Union and Divorce: The Language of Family Law

by Bill C. Berger

A dysfunctional family is any family with more than one person in it.
—Mary Karr, *The Liars' Club*[1]

Families root us, and they uproot us. We find strength in them, and we must find solace from them. As confusing as families can be, the words used to describe them remind us of the public policies at issue in domestic relation cases. The words speak of wishes and choices. They bespeak both obligation and dependency. These words have evolved over time. One cannot say, even, that the word *marry* has held its meaning. It already means something very different from its origin. Most important, these words reflect a simple truth: family is premised on the willingness each of us has to stand for another and, without turning away, by the other.

Wife, Husband, Spouse, Union, Child, Family, Emancipate

wife A married woman; a woman who has a lawful spouse living. [Cases: Bigamy 1.][2]

husband (13c) A married man; a man who has a lawful spouse living.[3]

spouse One's husband or wife by lawful marriage; married person. [Cases: Husband and Wife 1.][4]

union, *n.* An organization formed to negotiate with employers, on behalf of workers collectively, about job-related issues such as salary, benefits, hours, and working conditions. • Unions generally represent skilled workers in trades and crafts. — Also termed *labor union*; *labor organization*; *organization*. See TRADE COUNCIL. [Cases: Labor and Employment 998] — unionize, *vb.* — unionist, *n.*[5]

child (bef. 12c) **1.** A person under the age of majority. **2.** Hist. At common law, a person who has not reached the age of 14. **3.** A boy or girl; a young person. **4.** A son or daughter.[6]

family (14c) **1.** A group of persons connected by blood, by affinity, or by law, esp. within two or three generations. **2.** A group consisting of parents and their children. **3.** A group of persons who live together and have a shared commitment to a domestic relationship. See RELATIVE. **familial**, *adj.*[7]

emancipate (17c) **1.** To set free from legal, social, or political restraint; esp., to free from slavery or bondage. [Cases: Slaves 23.] **2.** To release (a child) from the control, support, and responsibility of a parent or guardian. [Cases: Child Support 386-392; Parent and Child 16.] **emancipative, emancipatory**, *adj.* **emancipator**, *n.*[8]

How often have we heard the old saw that *housewife* is a pejorative because a woman is not married to her house? Actually, the word *wife* does not, etymologically, suggest marriage at all. In Old English, a *wife* was simply *wif*, a woman, as in an "ale-wife, apple-wife, fishwife, old wife, (or) oyster-wife."[9] Thus, a *housewife* was the woman of the house, as in "the mistress of a household, the hostess or landlady of an inn;" it used to be a word "restricted to a woman of humble rank or of low employment."[10] *Wife* eventually came to suggest a married woman through its use as a verb: *To wife* was "to be one's wife"—that is, one's woman.

In contrast, the word *husband* carried precisely the pejorative that we have heard about *housewife*. A *husband* was, in Old Norse, the man who was bound (*-bondi*) to his house (*hus-*)—that is, the man who literally provided the bond, as in pledged security, for the acts of those within a house.[11]

Although I found no noteworthy nicknames for husbands, historical records give these catchy nicknames for wives: "wifekin, wifelet, wifeling, (and) wifelkin."[12] Personally, I have already grown fond of "wifelkin," though I am a mite reluctant to try "wifelet."

Spouse is from the Latin *spondere*, to betroth.[13] Perhaps the finest example of *spouse* used in literature is Omar Khayyam's refrain from 1120 AD: "You know, my Friends, with what a brave Carouse, I made a Second Marriage in my house; Divorced old barren Reason from my Bed, And took the Daughter of the Vine to Spouse."[14] According to the *Oxford English Dictionary* (*OED*), the primary function of the word *spouse* is to refer to a wife, the second, to a husband, and the third, which I had not heard, to one's "affianced suitor; one's fiancé."[15] It also can be used to refer to a church, "or to a woman who has taken religious vows," and "to God or Christ in relation to the Church."[16]

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Marry and *wed* surprisingly carry gender-specific meanings in their origins. In Proto-Indo-European, the word *meryo* meant young man, which eventually in Latin became, for a woman, to be manned, as in to be wed to a man.[17] In contrast, *wed* comes from the Old English *weddian*, to pledge or gamble. Anyone who has entered into the connubial state of bliss would not be surprised to learn that *weddian* also is the origin of *wager*.[18] It was the man who originally did the pledging to take the woman as wife. Thus, literally, we could say it is women who *marry* and men who *wed*, though social rights advocates might do well to consider these novel—and thoroughly persuasive (at least to this author)—bumper stickers:

- "Men May Marry!" (as in, men also may be manned).
- "Women Will Wed!" (as in, women, too, gamble on the success of their marriage and, like their spouse, stand behind the couple's wedding vows).

Of course, we could abandon both anachronisms and opt instead for the word *union*. Often used in the phrase "civil union" to mean something short of marriage, *union* offers much more than either *marry* or *wed*, at least etymologically. Indeed, all couples might prefer to use *union*, which comes from the Latin *unus*, one—in other words, to make as one.[19] Any long-term couple might recognize this sentiment as a much more poignant and clear descriptor of the state of a marital relationship. Perhaps even thinking of the term in this light, one might be better able to argue why *unions* should be available to all, even if certain churches might reserve *marriages* and *weddings* to only some.

Child originated in the Old English, *cild*.[20] It eventually traveled into Germany, where it became *kind* as in *kindergarten* and *wunderkind*. The origin of *adopt* is something perhaps every adoptive parent and child would like to know. It comes from the Latin *ad*, to, and *optere*, to wish—as in, to wish for, or to be wished for. What a grand verb to capture this happy conjunction!

Family is from the Latin *familia*, which meant household. The original usage was to refer to "the servants of a house."[21] Only later did the word expand to refer to those who live in the house.[22] The *OED* offers the following example of this relatively new usage from 1622: "His family were himself and his wife and daughters, two mayds [*sic*], and a man."[23] Flash forward four decades to 1667, and the OED offers an example of the word's modern meaning from Milton's *Paradise Lost*, "Father of his Familie."[24]

The father of a house, as in the household including the servants, originally was the *pater familia*, and in that capacity, he held a power over everyone in the house, called the *patria potestas*. When he released someone from his power, the verb used was *emancipare*. Thus, to be *emancipated* was, originally, to be released from the power of the head of the household. One who was emancipated was said to be "set free *sui juris*."[25]

Divorce, Alimony, Support, Maintenance,

divorce. (14c) The legal dissolution of a marriage by a court. — Also termed *marital dissolution; dissolution of marriage*. Cf. ANNULMENT. [Cases: Divorce 1.] — **divorce**, *vb*.

> When used without qualification, the term [*divorce*] imports dissolution of the marriage relation between husband and wife, that is, a complete severance of the tie by which the parties were united. However, in its common and wider use, the term includes the dissolution of a valid marriage, a formal separation of married persons, and the annulment of a marriage void from the beginning.
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> So, while the term "divorce" has sometimes been broadly defined or applied to include both decrees of nullity and decrees of dissolution of marriage, especially where the marriage was not void but only voidable at the option of the injured party, this has been declared to be not in accord with modern usage, and generally, the term denotes only dissolution or suspension of a marital relation, and does not include annulment of an invalid marriage. A\cjs Divorces 2 at 31-32 (1986).[26]

alimony (al-ə-moh-nee). (17c) **1.** A court-ordered allowance that one spouse pays to the other spouse for maintenance and support while they are separated, while they are involved in a matrimonial lawsuit, or after they are divorced. • Alimony is distinct from a property settlement. Alimony payment are taxable income to the receiving spouse and are deductible by the payor spouse; payments in settlement of property rights are not. The Supreme Court has held unconstitutional a statute that imposed alimony obligations on the husband only. *Orr v. Orr*, 440 U.S. 268, 99 S.CT 11021 (1979). — Also termed *spousal support; maintenance*. Cf. CHILD SUPPORT; DIVORCE AGREEMENT. [Cases: Divorce 208, 230.][27]

support, *n*. (14c) **1.** Sustenance or maintenance; esp., articles such as food and clothing that allow one to live in the degree of comfort to which one is accustomed.[28]

maintenance, *n.* (14c) 1. The continuation of something such as a lawsuit. 2. The continuing possession of something, such as property. 3. The assertion of a position or opinion, the act of upholding a position in argument. 4. The care and work put into property to keep it operating and productive; general repair and upkeep. 5. Financial support given by one person to another, usu. paid as a result of a legal separation or divorce; esp. ALIMONY. • Maintenance may end after a specified time or upon the death, cohabitation, or remarriage of the receiving party. [Cases: Divorce 208, 230; Husband and Wife 282.][29]

Divorce is from the Latin *divertere*, to turn aside, and referred specifically to a woman turning aside and leaving her husband.[30] Thus, it was women who divorced men, as in perhaps this most famous example, Shakespeare's *Henry VI*: "I here divorce myself Both from thy table, Henry, and thy Bed."[31] Of course, Henry VI's descendant Henry VIII, with his six wives, still holds the record for being history's most infamous divorcee. Writing in support of his King's decision, John Milton opposed the Catholic Church's view at the time that a marriage sanctioned by the Church did not permit divorce.[32] Milton saw divorce purely as an issue for the spouses—or at least the husband—to decide: "The reasons which now move him to divorce, are equal to the best of those that could first warrant him to marry."[33]

Alimony is one of those words that moves me to write this column. I enjoyed learning its origin. The word comes from the Latin *alimonia,* nutriment, and *alere*, to nourish.[34] In the family law context, it originally referred to the food that was supplied to a divorcee or widow, though by 1721 even this limited context had taken on a (I would say clearly incorrect and regrettable) pejorative mercenary connotation as in this example, "A wound in the reputation of an English woman, they say, only lets in Alimony."[35]

Support comes from the Latin, *sub-*, under, *-portare*, carry, as in to hold up.

Maintenance comes from Latin, *manu tenere*, meaning "to hold in one's hand."[36] In a family law context, it is short for "separate maintenance," meaning "support given by a husband to a wife when the parties are separated."[37] Understanding the word's origin, one can see that *maintenance* was and is, for many women (and men), still a serious obligation that their former spouse does well to respect. The *OED* gives this arithmetically challenged quotation as an example of its use in 1777: "She has been the cause of six matches being broken off, nine separate maintenances and two divorces."[38] I have read that quote several times and, while I can account for the deaths of four husbands to equal (with her two divorces) her six marriages, I can only assume there must have been a practice of ordering multiple separate maintenances to get from six marriages and four widowings to nine awards of maintenance. It's a bit like wondering how much wood a woodchuck could chuck. However the math played out, to be sure, the lady in question led a busy life.

Conclusion

Learning the origin of these ubiquitous family law terms, practitioners and judges are reminded of, if not refreshed in, their commitment to preserve and protect these common (albeit often complicated) concepts. With *marriage*, *wedding*, and *union*, we see that even the words' origins carry reflections of evolving social norms. We think nothing of saying a man has married or a woman has wed. Society's understanding of these words has evolved. With *alimony*, *support*, and *maintenance*, we remember that the bonds of marriage, just like the fruits of that marriage, carry obligations that even after a *divorce* might have turned the *wife* from her *spouse*.

Notes

1. Karr, *The Liars' Club: A Memoir* (Penguin Books, 1995).
2. *Black's Law Dictionary* (*Black's*) 1735 (9th ed., West Group, 2009).
3. *Id.* at 810.
4. *Id.* at 1533.
5. *Id.* at 1671.
6. *Id.* at 271.
7. *Id.* at 679.
8. *Id.* at 598.
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *The Compact Edition of the Oxford English Dictionary* (*OED*) 2981 (Oxford University Press, 1987).
14. *Id.* at 673, *quoting The Rubaiyat of Omar Khayyam*, sec. LV.
15. *Id.* at 2981.
16. *Id.*
17. *Id.* at 1731; en.m.wiktionary.org/wiki/marry.
18. *OED*, *supra* note 13 at 3724.
19. *Id.* at 3514.
20. *Id.* at 396.
21. *Id.* at 958.
22. *Id.*
23. *Id.*, *quoting* Star Chamb. Cases (Camden) 44.
24. *Id.*
25. *Id.* at 847.
26. *Black's*, *supra* note 2 at 549, 550.
27. *Id.* at 85.
28. *Id.* at 1577.
29. *Id.* at 1039.
30. *OED*, *supra* note 13 at 777.
31. Shakespeare, *Henry VI*, Act VI, Part III, Scene 1.
32. Milton, *The Doctrine and Discipline of Divorce* (1643).
33. *Id.*
34. *OED*, *supra* note 13 at 56.
35. *Id.*
36. *Id.* at 1698.
37. *Id.*
38. *Id.* ■