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Marriage in an Age of Possibility: Joseph Epstein's Divorced In America

William I. Fine
Indiana University School of Law, bill@williamfinelaw.com

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Joseph Epstein’s *Divorced In America*

WILLIAM I. FINE

“. . . and this is the extraordinary fact about divorce actions—the odds are heavily loaded in favor of nobody coming out the winner.” p. 121

Ever since the William Loud family first exhibited their marital difficulties on the Public Broadcasting Service, there has been a new direction in the popular literature on American divorce. In the past, the study of marital breakdown relied heavily on a foundation of case studies and empirical data. As society became more complex and variable, permutations from the basic theories became inextricably confused. Often the validity of a research technique would become a greater point of controversy than the results achieved. The product was a contradictory and prematurely dated body of knowledge in which no conclusive evidence could be assembled for an attack on the inadequacies of divorce law or the causes of marital breakdown. This left social engineers, already struggling against the inertia of archaic precedents, in a position where neither the status quo nor their reforms could be justified.

A quick glance at the *Reader’s Guide* for the past year will show that there is presently a growing emphasis on a more personalized view of the dissolution of marriage. The now questioned value of relying entirely on sociological and psychological studies has led some social commentators to seek new perspectives in dealing with divorce. In repudiating the faceless case study method and controversial research procedures, this new development focuses on how divorce affects the individual. The approach has changed from a discussion of arbitrary class divisions and personality categories to how the reality of divorce affects a particular individual.

One of the few points of general agreement among sociologists, lawyers, and laymen is that divorce in this country is in a terrible state of confusion. Man’s need to come to terms with this human relationship has encouraged a wide variety of explanations and remedies. This newest direction is a quasi-philosophical attempt to re-examine mankind’s state of marital existence: Why do we marry? Why do we divorce? What are the roots of disharmony? How can the ordeal be made easier? In effect, this is the reciprocal of the “creative marriage” manuals
which have for so long led the bestseller lists. In theory and format both groups have a great deal in common by presupposing the failure of traditional approaches. The current popularity of these writers may be a mere fad, nourished by a sordid curiosity on the part of its audience, but whatever its value it does represent a significant and viable alternative to earlier perspectives.

For the most part this movement has not affected the professional literature and has been restricted instead to weekly women's magazines and the shallow paperback treatises which in this decade have become the popular fodder for cocktail party philosophers and talk show symposiums. Within the overall mediocrity of this whole field it is refreshing to come across a provocative text which will appeal to both the general public and the social scientist. *Divorced in America* is such a book. In it, Joseph Epstein, a recent divorcé himself, utilizes the new individualistic perspective as a catharsis for his own beliefs, frustrations, and experiences. Alternating between sections of poignant second person autobiography and scholarly exposition, Epstein broadly narrates the condition of family life in the United States. It is this interweaving of the author's own polemic within his very literate reminiscences and cyclopedic commentary which presents the book's greatest appeal and thus its most significant contribution to the study of American divorce.

The text is divided into three sections which correspond to sweeping discussions of marriage, divorce, and life after divorce. It may at first appear that Epstein is overly ambitious, but these comprehensive background materials are basic to an understanding of the author's own life philosophy. Essential to Epstein's position is the proposition that marriage and the nuclear family are at the very foundation of human existence. Like the advocates of "creative marriage," Epstein believes that the institution of marriage is basically sound although it is a difficult and imperfect existence. This perplexing condition is aggravated by the unrealistic expectations which we bring to the union, unwarranted assumptions of marital life which are unrealistic and fatally romantic.

Apart from the inherent tension of marital relations, the author paints a gloomy portrait of American family life.

If [Thomas] Mann had the impression that 90 percent of the marriages of his day were unhappy, in our day the appropriate figure seems more on the order of 98 percent. p. 47

Epstein attributes this to a state of "tragic tension" which pervades the marital relationship. The author's discussion of mankind's doomed search for fulfillment is reminiscent of the more vibrant authors of the beginning of this century. Re-establishing those literary themes and citing analogies in western fiction, Epstein's concept of marital life is more of a conflict than a symbiosis. Epstein writes that even in sexual matters "... imagination everywhere outdistances physical reality, with temperament as a consequence trained to permanent dissatisfaction." p. 66

Such an outlook is particularly suggestive of D.H. Lawrence's life philosophy as expressed in his fiction and essays. Joseph Epstein exhibits the same Laurentian talent for brilliant insight which makes the provocative and vibrant attitudes of that author so memorable. Epstein narrates the same mechanical human existence that Lawrence considered and like Lawrence depicts this life as a futile search for the ideal interrelationship, i.e., personal fulfillment. It is this worldly attitude which raises the Epstein book above the typical writing of this modern divorce
Epstein’s narrative is so compelling that the reader is drawn into the practical and emotional considerations of a pending and then completed divorce. It is this aspect which provokes serious analysis of the legal and social mechanisms which establish and control marriage in our society. This book is not a listing of percentages and generic elements, but rather is one intelligent and perceptive man’s recollection of what happened to him during the ordeal of divorce.

The book is fatalistic though in its view of the human capacity to change behavior. Instead it directs its vehemence at the legal institution of marriage. To Epstein, American divorce law is

... a system neatly if not consciously devised to demean the law generally, exacerbate the emotions and often ruin the lives of those who find themselves caught up in it, and finally make a mockery of marriage itself. p. 114

It is this hypocritical and archaic institution which Epstein condemns as the most inflammatory aspect of the marital tension.

The source for Epstein’s attacks is a general knowledge of divorce law developed through his own experiences and information drawn from Max Rheinstein’s book, Marriage Stability, Divorce, and the Law. Unfortunately, Epstein’s selective translation of Rheinstein’s text is already dated in some areas and consequently Epstein’s thesis suffers from its overreliance on this one source. Furthermore, the author’s unfamiliarity with legal thought is apparent in many basic misconceptions (e.g., equating the criminal idea of “guilt” with “fault” and extending that misapprehension to considerations of “justice” and “punishment” in Fault divorce). Notably there is a conspicuous absence of No-Fault divorce in the author’s attack. Epstein does his reader a disservice by corrupting an otherwise objective treatment with these manipulated presentations of fact. Still, not all of his venom is entirely misdirected.

The villain of the book is clearly the law and its practitioners.

No one ever said that divorce was supposed to be easy. Nor, even though some divorces are more brutal than others, is it ever really easy. But as things stand now the law makes the process of getting a divorce more difficult than it need be—everywhere, as things stand now, feelings are exacerbated, horror is added to pain, and people who are merely imperfect are turned into all-too-perfect predators, each ready to savage the other lest they themselves be savaged first. p. 134

By focusing only on the interpersonal relationships of marital breakdown, Epstein de-emphasizes the practical considerations in modern divorce law to emphasize the hypocritical exigencies of the law’s precedent and compromise system. The layman in Epstein can see no reconciliation point between the realities of life and the inertia effect of old law. To him, it is simply a matter of the lethargic effect of the system’s vested interests. This is nowhere more apparent than in the discussion of alimony.

Not that divorce lawyers initiated alimony to begin with, nor have they feverishly lobbied to keep it alive; but as the one group that has seen the day-to-day workings of alimony and is thus in a solid position to discuss it in an informed and impartial way, divorce lawyers, not about to kill a good thing for themselves, have remained silent and grown fat on the status quo. p. 156
Such allegations are of course not new to the legal profession and there is undoubtedly much to be said for the charge of “divorce profiteering.” Still, Epstein oversimplifies the problem by trotting out familiar scapegoat theories to balance his fatalistic perspective. It is too easy to conclude that the problems of the uniquely impotent individual can be cushioned by a collective of knowledgable specialists. This ignores the essential problem in the study of divorce law. The great diversity of marital life styles, the many permutations which may lead to divorce and all the pragmatic legal considerations, in combination perclude the broad application of any one schematic for divorce.

Epstein offers no answers, but his book is invaluable as one more approach to the problem. The book conveys a sense of human drama to the reader and in this awakening of sympathy and subtle understanding the search for an answer may perhaps be renewed.