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COMPARATIVE LEGAL STATUS OF AMERICAN AND SOVIET WOMEN

ALETA WALLACH*

INTRODUCTION

The purpose of this comparison is to identify and evaluate the interrelationships of the group status of women, the law and the fundamental assumptions which inform the law to determine what, if any, role it can play in social change. Initially, in order to make sense of the legal status of Soviet and American women, one must analyze certain aspects of the conceptual background which illuminates ideological commitments and the divergent ways in which the relationship between the sexes may be conceived. Next, specific facets of the legal system such as statutes and decisions must be examined with particular reference to family law and related areas to exemplify the interconnection between non-legal values and presuppositions about women and men as well as the way law itself has an impact upon these values and presuppositions. The argument developed in this analysis allows one to make the following inferences: 1) the legal status of American women is oppressive to them, and there is no contrary national attitude or policy; 2) the legal status of Soviet women is theoretically equivalent to men as is consistently evident in all laws and expressions of public policy; 3) as a practical matter, however, Soviet women have not achieved rights and freedoms equal to those enjoyed by men; 4) solution of the problem of women's legal status does not reside solely, nor perhaps even primarily, in legal reform.

It would be simple-minded to suppose that legal reform can provide a panacea for solving problems rooted deeper than the legal strata; yet, it would also be senseless to suppose that the deeper problems can be solved without legal reform. Changes in the law are necessary, but are not sufficient conditions to alter discriminatory practices. The Soviets reshaped their consciousness of women by legal reform, but this has so far been insufficient to engender actual changes in the life of the Soviet people. This is due, at least in part, to the nature of the change itself: a systematic but "official" revision rather than an organic outgrowth of contemporaneous social values and attitudes.

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CONCEPTUAL BACKGROUND OF THE TWO SYSTEMS

At this point some conceptual background would provide a useful context for the subsequent development of this thesis. The exact function and characteristics of a legal system are determined by the basic assumptions inherent in the social arrangement that it maintains and enforces. The values displayed in the character of the legal system (and other social systems also) not only manifest the values by which the society at large defines itself but are concomitantly reinforced and perpetuated by the legal institution itself. A society's legal institution operates as a common nexus to which and through which groups and individuals relate: by defining legal relationships, it controls political relationships of groups, classes and sexes through the conferral of legally recognized powers, privileges, rights and liabilities. The nature of these grants reveals the society's politics[1] and, hence, its sociological type. As American women become increasingly aware of their inferior and disadvantageous position in American life, the inadequate institutional structure of American society becomes more apparent; attention focuses upon the characteristics of its type, and the visibility of alternative institutional forms which afford women a social position of equal participation and power becomes a critical factor in any consideration of rejection of our present institutional form whose mainstay, the family, requires the subjection and exploitation of women. Were there to be a revolutionary change in family structure, the impact upon the institutional structure of our capitalistic society and, therefore, upon our sociological type might well be far-reaching. Thus, before one can intelligently compare the legal status of American and Soviet women, one must know the national ideology and identity of their respective countries.

In the United States

America's politics are sexual and its sociological type patriarchal. In order to preliminarily illustrate how the phenomenon of group control through power operates, a glance at the more familiar example, race relations, will be helpful. For example,

> recent events have forced us to acknowledge at last that the relationship between the races is indeed a political one which involves the general control of one collectivity, defined by birth,

1. "Politics" is used here to mean that arrangement of groups according to power relations whereby the dominant group maintains its position by subjection of other groups. For further discussion of this definition, see K. MILLETT, SEXUAL POLITICS 23-58 (1970) [hereinafter referred to as MILLETT]. *See also id.* at 23 n.1.

> over another collectivity, also defined by birth. . . . The study of racism has convinced us that a truly political state of affairs operates between the races to perpetuate a series of oppressive circumstances. The subordinated group has inadequate redress through existing political institutions, and is deterred thereby from organizing into conventional political struggle and opposition.[2]

A systematic scheme for domination and subordination of one birth group by another also exists in the American system of sexual relationships. This scheme

> is one which tends . . . to be sturdier than any form of [racial] segregation, and more rigorous than class stratification, more uniform, certainly more enduring. However muted its present appearance may be, sexual dominion obtains nevertheless as perhaps the most pervasive ideology of our culture and provides its most fundamental concept of power.[3]

Patriarchy, as this form of "control through social authority"[4] is called, is empirically evident everywhere: every means of power in American society, the military, industry, technology, universities, science, courts, political office, finance and the coercive power of the police, is entirely under male control.

"Sexual politics [as this form of institutional sexual domination can be called] obtains consent through the 'socialization' of both sexes to basic patriarchal politics with regard to temperament, role, and status."[5] It invokes all our social institutions to participate in the process of conditioning to patriarchal ideology. The legal institution is, of course, a central prescripter through statutes and an admonisher through judicial decisions. Although in current patriarchies the male's de jure supremacy is somewhat undercut through extension of rights to divorce, protection, citizenship and property to women, their chattel status perseveres in instances such as obligatory loss of name,[6] duty to adopt the husband's domicile[7] and the prevalent legal assumption that marriage involves an exchange of the female's domestic and sexual

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2. *Id.* at 24.
3. *Id.* at 25.
4. *Id.* at 25 n.3.
5. *Id.* at 26.
6. *See* notes 51-55 *infra* and accompanying text.
7. *See* notes 57-58 *infra* and accompanying text.

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service (consortium) in return for financial support.[8] Through law's prohibition against illegitimacy,[9] patriarchy's main unit, the family, is reinforced, and the status of children and women is made dependent upon and subordinate to the male. Prescription against abortion[10] not only denies a woman her very basic right of biological control over her own body but also effectively denies her the right to control and determine her entire life. The double standard of sexual morality is even given the strength of "unwritten law"[11] which permits a male complete defense if he kills another who was having intercourse with his wife, although no state permits a wife to assert the "unwritten law" defense if she kills another who was having intercourse with her husband. Kentucky still allows proof of a wife's unchastity at the time of marriage to be a sufficient ground for a husband to obtain a divorce, but proof of a husband's unchastity at the time of marriage is an insufficient ground for a wife to be granted a divorce.[12] Finally, the inferior status of working women as the object of legalized job and pay discrimination is a notorious fact.[13]

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8. MILLETT 35.

Divorce is granted to a male for his wife's failure in domestic service and consortium: it is not granted to him for his wife's failure to render him financial support. Divorce is granted to a woman if her husband fails to support her, but not for his failure at domestic service or consortium. But see Karczweski versus Baltimore and Ohio Railroad, 274 F. Supp. 169, 175, N.D. Illinois, 1967, where the precedent was set and the common law that decrees a wife might not sue for loss of consortium overturned.

Id. at 35 n.31.

For a thorough discussion of current law on consortium, see L. KANOWITZ, WOMEN AND THE LAW 80-85 (1969) [hereinafter cited as KANOWITZ]: "An overwhelming majority of jurisdictions still permit a husband to sue for negligent invasion of his right to consortium as a result of his wife's injuries, but do not permit the wife to do so where her husband has been injured." *Id.* at 85.

9. *See* notes 103-06 *infra* and accompanying text.

10. *See* notes 90-96 *infra* and accompanying text.

11. N.M. STAT. ANN. § 40 A-2-4 (Repl. 1964); TEX. PEN. CODE ANN. art. 1220 (1961); UTAH CODE ANN. § 76-30-10 (4) (1953). *See* State v. Williams, 49 Utah 320, 168 P. 1104 (1917); KANOWITZ 92-93, 96 n.361.

12. KY. REV. STAT. ANN. § 403.020(3)(4) (1969).

13. The Department of Labor statistics for average year-round income show that women's average wage is one half that of men: white male, $6,704; non-white male, $4,227; white female, $3,991; non-white female, $2,816. Although the educational level of women is generally higher than that of men in comparable brackets, women who are college graduates do non-professional work and the types of employment are generally menial, ill-paid and without status. Thus, poverty is exceedingly a woman's problem. *See* U.S. DEP'T OF LABOR, WOMEN'S BUREAU, HANDBOOK ON WOMEN WORKERS (1969); U.S. DEP'T OF LABOR, WOMEN'S BUREAU, SEX DISCRIMINATION IN EMPLOYMENT PRACTICES (1968). The toil of the working class woman is accepted by the patriarchy as a source of cheap labor in factory and lower grade service and clerical positions. Its wages and tasks are so unrewarding that, unlike more prestigious employment for women, "it fails to threaten patriarchy financially or psychologically." MILLETT 41. Women who are employed still carry the burden of their second job, domestic service and child care, which is generally unrelieved either by socialized day care agencies or by the cooperation of husbands. *See* U.S. DEP'T OF LABOR, WOMEN'S BUREAU, DISCRIMINATION IN

Very recently, in its first interpretation of the sex discrimination provision of Title VII of the 1964 Civil Rights Act,[14] the Supreme Court has ruled that parenthood, if demonstrably more relevant to job performance for a woman than for a man, could be a basis for refusal to hire a woman.[15] It is clear that such laws and practices are links in the chain which bind women and detain them from achieving equal dignity with men and are therefore proper targets for demolition. Hence, one of the immediate goals of women's struggle for liberation in America is to surmount the primary parapet of their subjection: the present social arrangement and its fruit and nourisher, the legal institution itself, whose parameters perpetuate the abject legal status of American women.

In the Soviet Union

That historically Russia was a patriarchy where women were subject to the Church and the state is indisputable.[16] Since the October

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EMPLOYMENT PRACTICES (1968); C. BIRD, BORN FEMALE (1968).

The following California laws are typical of discriminatory practices sanctioned by the law: CAL. UNEMP. CODE § 2626 (West 1956) (excluding pregnancy or illness caused by pregnancy from disability coverage); CAL. LABOR CODE § 1197.5 (West 1955) (requiring equal pay for equal work but allowing wage differentials for seniority, skill and ability without considering the reasons a woman may not be in a particular position in the first place). CAL. LABOR CODE § 1251 (West 1955) restricting female weight-lifting to a fifty pound maximum, effectively keeping the many women who have ability to lift in excess of fifty pounds from competing for the higher paying jobs, has recently been struck down by a federal district judge in *Utility Workers, Local 246 v. Southern Cal. Edison Co.*, 320 F. Supp. 1262 (C.D. Cal. 1970). CAL. LABOR CODE § 1350 (West 1955) limits working hours for women to a maximum of eight hours per twenty-four hour period while § 1350.5 allows women working in interstate commerce a maximum of ten hours—making suspect the "protective" purpose of the restriction and elucidating its discriminatory purpose.

INT. REV. CODE of 1954, § 214(b) requires that a working wife wishing to deduct expenses for child care file a joint tax return with her spouse and disqualifies her from the deduction if their adjusted gross income exceeds $6000. This, in effect, discourages women from seeking high paying jobs by making them "pay" for the right to have a superior position, even though all working women equally require some type of child care service. In principle, it punishes the woman who has a career for purely reasons of personal preference and development where there exists no concomitant dire economic necessity. Moreover, the maximum deduction of $600 cannot cover the annual child care cost to a working wife regardless of what her job pays, and therefore she must "pay" for her right to employment outside the home.

14. 42 U.S.C. §§ 2000e et seq. (1964).

15. Phillips v. Martin-Marietta Corp., 91 S. Ct. 496 (1971). The dicta in this case indicate the present Court's preparedness to allow a mother's role in parenthood to be institutionalized beyond that of a father's and therefore allow her freedom to be more circumscribed than his. Justice Marshall, concurring, said the majority "has fallen into the trap of assuming that the Act [Title VII] permits ancient canards about the proper role of women to be a basis for discrimination." *Id.* at 498.

16. For a general discussion of the Russian woman's historical position, see F. HALLE, WOMAN IN SOVIET RUSSIA (1933). In the middle of the sixteenth century during the reign of Ivan the Terrible, the Domostroy or Domestic Ordinance was pro-

Revolution, there has been a vacillation between the initial commitment to egalitarian ideals based on Marxist ideology which informed the new institutions and the consequent oppressive changes which emerged during the Stalinist era which again subordinated women. This period was followed by the rebirth of egalitarian rhetoric in the 1968 Family Code.[17] It remains to be seen whether this most recent espousal will be mere rhetorical idealism or have a significant impact upon reality. While the focus of this article is primarily upon the current legal status of Soviet women, it will be helpful to look at the historical[18] changes leading up to the 1968 reform.

The direction of the historical development is anticipated by Engels and articulated by Lenin. It is no accident that the Bolsheviks immediately sought to expunge the very mechanisms of patriarchy—the inequitable family which required a woman to lose her name and choice of domicile and prohibitions against illegitimacy and abortion. Such changes were

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mulgated wherein "woman is . . . reduced to a mere object, degraded to a possession of the 'domestic and family abbot', whose part it is only to command, whilst she must obey under all circumstances:"

> If a wife refuses to obey, and pays no attention to what her husband . . . tells . . . her . . . it is advisable . . . to beat her with a whip according to the measure of her guilt, but not in the presence of others, rather alone . . . . And do not strike her straight in the face or on the ear, be careful how you strike her with your fist in the region of the heart . . . and do not use a rod of wood or iron. For he who allows himself to be carried away to such actions by anger may have much unpleasantness; if, for instance, she loses hearing or goes blind or breaks a bone in her hand or foot or elsewhere . . . . Keep to the whip . . . and choose carefully where to strike: the whip is painful and effective, deterrent and salutary . . . .
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> . . . But if her fault is very serious, the matter not so simple, and her disobedience beyond all bounds, then strip off her shift, seize her hands, and give her a sound beating—nicely and courteously, so as to eschew all anger . . . .
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> . . . A woman must consult her husband on all occasions about everything . . . . If she receives an invitation or summons anybody to visit her, it must only be if her husband permits it . . . . But she must talk with her guests of nothing but embroidery and household matters . . . and the way in which good wives should live and conduct their households, and instruct the children and servants, and how they should obey their husbands and seek their counsel upon everything . . . . And if she knows of nothing edifying, she must seek word of it courteously . . . . With good women like this one can pass the time: not for the sake of eating and drinking, but for good converse.

Quoted in *id.* at 13.

17. Law of June 27, 1968, FUNDAMENTAL PRINCIPLES OF LEGISLATION OF THE U.S.S.R. AND UNION REPUBLICS ON MARRIAGE AND THE FAMILY, [1968] 27 Ved. Verkh. Sov. S.S.S.R. Item 241, at 400 et seq. (Supreme Soviet U.S.S.R.), 4 Sov. STAT. & DEC., No. 4, at 106 et seq. [hereinafter cited as FUNDAMENTAL PRINCIPLES, reproduced in the Appendix].

18. The American patriarchy is not treated to a similar historical survey because it is assumed that people are somewhat familiar with American historical tradition. For an historical background on the woman's rights movement in America, see E. FLEXNER, CENTURY OF STRUGGLE (1970); MILLETT 61-156.

fundamental to communist ideology. Engels thought that the first historical example of class antagonism arose between men and women in monogamy, and that the

> first example of class oppression was that of the female by the male, and was caused by the existence of private property. Seen through the prism of the Marxist optic, the battle of the sexes was regarded as the prototype of the class struggle—man appropriated and enslaved woman as his means for the production of 'legitimate' heirs to whom his private property could be transmitted. Hence the institution of monogamy, the strong sanctions against the adulteress (but not against the philanderer), the double standard (in favor of men only), the existence and encouragement of prostitution, and the stigmatization of the unmarried mother and her offspring (the 'natural' or illegitimate child).[19]

The new institutions would have to liberate proletariat marriage from the confines of property relations so that the relationship could become a relationship based on love, mutual comraderie and choice rather than on contract. Women would be employed and thereby liberated from dependence upon dominant males. A new family pattern would emerge as the traditional one dissolved which would liberate women and children from male authority and grant them freedom and the right to equal participation in the production process. "Emancipation of women became a national program, and attempts to obstruct it were punished under the criminal code as counter-revolutionary crimes."[20] Communists needed an alternative to the bourgeois family which Engels "identified as no more than legal prostitution in the buying or enticement of brides with money, and a cover for polygamy among husbands who were unfaithful to their first wives."[21] Lenin, discussing the bourgeois social arrangement with

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19. Field, *Workers (and Mothers): Soviet Women Today*, in WOMEN IN THE SOVIET UNION 9 (D. Brown ed. 1968).

20. Order No. 27 (Sup. Ct. U.S.S.R. 1929), as cited in Berman, *Soviet Family Law in the Light of Russian History*, 56 YALE L.J. 26, 49 (1946).

21. J. HAZARD, COMMUNISTS AND THEIR LAW 271 (1969). R.S.F.S.R. 1960 (Criminal Code) art. 232 provides:

> The acceptance of ransom for a bride by the parents, relatives, or in-laws of the bride, whether in money, livestock, or other property—is punishable by deprivation of liberty for a period of up to one year and confiscation of the ransom, or by correctional labor for the same period, and confiscation of the ransom. The payment of a ransom for a bride made by the bridegroom, his parents, relatives or in-laws—is punishable by correctional labor for a period of up to one year or by public reprimand.

Reprinted in J. HAZARD, I. SHAPIRO & P. MAGGS, THE SOVIET LEGAL SYSTEM 502-03 (2d ed. 1969) [hereinafter cited as HAZARD, SHAPIRO & MAGGS].

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Clara Zetkin,[22] said:

> The decay, the corruption, the filth of bourgeois marriage, with its difficult divorce, its freedom for man, its enslavement for the woman, the repulsive hypocrisy of sexual morality and relations fill the most active minded and best people with deep disgust.[23]

In this ideological context, then, it was appropriate that the Criminal Code[24] provided the wife with a legal remedy against rape by her husband. The Plenum of the Supreme Court, in interpreting the corresponding article of the 1922 Criminal Code, said that

> marriage in Soviet Law is the free cohabitation of a man and a woman, and is not a right of the husband, founded on contract, to sexual relation and a duty of the woman to present her body for the satisfaction of the sexual desires of the husband.[25]

The Bolshevik Revolution presented an opportunity to liberate women; the first Soviet Family Code of 1918[26] announced their liberation by "paving . . . the way for the transformation of the family into a free association, bound not by law but only by the free will of the members."[27] The Code abolished "the concept of grounds for divorce as these had existed in the ecclesiastical law of the Russian Orthodox Church and in some other religious legal systems of the empire."[28] Divorce was available to either partner upon request, and neither had to appear in people's court.[29] Separation of marital property freed the wife from the husband's economic dominance through his management and control of marital property.[30] Children born outside of marriage had equal rights with those born inside marriage;[31] illegitimacy was a notion incompatible with the revolutionary aim of equality for all. The 1926

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22. Clara Zetkin (1857-1933) was a prominent figure in the German international working class movement, one of the founders of the German Communist Party and an organizer and leader of the international women's communist movement for many years.

23. C. ZETKIN, LENIN ON THE WOMAN QUESTION 10 (1934).

24. R.S.F.S.R. 1939 (Criminal Code) art. 153, as cited in Berman, *supra* note 20, at 49 n.150.

25. May 18, 1935. CRIMINAL LAW, SPECIAL PART (1939). ALL UNION INSTITUTE OF JURIDICAL SCIENCE (in Russian) 213, as cited in Berman, *supra* note 20, at 49 n.150.

26. R.S.F.S.R. 1918 Sob. Uzak. (Collected Laws & Decrees of the R.S.F.S.R.) §§ 76-77, pt. I, Item 818. *See* HAZARD, *supra* note 21, at 272.

27. Berman, *supra* note 20, at 39.

28. HAZARD, *supra* note 21, at 273.

29. *Id.*

30. *Id.* at 274.

31. *Id.*

Code provided for equal recognition of de facto and registered marriages and divorces[32] which

> marked in some measure the ending of state intervention in the marital relationship, which became a matter of socialist morals alone. To some of the commentators of the time, the experiment heralded the first stage of the withering away of law, since no enforceable rules limited marriage and none prevented its termination. Under the 1926 Code parties emerged wholly free of legal compulsion in the culturally important sphere of family relationships, but it took some court decisions to reaffirm that such liberation was really the intention of the legislators; for the Criminal Code of 1926 continued the 1922 prohibition against bigamy.[33]

By amendment[34] to the 1936 Code, both parties to a divorce were required to appear at the registration bureau in order to facilitate the arrangement of a mutually satisfactory record of agreement on child support. Although the 1936 amendment attempted to discourage divorce, its prohibition was not approached since the registration bureau still entered the divorce upon request of either party. The provisions on unregistered marriage and divorce remained in effect "until legislated out of existence by Stalin's unexpectedly strict amendments of 1944."[35]

In 1944, under Stalin's direction, Khrushchev headed a review of family law. The resultant reform[36] abolished recognition of unregistered

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32. R.S.F.S.R. 1926 Sob. Uzak. (Collected Laws & Decrees of the R.S.F.S.R.) § 82, pt. I, Item 612. *See* HAZARD, *supra* note 21, at 275.

33. HAZARD, *supra* note 21, at 276-77.

34. Law of June 27, 1936, 34 Sob. Zak. S.S.S.R. (Collected Laws U.S.S.R.), pt. I, Item 309. *See* HAZARD, *supra* note 21, at 278. This amendment,

> prohibiting abortions, providing benefits for mothers of large families [Item 10], extending the protection of mother and child [Items 5-6, 8-9, 11-13], and placing financial and procedural restrictions on divorce [Items 309, 27], reflected a new attitude; in a society in which law was now held to have a positive and creative value, the family deserved all the legal support that could be given to it.

Berman, *supra* note 20, at 40-41.

35. HAZARD, *supra* note 21, at 275. Law of July 8, 1944, 37 Ved. Verkh. Sov. S.S.S.R. (Supreme Soviet U.S.S.R.).

36. Law of July 8, 1944, 37 Ved. Verkh. Sov. S.S.S.R. (Supreme Soviet U.S. S.R.). *See* HAZARD, *supra* note 21, at 280.

One Soviet scholar has noted:

> [U]pon closer study . . . it is apparent that certain fundamental principles have survived from 1917 on. These include: (1) monogamy, (2) the lifelong character of marriage, (3) the equality of husband and wife, (4) the protection of illegitimate children, and (5) the protection of mother and child. What is new is rather the protection by law, which, in the interests of family security, these principles are now afforded.

Berman, *supra* note 20, at 41-42.

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marriage and divorce, as well as the right of an unmarried mother to institute proceedings to establish the paternity of her child to enable the child to have legal rights against its father. Within a year after Khrushchev was removed as first party secretary, a law adopted on December 10, 1965[37] introduced a new policy, but it was clearly a compromise between the conservative and liberal influences within the Communist Party.[38] The right to grant divorce was returned to the people's courts, but the parties had to attempt reconciliation before a divorce would be granted. The 1944 requirement of costly publication of notice of the hearings in the local press was withdrawn. But further changes were not made. Children of unmarried mothers had no claims against a father with whom the mother was not registered in marriage. "Soviet law remained a law with strong emphasis on preservation of the home and family as a font of socialist culture."[39]

In response to pressure against rigid features of the 1944 law, after extensive discussion new fundamental principles were enacted in June, 1968.[40] Although registration of marriage and divorce was still required, a child born of unregistered marriage could be granted rights equal to those born of registered marriages, such as support and the right to the father's name, under circumstances where the parental union was as permanent as if registered. Nevertheless, the child of the casual or transient union is still without legal rights against a father not in a registered marriage with its mother, a policy presumably intended to deter promiscuity.

The 1968 reform also required, for the first time in Soviet history, a 30-day waiting period before registration of an intended marriage Relaxing the rigid procedures of the Stalin era, the law reintroduced the concept of registered divorce without a court hearing to determine whether the party's conduct conflicted with communist morals in those cases where there was no issue from the marriage.

Current Legal Status of American and Soviet Women

Article 22 of the Soviet Constitution of 1936 placed the principle of sexual equality in that highest document which declares the nation's ultimate truths (certainly at least the highest *valued* truths, aspired to, if not yet attained):

37. [Undated], 1965, 49 Ved. Verkh. Sov. S.S.S.R. Item 275 (Supreme Soviet U.S.S.R.). *See* Hazard, *supra* note 20, at 285 n.45.
38. Hazard, *supra* note 20, at 285.
39. *Id.*
40. See Appendix.

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> Women in the U.S.S.R. are accorded equal rights with men in all spheres of economic, government, political, and other social and cultural activity.
>
> The possibility of exercising these rights is insured by women being accorded an equal right with men to work, payment for work, rest and leisure, social insurance and education, and by state protection of the interests of mother and child, state aid to mothers of large families and unwed mothers, maternity leave with full pay, and the provision of a wide network of maternity homes, nurseries, and kindergartens.[41]

In 1967 in order to further implement this new concept of woman and, necessarily, of the Soviet family (the cell of the socialist society),[42] the twenty-third session of the Communist Party of the Soviety Union outlined a program for the transformation of the role of consumer goods into a key and technically equipped branch of the national economy.[43] The new Five Year Plan included "faster growth in the development of consumer services in rural areas,"[44] since improvement in the standard of everyday living was prerequisite to women's actual liberation.

The 1968 *Fundamental Principles of Legislation in the U.S.S.R. on Marriage and the Family* was a legal restatement of the official Soviet attitude toward the relationship of women and the family:

> A communist upbringing for the coming generation and the development of its physical and spiritual strengths are a very important duty of the family. The state and society are helping the family to bring up children in all possible ways and the network of kindergartens, day nurseries, boarding schools, and other child care institutions are being widely expanded.
>
> The Soviet woman is assured of the everyday social conditions needed to combine a happy motherhood with ever more active and creative participation in production and social-

41. U.S.S.R. CONST. art. 122 (Dec. 5, 1936), reprinted in HAZARD, SHAPIRO & MAGGS 495.

42. A closely knit family, centered on a mutually adoring couple married for life and charged with rearing children to respect communist morality: this is the goal currently proclaimed by all Communists. [2 Sovetskow Grazhdanskoe Pravo 467 (1961) (Soviet Civil Law).] Their legal systems are designed to foster their concept through property relationships, criminal law, and, of course, codes of family law as the key element in the process.

As quoted in HAZARD, *supra* note 21, at 269.

43. This task was undertaken because the Party believed it necessary to further relieve women from household and child care duties. V. RYASENTSEV, SEMEINOE PRAVO [Family Law] 7 (1967), quoted in HAZARD, SHAPIRO & MAGGS 494.

44. *Id.*

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> political life.
>
> Soviet legislation on marriage and the family is called upon to contribute actively to the final removal of material calculations from family relations, to the elimination of remnants of the unequal position of women in everyday life, and to the creation of a communist family in which the deepest personal feelings of people will find their complete satisfaction.[45]

Some ways in which this official attitude is transposed into reality are reflected in the following legal categories.

Marriageable Age

Article 10 of the Soviet *Fundamental Principles*[46] sets eighteen years as the minimum age one must attain before marriage. In certain cases, a lowering of the marriageable age may be permitted but not by more than two years. There is no sexual restriction or qualification on this exception.

In contrast, the United States reflects its patriarchal social assumptions in its laws on marriageable age. A uniform minimum marriage age for males and females exists in only eleven states; thirty-nine states allow females to be married two to three years earlier than males.[47] This age differential is often justified by the existence of a legal presumption of differences in physical maturity (ability to procreate); however, by 18 *both* men and women are able to reproduce, and hence there is no basis in fact or reason to justify the presumption of earlier female physical development. As for the argument that women emotionally mature earlier, this, if at all true, would seem to be a factor of social conditioning and role development rather than a genetic characteristic. Until social scientists are able to delineate the relative role of biological and environmental factors, any argument which assumes that women obtain emotional maturity at an earlier age than men and hence the law should favor an earlier marriage age for women is a possible gross *hysteron proteron*; the very law in question and the practice it establishes may be a central factor in the difference in the rate of emotional maturation of men and women.

Underlying this age differential are two patriarchal assumptions based on the notion of female inferiority: that the married state and home is the only proper place for womanhood and that only the male, though

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45. Prelude to Fundamental Principles, [1968] 27 Ved. Verkh. Sov. S.S.S.R. Item 241, at 401-02 (Supreme Soviet U.S.S.R.), 4 Sov. STAT. & DEC., No. 4, at 109.

46. See Appendix.

47. Kanowitz, *Sex-Based Discrimination in American Law,* 11 ST. LOUIS U.L.J. 293, 303 (1967).

not to be denied the benefits of marriage, should be encouraged to develop himself and prepare for more meaningful pursuits in the real world. Since early marriage would hamper the male's preparation for more significant activity, the law postpones marriage, channeling him into "life's important business."[48] Woman's participation in meaningful activities outside the home is not *legally* encouraged; patriarchy sees no great harm in allowing females to "follow their biological inclination and to marry earlier than males."[49]

Change of Name

Article 11 of the Soviet *Fundamental Principles*[50] preserves the personal rights of the spouses by allowing a husband and wife to choose their respective surnames at their own discretion. They can choose either the surname of one or the other as their common surname, or each can retain his or her premarital surname. The right of a husband and wife to bear a double surname may be stipulated by Union-Republic legislation. Finally, upon agreement the husband and wife may choose the surname of children born of the marriage.

In the United States, a female automatically loses her name and acquires that of her husband upon marriage; children of the marriage will also acquire the husband's surname. In losing her surname, part of a woman's identity and personality are destroyed by submersion into that of her husband.

> Notwithstanding legislative rejection in the Married Woman's Acts of the theory in other spheres, this name change is consistent with the characterization of coverture as 'the old common-law fiction that the husband and wife are one . . . [which] has worked out in reality to mean that the one is the husband.'[51]

American courts have denied requests by women for the right to be known by their maiden names after marriage.[52] Under present law a husband may intervene by injunctive proceedings to prevent his wife's attempt to change her name informally, and statutes which prescribe

48. KANOWITZ 11.
49. *Id.*
50. See Appendix.
51. KANOWITZ 41, quoting United States v. Yazell, 382 U.S. 341, 361 (1966) (Black, J., dissenting).
52. *In re* Kayaloff, 9 F. Supp. 176 (S.D.N.Y. 1934); People *ex rel.* Rago v. Lipsky, 327 Ill. App. 63, 63 N.E.2d 642 (1945); Bacon v. Boston Elec. Ry., 256 Mass. 30, 152 N.E. 35 (1926); Chapman v. Phoenix Nat'l Bank, 85 N.Y. 437 (1881).

formal procedures for changing one's name often expressly[53] or impliedly[54] exempt married women from the provision. In addition, some states permit a woman to reassume her maiden name only if she is the successful complainant in a divorce action and not the defendant.[55] By contrast, Article 14 of the Soviet *Fundamental Principles* allows any spouse who changed his or her name upon entering into marriage the right to bear such name after dissolution of the marriage or, upon request, to reassume the pre-marital surname.

Domicile

Each spouse is granted the personal right to select his or her place of residence under Article 11 of the Soviet *Fundamental Principles.*[56] This provision is important because the availability of many rights and privileges of citizenship, as well as legal questions of forum and jurisdiction, depend upon a person's domicile. The general rule in the United States is that a wife's domicile follows that of her husband.[57] This principle can lead to practical disadvantages. For example, if the wife owns property in a state with a lower tax rate than the husband's domicile, the property may still be taxed at the higher rate of the husband's domicile. If the wife is living in a different state than her husband, which is not uncommon among career people, her right to vote or run for office could be rendered meaningless by the law which attributes her husband's domicile to her.[58] Certainly a law which accords to only the male spouse the right to decide a matter of such personal and *mutual* concern flies in the face of any presumed equality between the sexes.

Property Rights

Article 12 of the Soviet *Fundamental Principles*[59] establishes that property acquired by spouses during their marriage is community property, each spouse having equal rights to possess, use and dispose of the property.

In the United States, eight states[60] have community property

53. Iowa law allows a formal name change to be granted to "any person, under no civil disabilities, who has attained his or her majority *and is unmarried if a female.*" IOWA CODE ANN. § 671.1 (1947) (emphasis added).

54. Colorado law allows "every person to change his or her name . . . if the judge is satisfied that the desired change would be proper, *and not detrimental to the interests of any other person.*" COLO. REV. STAT. ANN. § 20-1-1 (1963) (emphasis added).

55. KANOWITZ 44.

56. See Appendix.

57. New York Trust Co. v. Riley, 315 U.S. 343 (1941).

58. KANOWITZ 48.

59. See Appendix.

60. Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington.

systems while the remainder have common law systems of property. It is generally believed that married women's rights in community property states are greater than those in common law property states because in the former the husband's earnings are classified as community property,[61] but in the latter his earnings are classified as his separate property. However, contrary to this belief, the married woman has not achieved equality under the law in community property states to a much greater extent than in common law property states. Although the husband's earnings are community property, he has the exclusive right to their management and control; where the wife has earnings, they are also classified as community property and hence subject to *his* exclusive management and control.[62] In common law property states, although a married woman does not have a present interest in her husband's earnings, her earnings are her separate property.

In California, archetypic of community property states, a wife is permitted to manage and control community property earned by her, but if she mingles it with the husband's earnings, it ceases to be her separate earnings and becomes subject to his control and management.[63] The average woman worker is unaware that the intricacies of the law require her to maintain a separate bank account for her earnings in order to retain control and management. It should be obvious, then, that property rights of all American married women are inferior to those of American married men. The Committee on Civil and Political Rights of the President's Commission on the Status of Women has recommended for both systems that "during marriage each spouse should have a legally defined and substantial right in the earnings of the other, in the real and personal property acquired through those earnings, and in their management."[64] Eight years after the report's recommendation there has been little, if any, remedial legislative action.

Article 12 of the Soviet law further provides that the spouses have equal rights to joint property, even where one of them has been engaged in homemaking and child care or for some other valid reason has had no independent earnings. Upon divorce, their joint property is divided

61. KANOWITZ 60. *See, e.g.*, CAL. CIV. CODE §§ 5105, 5125, 5127 (1970).

62. Effective January 1, 1970, Texas enacted a new Family Code granting to each spouse the right to manage his or her separate property. Ch. 888, § 1, [1969] Texas Laws.

63. CAL. CIV. CODE § 5125 (West 1970). *General Ins. Co. of America v. Schian*, 247 Cal. App. 2d 555, 56 Cal. Rptr. 767 (1967), held that the husband has both management and control of the entire community estate except for wife's earnings which have not been commingled with other community property.

64. *See* PRESIDENT'S COMMISSION ON THE STATUS OF WOMEN, AMERICAN WOMEN 18 (1963).

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between them in equal shares. In case of dispute on the division of property, courts take into consideration the wife's contribution of labor. The *value* of her labor is reflected in the property division as if she pursued an income-yielding occupation.

In the United States, even though the husband's statutory right to manage and control community property obscures it, there is a fundamental difference in the principle of the community system which distinguishes it from the common law property system: "the wife's work at home [has] a monetary value that could equal the income earned by the husband away from home, and that marriage [is] in certain important respects a type of partnership."[65] However, at no time during marriage or upon its dissolution does the American woman's domestic work actually receive a monetary value.

> In a money economy where autonomy and prestige depend upon currency, this is a fact of great importance. In general, the position of women in patriarchy is a continuous function of their economic dependence. Just as their social position is vicarious and achieved (often on a temporary or marginal basis) though [*sic*] males, their relation to the economy is also typically vicarious or tangential.[66]

In divorce actions community property must be divided equally.[67] In common law states, where property acquired by the spouses during the marriage stands in the name of the husband alone, courts either have no power to divide property in a divorce suit, or their power to divide is discretionary and not exercised according to any fundamental principle of sexual equality.[68] In those states, however, in instances where the husband retains property that was acquired during the marriage, courts often award to a wife a larger sum for support than she would otherwise have received.[69]

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65. KANOWITZ 67.
66. MILLETT 40.
67. KANOWITZ 67.
68. *Id.* at 67-70.
69. *Id.* at 67-68. *See also* FOOTE, LEVY & SANDER, CASES AND MATERIALS ON FAMILY LAW 913 (1966):

> Many states have statutory provisions . . . giving the divorce court discretion to make an equitable decision of the individually owned property of the spouses. But frequently neither the enabling statute nor the awarding decree differentiates clearly between property division and support payments. In some states the wife's separate property is included in the pool of divisible property only to the extent that it was derived from the husband. See, e.g., Wis. Stat. Ann. § 247.26 (Supp. 1965). Even where there is no explicit statutory authority for property divisions, some courts have asserted an inherent equitable power. See,

Support

Article 13 of the Soviet *Fundamental Principles*[70] establishes the mutual obligation of spouses to provide material support for each other. If one spouse is in a financial position to provide support, a court will compel support of the other spouse if in need and incapable of working or, in the case of a female spouse, during pregnancy and for one year after the birth of a child. The right to support is preserved even after dissolution of the marriage; a divorced needy spouse has the right to receive support if he or she becomes incapable of working within one year from the date of dissolution of the marriage. This principle of support, which recognizes a mutuality of obligation between spouses, also recognizes the principle of sexual equality; both spouses are expected to work outside of the home, and hence functionalism is the only logical determinant of support duty, *i.e.*, the spouse who cannot work and is in need receives support.

In the United States, the general rule is that the male spouse bears the primary obligation to provide financial support for the female spouse and children.[71] In the absence of a female spouse's "fault," she may be awarded alimony from the male spouse at the time of divorce with little regard for her need or his ability to pay. Underlying these legal rules is the assumption that the husband exchanges his financial support for a woman's sexual and domestic service, a social arrangement bourgeois law calls marriage. His legal duty to support corresponds to her position as his property, bound to honor and obey him always. "True equality of the sexes cannot be achieved until support rights and duties between

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e.g., Johnson v. Johnson, 137 Mont. 11, 349 P.2d 310, 21 Mont. L. Rev. 230 (1960).

70. See Appendix. *See also* Code of Laws on Marriage, the Family and Guardianship, R.S.F.S.R. 1945 (Civil Code) art. 14-16, reprinted in HAZARD, SHAPIRO & MAGGS 523 as additional declarations:

> Art. 14. A needy and incapacitated spouse has the right to receive maintenance from the other spouse if the latter is held by a court to be in a position to furnish support to the former.
>
> Art. 15. The right of a needy and incapacitated spouse to receive maintenance from the other spouse survives termination of the marriage, until a change in the conditions which serve, under Art. 14 of this Code, as the basis for receipt of maintenance, but not exceeding one year from the time of termination of the marriage.
>
> Art. 16. The amount of the maintenance payable to the needy and incapacitated spouse shall be determined by a court in the course of a regular judicial proceeding.

71. In the Soviet Union, both spouses bear financial obligation for support of minor children. Code of Laws on Marriage, the Family and Guardianship, R.S.F.S.R. 1926 (Civil Code) arts. 42, 48, reprinted in HAZARD, SHAPIRO & MAGGS 534; FUNDAMENTAL PRINCIPLES art. 18 (see Appendix).

husband and wife are drastically altered."[72] In theory, and perhaps in practice, the nearer the Soviet Union comes to a communist order, the more marriage will be liberated from superfluous obligations including the economic obligation. Marriage may then be transformed into a perfectly free union between two persons. However, until the state can take over the care of children and/or male spouses assume half the domestic responsibility, marriage in the United States and the Soviet Union retains the form of an economic contract; in the United States this contract is sanctioned by law.

Prostitution

After returning from a Soviet visit, David and Vera Mace wrote, "[i]t seemed to us that the Soviet claim to have eliminated the sexual exploitation [prostitution] of women was justified by the facts."[73] In prostitution Marx and Engels saw one of the most flagrant examples of economic exploitation of the poor woman by the rich man. After the Soviets had seized power and issued a "Declaration of Rights of the Working and Exploited People" and proclaimed the abolition of every kind of exploitation of one human being by another, it was logical that a planned and organized struggle against prostitution was launched, emphasizing that the war against prostitution must under no circumstances degenerate into a war against prostitutes.[74] One of the most successful institutions in this crusade was the Prophylactoria, residential and reeducational residences where voluntary spiritual and mental regeneration of prostitutes proceeded simultaneously with their medical and physiological treatment.[75] Another was the law, which took the view that prostitutes could not be punished as long as there was unemployment that the Soviet Union could not eradicate.[76] The consumer of prostitution was the culpable party because prostitution was considered a commodity which, absent buyers, would disappear. Since it was principally women's lack of rights and their economic dependence that drove them to prostitution, it was the consumer of prostitution rather than the prostitute who was regarded as the protagonist of the anti-social view of women and as one who is capable of exploiting their defenseless position. The procurer and consumer were deemed the appropriate receivers of legal

72. KANOWITZ 75.
73. D. MACE & V. MACE, THE SOVIET FAMILY 77 (1963).
74. HALLE, *supra* note 16, at 224-25, 227.
75. *Id.* at 235, 237.
76. Central Soviet, *On the Sentence in the "Judicial Proceedings Concerning a Prostitute,"* RABOCHAYA GAESTA (1925), reprinted in HALLE, *supra* note 16, at 229-31.

sanctions, especially if they were workers who were expected to have more class consciousness.[77]

In the United States prostitution certainly is not obsolete. Although it has been controlled at times by methods of "regimentation, segregation, and oppression,"[78] no serious effort to eliminate it has ever occurred. The woman reduced to prostitution is not regarded as the victim of economic exploitation but rather as a criminal. Prostitution is defined in such a manner (*e.g.*, "the practice of a female in offering her body to an indiscriminate intercourse with men for money or its equivalent;"[79] "indiscriminate sexual intercourse with males for compensation;"[80] "common lewdness of a woman for gain"[81]) as to make criminal the conduct of only one party, the woman, although the act required the participation of a male second party.[82] While males can be punished for aiding and abetting prostitution in some jurisdictions,[83] generally they cannot be punished directly for patronizing a prostitute.

> In those states where [collateral crimes of fornication, lewdness, solicitation, or associating with a prostitute] do exist, restrictive interpretations have often led to the exoneration of male customers of prostitutes. Thus, it has been held that resorting to a house of ill fame for an isolated act of intercourse does not warrant conviction for 'open and gross lewdness'; that a statute penalizing persons who 'solicit' another for prostitution does not apply where the solicitation is for the personal gratification of the soliciter; and that a statute prohibiting 'adultery or fornication' is not violated by occasional intercourse not accompanied by any pretense of the parties living together.[84]

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77. The Soviets decreed at one point in their anti-prostitution campaign that

> [w]henever officers raided a place of vice—whether it was a house, a tavern, or simply a dark street—they were to take down the names, addresses, and place of employment of all men found there. The customers were not to be arrested. But on the following day, and for a specified period, those men would have their names and identifying information posted in a public place, under the heading 'Buyers of the Bodies of Women.' These lists were to be prominently displayed outside the public buildings or on factory bulletin boards.

H. Carter, Sin and Science 56-57 (1945); Kanowitz 18-19.

78. Kanowitz 15.

79. Ferguson v. Superior Court, 26 Cal. App. 554, 558, 147 P. 603, 605 (1915).

80. La. Rev. Stat. § 14.82 (1950).

81. City of St. Louis v. Green, 190 S.W.2d 634 (Mo. App. 1945).

82. Kanowitz 16.

83. *E.g.*, Ga. Code Ann. § 26-6204 (1953); Hawaii Rev. Stat. § 309.30 (1968); Miss. Code Ann. § 2333 (1956); Ohio Rev. Code § 2905.27 (Anderson Supp. 1965).

84. Kanowitz 16-17.

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At least as important as the legal rules are the practices of police officials and prosecuting attorneys with respect to prostitution. Through the latter's exercise of discretion, a prostitute's male customers are rarely prosecuted in even the auxiliary offenses. The arrests of male

> customers are made in most instances with no expectation that an actual criminal prosecution will be carried through, but only as an inducement to the male to cooperate in convicting the woman. The invocation of the collateral 'statutes' is less likely to be designed to punish the male or control his future activities than it is to coerce him to cooperate with the prosecuting authorities by testifying against the woman.[85]

It is the entrenchment of male superiority which allows women to bear the entire burden of an offense that involves both sexes and permits discriminatory law enforcement. Unequal legal treatment in the area of prostitution is the result of sexual bias, and the law's complicity in the double standard of sexual morality permits men to escape the stigma and consequences of an act of mutual responsibility with a woman and imposes punishment upon her as the price of her identical conduct.

Abortion

In order to encourage the continuous growth of the consciousness and standards of women's culture, to obviate the great harm caused women's health and to provide women with self-determination, the 1936 Soviet decree prohibiting abortions was repealed in 1955.[86] Nevertheless, performance of abortions by non-physicians[87] and outside hospitals or other clinical establishments is unlawful.[88] However, criminal liability does not attach to a woman who undergoes an illegal abortion but only to the persons who performed it or who coerced the woman into undergoing it.[89] It is the general policy that a woman carry her first pregnancy to birth.

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85. *Id.* at 17.

86. Law of Nov. 23, 1955, Decree on the Abolition of Prohibition Against Abortions, 22 Ved. Verkh. Sov. S.S.S.R. Item 425 (Supreme Soviet U.S.S.R.), 4 Sov. STAT. & DEC. No. 4, at 47.

87. Law of Nov. 23, 1955, Decree on the Abolition of Prohibition Against Abortion, 22 Ved. Verkh. Sov. S.S.S.R. Item 425, pt. 3 (Supreme Soviet U.S.S.R.), 4 Sov. STAT. & DEC. No. 4, at 47.

88. Law of Nov. 23, 1955, Decree on the Abolition of Prohibition Against Abortions, 23 Ved. Verkh. Sov. S.S.S.R. Item 425, pt. 2 (Supreme Soviet U.S.S.R.), 4 Sov. STAT. & DEC. No. 4, at 47.

89. Law of Aug. 5, 1954, Decree on the Abolition of Criminal Liability on the Part of Pregnant Women for Inducing Abortions, 22 Ved. Verkh. Sov. S.S.S.R. Item 424 (Supreme Soviet U.S.S.R.), also cited in HAZARD, SHAPIRO & MAGGS, 513, and R.S.F.S.R. 1960 (Criminal Code) art. 116.

In the United States, women are generally denied the right to abortion on demand; procuring, performing or submitting to an abortion is criminal conduct.[90] Legal abortions have traditionally been available only in exceptional cases where necessary to preserve the life of the pregnant woman. Pregnant women who desire not to become mothers are forced to seek illegal abortions or perform self-abortions under conditions much less safe than those provided in hospital surgical wards.

> These facts undoubtedly account for the large number of women —between five and ten thousand every year—who lose their lives as a result of abortion. Though in many cases the desire to have the pregnant woman aborted is shared by her husband or lover, and though the latter are also subject to criminal prosecution for their participation in procuring an abortion, the criminal abortion laws have not caused those males to lose their lives.[91]

Abortion in the United States is kept illegal, dangerous and expensive "because of the social and economic exploitation of women, the greed of private physicians for whom this represents a lucrative practice, and the stigma against illegitimacy."[92]

In recognition of this fact, there has been a trend to "liberalize" abortion laws in the last five years. The California Therapeutic Abortion Act[93] is prototypic of the majority of reform efforts; it merely expands the justificatory grounds (available to physicians) to include risk of grave impairment of the pregnant woman's physical or mental health and the fact that the pregnancy resulted from rape or incest. The following conditions for performing abortions must be met: the abortion must take place in a hospital accredited by the Joint Commission on Accreditation of Hospitals, be performed by a licensed physician and be approved in advance by a committee of medical staff of the accredited hospital if, and only if, one of the above grounds exists.

The 1970 Hawaiian abortion amendment,[94] however, adopted an

90. Typical of such statutes was CAL. PENAL CODE § 275 (West 1970) prohibiting women from soliciting any abortifacient of another or submitting to an operation or using any means whatever with intent thereby to procure a miscarriage, except if necessary to preserve life. *See also* CAL. HEALTH & SAFETY CODE §§ 25950-54 (West Supp. 1971). In some states, however, the woman abortee is considered a victim rather than an accomplice to the offense of abortion. *See* Annot., 139 A.L.R. 399 (1942). *See also* KANOWITZ 26 n.119.

91. KANOWITZ 27.

92. MACE & MACE, *supra* note 73, at 240.

93. CAL. HEALTH & SAFETY CODE §§ 25950-54 (West Supp. 1971).

94. Act 1, [1970] Hawaii Laws 1.

attitude consistent with eventual repeal of criminal sanctions for abortion and thereby created an alternative model for changes in abortion law. Instead of merely adding justificatory grounds for performing abortions to the old statutes, the Hawaiian statute justifies and legalizes all abortions, regardless of motive, if the conjunctively necessary and sufficient conditions are satisfied: the abortion must be performed by a licensed physician, the pregnancy must be in the "non-viable fetus" stage (approximately first 24 weeks), and the patient must fulfill a ninety-day state residency requirement. New York, a state which has followed this model, has enacted a statute[95] which is even more liberal in that it does not require either the hospital or residency conditions. The statute does, however, require that the abortion be performed by a physician, but in certain cases where the physician reasonably believes it to be necessary to preserve the pregnant woman's life, he can perform an abortion *after* the twenty-four week period of pregnancy.

If one accepts the premise that abortion repeal and not abortion reform is the only way to enable women to decide for themselves the critical and personal questions of motherhood, then it is evident that the California law merely sets up a bureaucractic network which insures that a woman will be forced to ask a number of strangers for permission to determine her own fate. The Hawaiian law to some extent shifts the locus of control over women's decisions from the state to the hospital bureaucracies and their quasi regulations in so far as it requires that abortions be performed in licensed hospitals. Both the New York and Hawaiian laws reflect the attitude that woman's right to determine her own fate ceases to be hers and becomes the state's after the first twenty-four weeks of pregnancy. The New York exception to the twenty-four week period is the physician's decision, and not the woman's.

Although these laws take steps in the right direction, they do not reflect the realization that equality between the sexes cannot exist until the state recognizes that women's right to control their own destinies is basic to their freedom and that this right cannot be terminated at any stage of fetal development.[96] Men must stop making women's decisions

95. N.Y. PENAL LAW § 125.05 (McKinney Supp. 1970). Although technically New York's 1970 legislation amends only the former § 125.05, the amendment affects §§ 125.15 [2], 125.20[3], 125.40, 125.45, 125.50 and 125.55.

96. The doctrinal basis of this position was given judicial recognition recently in a federal district court decision declaring ILL. REV. STAT. ch. 38, § 23-1 (1969), the Illinois abortion statute, unconstitutional on the grounds that it was an invasion of women's right to privacy and that these interests outweighed the state's interest in protecting fetal life. Doe v. Scott, 321 F. Supp. 1385 (N.D. Ill. 1971). This ruling, however, only applies to the first trimester of pregancy, leaving control over abortion in the hands of the state thereafter.

for them.

Illegitimacy

> The Bolshevik Revolution had as one of its goals the complete removal of the 'stigma against illegitimacy.' The main concern was to protect the child from one of the cruelest of all human injustices. In addition, however, the revolutionaries were determined to sweep away the 'double standard,' which punished the woman who had a child outside marriage but allowed the man to evade censure.[97]

Therefore blood relation, and not legal marriage, became the basis of the legal relationship, and a man was under an obligation to provide equally for all his children. This step was considered necessary to establish true equality among the class of children and to ensure an unmarried mother and her child complete legal identity and rights, independent of any relationship to a man. Those children born within and without marriage had an equal claim to support and to inherit from their mother and father. During the Stalin era the concept of illegitimacy was reintroduced in the decree of the Presidium of the U.S.S.R. Supreme Soviet of July 8, 1944. This decree provided that only a legal marriage gave rise to the rights and responsibilities of spouses and abolished the mother's right to sue to establish paternity and to claim child support payments from a father to whom she was not legally married.[98] The mother was not left without support, however, since the state became surrogate-father for the support of all children born to single women and provided mothers with a monthly income. Nevertheless,

> Soviet women resented bitterly the dual standard of sexual morality, which the Bolsheviks had for years been condemning as an outrageous by-product of capitalist civilization, and which the Soviet State was practically legalizing. A man might father all the children he wished out of wedlock without incurring any responsibilities other than those his conscience might impel him to assume. Russians openly spoke of it as a 'law for men.'[99]

Article 16 of the 1968 Soviet *Fundamental Principles*[100] reinvoked the right to establish a child's paternity by joint application of the

97. MACE & MACE, *supra* note 73, at 240.
98. Gorkin, *Concern for the Soviet Family*, SOVIET LAW & GOVERNMENT, Winter, 1968-69, at 32.
99. M. HINDUS, HOUSE WITHOUT A ROOF 20 (1961), quoted in MACE & MACE, *supra* note 73, at 242.
100. See Appendix.

unmarried parents or by court action. However, the court must take into account whether a common household shared by the child's mother and the respondent existed prior to the child's birth or whether there is reliable evidence which establishes the respondent's own acknowledgement of paternity. Article 6 of the *Fundamental Principles*[101] established the right of a mother whose child's paternity has not been established in the manner provided for by law to receive a state allowance for the support and upbringing of the child, as well as the right to place it in a child care institution for support and upbringing at state expense. Soviet law expressly provides for imposition of liability on anyone who attempts to insult an unwed mother or lower her dignity.[102]

Kate Millett describes the United States' attitude on illegitimacy in *Sexual Politics*:

> To insure that its crucial functions of reproduction and socialization of the young take place only within its confines, the patriarchal family insists upon legitimacy. Bronislaw Malinowski describes this as 'the principle of legitimacy' formulating it as an insistence that 'no child should be brought into the world without a man—and one man at that—assuming the role of sociological father.'[[103]] By this apparently consistent and universal prohibition (whose penalties vary by class and in accord with the expected operations of the double standard) patriarchy decrees that the status of both child and mother is primarily or ultimately dependent upon the male. And since it is not only his social status, but even his economic power upon which his dependents generally rely, the position of the masculine figure within the family—as without—is materially, as well as ideologically, extremely strong.[104]

No comprehensive attempt has ever been made in the United States to obliterate the stigma attached to the illegitimate child and its mother and replace it with ideological equalitarianism. Illegitimate chil-

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101. 4 Sov. Stat. & Dec. No. 4 at 108.

102. See Law of July 8, 1944, art. 31 (Supreme Soviet U.S.S.R.), as reported in G. Sverdlov, Sovetskoe Seminoe Pravo [Soviet Family Law] (1958), at 194, excerpted in Hazard, Shapiro & Maggs 531.

103. Millett 35 n.2:
Bronislaw Malinowski, *Sex, Culture and Myth* (New York, Harcourt, 1962), p. 63. An earlier statement is even more sweeping: "In all human societies moral tradition and the law decree that the group consisting of a woman and her offspring is not a sociologically complete unit." [B. Malinowski], *Sex and Repression in Savage Society* (London, Humanities, 1927), p. 213.

104. Millett 35.

dren have gained certain rights such as the right to sue for the wrongful death of their mother[105] and the right of their mothers to sue for their wrongful death.[106] However, the egalitarian enlightenment which glimmered in these two decisions and the future rulings which they adumbrated has very recently been extinguished by the latest pyrrhic patriarchal victory. In *Labine v. Vincent*[107] the Supreme Court upheld a Louisiana statute which allows an illegitimate child to be an intestate heir only *after* it is ascertained that the father has no ascendants, descendants, spouse or collateral relatives. The words of the dissenting opinion aptly characterize the Court's ruling:

> The Court today . . . resorts to the startling measure of simply excluding such illegitimate children from the protection of the [Equal Protection] Clause, in order to uphold the untenable and discredited moral prejudice of bygone centuries which vindictively punished not only the illegitimates' parents, but also the hapless, and innocent children.[108]

Thus, legal rather than biological relationship remains the source of legal rights—penalizing that family group consisting of a mother and her offspring while benefiting that family unit consisting of legally married mother and father and their offspring.

Protection of Motherhood

The original Soviet plan was to achieve a collectivized social arrangement wherein the family would cease to exist as an individual unit, and parental authority over children would be transferred to the state. The transference would simultaneously liberate women from the material domination of patriarchal family life while removing children from the reactionary influence of parents whose tradition was prerevolutionary.[109] This trend was reversed in the thirties when the increase in juvenile delinquency necessitated the conclusion that parental rather than mass institutional care of children was preferable, and that the parental "bearing and upbringing of children is important not only for the family but also for the welfare of the state."[110] However, while legislative enactments were an important agent in strengthening family ties, the 1945 amendments[111] to the Family Code of 1944 also consider-

105. Levy v. Louisiana, 391 U.S. 68 (1968).
106. Glona v. American Guar. Co., 391 U.S. 73 (1968).
107. 91 S. Ct. 1017 (1971) (upholding LA. CIV. CODE ANN. art. 919 (West 1952).
108. *Id.* at 1022 (Brennan, J., dissenting).
109. Berman, *supra* note 20, at 52 n.166.
110. *Id.* at 53 n.173.
111. Law of July 8, 1944 (Supreme Soviet U.S.S.R.), 4 Embassy of the U.S.S.R.

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ably advanced state protection of mother and child. With this act the Soviet state assumed a considerable share of the financial burden of childbearing and rearing. This legal recognition of motherhood as a service rendered by Soviet women provides them with meticulous care during pregnancy: preferential treatment in lines,[112] reduced fees at kindergartens,[113] special labor laws[114] and maternity leave (during which a pregnant woman's tenure in her job is strictly safeguarded) with pay four weeks before and after a birth.[115] A pregnant woman cannot be fired because of her pregnancy; the Criminal Code[116] of the R.S.F.S.R. punishes the refusal to employ or the dismissal from work for reasons of pregnancy or breast feeding with correctional tasks for terms of up to one year or dismissal from the position. Furthermore, a husband may not divorce his pregnant wife without her consent during and one year subsequent to her pregnancy.[117] All medical services in connection with pregnancy and childbirth are free,[118] and the state provides increased subsidies to mothers of one child or more.[119]

In order to facilitate the emancipation of women from subordinate status and household chores and permit her active involvement in economic and political life (while still maintaining a strong family unit), the Soviets have provided communal facilities for raising children as well as for dining, cooking and performing other household tasks.[120]

Info. Bull. No. 84 (July 25, 1944), together with supplementary edicts of Nov. 10, 1944, and March 14, 1945, was introduced into the *Code of Laws on Marriage, Family and Guardianship* by the Edict of April 16, 1945, published in 26 J. SUP. SOV. U.S.S.R. 4 (May 11, 1945), reported in Berman, *supra* note 20, at 41 n.99.

112. MACE & MACE, *supra* note 73, at 245.

113. Law of July 8, 1944, art. 10 (Supreme Soviet U.S.S.R.) cited in Berman, *supra* note 20, at 55 n.181.

114. After four months pregnancy, women are not to be given overtime work, and women with infants are to be exempted from night work throughout the period of nursing. Law of July 8, 1944, art. 8 (Supreme Soviet U.S.S.R.) as cited in *id.*

115. Law of July 8, 1944, art. 6 (Supreme Soviet U.S.S.R.).

116. R.S.F.S.R. 161 (Criminal Code) art. 139.

117. FUNDAMENTAL PRINCIPLES, art. 14. See Appendix. It is unclear whether a woman can institute divorce proceedings against her husband without his consent during her pregnancy and for one year after the birth.

118. MACE & MACE, *supra* note 73, at 245-46.

119. FUNDAMENTAL PRINCIPLES, art. 5. See Appendix.

120. "The first condition for the liberation of the wife is to bring the whole female sex back into public industry . . . and this in fact demands the abolition of the monogamous family as the economic unit of society." Engels, quoted in Schlesinger, *The Family in the U.S.S.R.*, in CHANGING ATTITUDES IN SOVIET RUSSIA 10 (1949).

> We are establishing communal kitchens and public eating houses, laundries, and repairing shops, infant asylums, kindergartens, children's homes, educational institutes of all kinds. In short, we are seriously carrying out the demand in our programme for the transference of the economic and educational functions of the separate household to society.

Lenin, quoted in *id.* at 79. *See also* Article 5 of the FUNDAMENTAL PRINCIPLES in Appendix.

The Family Law of 1944[121] required compulsory organization of nurseries and kindergartens in all enterprises employing women on a mass scale. At the Twentieth Party Congress in 1956, Khrushchev announced the introduction of communal boarding schools, apparently a departure from the previous policy of cohesive family units and a move toward increased institutionalization of child raising. "During the five-year period from 1956 to 1961 the total number of children six years of age or under who were enrolled in these institutions rose by over two million, compared with a gain of a little over 900,000 during the six years immediately preceding."[122] In 1962-63, over 2,000,000 pupils were in boarding schools, more than 4 percent of all children enrolled in Soviet schools that year.[123]

By contrast, in the United States the domestic sphere is deemed to be the proper place for women and no socialized effort is made to free the American woman from domestic servitude or to encourage her to become an active participant in the economic and political world. The female is the victim of discriminatory hiring practices, justified in part by male chauvinism and in part by the expectation that she will become pregnant, which is a *liability* to a career woman in the United States.[124] If she has been successful in getting a job at all, upon becoming pregnant she is frequently "let go." Many states categorically exclude pregnancy as a "disability" entitling one to unemployment insurance.[125] Additionally, if a woman is married, a mother and employed, she is allowed a $600 tax deduction for child care only if her gross annual income combined with her husband's is $6,000 or less.[126] This law

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121. *See* note 36 *supra* and accompanying text.

> Additional mother and child centers, special rest homes for needy unmarried expectant mothers and for nursing mothers in poor health; additional children's institutions, medical consultation centers for children, milk kitchens, nurseries for infants, evening accommodations at kindergartens...the obligatory organization at enterprises and institutions where women are employed in large numbers, of nurseries, kindergartens, and special rest rooms for nursing mothers; the considerable extension of the output of clothing and footwear for children, toilet accessories for children, etc., both for children's institutions and for sale to the general public, [were] provided

for by the Edict of July 8, 1944, (Supreme Soviet U.S.S.R.), 4 Embassy of the U.S.S.R. Info. Bull. No. 84 (July 25, 1944), reported in Berman, *supra* note 20, at 55 n.182.

122. Bronfenbrenner, *The Changing Soviet Family,* in BROWN, *supra* note 19, at 110.

123. *Id.* at 111.

124. Very recently a federal court judge has ruled that an Air Force officer who gave birth while on active duty can be discharged. Struck v. Secretary of Defense, No. 4191 (W.D. Wash., Feb. 1, 1971). This decision is stayed pending appeal to the Court of Appeals.

125. *See* note 13 *supra* and accompanying text.

126. *Id.*

reveals an underlying assumption that, absent dire economic necessity, a woman's place is in the home—if she ventures out, it will be at her own expense.

SOVIET UNION: PATRIARCHY OR COMMUNARCHY?[127]

The difficult but inevitable question now arises: to what extent has the Soviet effort to create a society of equality among all citizens become a reality? In order to qualify the Soviet Union as a sociological type more or less resembling patriarchy, some practical aspects of Soviet life must be considered.

Soviet Women in Employment

The Soviet Union has been successful in integrating women into the working force. In 1967, 50 percent of the total employment force in all economic sectors was female: women comprised 47 percent of industry, 20 percent of construction, 24 percent of transportation, 66 percent of communications, 74 percent of trade, 85 percent of public health, 72 percent of education and 75 percent of credit and finance.[128] The activity rate of women between the ages of 16 and 54 rose from 63 percent in 1958 to 79 percent in 1965 and is projected to increase to 89-90 percent.[129] However, although women are engaged in practically all types of work, they are under-represented in positions which require managerial, decision-making and executive functions, while they are over-represented in subordinate and junior positions.[130]

> The low proportion of women in executive positions may well be due not only to certain lingering stereotypes and prejudices, but also to women's child-bearing and child-raising functions. These may be seen as handicapping their life-long and full-time dedication to a career.[131]

At the present time, it would seem that women have become incorporated into the Soviet labor force more because of economic need than because of ideology.

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127. Communarchy is my neologism to describe the ideal social relation among groups and between sexes. The goal of socialist states is not to merely supplant forms of patriarchy with matriarchy, but rather to create a society free of class or sex exploitation or domination—one in which all groups participate at all levels.

128. Berent, *Some Demographic Aspects of Female Employment in Eastern Europe and the U.S.S.R.*, 101 INTERNATIONAL LABOUR REVIEW 175 (1970).

129. *Id.* at 192.

130. FIELD, *supra* note 19, at 14. *See also id.* at 33-36.

131. *Id.*

The Double Load

Although the Soviet woman is free to participate in employment outside the home, two factors presently contribute to the retardation of female emancipation in the Soviet Union. The first is that Soviet men suffer from male chauvinism and therefore do not carry their half of the domestic work.

Lenin once said to Clara Zetkin:

> What is at the basis of the incorrect attitude of our national sections? In the final analysis it is nothing but an underestimation of woman and her work. . . . Unfortunately it is still true to say of many of our comrades, 'scratch a Communist and find a Philistine.' Of course, you must scratch the sensitive spot, their mentality as regards to women. Could there be a more damning proof of this than the calm acquiescence of men who see how women grow worn out in the monstrous household work, their minds growing narrow and stale, their hearts beating slowly, their will weakened? . . . What I am saying applies to the overwhelming majority of women, to the wives of workers and to those who stand all day in a factory.
>
> So few men—even among the proletariat—realize how much effort and trouble they could save women, even quite do away with, if they were to lend a hand in 'woman's work.' But no, that is contrary to the 'right and dignity of a man'. They want their peace and comfort. The home life of the woman is a daily sacrifice to a thousand unimportant trivialities. The old master right of the man still lives in secret. . . . We must root out the old 'master' idea to its last and smallest root, in the Party and among the masses. This is one of our political tasks, just as is the urgently necessary task of forming a staff of men and women comrades, well trained in theory and practice to carry on Party activity among working women.[132]

The realization that the old master male chauvinist was not rooted out by 1958 caused Krushchev to call for the second of the two conditions sufficient to emancipate the female: state action to relieve woman of her second load:

> We have done much to ease the labor of women, but it is still

132. ZETKIN, *supra* note 23, at 19.

> insufficient. The time has come to earnestly get to work on the mechanization of labor-consuming processes in order to lighten labor, particularly in those areas which women work, and make it more productive, and this means more highly paid too.
>
> It is necessary to give some thought also to easing the housework burden of women in every possible way. For this, it follows, more crèches, nurseries, boarding schools, dining rooms, launderies, and other domestic appliances and services will be required. Everything possible must be done to extend these service facilities and better satisfy the growing needs of the population. All of these are very important questions, affecting the lives of the Soviet people. We must not shrink from resolving them.[133]

Women do have legal equality in contemporary Soviet society, but this equality entails the obligation of women to work side by side with men while at the same time carrying the burden of domestic duties and the bearing and care of children. Measures taken to lighten that load by establishing institutions and facilities to relieve women of their domestic and child care obligations remain insufficient, inadequate and sometimes non-existent although certainly the blueprint and commitment are there.[134] Members of the Research Institute of the U.S.S.R. Planning Commission have suggested that when the blueprint is fulfilled, women's presence at home will not be needed for more than 1.5 to 2 years after pregnancy.[135] On this basis, they project that not more than 7 to 9.5 million women of working age need be left outside the labor force; therefore, the activity rate of women 16 to 54 years old could reach 90 percent.[136] However, as long as it is not possible for the state to undertake complete child care and domestic services for every woman who wishes them, the "blueprint outlined by Engels for the complete emancipation of women will have to remain just that."[137]

As a result of the state's inability and men's refusal to provide adequate domestic relief, the constitutionally promised equality of "rest

133. "Vstrechi izbiratelei s Kandidatami v. deputaty Verhhouvogo Soveta S.S.S.R.: Rech' torarishcha N.S. Khrushcheva" [Meeting of the Voters with the Candidates for Deputies to the Supreme Soviet U.S.S.R.: Speech of Comrade N.S. Khrushchev], *Pravda,* March 15, 1968, quoted in FIELD, *supra* note 19, at 8.

134. *Id.*

135. Berent, *supra* note 128, at 192.

136. *Id.*

137. FIELD, *supra* note 19, at 11.

and leisure" completely breaks down.[138] Because of the poor development of shopping and retail facilities, the average housewife may spend as much as three hours a day shopping "and as much time preparing food, cleaning, making beds, washing dishes and doing myriad other tasks that women, particularly when they have no labor saving devices, must perform."[139] Hence, according to time-budget studies, men have more than twice as much leisure time at their disposal than women.[140]

Woman's Political Role

The configuration of individuals in positions of power and authority is a touchstone for any social arrangement. In spite of the fact that females comprise the majority of the adult population, women in the Communist Party (the real base of political power in the U.S.S.R.) constitute only about 20 percent of its membership, and their representation in higher Party bodies is negligible.[141] About two-fifths to one-half of the membership of the Komsomols, the Communist Youth League, is female, but female representation in Komsomol leadership is small.

Although women are better represented in the soviets than in the Party, their proportion in soviet organs is not commensurate with their percentage of the Soviet population. At the local level, soviets function in an administrative capacity; since they are dominated by the Party, the source of political power, they mainly implement Party policy. It is therefore consistent with women's inferior rank that they should play an important role in municipal services, education, public health, welfare and assistance functions of the local soviets.[142] About two-fifths of the local deputies of local soviets[143] and one-third of the delegates to Republican Supreme Soviets[144] are women. The percentage of female deputies in the Supreme Soviets is smaller, "27 percent at the Soviet Union level and 23 percent at the Republican level,"[145] and female representation in executive bodies of the Soviet is small. It is evident that women's participation in the political life of the Soviet Union is not generally in high-ranking influential leadership positions and hence is limited.

Sexual Counterrevolution

138. Art. 122 of the 1936 Constitution and Article 119 of the 1936 Constitution (as amended) guarantees to every citizen of the U.S.S.R. the right to rest and leisure.
139. FIELD, *supra* note 19, at 22.
140. *See* Berent, *supra* note 128, at 45.
141. FIELD, *supra* note 19, at 15.
142. *Id.* at 16.
143. *Id.* at 41.
144. *Id.* at 42.
145. *Id.* at 16.

Kate Millett postulates that sexual revolution in the Soviet Union ended in sexual counterrevolution because its first phase ended in reform rather than in truly radical transformation involving the alteration of marriage and the family as known in patriarchy.[146] Without fundamental change it was impossible to eradicate "the economic disabilities of women, the double standard, prostitution, venereal disease, coercive marital unions and involuntary parenthood."[147] A complete sexual revolution would have entailed the end of patriarchal order through destruction of its ideology as it functions through a differential socialization of the sexes; instead, the essential patriarchal social order remained, requiring a family structure which subordinated women.

> [T]he modern nuclear family, with its unchanged and traditional division of roles, necessitates male supremacy by preserving specifically human endeavor for the male alone, while confining the female to menial labor and compulsory child care. Differences in status according to sex follow inevitably.[148]

While the Soviet Union did make a conscious effort to terminate patriarchy and revamp its key institution—the family—Kate Millett thinks that the Soviet experiment failed and was abandoned and that Soviet society in the thirties and forties came to resemble the modified patriarchy of other western countries. The main causes of failure were contemporary political and economic problems, Marxist theory's failure to supply a sufficient ideological base for sexual revolution and the inability to change attitudes.

> Women . . . were loath to relinquish the dependency and security of the family and the domination over children which it accorded them; men were just as reluctant to waive their traditional prerogatives and privileges; everyone talked endlessly about sexual equality, but none, or few, were capable of practicing it.[149]

The replacements for the family—communal housekeeping and crèches—did not materialize; in 1925 only three out of every one hundred children were accommodated outside the home.[150]

Revisionists abolished abortion and reintroduced punishment of homosexuality. Kate Millett notes that "[i]t is an interesting insight

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146. MILLETT 157-233.
147. *Id.* at 157.
148. *Id.* at 159.
149. *Id.* at 170.
150. *Id.* at 170-71.

to reawakened patriarchal sentiment to observe that in Russia, as elsewhere, homosexuality is recognized and punished only between males; homosexuality between females is presumed to be unthinkable or nonexistent."[151] Soviet education again became antisexual and asceticism reappeared as the ideal in schools and among youth groups. In 1944, Soviet authorities announced that sexual union was to be in principle a lifelong union—a welding together of sex with procreation and family. Divorce laws were rigidified and the concept of illegitimacy was reinstigated.

> It is a remarkable fact that, as John Stuart Mill pointed out long before, the authoritarian and patriarchal mind cannot separate the liberation of women from racial extinction and the death of love, and equation of human affection and reproduction with slavish subordination, excessive or accidental progeny, and servile affection which never fails to convict the speaker.[152]

Kate Millett concludes that twenty-seven years after the revolution the Soviet position had completely reversed itself and that the radical freedoms instituted in marriage, divorce, abortion, child care and the family were abridged by the reaction she calls counterrevolution. Although she does not consider the new proclamations of the 1968 *Fundamental Principles* in her analysis, no doubt she would consider them tokenisms, counterrevolutionaries' concession to revolutionary ideology, but too impotent (and perhaps too insincere) to counterpose the pendulum's triumphant reactionary swing.

Conclusion

It has become clear that the legal status of women is so intricately connected to other social phenomena that one cannot engage in a purely "legal" discourse on the subject without seeming lamentably myopic. To see the position of women exclusively through the prism of a legal optic is at best to see obliquely, at worst to see obscurely. If nothing else, the Soviet experiment has demonstrated the danger of the oversimplistic presumption that family and marriage are merely economic, material or legal phenomena capable of being treated by economic and institutional methods alone.

The legal status of women appears to be complexly entwined with social attitudes particularly with male attitudes; the Soviet experiment has proven that while female liberation can be legislated, ideologically

151. *Id.* at 173.
152. *Id.* at 176.

it takes more than proclamation to make it a living reality in any society. The effective methodology for changing the recalcitrant attitudes and customs which detain women from achieving true equality is not very clear. Two different modes are suggested by the American and Soviet approaches. The Americans have been reluctant to enact egalitarian legislation for women, and, when they have, as in the 1963 Equal Pay Act[153] and Title VII of the 1964 Civil Rights Act,[154] enforcement has been difficult and consequently women have benefited slightly by them. Every year since 1923 the Equal Rights Amendment to the Constitution has been introduced and rejected in Congress;[155] legislators apparently feel that until attitudes have changed sufficiently to allow women equality, to legislate it would be simply to create one more American apostasy, one more hollow promise.

There is intrinsic value in ideological declaration of sexual equality by the highest lawmaking body under the Constitution—the most sanctified document by which America ultimately defines itself. Even if initially there is little corresponding response in human behavior, *at least* American commitment to the ideal of sexual equality as normative, intended and constitutionally mandatory would be indisputable. This would stake out the direction and goal for human beings individually and collectively to keep in sight.

Apparently this is the mode chosen by the Soviets. They calculate that behavior is likely to follow and conform to the legal norm sooner than behavior would *sua sponte* develop the conditions necessary to allow simultaneous creation of legal mandate and reality. Although Soviet women come closer to achieving real equality when there is an economic necessity concomitant to ideological preference than solely on the basis of the principle itself, the moral prerogative of sexual equality remains the national standard to which social attitude and form, shaped more slowly when not affected by economic exigency, approach. That one function of law is educational is undeniable; one hopes that as law has been an institutional manservant in the steady service of patriarchal socialization, now it can become a humanity-servant in the service of communarchal socialization. However, if communarchal law does not exist, it cannot serve, and hence it can have no force.

The Russian Revolution allowed the Soviets to introduce large-scale rhetorical reforms which stopped short of social transformation;

153. 29 U.S.C. § 206(d) (1964).

154. 42 U.S.C. §§ 2000e et seq. (1964).

155. *See* Eastwood, *The Double Standard of Justice: Women's Rights Under the Constitution*, 5 VAL. U.L. REV. 281 (1971).

they seem not to have succeeded, at least at this time, in eradicating women's inferior social status and providing them with a revolutionized social position. However, it does not necessarily follow that such rhetorical reforms would be inefficacious elsewhere, and that therefore the United States should not adopt them. First, the Soviet reforms are not *without* effect. Rather, the slow response of human behavior to ideological shift indicates not (one should indeed hope) the impossibility of social change but, on the contrary, it accentuates the long-range nature of programatic institutional attrition. It is unlikely that the Soviets expected instant achievement of their goals. (Americans often tend to be impatient and conclude an experiment a failure if its success is not quickly demonstrable.)

Second, rhetorical reforms only modify symptoms, if anything. However, symptoms, as well as more systemic ills, should be alleviated. The healing process is slow, especially if we desire a new body politic (transformation) rather than a revitalized old one (reformation). New forms are slow in creation. It would be a mistake to allow the élan for transformation to burn itself out because of false hopes and unrealistic expectations. Ideals must be formulated in such a way as to be visible and approachable but high enough to stimulate a striving for a better world. If the ideals are hopelessly out of reach, they will become empty and produce frustration and bitterness; accusations of hypocrisy and insincerity will result, as has already happened, in fact, as the chasmal disparity between American ideals and reality becomes increasingly apparent. But if ideals are not set high enough, no real or significant social change will occur. The problem is to adjust a proper tension between ideals and reality. It is not at all clear at this point that the Soviet Union has not achieved a proper adjustment and that they are not along the road to egalitarian reality. It is clear that the United States is not even on that road.

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APPENDIX

FUNDAMENTAL PRINCIPLES OF LEGISLATION OF THE USSR AND UNION REPUBLICS ON MARRIAGE AND THE FAMILY, JUNE 27, 1968

Article 1. Tasks of Soviet legislation on marriage and the family. The tasks of Soviet legislation on marriage and the family shall be:

the further strengthening of the Soviet family based on the principles of communist morality;

the building of family relations [based] on a voluntary marital union of a woman and a man and on feelings of mutual love, friendship, and respect for all members of the family free from material calculations;

the bringing up of children by families in organic combination with their social upbringing in the spirit of devotion to the Motherland, of a communist attitude toward work, and of participation by the children in the building of a communist society;

protecting the interests of mothers and children in all possible ways and assuring a happy childhood to each child;

the final elimination from family relations of harmful survivals and customs of the past;

the fostering of a feeling of responsibility toward the family.

. . . .

Article 3. Equality of women and men in family relations. Women and men shall have equal personal and property rights in family relations.

The equality of rights in the family is based on equal rights of women and men embodied in the Constitution of the USSR in all fields of state, social-political, economic, and cultural life of the nation.

. . . .

Article 5. Protection and encouragement of motherhood. Motherhood in the USSR shall be honored and respected by all the people and shall be protected and encouraged by the state. The protection of the interests of mothers and children shall be assured by the organization of a vast network of maternity homes, day nurseries, kindergartens, boarding schools, and other child care institutions, by granting women work leaves during pregnancy, and by granting their families maintenance allowances, by establishing privileges for pregnant women and mothers, by labor protection while engaged in production, by paying

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state allowances to mothers of one child or many children, and by other state and social aid to the family.

. . . .

PART II. MARRIAGE

Article 9. Conclusion of marriage. A marriage shall be concluded in state registries of documents of civil status. Registration of marriage shall be established both for [the purpose of serving] state and social interests and for the purpose of protecting the personal and property rights and interests of spouses and children.

Rights and duties of spouses shall arise only from marriages concluded in state registries of documents of civil status.

A marriage shall be concluded after the passage of one month from the date the parties wishing to be married have filed a petition in a state registry of documents of civil status. In individual instances, the legislation of union republics may provide for a reduction or extension of this period.

The conclusion of a marriage shall be conducted ceremonially. Registries of documents of civil status shall provide ceremonial conditions for the registration of marriage with the consent of the persons who are getting married.

Article 10. Conditions for the conclusion of a marriage. In order for a marriage to be concluded, there must be a mutual agreement by the persons who are getting married, and both of them must have attained the marital age.

The marital age shall be set at 18 years. A lowering of the marital age may be provided for by not more than two years.

The conclusion of marriage shall not be permitted:

between persons one of whom is already in a state of marriage;

between relatives in a direct line of ascent or descent, and also between brothers and sisters of full blood or half blood, as well as between adoptive parents and adopted children;

between persons one of whom has been declared by a court to be incapable of performing legal transactions as a result of mental illness or feeble-mindednss.

Article 11. Personal rights of spouses. When concluding a marriage the spouses, according to their own wishes, shall select the surname of one of the spouses as their common surname, or each of the spouses shall retain his own pre-marital surname.

Legislation of union republics may provide for the right of spouses

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to bear a compound surname.

Questions concerning their children's upbringing and other questions of family life shall be decided by the spouses jointly.

Each of the spouses shall be free to select his occupation, profession, and place of residence.

Article 12. Property of spouses. The property acquired by spouses during their marriage shall be held in their common, joint ownership. The spouses shall have equal rights to possess, use, and dispose of such property.

The spouses shall enjoy equal rights to the property even if one of them has been engaged in conducting the household, caring for the children, or for other valid reasons has not had independent wages.

In the event that property which is held in the common, joint ownership of the spouses is divided, their shares shall be deemed to be equal. In individual instances a court may deviate from the principle of the equality of the spouses' shares, taking into account the interests of minor children or the interests of one of the spouses which deserve attention.

Property which belonged to the spouses prior to their marriage, as well as property which they received by gift or by way of inheritance during their marriage, shall be held in the ownership of each of them [separately].

If the spouses are members of a collective farm household, the rules of the present article shall extend only to that part of their property which is held in their personal ownership.

The rights of spouses to possess, use, and dispose of [objects of] ownership of a collective farm household shall be established by the legislation of union republics.

Article 13. Spouses' duties of mutual support. Spouses shall be required to provide material support for each other. In the event of a refusal to provide such support, a spouse who is in need of material help and who is incapable of working, as well as a wife during pregnancy and for one year after the birth of a child, shall have the right to obtain support [alimony] from the other spouse through a court, if the other spouse is in a position to provide it. Such right shall be preserved even after dissolution of marriage.

A divorced needy spouse shall also have a right to [receive] support if he becomes incapable of working within one year from the date of dissolution of the marriage. If the spouses had been married for a long time, a court shall have the right to exact alimony for the benefit of a

divorced spouse even when such spouse has attained the pension age not more than five years from the date of dissolution of the marriage.

In individual instances a spouse may be relieved of the duty to provide support for the other spouse, or such duty may be limited to a time period. The conditions under which a court may relieve a spouse of the duty to provide support for the other spouse or to limit such duty to a time period shall be established by the legislation of union republics.

Article 14. Termination of marriage. A marriage shall be terminated as a consequence of the death of one of the spouses or of the declaration of the death of one of the spouses in a judicial proceeding.

During the lifetime of the spouses, a marriage may be dissolved by means of a divorce on the application of one or both of the spouses.

Dissolution of marriage shall be carried out in a judicial proceeding. The court shall take measures to reconcile the spouses.

A marriage shall be dissolved if the court establishes that the continued conjugal life of the spouses and the preservation of the family have become impossible.

A husband shall not have the right to institute a divorce case without his wife's consent during her pregnancy and for one year after the birth of a child.

When rendering a decision to dissolve a marriage, a court shall, when necessary, take measures to protect the interests of minor children and of a spouse who is incapable of working.

When there is mutual consent to dissolution of marriage by spouses who do not have minor children, the dissolution of marriage shall be carried out by registries of documents of civil status. In such instances the divorce shall be formulated and a certificate on the dissolution of marriage issued to the spouses after the expiration of three months from the day the divorce application was filed by the spouses.

Dissolution of marriage with the following [types of] persons shall also be carried out by registries of documents of civil status:

persons who have been declared missing in the established procedure;

persons who have been declared, in the established procedure, to be incapable of performing legal transactions as a consequence of mental illness or feeble-mindedness;

persons who have been sentenced to deprivation of freedom for a period of not less than three years for the commission of a crime.

When there is a dispute, the dissolution of marriage in such instances shall be carried out through a court.

A spouse who changed his [or her] own name upon entering into

marriage shall have the right to bear such name after dissolution of the marriage or at his [or her] request shall have his [or her] premarital surname conferred on him [or her].

Article 15. Invalidity of a marriage. A marriage may be declared invalid if the conditions stated in Article 10 of the present Fundamental Principles have been violated and if the marriage was registered without the intent to create a family (fictitious marriage). A marriage shall be declared invalid in a judicial proceeding.

The invalidation of a marriage shall not affect the rights of children born to such marriage. Other consequences of the invalidation of marriage shall be established by the legislation of union republics.

PART III. THE FAMILY

Article 16. Bases of the origin of the rights and duties of parents and children. The mutual rights and duties of parents and children shall be based on the parentage of the children, as certified in a procedure established by law.

The parentage of a child whose parents are in a state of marriage shall be certified by the registration of the parents' marriage. The parentage of a child whose parents are not in a state of marriage shall be certified by means of a joint declaration by the child's father and mother to be filed at a state registry of documents of civil status.

In the event a child is born to parents who are not in a state of marriage and who did not file a joint declaration, paternity may be established in a judicial proceeding.

When establishing paternity, a court shall take into account cohabitation and conduct of a common household by the mother of the child and the defendant prior to the birth of the child, or their joint upbringing or support of the child or evidence together with authentication which confirms the defendant's acknowledgement of paternity.

Article 17. Registration of parents in birth registration books. A father and mother who are in a state of marriage shall be recorded as the parents of [their] child in the birth registration book on the declaration of either of them.

If parents are not in a state of marriage, the registration of the child's mother shall be carried out on the mother's declaration, whereas the registration of the child's father [shall be carried out] on the joint declaration of the child's mother and father, or the father shall be recorded according to the decision of a court. In the event of the mother's death or if it is impossible to establish her residence, the registration of the child's father shall be carried out on the father's declaration.

When a child is born to a mother who is not in a state of marriage and there has been no joint declaration of the parents or a court decision establishing paternity, the registration of the child's father in the birth registration book shall be made in the mother's surname; the first name and patronymic of the child's father shall be recorded according to her instructions.

Article 18. Rights and duties of parents. A father and mother shall have equal rights and duties with respect to their children.

Parents must bring up their children in the spirit of the moral code of a builder of communism and must care for their physical development, education, and preparation for socially useful activity.

Parents shall be required to support their minor children and their adult children who are incapable of working and in need of help.

Protection of the rights and interests of minor children shall rest upon their parents.

Parents shall have the right to demand the return of their children from any person who holds the children without a basis in law or in a court decision.

Parental rights may not be exercised contrary to the interests of the children.

Parents shall enjoy equal rights and bear equal duties with respect to their children even when the marriage between them has been dissolved. The procedure for resolving disputes between parents involving questions of the residence and upbringing of children shall be established by legislation of union republics.

. . . .

Article 21. Duty of the family to pay alimony. The duty to support minor children, if they have no parents, may be imposed on other relatives—grandfathers, grandmothers, brothers, sisters, as well as the child's stepfather and stepmother.

The duty to support adult family members who are incapable of working and who are in need of help may be imposed on grandchildren and greatgrandchildren if [the needy family members] do not have spouses, parents, or adult children.

Legislation of union republics may establish other grounds on which rights and duties of mutual support of relatives and other persons shall arise.*

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* Law of June 27, 1968, 27 Ved. Verkh. Sov. S.S.S.R. Item 241, at 400 et seq. (Supreme Soviet U.S.S.R.), 4 Sov. Stat. & Dec., No. 4, at 106 et seq., English translation published in *Izvestia,* June 28, at 3, col. 1.