



## Introduction



*A good book is the precious life-blood of a master-spirit,  
embalmed and treasured up on purpose to a life beyond life.*

John Milton, *Areopagitica*, 1644



VER THE YEARS THAT I SERVED AS THE national chairman of the American Bar Association's Division of Family Law, and as the first editor-in-chief of their magazine *Family Advocate*, I frequently received requests for an introductory treatise on the development of matrimonial and family issues in the growth of Anglo-American common law. It was suggested, as an example, that such a reference could be used in an advanced seminar on this subject, and that it would enable law professors, their students, and even practitioners in the specialty of family law, wishing to corroborate or bolster a legal position by reference to early historical precedents, to readily source this type of material without lengthy research, or becoming overwhelmed by the detail commonly found in the more scholarly writings found in bibliographies and book catalogues, or in the lengthy reports found in such works as those published for the Year Books by the London Selden Society.

As a specialist with a law practice limited solely to family law matters, I thought it appropriate, if not mandatory, to acquaint myself with the origins of the law in this field. Accordingly, I have searched for and inquired

OPPOSITE  
Title page of *The  
Lawes Resolutions of  
Womens Rights: or,  
The Lawes Provision  
for Woemen*,  
London, 1632.

into the existence, location, and content of the law lists and bibliographies of early writings about family law that have formed the foundations of contemporary family laws. While it is my hope to achieve a readable working guide to such materials with this book, it is not intended as a final or complete identification of the available literature.

It was hard to identify a compilation of earlier legal resources on family law. Consequently, if a bibliography of early Anglo-American family law had not been done before, it seemed appropriate, and I was willing, to compile one. As my interest in and commitment to family law grew, so did my curiosity about the origins of family-related legal theories, as well as my desire to understand the evolution of this discipline over the centuries. I kept searching for the journal articles and treatises that I felt certain must exist to contribute such information. However, search as I did, I found few written answers in the early literature of the law. Thus, partly from naïveté, and partly by trial and error, I had to start almost from scratch. Logical sources for my search were in any bibliographies that dealt in any manner, either generally or peripherally, with the subject matters of the family, the law, or the early publication of books about the law. This hunt-and-peck process took me back to the very origins of English common law, early Roman civil law, and even earlier ancient and tribal laws, and forward to the beginnings of the process of writing and the origins of printing.

Fortunately, my research led me to the work of Chilton Latham Powell, Ph.D., an instructor at the Johns Hopkins University, who in 1917 published *English Domestic Relations, 1487–1653: A Study of Matrimony and Family Life in Theory and Practice as Revealed by the Literature, Law, and History of the Period*.<sup>1</sup> While the primary thrust of Powell's monograph and bibliography is directed at the history of marriage and related law, Chapter 3, "The Attempted Reform of Divorce,"<sup>2</sup> provides explanations and references to the types of books I had been attempting to discover. Powell comments:

The reader should not get the impression that church government and matrimonial jurisdiction were equally the leading issues of the day. By 1642, church government was probably the chief subject in the field

<sup>1</sup> Chilton Latham Powell, *English Domestic Relations, 1487–1653: A Study of Matrimony and Family Life in Theory and Practice as Revealed by the Literature, Law, and History of the Period* (New York: Columbia University Press, 1917; republished, Union, N.J.: Lawbook Exchange, 2001). This work has recently been republished by the Lawbook Exchange as part of their lengthy series of Reprints of Legal Classics; the full listing of this series can be found at <http://www.lawbookexchange.com>.

<sup>2</sup> *Ibid.*, pp. 61–100.

of controversy; next to this came questions of doctrine. Marriage and divorce were minor points in the discussion of the former of these topics; and one might read far into the writing of the time without finding mention of either, as is evidenced by the fact that many of the books and pamphlets discussed above have not been previously examined.<sup>3</sup>

<sup>3</sup> *Ibid.*, p. 85, n. 1.

Providing detailed references for and discussion of the numerous books on marriage and divorce written in the seventeenth century, Powell identifies two that he concludes had significant influence at the time, and he quotes at length from their content: *De Jure naturali et Gentium* by John Selden, London, 1640, written in Latin, with frequent quotations from Greek, Hebrew, Assyrian, and other languages; and *Doctrine and Discipline of Divorce*, by John Milton, London, 1643.

In his bibliographies Powell identifies "Early Books of Domestic Relations," "Books on Henry VIII's Divorce," and "Later Books of Reference." In Chapter 5, "Contemporary Attitudes towards Women," he identifies the contribution of the book *The Lawes Resolutions of Womens Rights* by the anonymous author T.E. as simply a women's book on their legal rights, pointing out that the British Museum Catalogue suggests this writer was Thomas Edwards.<sup>4</sup> As set forth later in this book, my reading of this work suggests that it was much broader in scope: it was really the first detailed treatise on family law in English, but never received the acclamation it deserved.

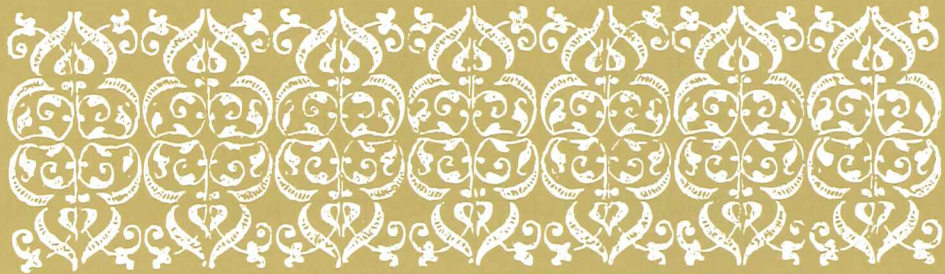
<sup>4</sup> *Ibid.*, pp. 243–56 (bibliographies) and pp. 147–78 (chap. 5).

Powell's work also contains a most authoritative Appendix A, "English Writing on the Divorce of Henry VIII and Catherine," as well as an Appendix B, "The Date and Occasion of Milton's First Divorce Tract."<sup>5</sup>

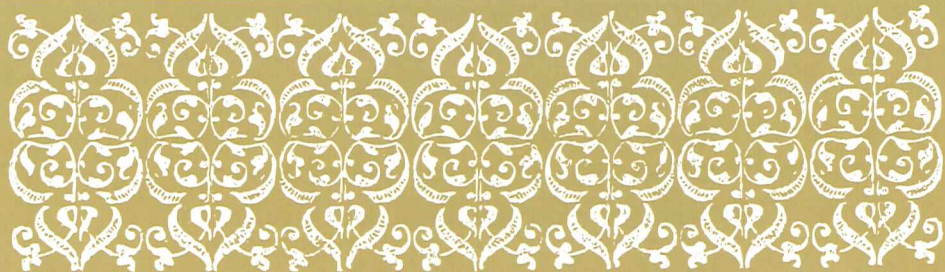
<sup>5</sup> *Ibid.*, Appendix A, pp. 207–24, and Appendix B, pp. 225–31.

Toward the end of my own researches, I discovered that a more current family law bibliography had been published by the Institute for Legal Studies, University of Wisconsin–Madison Law School. This work, entitled *American Family Law and American Family History: A Bibliography*,<sup>6</sup> was an outgrowth of the University of Wisconsin's 1984 summer program on "The Pictures of the Family in American Law." Its emphasis begins in the early nineteenth century, and makes the comment that "[p]rior to the nineteenth century, there probably was nothing that could have been called a discourse of family law, distinguishable in its language and

<sup>6</sup> Hendrik Hartog, with Kristin Oakley and Jeanne Bourguignoni, *American Family Law and American Family History: A Bibliography* (Madison, Wisc.: Institute for Legal Studies, University of Wisconsin–Madison Law School, 1985).



*The earliest known example of European printing from movable type still extant is the Indulgence of Nicholas V, printed in Mainz, Germany, in 1454. The famous Gutenberg Bible was printed the following year, in 1455. ¶ The first book printed in English, the Recuyell of the Hystoryes of Troyes, had been translated by William Caxton (ca. 1422–1491) between 1469 and 1471, when Caxton was a member of the household of Duchess Margaret of Burgundy. The book was drawn from a French romance by the priest Raoul Le Fèvre, chaplain to Philip, Duke of Burgundy. This book, a folio volume consisting of 352 leaves, was printed in 1474 by Caxton and Colard Mansion in the city of Bruges. The first book known to have been printed in England was printed by Caxton in 1477, and was entitled The Dictes or Sayings of the Philosophers. Caxton produced 103 printed works. His type was most probably made of wood, and consisted of eight different type fonts. L. S.*



concerns from property law." This commonly held idea, still prevailing with both teachers and practitioners of family law, is, I believe, in error. I thus undertake to provide my own bibliography of early family law writings.

My goal is to break ground and provide starting points for the lawyer, researcher, and legal historian concerned with the legal lore of the family. Most likely I have failed to identify numerous texts, bibliographic materials, catalogues, and indexes that with certainty would disclose further materials relating to the family written or produced prior to 1900. I hope that others will be encouraged by this beginning to help piece together the untold story of the written history of Anglo-American family law.

Traditional courses of instruction on the historical sources of Anglo-American law paint a "broad brush" description of family law. They introduce the various sub-topics in which the subject may be listed, such as "marriage," "divorce," "women's law," and so forth. For prospective scholars of family law, I list below a number of commonly available bibliographical topics by which publications in this area of the law might have been categorized. I was surprised to discover that a family law treatise will commonly be listed in only one of several different topic headings to which it might apply. Therefore it is necessary to review several different topical headings when attempting to locate all available literature on an early family law subject. Good starting points in looking for pertinent materials can usually be found in one or more of these commonly used topical headings: Divorce; Marriage; Domestic Relations; Husband and Wife; Matrimonial Matters; Parent and Child; Women's Law; Infants; and Bastardy.

For the dedicated legal historians and family law scholars who wish to examine first-hand the original full texts of cases, manuscripts, and readings and moots, instead of relying on summations of their content by others in treatises or collections of trials, and who thus need to identify the nature of what materials actually exist, I seriously recommend the following works and collections.

- I. *A Bibliography of Eighteenth Century Legal Literature*, edited by J. N. Adams and G. Averley (Newcastle upon Tyne, Eng.: Avero



Rococo-style initials with birds by Manoel de Andrade, Lisbon, 1719.