and **to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention**. **Furthermore, as a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which defendants seek to adduce** (see *Vidal v. Belgium*, judgment of 22 April 1992, Series A no. 235-B, p. 32, § 33, *Elsholz*, cited above, § 66, *M.C. v. Finland* (dec.), no. 28460/95, 25 January 2001). However, **the Court must ascertain whether, taken as a whole, the proceedings, including the way in which the evidence was dealt with, were fair within the meaning of Article 6 § 1 of the Convention. The Court recalls in this respect that the difference between the purposes pursued by the safeguards afforded by Article 6 § 1 and Article 8, respectively, may justify an examination of the same set of facts under both Articles** (*McMichael v. the United Kingdom*, judgment of 24 February 1995, Series A no. 307-B, p. 57, § 91, *Hoppe v. Germany*, no. 28422/95, § 61, 5 December 2002, *Buchberger v. Austria,* no. 32899/96, § 49, 20 December 2001, *Nekvedavicius v. Germany* (dec.), no. 46165/99, 19 June 2003).

From the Hansard notes on January 15th 2004 at 1.28 pm Mr. Eric Forth (Bromley and Chislehurst) (Con): My plea, which I hope it is In legitimate to make in this debate, is that when the Committee on Standards and Privileges comes to examine the matter—I hope that it will, as, on balance, I think I support the motion—it will feel free to examine the political aspects involving the Lord Chancellor, notwithstanding his own phrase in the document before us, that "I completely understand that individuals must feel free to give evidence to Select Committees", for which I

suppose we must be grateful[**Yet UK judiciary have given such evidence stating that there is no bias against fathers when ample evidence is available to disabuse the Committee, yet no proper challenge was permitted**]..Member for Berwick-upon-Tweed (Mr. Beith) and to you, Mr. Speaker, for allowing us to pursue the matter. If the examination shines a light on the attitude of senior civil servants to members of the public, or of public bodies, giving evidence to Select Committees, that will be a matter of the utmost gravity. It is very important for the Committee on Standards and Privileges to take all the time it needs, and to go as far as it needs, in examining the ramifications of the case. It might look like just one case, and it might or might not be isolated, but it sets the alarm bells ringing over the attitude of the Government, in political and administrative matters, to the Committees of this House and to the relationship between the Executive and the legislature. This case has the potential to be that important, so I urge the Committee to treat it with the utmost gravity…. It touches on something essential to the functioning of this House as a corporate body, if I may pick out language from the report. We have to be assured that any witness coming before a Select Committee is protected, and I recognise, as did the Government when they supported the Public Interest Disclosure Act 1998, that the concept of whistle-blowing is important.''

Within a week, Gun had confessed to her role as the leaker, left GCHQ, been arrested, and spent a night in police custody. Eight months later, she was charged with breaking the Official Secrets Act, facing the threat of a trial and a two-year prison sentence. Yesterday, at the Old Bailey, the case was finally dropped. The prosecution declined to offer any evidence, prompting speculation that the government was desperate to avoid being forced to reveal, in the course of a trial, details of its own legal advice on the war. Gun was to prove a particularly credible - and therefore, from the government's point of view, dangerous - kind of whistleblower...

When the charges came, she was shocked, she says - and scared about "having the whole government machine after you" - but still she did not doubt what she'd done. "**Do nothing and die, or fight and die,**" she remembers her husband telling her, but the way she tells it, she never really had much of a choice. "**I didn't feel at all guilty about what I did, so I couldn't plead guilty, even though I would get a more lenient sentence," …..Her decision to follow her conscience sounds almost unthinking - "I didn't want to step back and think, 'But, hey, what happens if I do this, and then this happens and then that happens**?'"

In the words of Winston Churchill "Still, if you will not fight for the right when you can easily win Without bloodshed, if you will not fight when your victory will be sure and not so costly, you may come to the moment when you will have to fight with all the odds against you and only a precarious chance for survival. There may be a worse case. You may have to fight when there is no chance of victory, because **it is better to perish than to live as slaves**."

We whistle blow on the abuse of children and families. If the Governments don't like it – then time for them to be held accountable for the abuses of UDHR and CCR which they have assigned to or to show their true colours and admit the truth – they have no interests in UDHR and CCR except as excuse to control us all.

Parents, Grandparents and concerned others who doth protest are suffering mental torture as recognized in Tekin V Turkey ECtHR. The question becomes GENDERCIDE or GENOCIDE?

The Permanent Court of International Justice has held that jus cogens principles impose obligations on states to the wider international community ergo omnes to ensure they are upheld.

Certain fundamental human rights pertaining to the protection of life, liberty and security have clearly assumed jus cogens status in international law and this includes the Judiciary in the UK. ‘’***[I]n the hierarchy of persons in authority, there is no reason why rank, however exalted, should in any circumstances protect the holder of it from responsibility when that responsibility has been established before a properly constituted tribunal. This extends even to the case of heads of State.’***

In Article IV of the Genocide Convention 1948 providing that persons committing genocide ‘ *shall be punished whether they are constitutionally responsible rulers, public officials or private individuals’.*

More recently, similar provisions are found in Articles 7(2) of the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) 1993 and 6(2) of the International Criminal Tribunal for Rwanda (ICTR) 1994 : ‘*The official position of any accused person, whether as head of state or Government or as a responsible Government official****, shall not relieve*** **such person of criminal responsibility nor mitigate punishment**.’

This is further confirmed by both the unanimous approval of the General Assembly of the Nuremberg Principles and the adoption by the International Law Commission of Article 7 of the Draft Code of Crimes Against the Peace and Security of Mankind 1996 : ‘**The official position of an individual who commits a crime against the peace and security of mankind, even if he acted as head of State or Government, does not relieve him of criminal responsibility or mitigate punishment**.’

'*There can be no doubt that today a head of State cannot rely on his official position as a defence or plea in mitigation of punishment before International tribunals established to try war crimes and crimes against humanity* and that :

"While generally international law . . . does not directly involve obligations on individuals personally, that is not always appropriate, particularly for acts of such seriousness that they constitute not merely international wrongs (in the broad sense of a civil wrong) but rather international crimes which offend against the public order of the international community. States are artificial legal persons: they can only act through the institutions and agencies of the state, which means, ultimately through its officials and other individuals acting on behalf of the state. For international conduct which is so serious as to be tainted with criminality to be regarded as attributable only to the impersonal state and not to the individuals who ordered or perpetrated it is both unrealistic and offensive to common notions of justice….The idea that individuals who commit international crimes are internationally accountable for them has now become an accepted part of international law … can no longer be doubted that as a matter of general customary international law a head of state will personally be liable to be called to account if there is sufficient evidence that he authorised or perpetrated such serious international crimes."

A Universal Prohibition on Torture

Therefore since the end of the second world war there has been a clear recognition by the international community that certain crimes **are so grave and so inhuman that they constitute crimes against international law and that there is a duty to bring to justice a person who commits such crimes**. Furthermore, it is clear that such crimes include torture as prohibited by the UN Convention Against Torture 1984 (CAT) **which has been ratified by the United Kingdom. CAT makes it clear that no state is to tolerate torture by its public officials or by persons acting in an official capacity and Article 2 requires that:**

"1. Each state party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction."

further providing that:

"2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

whilst Article 4 provides:

"1. Each state party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture."

"2. Each state party shall make these offences punishable by appropriate penalties which take into account their grave nature."

and Article 7 provides: "1. The state party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found, shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution."

Burgers and Danelius make clear that these prohibitions had already assumed jus cogens status long before the treaty came into force: *"It is expedient to redress at the outset a widespread misunderstanding as to the objective of the Convention against* ***Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,*** *adopted by the General Assembly of the United Nations in 1984. Many people assume that the Convention's principal aim is to outlaw torture and other cruel, inhuman or degrading treatment or punishment. This assumption is not correct insofar as it would imply that the prohibition of these practices is established under international law by the Convention only and that this prohibition will be binding as a rule of international law only for those states which have become parties to the Convention. On the contrary, the Convention is based upon the recognition that the above-mentioned practices are already outlawed under international law. The principal aim of the Convention is to strengthen the*

existing prohibition of such practices by a number of supportive measures."

This is further reinforced by the fact that torture has been specifically defined as a crime against humanity by Articles 5, 3 and 7 of the ICTY, ICTR and ICC Statutes respectively. Torture is also explicitly prohibited under Article 7 of the International Covenant on Civil and Political Rights (ICCPR) which has been ratified by the United States and, according to the Human Rights Committee in its General Comment No. 24 on the ICCPR torture enjoys jus cogens status, together with a number of other fundamental civil and political guarantees: *Reservations that offend peremptory norms would not be compatible with the object and purpose of the Covenant. Although treaties that are mere exchanges of obligations between States allow them to reserve inter se application of rules of general international law, it is otherwise in human rights treaties, which are for the benefit of persons within their jurisdiction. Accordingly, provisions in the Covenant that represent customary international law (and a fortiori when they have the character of peremptory norms) may not be the subject of reservations.* ***Accordingly, a State may not reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion, to presume a person guilty unless he proves his innocence, to execute pregnant women or children, to permit the advocacy of national, racial or religious hatred, to deny to persons of marriageable age the right to marry, or to deny to minorities the right to enjoy their own culture, profess their own religion, or use their own language. And while reservations to particular clauses of article 14 may be acceptable, a general reservation to the right to a fair trial would not be****.'*

Yet what hope of a fair trial in secret courts in the UK? We hope that other countries will provide such evidence to mirror the UK position and we ask for this campaign to be recognised by the United Nations.

The UK can go to an unlawful war, yet we the Public have the right to pursue redress and a better future for all of us and the future of our own children and Grandchildren.