

WHY PAY ALIMONY?

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When a man loses his enthusiasm for supporting his wife, two rules of law exist to spur him on to renewed endeavors. The first covers lapses during the time the parties are living together when there is at least a semblance of family solidarity. The second operates in cases arising after a domestic breakdown due to separation, desertion or limited divorce and until death or a court order finally discharges the obligation. Although these twin "persuaders" are venerable and respected,¹ the second rule needs revision.

In the English legal system the two rules, their fundamental concepts and their administrative machinery were distinct. The common law courts administered the first.² The second obligation was the peculiar care of the ecclesiastical courts. They employed spiritual, rather than temporal, concepts. Marriage was a sacrament, a status. Penalties were imposed be-

cause of guilt, rather than a breach of contract or a tort. Administrative machinery, including the confessional, penance and excommunication, enforced court orders upon the conscience, if not upon the person and property, of the husband.³

In the United States, where there was no ecclesiastical legal system, the traditional English concepts were accepted and we have been trying for many years to execute them by the ordinary equity and common law processes. Even the statutes have framed the picture in terms of "alimony." Our courts insist that marriage is a contract, but "sui generis." This provides some judicial discretion.

Under the sheltering aegis of the requirement that the husband support his wife after a domestic breakdown, the innocent, faithful wife, deserted without legal justification by her anti-social husband, has taken steps to secure financial aid from her erring

was injured by third persons the husband might sue on the theory that he was entitled to her services, and recover damages for the loss of these services. One thinks of an employer-employee relationship with wages. Other situations in which the law allowed business concepts to creep in were when the wife became *feme sole* trader, or where her activities extended beyond those which might reasonably be expected of a wife. The common law courts thought of these aspects of the marriage relationship in terms of the commercial contract.

³ When the ecclesiastical courts in England in 1857 surrendered their functions in this respect to the common law courts, many of the legal concepts were taken over bodily. [Matrimonial Causes Act, 20 & 21 Vict., c. 85 (1857).] The administrative machinery remained behind. It has been something of a task to enforce spiritual concepts through purely temporal administrative machinery.

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¹ Their sociological importance is attested by reports on the customs of primitive tribes and in early legal codifications. They were known to Roman law and to the medieval ecclesiastical establishment. See Westermarck, *A Short History of Marriage* (1926) c. VII; Corbitt, *The Roman Law of Marriage* (1930) 127; 1 Blackstone's Commentaries 355.

² If the husband did not supply his wife with necessities, she might obtain them from third persons and render him liable for their cost. The commercial concept of the wife as the husband's agent was employed. If the wife

spouse instead of casting herself upon the charity of neighbors or the state. At the same time mercenary and vindictive women have cleverly trapped men into the bonds of matrimony and then employed the rule as an instrument of extortion and blackmail. The rule, in an unrestricted form, today does enough damage to warrant a critical survey. Suggestions for improvement will naturally follow.

A Test of Social Utility

Conditions of family life have changed materially during the lifetime of the rule,⁴ and anyone, who assumes, without fresh proof, that its effectiveness is, today, as great as formerly, demonstrates more placid devotion to precedent than alert critical judgment. Conditions surrounding modern marriage contribute to family instability.⁵ In a period when the wife is not necessarily an economic asset to her husband and society is not too shocked to receive a woman living an independent life, if domestic affection wanes, dissolution seems a natural remedy. The psychological balance between two personalities is easily disturbed. At such a time the woman, listening to sympathetic indignation from her friends, and closing her ears to impartial suggestions,

may grasp, all too readily, the legal weapon afforded by the instant rule. But, a hasty, impetuous, emotional, premature use by one spouse of the sharpened blade of litigation may sever unnecessarily, but permanently, whatever marital bonds remain, and thus do irreparable injury to an institution in which the state has an interest. Similarly, if, for sentimental reasons, the blow is withheld until the husband has made good his escape, the family is destroyed, and at the same time the state may be saddled with the support of the wife. The rule is a vestigial remnant of an earlier era, and should be viewed today with critical caution.

The Unfairness of the Rule to the Husband

In spite of the development of the idea that women should have equal rights with men, there still remain many husbands who lament the passing of the days of male supremacy in the home. The husband's right to control his wife, by force, if necessary,⁶ has been appreciably curtailed.⁷ If he attempted to exercise it today, in many jurisdictions his wife could place him in jail for assault and battery,⁸ or secure a divorce from him on the ground

⁴ For example, the modern home is seldom the center of industry, and social life is enjoyed in clubs, motion picture houses, dance halls, and automobiles. Mowrer, *Family Disorganization* (1927) c. VII. Young women now make their own way in the world, and the number of opportunities for them in industry has increased amazingly. Groves and Ogburn, *American Marriage and Family Relationships* (1928) c. XVII. The functions of the family as a social institution have shrunk until they include little more than the rearing of children, an orderly adjustment of sex relations and a device for holding property. Jacobs and Angell, *A Research in Family Law* (1930) 37-8. The supervision exercised by church and family

over the individual is greatly relaxed. Seagle, *Family Law* (1931) 4 *Ency. Soc. Sci.* 81.

⁵ 1 Calhoun, *Social History of the American Family* (1917) c's. 4, 9; Groves and Ogburn, *op. cit. supra* note 4, c's. II, V.

⁶ *State v. Black*, 60 N. C. 274 (1864) (duty of a husband is to "govern his household" and in so doing "the law permits him to use towards his wife such a degree of force as is necessary to control an unruly temper, and make her behave herself . . .").

⁷ *State v. Fulton*, 149 N. C. 435, 63 S. E. 145 (1908); *Stedman, Right of Husband to Chastise Wife* (1917) 23 *Va. L. Reg.* 241.

⁸ 3 Vernier, *American Family Laws* (1935) 103.

of cruelty.⁹ If he attempts to compel her to live in a home of his choice, but against her will, she may have her divorce on the ground of constructive desertion.¹⁰ Her right to a divorce from him is as broad as his right to divorce her.¹¹ She does not forfeit her right to support and alimony unless she does some act which will entitle him to a divorce, and sometimes not even then.¹² His rights over his wife's property have shrunk.¹³ The legal concept which entitles him to her services is most obvious today in his right to recover damages for injuries she may receive.¹⁴ Many wives bring no dowry to their husbands.

His task in making a home in which she will be content to remain is increased by a number of factors. She may legally set up a separate establishment of her own.¹⁵ There are statutes protecting the health, and regulating hours of work and conditions of employment of women in industry.¹⁶ Divorce, with remarriage to someone who can offer her more of the things she wants, is much simpler than it used

to be.¹⁷ If the grass in the adjoining field looks greener to the wife, the task of the husband, in persuading her to remain in the home, increases.

Not only are the corresponding advantages of the husband declining. The public conscience is raising the minimum requirements as to what constitutes a good husband. There are many occasions when the shrewdly advised wife may exercise control over her spouse.¹⁸ Domestic relations and family courts¹⁹ are improving the technique of making him do what someone else wants him to do. Regimentation of husbands is no more popular than regimentation of other individualistic people.

The courts have expressed sympathy for the husband who gains nothing from the marital relationship except the privilege of paying for the wife's board and lodging.²⁰ But all too little has been accomplished in curbing certain well established "rackets" based upon the rule in question. In an earlier day the threat of scandal resulting from a suit for breach of promise of marriage persuaded many men to con-

⁹ McDonald, *Cruel and Inhuman Treatment as a Grounds for Divorce* (1926) 10 Marq. L. Rev. 215.

¹⁰ 2 Vernier §§67, 115; Keezier, *Marriage and Divorce* (1923) §334; Comment (1926) 11 Cornell L. Q. 544.

¹¹ 2 Vernier 8.

¹² 2 Vernier 266; Keezier, *Marriage and Divorce* (1923) §672; *Graves v. Graves*, 108 Mass. 314, 318 (1871).

¹³ 1 Vernier §§167-175; see also N. C. Const. (1868) Art. X, §6 ("Property of married women secured to them—The real and personal property of any female in this state acquired before marriage and all property, real and personal, to which she may after marriage become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations, or engagements of her husband and may be devised and bequeathed and with the

written assent of her husband, conveyed by her as if she were unmarried").

¹⁴ Warren, *Husband's Right to Wife's Services* (1935) 38 Harv. L. Rev. 421, 622.

¹⁵ Haddock v. Haddock, 201 U. S. 562 (1905).

¹⁶ See, for example, *Consol. Laws of N. Y.* (Cahill, 1930) c. 32, §§146, 170, 182, 183, 445; *Ohio Gen. Code Ann.* (Page, 1926) §§13005, 1008, 1009, 1011.

¹⁷ Mowrer, *Family Disorganization* (1927) c. II.

¹⁸ Albertsworth, *New Interests in the Law of Torts* (1922) 10 Calif. L. Rev. 461, 471-80; McCurdy, *Torts Between Persons in Domestic Relation* (1930) 43 Harv. L. Rev. 1030, 1036-56.

¹⁹ See bibliography on *Family Courts in United States*, Dept. of Labor, *Children's Bureau*, Bulletin No. 193 (1929) 71, Appendix B; 3 Vernier 139, n. 13; North, *The Family Court* (1935) 19 Marq. L. Rev. 174.

²⁰ See *Campbell v. Campbell*, 149 Mich. 102, 112 N. W. 481 (1907); *Northrup v. Northrup*, 200 Mich. 623, 166 N. W. 919 (1918).

tribute money to ladies.²¹ In more recent times, perhaps because divorce is easier, and a divorced wife appears more in need of protection than a jilted fiancée, the alimony racket seems to occupy a favored position.

The Unfairness to the Wife

The wife also is entitled to our sympathy. There are many instances in which the layman, judging her to be deserving, feels his heart wrung with pitiful stories of cases where in practice the rule has failed to function leaving her in critical and destitute circumstances.

The words "delay," "expense," and "complexity of legal machinery" are well known labels for long standing popular dissatisfactions with the administration of justice.²² If domestic relations courts, in the few centers where they are set up, help some of the litigants over some of these hurdles, they also place upon the shoulders of the taxpayer, who supports his wife, the duty of paying money to keep his neighbor in line. In many places these aids are not available.

Even if this court expense is justified, civil and criminal sanctions available to the judges are tools inadequate

to compel all husbands to pay support.²³ Some flee the jurisdiction. Some stubbornly prefer to remain in jail. Some have no property and refuse to work. One thinks of Aesop's fable about the contest between the wind and the sun to see which could make the traveler remove his cloak. The court, armed at present only with the instruments of compulsion, is expected to secure results where cooperation is indicated.²⁴

Existing Administrative Difficulties

A brief outline of the procedure followed by a wife endeavoring to enforce the instant rule will emphasize the administrative difficulties confronting her and will illustrate how in each step designed to solve the incidental problem of support the foundations of family solidarity are shaken.

Before any legal action is taken certain legally relevant facts are necessary to justify the court in taking cognizance of the domestic rift.²⁵ These facts may arise naturally in the course of years, or they may be developed by a malicious wife who nags her husband in the presence of witnesses, and, when she has amassed as much as her lawyer deems necessary, rushes into court to

²¹ Feinsinger, Legislative Attack on "Heart Balm" (1935) 33 Mich. L. Rev. 979; Comment (1936) 30 Ill. L. Rev. 764.

²² Smith, Justice and the Poor (3d ed. 1924) 13-35; Ransom, Improving the Administration of Justice (1920) 20 J. of Am. Jud. Soc. 222.

²³ Colcord, Family Desertion and Non-Support (1931) 6 Ency. of Soc. Sci. 78; Feinsinger, Observations on Judicial Administration of Divorce Laws in Wisconsin (1932) 8 Wis. L. Rev. 27; 1 Marshall and May, The Divorce Court (1932) viii.

²⁴ Litigation, the legitimate offspring of trial by battle, (2 Pollock and Maitland, History of English Law (2d ed. 1923) 600) and with unrestricted murder as a distant ancestor, (3 Holdsworth, History of English Law (1922) 311) pro-

duces in the minds of present day litigants a competitive desire to excel as if in a sporting contest. The man sued by his wife for support may recall dimly some racial heritage of male supremacy and conclude to insist upon family discipline or call the whole thing off. The result of the application of the legal sanctions is, therefore, frequently to destroy the spiritual bonds which, today, are the most potent in holding the family together. The court often must choose between these two evils—non-support and complete family breakdown. The law in the field of domestic relations deals inevitably with personalities as well as with events. It is not well equipped for such a task.

²⁵ 3 Vernier §§150, 161, 162.

ask protection from a situation which is the result of her own doing.

After the facts are gathered, in some jurisdictions, there is a choice to be made among several courts or several legal processes. The wife who has money or whose husband is financially able to pay an attorney's fee may without difficulty secure this guidance. Others resort to domestic relations courts where these exist. Legal aid societies and social service agencies have in their files records of cases where wives have failed to institute proceedings or have discontinued those already begun because the litigation procedure frightened, bewildered, discouraged and shocked them with its conflicts, formality and publicity. Many lawyers, police court judges and others in touch with the problem know of women whose fear of their husbands, or affection for them, have created a sort of paralysis.

After the court and the procedure have been selected, it is a major problem to get and to keep the husband within bounds. If he has property in the jurisdiction the legislature may render it subject to the court order.²⁶ But if he manages to conceal himself or to get over the state line, the wife does not always have the money necessary to apprehend him and secure his return. Even if she has the money, the usual result of bringing him back is incarceration, not payment. In some

jurisdictions the statutes do not make non-support an extraditable offense.²⁷

In cases where the husband is in court the procedure is, too often, a mailed fist even when concealed in the velvet glove of a modern domestic relations court. The judicial discretion implicit in such cases too often is exercised according to the old concepts of status or sin.²⁸ Punishment is imposed because of fault or guilt. The disturbing effect of such sanctions upon a relationship of personalities is self-evident.

A court order may be enforced against a willing or financially able spouse. It may sometimes be executed by frightening the defendant. But where the husband is stubborn the case resolves itself into a bitter battle between the wife and an outraged court on the one hand, and a resolute husband whose domestic affairs have caused him to be branded a criminal. This is a tragic result in a jurisprudence which claims to foster stable family life.

A Tentative Suggestion

It is comparatively simple to find fault with nearly any rule of law. One who attempts to formulate a remedy offers himself to make a Roman holiday. The value of the proposal need not be judged by its ultimate acceptance as the ideal solution. If the sug-

under court supervision to manage, sell and encumber the property of the absent husband for the support of the wife and children.

²⁷ 3 Vernier §162.

²⁶ *Coler v. Corn Exchange Bank*, 250 N. Y. 136, 164 N. E. 882 (1928) (upholding the constitutionality of a New York statute authorizing the seizure of the property of an absconding husband and applying it to the support of his wife), *aff'd*, 280 U. S. 218 (1930). See note (1929) 29 Col. L. Rev. 669. Nine states have already by statute given a deserted wife power

²⁸ See *Weiss v. Weiss*, 174 Mich. 431, 145 N. W. 587 (1913); *Foy v. Foy*, 35 N. C. 90 (1851); *Carmichael v. Carmichael*, 106 Ore. 198, 211 Pac. 916 (1923); *Keezier, Marriage and Divorce* (1923) 301.

gestion promotes discussion, it may lead to a satisfactory answer, and thus vicariously justify itself.

The present suggestion includes modification in the rule and in the administrative machinery.

1. *Modifications in the Rule.* Several alternatives are available here. It would seem quite radical to abolish the rule entirely, though extreme feminists and exasperated husbands might be well pleased. Some jurisdictions have attempted to balance the equities by requiring the wife, if financially able, to support her husband.²⁹ But if the rule is unsatisfactory one can scarcely expect to cure it by increasing its field of operations. The same criticisms may be made against it in the enlarged state.

Still another possibility is to whittle away the scope of its operation by a series of exceptions to cover unfair situations. The whittling process requires easily recognizable boundary marks, but it is difficult to find accurate and valid distinctions in the field of domestic relations. The events leading up to a domestic breach are of long duration, and involve innumerable complex inter-relationships and repercussions, conflicts of personality as well as legal events. If one attempts to employ in the litigation process in a modern common law court ecclesiastical yardsticks such as "fault," "guilt," "clean hands," "innocent spouse," to decide whether a wife is

entitled to support from her husband or not, there are well nigh insuperable obstacles. The issues raised by these yardsticks are not in the field of social utility. The real question for the state is, first, whether the family can be rehabilitated and made again to function as a going concern; second, if the family is done for, what can be done for its members. Such issues require tests with labels in terms of "what is best for the family," rather than "who is at fault." The legally relevant facts available under these older yardsticks are so circumscribed that too often the real issues in the case, in a social sense, are distorted and cramped. The socially relevant facts are too often unobtainable, legally inadmissible or so imponderable as to defy accurate evaluation by a mind which has had only the orthodox legal training.

One may have unshakable confidence in the ability of a jury to answer a single question of fact—did the defendant strike the plaintiff on such and such an occasion—and still doubt its usefulness in striking a balance by a complicated cost accounting system of domestic debits and credits. There was a time when "common sense" dictated a medical treatment composed of traditional spells, incantations, patent nostrums and amazing elixirs. The medical profession has taught us that there are human problems too complex for such simple devices. There is no

²⁹ Cal. Gen. Laws (Deering, 1931) Act 5814, §§6, 7 ("If any pauper, indigent, poor, incompetent, or incapacitated person has kindred of the degree of husband, wife, children (other than minor), father or mother, brother or sister, etc. . . . of sufficient pecuniary ability, such kindred in the order above named shall support such person by paying into the county treasury of such county the sum per month

fixed on by the board of supervisors . . ."); Consol. Laws of New York (Cahill, 1930) c. 49½, §125 ("The husband, wife, father, mother, grandparent, child or grandchild of a recipient of public relief shall, if of sufficient ability, be responsible for the support of such person."). Similar statutes exist in Connecticut, Iowa, Kentucky, Michigan, New Jersey, Pennsylvania and Wisconsin.

reason for the legal profession to oversimplify the issues any more than to employ the methods of the celebrated Judge Bridlegoose.³⁰

Dismissing all these suggestions, we come to the present proposal which involves the following steps:

A. Marriage has several aspects—spiritual, physical, economic. The economic aspect has received modern legislative and judicial attention with respect to married women's property rights, but not enough with respect to support and alimony. This phase of it should be segregated and studied in isolation.

B. Marriage as a sacrament or a status was not bewildering to a medieval ecclesiastical jurist. The legal concept fitted into a social and economic scheme in which the mutual obligations for the spouses were both clear and, in general, enforceable. But the mutual obligations of modern spouses are not so clear or enforceable. Common law administrative machinery is more effective in enforcing a contract with business sanctions behind it than a status in which spiritual values are inextricably involved. If the obligation of a husband to support his wife can be isolated from the rest of the status and a business sanction substituted the result may be a material gain for the spouses with little or no disturbance of the spiritual relationship.

C. A third difficulty to be removed is the antagonism engendered by the litigation process. Some other device should be found which will enable the

spouses to adjust their differences.

Let us first consider the substitution of a new set of concepts. The marital relation has been likened to a partnership. It approximates more closely a corporation because most marriages must have the approval of the state before they are valid³¹ and a divorce may be obtained only by permission of the state.³² If the legal concepts in the economic aspect of family life were expressed in terms now applied to a corporation the subject would be clearer and ready for critical study and improvement.

A corporation deals with three groups of persons—creditors, stockholders and employees. To the first it pays its debts under well recognized legal rules. To the second go dividends in orderly fashion. To the third are awarded wages for services rendered. The economic relations of the wife to the husband can be expressed in terms of debts, dividends and wages without doing violence to her legal rights or his. If she brings to the marriage money or property amassed elsewhere, her rights in it may be defined as those of a creditor. If she contributes to the social or economic improvement of the family by extraordinary services or skills a dividend could reward her insofar as such imponderables may be translated into material values. But for her ordinary services wages would seem a businesslike return.

The use of the wages concept has been urged by many feminists,³³ but

³⁰ Guest, *The Trial of Judge Bridlegoose*, as reported by Francois Rabelais (1923) 23 Rep. Pa. B. A. 235.

³¹ Harris, *Essentials of a Valid Marriage*

(1900) 6 Va. L. Reg. 437, 511, 598.

³² 2 Vernier §64.

³³ Parkhurst, *Is Feminism Dead?* (1935) 237 Harper's Magazine 735.

apparently not as a part of the analogy between the family and the corporation. The market value of wages is determinable.³⁴ As long as the family remains a going concern the wife's wages ordinarily would be a matter of domestic adjustment. But when the family disintegrates, the wife's rights might be protected by something like unemployment insurance.³⁵

2. *Modifications in Administrative Machinery.* There is nothing unusual in utilizing the insurance device to solve social problems. A long list of precedents show that it is practicable and that it has an inherent flexibility which should make possible an adaptation to a somewhat novel situation.³⁶ The question is whether it can be adapted to the domestic relations field. An illustration will suggest some of the administrative problems and bring up tentative proposals for their solution.

Let us assume that an insurance fund has been established with all the necessary administrative details; that it offers a policy or variety of policies of insurance to husbands and wives promising to pay the wife a certain sum or sums upon the event of the dissolution of the family; that it will function when the wife, unable to live adequately upon the normal returns for her services in the home, is faced with

an appeal to the charity of friends or the public authorities administering the poor laws; that the wife must elect either the present system, or the insurance plan, but not both.

M and W, planning to marry, or already married, and being convinced that the possibility of domestic dissolution with the consequent unemployment of the wife for an uncertain period is a contingency as worth guarding against as the illness or death of the breadwinner, the burning of the residence or the theft of the family possessions, come to the office of an insurance company and make application. They have decided that it is more businesslike to accept the insurance protection than to rely upon the older methods.

They desire to know, first of all, the nature of the fund out of which the insurance will be paid. Public³⁷ and private insurance funds, sustained by premiums, by taxation and otherwise, have engaged the attention of experts in the field for a sufficiently long time so that several working models are available, any one of which geared to the local conditions of a particular jurisdiction, should offer adequate service.

The second question will relate to the cost of the protection. After a reasonable period of experimentation it

³⁴ Handbook of Labor Statistics (1936 ed.) 1096-1115; Havighurst, *Services in the Home* (1932) 41 Yale L. J. 386.

³⁵ See Unemployment Compensation (1936) 3 Law and Contemp. Prob. No. 1; Old Age and the Welfare Titles of the Social Security Act (1936) 3 Law and Contemp. Prob. No. 2; note (1936) 31 Ill. L. Rev. 386.

³⁶ It is hardly necessary to mention the fact that the insurance device has been employed to protect groups of workmen from the hazards

which beset damage suits for injuries to them, widows who had children to rear, groups desiring hospitalization and to distribute the cost of other social and economic problems.

³⁷ 48 Stat. 168 (1933), 12 USCA §264 (1935) (Federal Deposit Insurance Corporation); 49 Stat. 620 (1935), 42 USCA §301 (1936) (Social Security Act); 43 Stat. 1308, 1309 (1925), 38 USCA §§511, 512 (1928) (War Risk Insurance); 39 Stat. 742 (1916); 5 USCA §751 (1927) (Employee's Compensation Act).

is possible for any insurance company to arrive at an actuarial figure for premiums, on certain classes of risks. While it is usual for the insured to pay the premiums, it is not unknown for the beneficiary to undertake the burden. In cases where the individual does not have sufficient funds to meet the payments, group insurance, paid by the employer,³⁸ or a group of individuals on a cooperative basis³⁹ or even by the state⁴⁰ is not unknown.

The nature of the policy next engages attention. This would be in the form of a promise by the insurance agency, public or private, to pay certain monies in a certain manner upon the happenings of the contingency. The amount of the policy may be a matter for individual agreement. There is much to be said, however, for the arrangement, now in effect in workmen's compensation policies, which provides for a return to the beneficiary or his family at a schedule based upon the wages earned, and the nature of the disability, whether temporary or total.⁴¹ The manner of distribution of the money upon the happening of the contingency, whether in a lump sum or installments, may also be the subject of individual preference. It is likely, however, that the state may desire some voice in the matter since the purpose of the plan is to protect the public from the need to pay for the wife's support. The duration of the liability of the fund, whether for a term or an endowment basis or

otherwise, may be adjusted to fit the particular family.

The next step is to make the application. From a business standpoint this is important because it presents the facts which enable the insurance fund to determine whether or not the applicant is an insurable risk. It is the practice of insurance companies not to accept the application at its face value, but to make a thorough investigation of the applicant to prevent fraud, and for other reasons. Hence one finds physicians on the staffs of insurance companies. Other business organizations also probe into the financial ability of a prospective customer, his credit rating and other personal matters. Some of the small loan companies of the country employ a social worker to aid in obtaining the social background of the prospective borrower and to investigate any difficulties which occur during the continuance of the loan.

In the light of these established practices there is little novelty in the proposal that part of the application procedure for unemployment insurance for the wife should be an investigation by a trained social worker as to the social stability of the family. There seems no better way to determine whether it is an insurable risk. The technique of such an investigation is well known to trained social workers, and they are able to secure a maximum of information with a minimum of annoyance to those being investigated.⁴² Experience should permit the erection

³⁸ Consol. Laws of New York (Cahill, 1930) c. 661, §§90, 99 (workmen's compensation law).

³⁹ Bamberger, *Legal Aspects of Group Insurance* (1934).

⁴⁰ Pub. Laws of N. C. (1936) c. 1, §14.

⁴¹ See schedule of payments for injuries due

under Workmen's Compensation Act, N. C. Code Ann. (Michie, 1935) §8081 (mm).

⁴² Landis, *If I Were a County Relief Director* (July, 1935) 71 *Survey* 208; Stinson, *I am a County Relief Director* (Oct., 1935) 71 *Survey* 296.

and maintenance of reasonable standards here as in other business relations. It is possible that during an experimental period the executives of the insurance fund will require periodic renewals of the application on which occasions the fund may relieve itself from liability in the event of fraud or a threatened domestic instability. During the continuance of the policy there may be occasional social investigations and perhaps we may hear the slogan, "See your social worker twice a year," just as we now find life and health insurance companies advising their clients to have periodic conferences with physicians and dentists. When group insurance in this field has become well established there may be organized supervision which will tend, by preventive means, to keep families from disintegration. The analogy is to preventive work in the medical field.

The insured will look forward to certain contingencies: the ending of the term when the contract will cease and determine; the death of the husband when the policy may provide a payment to the wife as in ordinary endowment life insurance; the death of the wife, when the policy may provide an endowment return to the husband; the continuance of the marriage for a certain number of years, when an endowment may be payable to both parties. Such matters may render the plan more attractive to individual families.

What will happen when the family breaks down? A break down may mean a domestic quarrel, a desertion, or a divorce. Through its periodic social investigations the insurance fund

should have advance notice, and it is assumed that all sorts of preventive efforts will have been made. When the contingency, in spite of everything, does occur, the following steps are in order:

1. A filing of a claim by the wife.
2. A social investigation of the claim by the insurance fund.
- 3 The approval or rejection of the claim.

If the claim is approved, payments will be made at once. If it is rejected, the wife may sue the insurance company, presenting such facts as she may have to support the contention that the contingency has occurred and that it is bona fide. From this point the proposal merges with a litigation procedure and need not be discussed here. This, roughly, is the plan both as to theory and practice. Attention should now be given to some obvious criticisms.

Will the Plan Work?

Since it is unlikely that any plan will meet a test of perfection, let us submit the present proposal to two less exacting measuring rods. (a) Does it meet the more serious inadequacies in the present system? (b) What is the public reaction regarding it likely to be? On uncontested claims the proposed plan should function on behalf of the wife more speedily, less expensively, and more simply than the present court procedure. On contested claims, it has two advantages over the present court machinery. There will always be a defendant within the jurisdiction of the court who is able to pay a judgment secured against it. The litigation will

be between the wife and the insurance company—not the wife against the husband. There is no reason to assume that claims against insurance companies will be, in the long run, any slower or more expensive or complex than the present procedure. The expense would be borne in large measure by the insured, and this should relieve the taxpayer. There would be no occasion to threaten the husband with litigation, a prison sentence or any other punishment. He would not be a party to the litigation, at most only a witness. The process should have little disturbing effect upon family solidarity.

From the standpoint of the husband the proposed plan is fairer than the present system. He may elect to continue as at present or to protect himself by insurance. In either event he will embark upon marriage with a clearer knowledge of its financial risks and business obligations. His economic duty to support his wife is discharged just as are his payment to the landlord, the butcher, the baker and the candlestick maker. While his power over the person and property of his wife would not increase, here is a definite check upon her control over him and one which permits of solution of differences of opinion without dragging him into court.

From the standpoint of the state the proposal also seems satisfactory in that it isolates, prepares for scientific study, and disposes of economic problems of marriage in a manner which does not aggravate the relations of the spouses or weaken whatever ties may still hold them together. Yet there is nothing perfect about it. Even though it ap-

pears good on paper, it may strike snags in practice.

The first possible snag is the problem of regimentation. Will people voluntarily submit their personal affairs to investigation by social workers and others, no matter how tactful and able? There are several reasons why they may. The applicant may come to believe that the business advantages of the plan outweigh considerations of privacy. Since, in an earlier day, individuals submitted to supervision by families and church officials, the proposal is not novel, rather it is a return to fundamentals. If standards of living were more clearly defined and the causes of breakdown statistically presented, individuals might be aroused to a sense of pride in keeping the rate of marriage dissolutions in their home community at a lower rate than in the neighboring city.

A second snag is the possibility that frauds may be perpetrated upon the fund so extensive and ingenious as to discourage its operation. It is difficult to see how such frauds would be greater than those now attempted in other forms of insurance. Since they are being met and insurance companies still show a profit, it is likely that ingenuity, backed by an enlightened self interest, will find a solution. The social work investigation should reduce the possibility of fraud to a minimum and the offenders could be prosecuted criminally with more effect than a wife can bring to bear upon her husband.

A third snag is the possibility that romantically inclined persons will resent what may appear to them a commercialization of the marriage relation.

If this were the only occasion dragging the domestic intimacies before the light of publicity, the argument would be stronger. Domestic matters are spread abroad in the columns of every newspaper and many magazines. Court proceedings receive wide attention. A generation which has learned to discuss sex without distress of mind or spirit, and to seek aid from advice-to-the-lovelorn columnists is not likely to be frightened by the instant proposal. When an engagement is announced insurance agents flock to the prospective bridegroom and discuss with him such dismal subjects as death, illness, accidents. Since young love can see a business value in protecting the family from such spectres, it would seem that there is nothing scandalously shocking in the suggestion that protection should be afforded the wife, if a family dissolution should occur.

The fourth snag is the possibility that the proposed device will free the husband from a sense of obligation to his family, and that a general exodus will ensue. There seems to be no real reason to fear such a catastrophe. While the present proposal is not intended to solve the whole problem of family disintegration, it is not so revolutionary as to upset established habits. The proposal is voluntary, not compulsory. If

the husband and wife do not elect it, there are still the existing rules and machinery. If they take the insurance it does not necessarily mean that they abandon all marital ties. No doubt some men will seek their freedom who today are restrained by a fear of the consequences. Yet one cannot call this an unmitigated evil. A family held together only by fear is not a healthy social organism such as the state desires. How can it perform adequately the tasks which the state requires of it, such as the rearing of children?

Conclusion

We have now considered a rule of law, criticized it, and suggested a remedy. A word should be said as to the manner of putting the remedy into effect. Two steps are required to establish the system: (a) A statute declaring a policy, abolishing the status concept, substituting a series of business principles. The statute should set up a fund and provide for its operation; allow families to elect the present system or the proposed system, but not both. (b) Sufficient experimentation to secure experience in the administrative details.

The proposal is no panacea, but there is something to be said in its favor.⁴³

⁴³ Lawyers may be concerned over the possible loss of large fees now occasionally obtainable in such cases. It would seem that a small

fee in the hand might well be worth two large ones in the bush. In many of these cases today there is no chance for a fee.