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Sexual freedom or social chaos: The debate on the 1926 Code

Aron Sol'ts: It seems to me that the draft suggested by the Commissariat of Justice is only a formal "step forward." It has nothing in common with the real steps forward we must take in the areas of culture, life, and development.

Nikolai Krylenko: So, Comrade Sol'ts wants what we now already have. All these countless *babi* with children, wives suing communists, and communists running from their wives . . . in one word, all those who protest to him about the current situation. Are they really protesting against the draft? What does Comrade Sol'ts want to change? The draft, which is not yet in effect, or the current law?

Sol'ts: The draft and the current law!

Krylenko: How do you want to change it? Tell us, Comrade Sol'ts, do you want to provide a legal basis for only the first marriage, to establish the right to enter marriage only once? Is that what you want? Is this so, or not so?

Sol'ts: Not so.

Krylenko: No, it is so. If we are to call ourselves Marxists, we must affirm that we cannot struggle with a definite phenomenon of life by punitive norms.

Sol'ts: I didn't suggest this.

Krylenko: Then tell us concretely, what are you suggesting?¹

By October 1925, the final draft of the new Family Code was affirmed by Sovnarkom (Council of People's Commissars) and submitted to the Central Executive Committee (VTsIK) for ratification. Jurists had taken two years to agree on an acceptable draft, discarding at least three previous versions in an attempt to meet various needs and interests. Yet the final draft, introduced to the 434 delegates to the VTsIK, continued to provoke de-

¹ Ia. Brandenburgskii, A. Sol'ts, N. Krylenko, S. Prushitskii, *Sem'ia i novyi byt: spory o proekte novogo kodeksa zakonov o sem'ye i brake* (Moscow, Leningrad, 1926): 21–23.

bate.² After several days of heated discussion, the delegates could not even agree whether to put it to a vote. The radical proponents of the Code were eager to vote. Dmitri Kurskii, an old Bolshevik who had helped set up the people's courts in 1918 and currently served as People's Commissar of Justice, pointed out that there had been ample discussion in the regional and district executive committees of the soviets and in the press.³ But the conservative delegates insisted on additional discussion: The district (*uezd* and *volost'*) soviets, women's organizations, and the local newspapers had not yet discussed it. Both Mikhail Kalinin, a Politburo member and president of the VTsIK, and David Riazanov, Party member and director of the Marx-Engels Institute, proposed to remand the Code to the local level in the hope that its more radical provisions would be tempered by the conservatism of the peasantry. Kalinin cloaked his aim in an appeal to democracy: "Our main task lies in drawing the workers and peasants to participate in the legislative process."⁴ Iury Larin, the Party member who had initiated the revisions of the Family Code in 1923 and an advocate of the final draft, sharply responded to its conservative critics: "If we make a decision on the Code solely on the basis of a majority vote in the villages, in the *skhod*, then we are taking the leadership of our country away from the Party, away from the vanguard, and turning it over to the most backward, long-bearded village elders, to whom Comrade Riazanov seems to belong."⁵

Many delegates to the 1925 VTsIK shared Kalinin's reservations. Of the main speakers, approximately 60 percent opposed the Code on moral grounds; and of this group, 35 percent identified their interests specifically with the peasantry. Only 20 percent of the speakers supported the draft without reservations,

² According to the *Stenograficheskii otchet zasedaniia 2 sessii Vserossiiskogo Tsentral'nogo Ispolnitel'nogo Komiteta 12 sozyva. 20 oktiabria 1925 goda* (Moscow, 1925): 540, the TsIK of the RSFSR contained 300 members and 134 candidate members. Of its members, 26% did not belong to the Party; and of the non-Party members, 23% were factory workers and 53% were peasants.

³ "Stenograficheskii Otchet 2 Sessii Vserossiiskogo Tsentral'nogo Ispolnitel'nogo Komiteta 12 Sozyva. 20 oktiabria 1925 goda," in *Sbornik statei i materialov po brachnomu i semeinomu pravu* (Moscow, 1926): 188. Hereafter cited respectively as 1925 *VTsIK* and *Sbornik*.

⁴ *Ibid.*, p. 191. ⁵ *Ibid.*, p. 192.

and these were mainly the jurists who had helped to author it.⁶ Both Kalinin and Larin shared the opinion that the population, and the peasantry in particular, was not ready to accept the Code. Such was Kalinin's hope and Larin's fear.

After considerable debate, the VTsIK decided to remand the Code for further discussion. Between October 1925 and November 1926, when it was discussed again and finally ratified by the VTsIK, the Code was widely debated in the press and local organizations. Peasants, workers, jurists, Party organizers, sociologists, women, and young people met in the towns and in the country, in factories, schools, and six thousand village meetings, to debate the very meaning and purpose of marriage. In the words of Kurskii: "Reports, disputes and articles on marriage and family law have become a universal phenomenon."⁷ Peasants and women boldly testified about their experiences; snide jokes and sexual banter competed with scholarly legal polemics on the meaning of marriage. The discussion was open and forthright, marked by little ideological obeisance. The participants in the debate did not see themselves as members of self-constituted groups, advocating clearly delineated positions. Although the Commissariats of Justice, Land, and Internal Affairs, and Sovnarkom took positions on certain provisions of the Code, it was not unusual for members of the same Commissariat to advocate opposing positions in accordance with their personal opinions.

The draft Code's proposal to provide the same legal rights to people living together in de facto unions as to those in registered marriages provoked the greatest controversy. De facto marriage was happily hailed by some as the wave of the socialist future, a hopeful portent of a new age when contractual formalities would disappear and people would form social ties free from the constraints of poverty and "bourgeois hypocrisy." Iakov Brandenburgskii, the long-time Party member, dean of the juridical faculty of Moscow University, and an active proponent of the new Code, expressed this view at a Zhenotdel meeting in Febru-

⁶ These percentages were arrived at by tabulating the number of speakers and their positions according to 1925 *VTsIK*.

⁷ D. I. Kurskii, "Predislovie," in Ia. Brandenburgskii, A. Sol'ts, N. Krylenko, S. Prushitskii, *Sem'ia i novyi byt: spory o proekte novogo kodeksa zakovov o sem'e i brake*, p. 3.

ary 1926. He proudly told the assembled organizers that “the many cases of de facto marriage reveal a new, revolutionary form of life in the towns and in the country. These relations, developing in the heart of the working masses, have now found a careful and timely reflection in the law.” Brandenburgskii optimistically predicted, “We should know where we are going, and we are going toward marriage without registration – this is a fact.”⁸

Yet others argued that de facto marriage was not a sign of the socialist future, but rather of the chaos, disruption, and dislocation of a war-ravaged society. Ivan Stepanov, Party member and editor of *Izvestiia* and *Leningradskaiia Pravda*, described Soviet social life in bitter terms: “We thought we could create institutions through which the development of harmonious, beautiful, and communist forms of marriage would be possible. But what has happened? Women remained chained to the ruined family hearth, and men, whistling gaily, walk out leaving women with the children.”⁹ The authors of the draft had hoped to craft a provision that would satisfy the libertarian critics of marriage as well as the defender’s of women’s interests, but instead, the recognition of de facto marriage incited an outpouring of opinions concerning the troubled status of women, marriage, and the family after almost a decade of Soviet rule.¹⁰

⁸ Ia. N. Brandenburgskii, *Brak i sem’ia* (Moscow, 1926): 6, 23.

⁹ I. Stepanov, “Problema Pola,” in E. Iaroslavskii, *Voprosy zhizni i bor’by* (Moscow, Leningrad, 1924): 205.

¹⁰ Some historians have viewed the 1926 Code as a positive move in the direction of sexual freedom, the liberation of women, and the transformation of the family. See Harold Berman, “Soviet Family Law in the Light of Russian History and Marxist Theory,” *Yale Law Journal*, 56, no. 1 (1946): 25–57; Kent Geiger, *The Family in Soviet Russia* (Harvard University Press, Cambridge, Mass., 1968); John Hazard, *Law and Social Change in the USSR* (Carswell, Toronto, 1953); Alex Inkeles, *Social Change in Soviet Russia* (Harvard University Press, Cambridge, Mass., 1968); Nicholas Timasheff, *The Great Retreat* (E. P. Dutton, New York, 1946); Maurice Hindus, *House Without a Roof* (Doubleday, New York, 1961). According to this view, the changes in marriage and family law in 1936 represented a “sensational somersault,” Hindus, p. 139. Under Stalin, “controversies over the role of women under socialism came to an end.” See Gail Lapidus, *Women in Soviet Society. Equality, Development, and Social Change* (University of California Press, Berkeley, 1978): 94. Excep-

The politics of Left and Right

Throughout the year that the Code was being discussed, the leaders of the Party were engaged in a bitter struggle for power. The triumvirate of Stalin, Zinoviev, and Kamenev had successfully silenced Trotsky and the left opposition by January 1925, but with Trotsky gone, the unity of the triumvirate crumbled. The rift between Zinoviev and Kamenev, on the one hand, and Stalin on the other revived debate over policy toward agriculture and industrialization. Stalin, Bukharin, and the majority-wing of the Party defended the continuation of NEP, arguing in favor of greater concessions to the peasantry and a gradual development of industry on the basis of an expanding peasant market. The Left, increasingly critical of a policy that promoted petty capitalism in the countryside, advocated a quicker tempo of industrialization based on the increased extraction and appropriation of peasant surplus. The debate intensified throughout the year as Zinoviev and Kamenev reconciled with Trotsky to create a new, united opposition.

Even though a large majority of delegates to the 1925 and 1926 VTsIKs were Party members, the debate over the draft Code was not defined by the struggle for power going on at the upper levels of the Party. Neither the left opposition nor the majority wing of the Party held a defined position on the new Code. Yet references to the debate over agriculture surfaced repeatedly in the discussion of the impact of the Family Code on the peasantry. Several opponents of the draft, contending that frequent divorce, alimony, and de facto marriage were economically harmful to the *dvor*, invoked the ideas of Bukharin and the ideology of NEP in their critique of family policy.

Kalinin, for example, known for his “pro *muzhik*” (pro peasant) position on agrarian policy,” voiced the opinion that the

tions to this view are provided by Beatrice Farnsworth, “Bolshevik Alternatives and the Soviet Family: The 1926 Marriage Law Debate,” in D. Atkinson, A. Dallin, G. Lapidus, eds., *Women in Russia* (Sussex, 1978); and John Quigley, “The 1926 Soviet Family Code: Retreat from Free Love,” *Soviet Union*, 6, pt. 2 (1979): 166–74. In a careful legal analysis, Quigley argues that the Code represented a temporary retreat from the socialist position on the family and that “the dominant thinking behind the 1926 Code was conservative.” (p. 173.)

Code was “too bold.”¹¹ Aleksei S. Kiselev, an Old Bolshevik, member of the Presidium of the Central Control Commission, and deputy commissar of the Workers and Peasants Inspectorate, also opposed the draft, claiming that it slighted the needs of the peasantry. In a perfect expression of Bukharin’s approach to industrialization, Kiselev explained that the peasantry was the essential basis for the development of a socialist economy: “If we do not create a firm foundation for the family, if we do not create firm relationships between family members and firm guidelines in regard to the division of property, then we will weaken and shatter the economic base of our economy.” Kiselev argued that the *dvor* was crucial to economic development, and while “we should not lag behind the peasant, we must consider his life and his economy.”¹²

Shakhnazarov, a jurist and member of the Society for the Study of Soviet Law, noted that the state could not afford to ignore the interests of the middle peasants “and conduct an experiment with them.” “In 1918 . . . a rifle was the best weapon of the revolution,” he said, referring to the policy of forced grain requisitioning during the civil war. Yet “under today’s conditions we build the economy on the *smychka* (alliance) with the peasants.” He opposed the draft in the belief that its property provisions would lead to the weakening and eventual ruin of the peasant household.¹³

The proponents of the Code, expressing the Left’s view of the peasantry’s petty-bourgeois tendencies, retorted that family law should not reflect the interests of the most backward sector in Soviet society. Larin, who criticized the Party’s agricultural policy for favoring the *kulak* (wealthier peasant),¹⁴ claimed that Lenin’s suggestion to extend debate “under the slogan, ‘Face to

¹¹ Isaac Deutscher, *Stalin. A Political Biography* (London, 1929): 299; 1925 VTsIK, p. 190.

¹² III sessii Vserossiiskogo Tsentral’nogo Ispolnitel’nogo Komiteta 12 sozyva. Stenograficheskii otchet (Moscow, 1926): 687. Hereafter cited as 1926 VTsIK.

¹³ “Diskussiia po Povodu Proekta Kodeksa Zakonov o Brake, Sem’e i Opeke,” *Rabochii sud*, 3 (1926): 231–242; *Leningradskaiia pravda*, December 12, 1925: 6.

¹⁴ E. H. Carr, *Socialism in One Country*, Vol. 1 (Macmillan, New York, 1958): 263, 270n. Isaac Deutscher, *The Prophet Unarmed* (Oxford University Press, London, 1959): 303n, notes that Larin’s attitude toward the left opposition was ambiguous.

the Countryside,'" was an effort to alter the Code "in accordance with whatever suits the *kulak*."¹⁵ Nikolai Krylenko, the senior deputy public procurator and a strong supporter of the draft, insisted that the purpose of family law was not to strengthen the peasant household. The needs of the "leading class" of the population, the working class, should determine state policy. Although peasants constituted the majority of the population and the *dvor* was a central economic unit, "It in no way follows that we should provide a legal norm in accordance with the interests of many millions of peasants." Pandering to the peasantry would only lead society backward, away from socialism. Krylenko offered a contemptuous parody of the peasant view of marriage as "a laboring union of a man and a woman, concluded for the free mutual support of the peasant household on the basis of a defined division of labor, and for the satisfaction of the sexual interests of the *khozain* himself."¹⁶ Although spoken half in jest, Krylenko's message was clear: Peasant social attitudes were hardly compatible with socialist ideals.

Evgeny Preobrazhenskii, the noted Party economist and left-wing spokesman for a more rapid approach to industrialization, supported the Code and shared Krylenko's disdain for concessions to the peasantry. "We cannot place our socialist legislation on par with the average peasant *dvor*," he said bluntly. Preobrazhenskii argued that Soviet family law was not responsible for the breakdown of the peasant household and the increasing number of *razdely* (household divisions). He argued that the large patriarchal household was inevitably fated to disappear. The process had begun before World War I when the laws on marriage and divorce were extremely strict. The present high rate of *razdel* was due, in part, to a higher "cultural level in the countryside." Preobrazhenskii acknowledged that *razdel* was not always economically feasible, but he welcomed the process as "evidence of a significant leap forward by peasant youth in cultural relations."¹⁷ Krylenko agreed with Preobrazhenskii's view

¹⁵ 1925 VTsIK, p. 192. According to Carr, *Socialism in One Country*, Vol. 1, p. 237, Kalinin and Larin had locked horns earlier, in the 1924 VTsIK, over the question of class differentiation in the countryside.

¹⁶ *Sem'ia, opeka, brak. Sbornik materialov k proektam semeinogo kodeksa USSR i RSFSR* (Khar'kov, 1926): 135.

¹⁷ 1926 VTsIK, pp. 677–680.

of *razdel*, claiming that the large number of *razdely* did not indicate economic ruin, but rather “the definite, natural process of disintegration of the former large family.” The process of division, he believed, was inevitable and impossible to arrest by legislation. He staunchly proclaimed, “it is necessary with all decisiveness to end the reactionary utopia of preserving the peasant family.”¹⁸

Preobrazhenskii understood the problems posed by the uneven economic development of his country, but he considered it a grave mistake to draft Soviet law to suit the peasants. “It is completely clear that the towns are in favor of this Code,” he observed, “we cannot turn back just because the middle peasant cannot immediately adapt.” Noting the huge gap between life in the countryside and the towns, Preobrazhenskii further asserted, “We cannot have two legislations, one for the countryside, the other for the town.” Family policy must be designed to favor the towns and the “more progressive element.”¹⁹

Aron Sol’ts, a member of the Party, the Supreme Court, and the Presidium of the Central Control Commission, directly addressed the political differences over the Code in a speech to the judges and jurists of the Leningrad provincial court. He attacked the polemical style popular among Party members, the tendency to identify every position with a class interest. “This is a *kulak* deviation, this is a *bedniak* deviation, this is a Philistine deviation,” he mimicked. Sol’ts himself opposed the draft. He argued that the entire population, including the middle peasants, had to be drawn into the building of socialism. He strongly appealed for the continued cooperation of the NEP period, and he sharply attacked Krylenko for dismissing various sections of the population as petty-bourgeois. “We write laws not for communists, but for the entire country,” he proclaimed. “It is impossible to build socialism with only one socialist hand.”²⁰

¹⁸ Ibid., pp. 560–562.

¹⁹ Ibid., pp. 679–680. The peasants were not pleased by Preobrazhenskii’s words. One peasant delegate to the 1926 VTsIK sharply responded, “We have over 100 million peasants and we cannot dismiss them as Preobrazhenskii wants to do” (p. 690).

²⁰ “Perelom v Diskussii o Brake,” *Rabochii sud*, 4 (1926): 258–260. Sol’ts took a similarly nonantagonistic position on the Criminal Code, arguing against a class-based system of justice. See Carr, *Socialism in One Country*, Vol. II, pp. 439–440.

Krylenko, Preobrazhenskii, and other advocates of the new Code argued that the Party firmly lead the peasants toward socialism by overcoming their attachment to older social forms and customs. Sol'ts, Kalinin, and other opponents, on the other hand, held that the Party must consider the peasants' interests, for they constituted a majority of the population. The proponents of the Code believed in moving quickly toward socialism; the opponents, at a slower, more gradual pace. Both sides recognized that the peasantry, with their primitive mode of production, stubborn household interests, and strong patriarchal values, posed problems for the transition to socialism. They differed, however, on the best way to transform the economic and social life of the village. In this way, the debate over the Code paralleled the larger debates over industrial and agrarian policy.

Yet despite these parallels, many of the most active participants in the debate over the Code aligned themselves with neither the Left nor the Right in the larger political struggle within the Party. Krylenko, Brandenburgskii, and Kurskii, three of the draft's most ardent supporters, never sided with the left opposition. Similarly, many vocal opponents of the Code, such as Sol'ts, Kiselev, and Kalinin, did not later support Bukharin's right opposition. The case of Alexander G. Beloborodov, commissar of the NKVD in 1923, demonstrates how family issues and larger political positions of the Left and the Right did not neatly coincide. Beloborodov, expelled from the Party in 1927 for membership in the left opposition, expressed many reservations about the draft code in 1926. Although he favored a more rapid approach to industrialization, he took a more cautious approach to radical change on the social front.

As the country as a whole debated the draft Code, four main groups, defined by a common position on specific issues, emerged: the peasants, the protectionists, the progressive jurists, and the women's interest group.²¹ The peasants advanced the clearest position: They were resolutely opposed to the new Code. They opposed the provision on alimony as detrimental to the *dvor*; they opposed simplification of the divorce procedure

²¹ I have chosen these terms for the sake of clarity and convenience. They did not appear in the debate. I have avoided the terms "left" and "right" which are often confusing when applied to issues concerning women and the family, settling instead on "progressive" and

and legal recognition of de facto marriage. They argued that the government should adopt measures to strengthen traditional registered marriage, thereby discouraging "moral dissolution." Their greatest fear was economic: If demands for alimony or child support could not be met by the responsible member of the *dvor* (i.e., the husband or father), the entire household would be made to pay.

Although not particularly sympathetic to peasant patriarchalism, the protectionists shared certain elements of the peasant position, opposing the recognition of de facto marriage on economic and moral grounds. This group of prominent Party officials, jurists, sociologists, and health workers amplified many of the earlier objections jurists had voiced to the new drafts of the Family Code. They invoked the Marxist model of base and superstructure to argue that the draft Code was too advanced for the economic and social conditions of the country. Recognition of de facto marriage would undermine registered marriage; promiscuity and women's suffering would increase. De facto marriage represented a disintegration of the social fabric, to be countered with strong legal and governmental measures. The millions of *besprizorniki* needed strong, stable homes, which could only be created by strict statutes on marriage and divorce. The role of law in society was to set firm norms for people to follow.

The progressive jurists were perhaps the most complex group. They favored the new Code and the recognition of de facto marriage, although various members differed in their reasoning. Some took the libertarian position, hailing de facto marriage as part of a new socialist future; others were more cautious. All were deeply concerned about the plight of women in de facto marriages and advocated its recognition for three reasons: First, they hoped to provide some means of support for the abandoned de facto spouse; second, they viewed the registration of marriage as a mere technicality, fated to disappear with the advance of socialism; and third, they argued that it was "bourgeois hypocrisy" not to recognize de facto marriage. Contrary to

"protectionist." The positions taken by these groups will clarify their designations. Male and female peasants differed sharply on many provisions of the Code. The peasant group refers mainly to men who promoted the interests of the household.

the protectionists, the progressive jurists conceived the law as a reflection of social reality rather than a set of prescriptive norms.

The women's interest group was perhaps the least coherent group. Its members shared one common attribute: a sensitive and often highly personal awareness of the problems and difficulties of women. The group numbered among its members leading Party activists such as Vera Lebedeva, the head of the Department for the Protection of Maternity and Infancy (OMM), as well as many peasant and working-class women. The peasants and workers, who were largely uneducated, did not participate in the intellectual and juridical arguments, but they nonetheless defended the practical interests of women. They sharply rebuked the male peasant speakers who depicted women as cunning and greedy creatures. Yet they were not feminists: Women's liberation from traditional family roles was a remote issue to them. Underlying their passionate descriptions of women's plight was the belief that a woman needed the protection of a strong, stable marriage to raise a family. Women, they argued, needed to be liberated from the social effects of the new sexual freedom of men.

De facto marriage

The differences in the values these four groups attached to marriage and family life were most clearly revealed by the heated discussion of de facto marriage, for this provision, more than any other, directly challenged the basic, traditional conception of marriage. The peasants had the most straightforward position. They favored the clear, unambiguous registration of marriage and resolutely refused to recognize de facto relations. In their village meetings, they adopted the following resolutions: "Only registered marriage should be considered as legal marriage," and "With the aim of the earliest and most exact establishment of paternity, recognition of marriage registration is a necessity."²² One peasant delegate to the 1926 VTsIK said of the draft, "The village does not need this. The village demands

²² I. Dombrovskii, "Novyi Kodeks Zakonov o Brake, Sem'e i Opeke i Derevniia," *Ezhenedel'nik sovetskoi iustitsii*, 48 (1926): 1531.

standard laws that are stable. The village demands that wives and brides register. We do not want a situation where today they are tied to one and tomorrow to another, and the court recognizes all this as marriage.”²³ Another peasant delegate asked simply, “How can we have unregistered marriage in our area? Ninety-five percent of the population there is illiterate and in the majority of cases they live under conditions of a subsistence economy and extended households. You preach here that every union should be considered marriage. But this is possible only for a small group of conscious citizens – for those like Comrade Krylenko.”²⁴

The peasants were deeply concerned that de facto marriage would undermine the economic unity of the household. The property of the *dvor* was held jointly, and the peasants feared that social instability would lead to the impoverishment or breakup of the *dvor*. The peasants of Arkhangelsk, in a resolution Kurskii deemed “extraordinarily characteristic,” expressed the need to limit *razdel* in the interests of the household. Other village resolutions presented similar demands, including the need to limit divorce and the household’s responsibility for alimony. One resolution specifically noted that a woman in an unregistered marriage should not have the right to *razdel*.²⁵ Marinenko, a peasant delegate to the 1925 VTsIK who described himself as “from the dark country, from a far and lonely province,” stated his objections very simply: “In my province this plan does not please us. It will bring ruin to the family.”²⁶ Another peasant launched a tirade against spongers, parasites, and conniving females. He argued that the recognition of de facto marriage would lead to endless legal confusion and inequities. Women would use the law to take advantage of men. Amid the laughter of the other delegates, he explained, “You go to a club a few times, help a woman find her way through a political question, and the next thing you know, you’re in court.”²⁷

Many peasants believed that de facto marriage would lead to nothing less than social and moral chaos. The resolution from the peasants of Arkhangelsk declared that de facto marriage would foster “debauchery and other liberties in the village.”²⁸

²³ 1926 VTsIK, p. 621.

²⁴ Ibid., p. 648.

²⁵ Ibid., pp. 563–564.

²⁶ 1925 VTsIK, p. 156.

²⁷ Ibid., p. 132.

²⁸ 1926 VTsIK, p. 563.

Volkov, a peasant delegate to the 1926 VTsIK, derided the notion that de facto marriage was a positive phenomenon. "The countryside does not want the chaos we have in the towns," he stated firmly. "What will happen if 85 percent of the population – the peasantry – will be occupied by those same things which you are occupied in the towns? We will drown in this chaos."²⁹ Many peasants expressed a deep mistrust of urban life and emphasized the need for strict morality, strong family bonds, and a clear definition of marriage.

The protectionists also opposed the recognition of de facto marriage, although they did not share the peasants' conservatism. This group, composed of well-known figures such as P. A. Krasikov, an Old Bolshevik and current procurator of the USSR Supreme Court, N. A. Semashko, the commissar of health, David Riazanov, Aron Sol'ts, and others in important judicial and Party positions, believed that the family would eventually wither away. Unlike the peasants, they looked forward to a socialist society. But they argued from a self-consciously Marxist position that the new Code did not fit the economic realities of the country. Krasikov contended that the family still served the crucial function of distributing the wealth among its members: the young and the old, men and women, the able-bodied and the disabled. Marriage and the family had an "extraordinarily important meaning" as long as society lacked "full socialization of the means of production and consumption." In light of "the insufficient development of social and productive relations," a change in the laws on marriage and the family would do more harm than good.³⁰

Sol'ts charged that the Code was founded on the "idealistic principles" of sexual liberty and freedom from state interference. But these principles could only be realized in the communist society of the future. Sol'ts grimly observed, "We are destroying the family without assuming its material responsibilities."³¹ A. M. Vasil'ev-Iuzhin, the deputy chairman of the

²⁹ Ibid., p. 689.

³⁰ P. Krasikov, "V Chem Sushchnost' Semeinykh Brachnykh Form," *Rabochii sud*, 1 (1926): 5–6.

³¹ A. Sol'ts, "O Revoliutsionnoi Zakonnosti," *Pravda*, January 24, 1925, p. 4.

Supreme Court, also deemed the draft "premature." He accused Krylenko of being an "incomparable utopian," "an idealist" who believed "boundlessly in the strength of the laws he drafted, even though they do not have a strong material base." "I am an old Marxist and a revolutionary," Vasil'ev-Iuzhin announced. "As an old Marxist, I am accustomed to consider phenomena in terms of their development and movement. Everything we want now is not yet possible."³²

Another protectionist, I. Kondurushkin, pointed out numerous practical problems. Recognition of de facto marriage would prompt endless disputes between partners that the courts would have to resolve. The new Code was incompatible with the needs of a peasantry still involved in petty-commodity production. And the government could not yet care for all the needy. Kondurushkin said frankly, "The collapse of the family at the present moment means this: an increase in the number of *bepsprizorniki*, a growth in criminality and even infanticide, and the triumph of church marriage in the countryside." Kondurushkin summed up succinctly: "The new Code wants to outstrip economics and history."³³

Given the backwardness of productive relations, the protectionists emphasized the important social role of the marriage contract. Krasikov argued that marriage was primarily a social, not a private affair, and that its basis needed to be strengthened and publicized.³⁴ Registration, as Sol'ts pointed out, was the primary means of publicly affirming a marriage. "It is necessary to distinguish marriage from sexual intercourse," he noted.³⁵ Kondurushkin fiercely condemned the "anarchist" view that marriage was a purely personal affair. "Sooner or later," he pre-

³² A. M. Vasil'ev-Iuzhin, "Eshche o Sem'e, Brake i Novom Semeino-Brachnom Kodekse," in *Sem'ia, opeka, brak. Sbornik materialov k proektam semeinogo kodeksa USSR i RSFSR*, p. 144.

³³ I. Kondurushkin, "Diskussiia o Brake," *Rabochii sud*, 2 (1926): 102–103.

³⁴ 1925 *VTsIK*, p. 129; 1926 *VTsIK*, p. 587.

³⁵ *Leningradskaiia pravda*, January 19, 1926, p. 4. Raigorodskii, a member of the Collegium of Advocates, also contended that registration would bring clarity to sexual relations. See "Diskussiia po Povodu Proekta Kodeksa Zakonov o Brake, Sem'e i Opeke," p. 236.

dicted grimly, “you will run for social sanctions when you appeal to court.”³⁶ And Riazanov angrily dismissed the new Code as “petty-bourgeois, Philistine, and anarchistic.” Amid the jeers and applause of the other delegates, he loudly decreed, “Not every pairing is a marriage.” “Old man!” hooted someone from the audience. “You need to be rejuvenated,” yelled another. “Not every old man is bad,” Riazanov retorted calmly. “And not every member of the intelligentsia is an intelligent person.” The draft, in Riazanov’s seasoned opinion, was nothing more than “left phraseology.”³⁷

The protectionists argued that the plan was not only premature, but that it actually harmed women’s interests. In a scathing critique of the new morality, published in 1923, Ivan Stepanov, the editor of *Leningradskaiia Pravda* and *Izvestiia*, argued that the breakdown of traditional marriage had resulted in even more oppressive conditions for women. The main problem lay in the government’s inability to establish childcare centers and other communal facilities that would relieve women of their traditional burdens. Stepanov had nothing but contempt for the men who abandoned pregnant women and then glorified the new form of marriage. He insisted that the recognition of de facto marriage only encouraged male irresponsibility. Although the old law could not prevent men from abandoning their children, at least “earlier custom demanded that the father bear his burden in the upbringing of the child. New custom does not demand this.” Stepanov concluded, “We made a revolution in such a manner that it benefited only men. Women have remained in a tragic position.”³⁸

As a member of the Central Control Commission, Sol’ts was especially knowledgeable about the problems of abandoned women. The wives of Party members constantly beseeched him to take action against their former husbands for nonpayment of alimony and child support. In Sol’ts’s view, the draft misled women by encouraging them to believe that their interests could be protected. “I think we would help a woman more,” he explained, “if we would say to her: ‘The law protects you only in certain circumstances in the current economic situation. We are

³⁶ Kondurushkin, “Diskussiia o Brake,” p. 103.

³⁷ 1926 *VTsIK*, p. 641–642.

³⁸ Stepanov, “Problema Pola,” pp. 205–207.

not able to protect you more fully.'" Sol'ts did not oppose sexual freedom in principle, but he argued that as long as the state could not offer women full protection, it had to encourage stable marriage. Alimony was a poor solution to the problems created by social instability.³⁹

Osman Deren-Aierlyi, a 1925 VTsIK delegate, agreed with Sol'ts, fearing that men would use the new law to persuade women that marriage was unnecessary. People would refuse to register their marriages if the law recognized de facto relations. A massive court apparatus would then be needed to handle the influx of new disputes. "If we go in this direction," Deren-Aierlyi proclaimed, "all Russia will be transformed into one continuous all-national marriage!"⁴⁰

The progressive jurists defended the recognition of de facto marriage against each and every one of these points. Kurskii drily replied to Deren-Aierlyi that he did not plan to organize group marriage at his advanced age.⁴¹ Of all the progressive jurists, Kurskii had the most conservative approach to de facto marriage. He stated: "This Code is a means by which we can fight against male promiscuity. Why? Because in the former Code there was no factual protection for de facto marriage and here we have protected it. We speak to those comrades who have shirked and abandoned their responsibilities to women and children and say, 'You will answer for this.'"⁴² Kurskii saw the Code as a means of defining de facto relations, not undermining registered marriage. He implicitly assumed that de facto marriage was a consequence of social instability, not a sign of future communist relations. He hoped the new Code would force the partners, especially men, to assume the same responsibilities as spouses in a registered marriage. Kurskii sought to bring de facto relations closer to the traditional conception of registered marriage, not the reverse.

³⁹ A. Sol'ts, "Vvedenie v Diskussiu o Brake i Sem'e," *Rabochii sud*, 5 (1926): 349–360. For similar positions see also Kondurushkin, and N. A. Semashko, *Novyi byt i polovoi vopros* (Moscow, Leningrad, 1926): 21.

⁴⁰ 1925 VTsIK, p. 154.

⁴¹ Ibid., p. 184.

⁴² Kurskii as quoted by Brandenburgskii in "Brak i ego Pravovye Posledstviia," in *Sbornik*, p. 30.

Many participants in the debate took a similar position. A. Vinokurov, a member of the Supreme Court of the USSR, argued that recognition of de facto marriage would help women. To claim, as the traditionalists did, that a sufficient material base did not exist only absolved men of responsibility. Unlike Kurskii, Vinokurov doubted that recognition of de facto marriage could eliminate promiscuity, for the divorce procedure made it possible "to register today and divorce tomorrow." If the traditionalists wanted to curb promiscuity, they had to prohibit divorce; a measure Vinokurov spurned as typical of "the priests' point of view."⁴³ The jurist Ryndziunskii rejected the traditionalist implication that women should bear the main responsibility for enforcing a stricter sexual morality. Women, "regardless of the threats and prohibitions of the law," were in no position to force men to register. The refusal to recognize de facto marriage hurt women the most.⁴⁴

While Ryndziunskii, Kurskii, and Vinokurov emphasized that recognition of de facto marriage would protect needy women, several jurists took a more radical position, advancing the same libertarian arguments that initially provoked revision of the 1918 Code. Brandenburgskii insisted that de facto marriage was the result of "the new, revolutionary life," and that it was only "juridical fetishism not to include it under the law." It was as legally oppressive to perpetuate a distinction between registered and unregistered marriage as between legitimate and illegitimate children. He scorned the "bourgeois hypocrisy" that termed a registered union "marriage," regardless of the behavior of the spouses, but denied legal support to those who lived together without registration. He accused the protectionists of bourgeois prejudice: "There is no qualitative difference between the approach of our critics, who believe that only registered marriage should entail material responsibilities, and bourgeois civilized thought that teaches that the difference between marriage and cohabitation is a defined ceremony that bestows the protection of the law, and earlier, the protection of the church." In Brandenburgskii's estimation, cohabitation was in no way different from registered marriage. "We consider it necessary to

⁴³ 1926 *VTSIK*, p. 663.

⁴⁴ G. Ryndziunskii, "K Popytke Iuridicheskogo Opredeleniiia Sushchnosti Braka," *Rabochii sud*, 1 (1926): 22.

preserve registered marriage," he wrote, "but we categorically refuse to look at registration as a prior condition without which there can be no marriage. Registration is necessary, but only as registration of an already defined fact." In other words, marriage was a social fact; registration was merely a legal act.⁴⁵

Brandenburgskii argued against the protectionist position that more women would force men to register if that was the sole form of legal protection. "This is not real life," he said. Law could not create the conditions for stable marriage. A product of consciousness and culture, stable marriage could not be legislated into existence. Yet Brandenburgskii wavered: Was stable marriage even a desirable goal? In the 1925 VTsIK he proclaimed, "We should not aspire to a highly stable family and look at marriage from that angle. Strengthening marriage and the family – making divorce more difficult – is not new, it is old: It is the same as bourgeois law."⁴⁶

Brandenburgskii's arguments revealed a deep uncertainty about de facto marriage. Was it identical to stable, registered marriage, denied legal status by the bourgeois hypocrisy of the state? Or was it less stable than registered marriage, a product of social disintegration, signaling women's need for greater legal protection? Or did it represent a freer, more advanced form of relations between men and women? Depending on his reasoning, Brandenburgskii saw de facto marriage as the same, worse, or better than registered marriage. At various times, he consciously or unconsciously supported all these views. The contradictions perfectly mirrored the headlong collision between the socialist-libertarian tradition and the conditions of the time.

Krylenko was the most consistent representative of the libertarian perspective. Unlike the protectionists, who viewed marriage as a social institution, Krylenko considered it a strictly personal choice. "If you want – register. If you don't want – don't register," he announced. Krylenko noted that the 1918 Code defined "real marriage" by registration in ZAGS. "What is real?" he queried. "De facto marriage is not real in a juridical

⁴⁵ Ia. Brandenburgskii, "K Diskussii o Proekte Brachnogo i Semeinogo Kodeksa," *Ezhenedel'nik sovetskoi iustitsii*, 46 (1925): 1414; and "Brak i ego Pravovye Posledstviia," in *Sbornik*, pp. 19, 37, 32.

⁴⁶ Brandenburgskii, "Brak i ego Pravovye Posledstvy," p. 37; *Brak i sem'ia*, p. 25; and 1925 VTsIK, p. 146.

sense, but it is in terms of life." It was ridiculous to argue, as the critics of the Code did, that marriage ought to be blessed by Soviet power rather than the church.⁴⁷ He welcomed the eventual disappearance of registration: "We cannot defend compulsory registration in communist society. If we preserve it now, it is as a means to something else, not because it has some intrinsic value." At present, registration was a legal means of self-protection for women, an unfortunate necessity in the turbulent transition to a communist society.⁴⁸

Both Preobrazhenskii and the jurist F. Vol'fson shared Krylenko's libertarian views. Vol'fson argued that Soviet law differed from bourgeois law precisely in that it did not seek to protect, preserve, or stabilize the family. "This task is impractical and pointless," Vol'fson claimed. The purpose of the Code was to protect women in the transition period, "not to defend the family and marriage."⁴⁹ Preobrazhenskii argued that if Soviet society was to advance toward socialism, "We must struggle for things that do not yet exist." He insultingly observed that the opponents of the Code were mainly men, who "in every case smell of the Domostroi," the reactionary family law of the tsarist period.⁵⁰

The women's interest group was less concerned with the technicalities of the law than with stating their strongly held views of Soviet social life. It shared the protectionists' concern for family disintegration and the high divorce rate, but differed on the question of recognizing de facto marriage. Vera Lebedeva, the head of OMM, proudly declared herself "on the extreme right" in opposing the draft.⁵¹ The Zhenotdel officially favored it. Yet most women in the debate did not address themselves to the

⁴⁷ N. Krylenko, "Proekt o Brake i Sem'e," in *Sbornik*, p. 62.

⁴⁸ Ibid. Rostovskii stressed this view in his popular handbook, *Sovetskii zakon o brake i sem'e* (Moscow, 1926): 12, urging women to register solely for this reason. "When a marriage is registered, paternity is proven," he counseled. "Registration makes it easier for the mother to prove who is her husband and who is the father of her child, and because of this reason, frankly speaking, registration is useful."

⁴⁹ F. Vol'fson, "K Peresmotru Semeinogo Kodeksa," *Proletarskii sud*, 10–11 (1925): 5, 4.

⁵⁰ 1926 *VTsIK*, pp. 675, 677.

⁵¹ Vera Lebedeva, "Itogi i Perspektivy Okhrany Materinstva i Mladenchestva," in *Trudy III Vsesoiuznogo s"ezda po okhrane materinstva i mladenchestva* (Moscow, 1926): 30.

specific provisions of the draft. Of the seven women speakers in the 1925 VTsIK, only one clearly favored recognition of de facto marriage; the remainder confined their comments to the need for stricter norms of sexual behavior. Of the ten women speakers in the 1926 VTsIK, four favored the recognition of de facto marriage, two were opposed, and four did not mention the issue. More than half, however, focused on social instability and the problems women experienced in collecting alimony.⁵²

One of the VTsIK delegates who favored ratification of the new Code suggested that the recognition of de facto marriage was an excellent means of protecting women at a time when the state could not.⁵³ Another delegate favored recognition but doubted that the law alone could resolve the problems of social life. She argued that the country needed children's homes, "not court procedures."⁵⁴ And a woman worker in a spirits factory wrote, "I think it is necessary to increase the number of childcare institutions so that women can stop fearing divorce and running after alimony."⁵⁵

Many women spoke out against the recognition of de facto marriage and the simplified divorce procedure. Given the state's inability to shoulder the burden of child rearing, they feared divorce and regarded the recognition of de facto marriage as a direct threat to their own economic security. Ten women factory workers wrote a letter suggesting that only two types of women should have a right to child support: the legal ex-wife and the woman living openly with a man who did not have another family. Any woman who knowingly got involved with a married man did not deserve support. Women who had sexual relations with many men did not deserve even a "scrap of bread."⁵⁶ One woman worker in a sawmill factory wrote, "I think that women who have relations with several individuals should not be awarded alimony. If she does not know who the father of her child is, let her bring it up herself." And she added, "Such women are no better than street prostitutes, and alimony would only corrupt them even more.⁵⁷

⁵² See 1925 VTsIK and 1926 VTsIK.

⁵³ 1926 VTsIK, p. 593.

⁵⁴ Ibid., p. 605.

⁵⁵ "Chto Predlagaiut Rabotnitsy," *Rabotnitsa*, 15 (1926): 16.

⁵⁶ "Chto Predlagaiut Rabotnitsy," *Rabotnitsa*, 13 (1926): 14.

⁵⁷ "Chto Predlagaiut Rabotnitsy," *Rabotnitsa*, 15 (1925): 16.

Women's positions in the debate demonstrated that all women did not have the same economic and legal interests. The interests of single and married women frequently diverged as a result of their different relationships to the male wage earner. While recognition of de facto marriage benefited the single woman, it directly threatened the wife. Yet even women who supported the recognition of de facto marriage did not embrace it as a new, emancipatory form of marriage. Given the difficulties that women experienced as single mothers, their practical experience told them that de facto marriage only emancipated the man.

What is marriage?

Many participants in the debate worried that the new Family Code did not define de facto marriage. In the event of a dispute between parties, the courts had no criteria by which to judge whether a marriage in fact existed. Krasikov pointedly asked, "If we have registered and unregistered marriage, then who will decide what is marriage?"⁵⁸ A draft of the Code advanced by the NKVD had defined marriage as "an unrestricted term of voluntary cohabitation, based on a free contract between a man and a woman," but the definition had been roundly criticized by Krylenko and others. Both Sovnarkom and the Zhenotdel also opposed this definition. The Zhenotdel opposed any definition, fearing it would be used to exclude some women from the protection of the law. Sovnarkom wanted to replace the words "unrestricted term" with a fixed minimum of time.⁵⁹ E. Rosenberg, a jurist, explored the question in depth. He wrote that if the draft rejected registration as the sole means of defining marriage, then a new definition had to be created. Neither the presence of love, sex, a common household, nor pregnancy alone provided adequate proof of "marriage." Moreover, Rosenberg feared that the recognition of de facto marriage would lead to "the disappearance of the very institution of marriage."⁶⁰

⁵⁸ 1925 *VTSIK*, p. 124.

⁵⁹ Ibid., p. 114.

⁶⁰ E. Rosenberg, "Proekt Kodeksa Zakonov o Brake, Sem'e i Opeke," *Ezhenedel'nik sovetskoi iustitsii*, 48 (1925): 1485. Krasikov shared this worry, adding that if registration lost its significance in the eyes of

As jurists and Party officials vied to provide a definition independent of the act of registration, “marriage” proved itself an ever more elusive concept. Several jurists considered the task of definition hopeless from the onset. Vinokurov, a member of the Supreme Court, argued that it was impossible to enumerate the essential characteristics of marriage, for people “combined in the most freakish variety.” Only the courts could decide, on a case by case basis, if marriage existed.⁶¹ The jurist Ryndziunskii argued that marriage was not a juridical act but “a phenomenon of life,” and neither marriage nor life was subject to a precise legal definition.⁶² Larin, referring obliquely to the terrible housing shortage in the cities, remarked with amusement that if a common residence was accepted as a criterion for marriage, “a significant part of the population must be considered to be chaste virgins,” even though they were married.⁶³ And Vol’fson argued that a definition would only complicate the court process and lead to “purely metaphysical arguments about what is or is not marriage.”⁶⁴

Yet jurists and Party officials, undaunted by Vol’fson’s counsel, offered a wild array of definitions for inclusion in the draft Code. Sural’skii, a member of the Collegium of Advocates, held that marriage was based on three elements: physical union, a joint household, and “a sacred or spiritual promise”⁶⁵ – an oddly old-fashioned definition for a Soviet jurist. Sol’ts, not surprisingly, insisted that registration had to be a feature of marriage,⁶⁶ while Nakhimson, the chairman of the Leningrad provincial court emphasized duration, stability, and recognition by a

the people, it might lead to a resurgence of Church marriage. See 1925 *VTSIK*, p. 125.

⁶¹ A. Vinokurov, “Idti v Khvoste ili Rukovodit?,” *Rabochii sud*, 17–18 (1926): 1046. F. Kompalov, a jurist in the Leningrad provincial court with extensive practical experience, also felt that the courts should determine the issue of de facto marriage on a case-by-case basis. See F. Kompalov, “Po Povodu Brachnogo i Semeinogo Kodeksa,” *Rabochii sud*, 2 (1926): 106.

⁶² G. Ryndziunskii, “K Popytke Iuridicheskogo Opredeleniia Sushchnosti Braka,” p. 20.

⁶³ 1926 *VTSIK*, p. 578.

⁶⁴ F. Vol’fson, “K Peresmotru Semeinogo Kodeksa,” p. 5.

⁶⁵ “Diskussiia po Povodu Proekta Kodeksa Zakonov o Brake, Sem’i i Opeke,” p. 235.

⁶⁶ 1926 *VTSIK*, p. 610.

third party.⁶⁷ Beloborodov naturally supported the definition of the NKVD, which Ryndziunskii promptly branded “the best proof of the sterility of a juridical definition of marriage.”⁶⁸ Vasil’ev-Iuzhin claimed that the birth of a child was the most important feature of marriage.⁶⁹ Krylenko, appalled at the idea that every sexual union resulting in pregnancy would be considered marriage, deemed Vasil’ev-Iuzhin’s idea “nonsense.”⁷⁰ Vinokurov did not hesitate to inform Vasil’ev-Iuzhin, his deputy chairman on the Supreme Court, that his definition lacked “an understanding of marriage as a social relation between a man and a woman,” and was thus distinctly non-Marxist.⁷¹ Brandenburgskii, surveying the field of flying formulas, despaired of ever reaching a workable and acceptable definition.⁷²

The jurists, however, did finally arrive at a compromise, based on a proposal offered by Brandenburgskii himself. Incorporating the most commonly cited features of marriage, the definition of de facto marriage in the new Code included a common household, the joint upbringing of children, and the expression of marital relations before a third party.⁷³ Although this definition approximated the features of traditional marriage fairly closely, the debate revealed a range of opinion stretching from Sural’skii’s “sacred element” to Vasil’ev-Iuzhin’s generous equation of every pregnancy with marriage. Although the jurists ultimately adopted fairly conservative criteria for de facto marriage, the debate demonstrated the diversity of juridical opinion on the role and meaning of marriage in Soviet society.

⁶⁷ “Diskussiia po Povodu Proekta Kodeksa Zakonov o Brake, Sem’e i Opeke,” p. 240.

⁶⁸ A. Beloborodov, “Nashi Raznoglasiiia o Brachnom Kodekse,” *Rabochii sud*, 1 (1926): 4; G. Ryndziunskii, “K Popytke Iuridicheskogo Opredeleniia Sushchnosti Braka,” p. 19.

⁶⁹ M. Vasil’ev-Iuzhin, “Ob Osnovnykh Poniatiiakh v Novom Proekte Semeino-Brachnogo Kodeksa,” *Pravda*, November 12, 1926, p. 2.

⁷⁰ As cited by Vasil’ev-Iuzhin. *Ibid.*

⁷¹ A. Vinokurov, “Idti v Khvoste ili Rukovodit?”, p. 1045.

⁷² Ia. Brandenburgskii, A. Sol’ts, N. Krylenko, S. Prushitskii, *Sem’ia i novyi byt: spory o proekte kodeksa zakonov o sem’e i brake*, p. 15.

⁷³ Ia. Brandenburgskii, “Chto Dala Nam Diskussiia o Brake i Sem’e,” *Proletarskii sud*, 4–5 (1926): 5.

Divorce, alimony, and joint property

If the issue of de facto marriage and its definition riveted the academic attentions of the jurists, the issues of alimony and property commanded the passionate interests of the debate's nonacademic participants. Peasants and women both held strong, albeit clashing, opinions on the economic facts of marriage.

The peasants took a dim view of divorce for both social and economic reasons. The very concept of divorce was alien to them for it jeopardized the existence of the *dvor* as the basic productive unit. Volkov, a peasant delegate to the 1926 VTsIK from Ivanovo-Vosnesensk province, explained that his wife had recently written to him about a neighbor whose husband had suddenly decided to seek a divorce. "Excuse me," Volkov exclaimed with perplexed indignation, "but something should bind him so that he cannot simply say that he does not want to live with his wife."⁷⁴ The peasants worried that the entire *dvor* would be held responsible for paying either the alimony or child support owed by one of its members. "Why should we all be made to pay?" cried almost every peasant who spoke before the VTsIK.

A. T. Kartyshev, one of the peasant delegates, stated plainly, "We should not be responsible for the sins of others. Brothers, sisters, relatives, and parents should not be responsible for sons or other relations." He insisted that the VTsIK must put an end to those situations where the peasant was forced to sell his last mare to pay for the support of his son's child.⁷⁵ Blinov, a peasant from Tambov province, adamantly agreed, "It is impossible for the peasant *dvor* to sell their horse or cow."⁷⁶ The poorer households simply could not afford to pay alimony. Korytin, a peasant from Smolensk province, argued that divorce should not be permitted without a compelling reason. Perhaps divorce had little significance in the towns, Korytin noted with disapproval, but to the peasant it was extremely important. "Rarely do a man and wife live alone," he said; "They live with a whole family and thus all suffer in the case of divorce. Why should my brother suffer if I divorce my wife and the court orders me to pay?"⁷⁷

⁷⁴ 1926 VTsIK, p. 690. ⁷⁵ 1925 VTsIK, p. 133.

⁷⁶ 1926 VTsIK, p. 659. ⁷⁷ 1925 VTsIK, p. 167.

The economic indivisibility of the *dvor* was a considerable obstacle to the solution of the alimony problem. The peasants stressed that the court should secure payment only from the defendant's share, but this presented two problems. First, it was difficult, if not impossible, to isolate the defendant's share. Second, his share frequently proved insufficient to meet the needs of the woman or child. Two peasant delegates to the VTsIK showed a keen understanding of the property laws in the draft Code and the Land Code when they slyly suggested that the *dvor* be subject to the same laws as the urban family. The peasant woman who entered her husband's *dvor* after marriage should not be entitled to a full share of the household's property. Rather, her claim, like that of the housewife, should be limited to property acquired in the course of marriage. Kostenko, a peasant from the North Caucasus, brashly suggested the elimination of the section of the Land Code that entitled women to full property rights in the *dvor*.⁷⁸

The protectionists sympathized with the peasants' complaints, although they did not support any diminution of women's rights. They argued from a Marxist perspective that divorce was an insupportable practice in both the countryside and the towns. Free union was fine, one delegate to the 1926 VTsIK from Tambov province argued, as long as children were not involved. He put the problem bluntly: "The woman says 'Here, dear comrade, you spent the night with me and as a result, I have "Ya-ya.' Please support him. And he says to her, 'Get lost.'" Women could not collect alimony because men moved around to avoid the bailiff.⁷⁹ And even if the man paid his share, the typical award could not possibly support a child.⁸⁰ Sol'ts argued that alimony could not protect women. The economic questions of marriage could not be resolved through court orders. "The court passes sentence," Sol'ts noted wryly, "but at the same time, the defendant has the right to change his wife every week." "Don't have five wives," Sol'ts declared, "this is what must be said!"⁸¹ The protec-

⁷⁸ 1926 VTsIK, pp. 658, 682. ⁷⁹ Ibid., p. 660.

⁸⁰ "Perelom Diskussii o Brake," *Rabochii sud*, 4 (1926): 261.

⁸¹ Ia. Brandenburgskii, A. Sol'ts, N. Krylenko, S. Prushitskii, *Sem'ia i novyi byt: spory o proekte novogo kodeksa zakonov o sem'e i brake*, pp. 19, 18; A. Sol'ts, "Vvedenie v Diskussii o Brake i Sem'e," pp. 354, 351; *Sem'ia, opeka, brak. Sbornik materialov k proektam semeinogo kodeksa USSR*

tionists argued that Soviet family policy encouraged sexual behavior that the economies of family and state could not accommodate. Alimony and child support cases were flooding the courts. Measures were needed to stabilize social relations and preserve the family.

Krylenko argued that men should be forced to pay alimony. Sympathy for their problems was nothing but a "petty-bourgeois" reaction, and Sol'ts was "the ideologue" of the petty-bourgeoisie.⁸² Members of the Presidium of the Leningrad provincial court overwhelmingly favored the draft, claiming that alimony cases were not flooding the courts. One judge noted that alimony served as a "bridle" on male sexuality. Moreover, many judges noted that the draft was simply a written expression of current court practice. Since 1922, the courts had recognized joint property and awarded alimony to partners in de facto marriages.⁸³

Brandenburgskii sought to address the problem of alimony by limiting and defining the terms of support.⁸⁴ On the one hand, he thought it disgraceful that a housewife married for fifteen years could be left with nothing after a divorce. But on the other hand, if a man remarried, and started a new family, how long should he be obligated to support his ex-wife?⁸⁵ Since the new Code expanded its coverage to include the unemployed spouse as well as the needy and disabled, Brandenburgskii feared that the law might be used as a refuge for those who did not want to work. A peasant speaker offered an example of a woman who married a man, feigned illness, divorced him, and planned to

ⁱ RSFSR p. 150. See also the argument of Krasikov in "V Chem Sushchnost' Semeinykh Brachnykh Form," pp. 5–8.

⁸² Ia. Brandenburgskii, A. Sol'ts, N. Krylenko, S. Prushitskii, *Sem'ia i novyi byt: spory o proekte novogo kodeksa zakonov o sem'e i brake*, p. 24.

⁸³ "Zasedanie Presidiuma Leningradskogo Gubsuda," *Rabochii sud*, 1 (1926): 28–30; "Diskussiia po Povodu Proekta Kodeksa Zakonov o Brake, Sem'e i Opeke," p. 232.

⁸⁴ The Workers and Peasants Inspectorate suggested that a disabled spouse receive support for one year from the end of the marriage. Brandenburgskii proposed a six-month time limit for the support of an unemployed ex-spouse. "Divorced spouses do not constitute a family," he said. See Brandenburgskii, "Brak i ego Pravovye Posledstviia," in *Sbornik*, pp. 28–29.

⁸⁵ Ibid., p. 25; Brandenburgskii, *Brak i sem'ia*, p. 12.

live off his alimony for the rest of her life. "We must burn out these spongers with a red hot poker," the peasant declared.⁸⁶ The final version of the Code acknowledged such sentiment by defining and limiting the alimony term.

Although the progressive jurists agreed on the need to limit the alimony term, they had little sympathy with the peasants' complaints. Krylenko, engaging a peasant delegate to the 1925 VTsIK in a dialogue noteworthy only for its mutual lack of comprehension, insisted several times that the law would hold only the defendant responsible for alimony.⁸⁷ Impatient with the peasants' concerns, Krylenko later wrote that the essential peasant demand was to abolish alimony altogether, a point of view he would not tolerate.⁸⁸

Kurskii took a more sympathetic view of peasant problems, but he shifted the legal responsibility for alimony and the *dvor* from the Family Code to the Land Code. "Of course, the important thing is that the demands of dividing property are painful for the *dvor*, but I think that the question of alimony in peasant life should not be considered here, but in the land laws."⁸⁹ Kurskii correctly pointed out that the Land Code, not the Family Code, had jurisdiction over alimony and child support in the countryside. In an effort to balance the needs of the woman and the child against the economic viability of the *dvor*, the Commissariats of Land and Justice decreed that if the individual property of the father was insufficient to care for the child, then a collection was to be made from the entire *dvor*.⁹⁰

The draft code altered the land laws in only one respect. The recognition of de facto marriage entitled the unregistered peasant wife to collect alimony. The child support provisions were identical in both the 1918 Code and the draft, and the joint property provision of the draft was preceded and superceded by the property provisions of the Land Code. Thus in many respects, the discussion was, as Brandenburgskii pointed out, judicially superfluous. Yet the peasants seized the opportunity to express their general dissatisfaction with the notion of divorce.

⁸⁶ 1925 VTsIK, p. 131. ⁸⁷ Ibid., p. 167.

⁸⁸ Krylenko, "Proekt o Brake i Sem'e," in *Sbornik*, p. 68.

⁸⁹ 1925 VTsIK, p. 187.

⁹⁰ Ia. Brandenburgskii, "K Predstoiashchei Sessii VTsIK: Krestianskii Dvor i Alimenty," *Ezhenedel'nik sovetskoi iustitsii*, 38 (1926): 938.

In the blunt words of one peasant delegate, “It doesn’t matter who is responsible. We must change this!”⁹¹

The women’s interest group was resolutely opposed to the peasants on the question of alimony. Women peasants often differed with their men, insisting on a woman’s right to collect alimony and child support after divorce, and displaying a surprising lack of sympathy for the economic interests of the patriarchal household. Panarina, a peasant delegate from Voronezh province, angrily demanded, “I hear now from the peasant delegates that we must not ruin our households or take alimony from the household’s property. But what will the woman peasant be left with then? Why should the child suffer?” She adamantly declared that women must receive part of the common property, “even if we must divide the cow.”⁹²

The women’s interest group was especially sensitive to the problems of divorce and alimony. Lebedeva, the head of OMM, opposed the draft precisely because she believed it would increase the number of divorces and abandoned women. Casting a common female complaint in Marxist language, she explained, “The level of the wage payment and the entire organization of our social relations of production do not engender family units that can endure the burden of two, three or four wives.” Frequent divorce undermined the interests of women “because under the current material conditions, a man cannot support three wives.”⁹³

Working-class and peasant women did not need a formal education in Marxist political economy to grasp this point. Several women discussed the problems of divorce, alimony, and child support in precise budgetary terms. Offering their own modest family budgets as examples, they told the jurists that the average male wage could support no more than one family.⁹⁴ If a man married many times – as many did – it was even more difficult for women to collect adequate child support. One delegate to the VTsIK remarked, “We know of cases in which boys 18 to 20 years old have registered 15 times, and in 10 of these marriages

⁹¹ 1925 VTsIK, p. 134. ⁹² 1926 VTsIK, pp. 683–684.

⁹³ Vera Lebedeva, “Itogi i Perspektivy Okhrany Materinstva i Mladenchestva,” in *Trudy III Vsesoiuznogo s”ezda po okhrane materinstva i mladenchestva* (Moscow, 1926): 30.

⁹⁴ “Chto Predlagaiut Rabotnitsy,” *Rabotnitsa*, 15 (1926): 16.

there were consequences. What can the court take from him? Nothing.”⁹⁵ A woman from a rural area wrote, “In the towns and in the country it is possible to find no small number of families abandoned by husbands. Although they sometimes pay child support, it is not enough to live on, and often they simply stop paying. This affects children most painfully of all. . . . In some cases, women are responsible for these tragedies, but mainly it is men.”⁹⁶

In view of the high level of female unemployment, the low level of wages in general, the concentration of women in low-paying jobs, the lack of adequate daycare, and the patriarchal structure of rural life, women passionately opposed frequent divorce and stressed that men should take more responsibility for their sexual behavior. Pasynkova, a delegate to the VTsIK, spoke for many women in her angry condemnation of male irresponsibility. “Some men have 20 wives,” she said “they live with one for a week, another for two, and leave each one with a child. Indeed this should not be allowed!” Denouncing men’s lack of commitment to marriage, she noted with sarcasm: “Men always say that women are guilty, they swear they have nothing in common with their wives. This is all ridiculous: Is it really possible to marry so many times and never have anything in common? They themselves don’t want to live together.”⁹⁷

A delegate to the VTsIK who worked in a textile factory deplored the disintegration of family life she saw around her. She said, “A girl marries, a year or so passes — her husband abandons her, she goes to another, more children result.” “What kind of life is this?” she asked her fellow delegates. She called attention to a widespread phenomenon wreaking havoc with working-class marriages. As men took advantage of the opportunities for social mobility created by the Revolution, some began to regard their wives as backward and uneducated. “When you are working in a factory, you note a very unpleasant picture,” she said, “As long as a guy doesn’t participate in political work, he works and respects his wife as he should. But just a little promotion and already something stands between them.

⁹⁵ 1926 *VTsIK*, pp. 613–614.

⁹⁶ “Mysli Krest’ianka,” *Krest’ianka*, 6 (1926): 7.

⁹⁷ 1925 *VTsIK*, p. 136.

He begins to stay away from his family and his wife, already she doesn't please him."⁹⁸

Gnipova, another delegate to the VTsIK, agreed. She said that she could understand a man who married for a short time and then divorced his wife because the two had nothing in common. But, she added angrily, "I can't forgive a man who lives with a woman for twenty years, has five kids, and then decides his wife no longer pleases him. Why did she please him before, but now she doesn't? Shame on you, comrade men." Gnipova accused men of using women, benefiting from their labor, and then discarding them as they grew older and less attractive. "He doesn't understand why she is ugly now," Gnipova lectured, "It's because she is worn out on his behalf." Gnipova castigated those men who betrayed their wives and justified their actions in terms of "love." "This isn't love," she said firmly, "this is swinishness." Gnipova pointed out that men took advantage of the easy divorce law to abandon their wives and families. She mimicked the popular male mentality: "Here is freedom. I feel free. Give me a divorce."⁹⁹

The women delegates expressed special bitterness toward men who left their marriages because they no longer had anything in common with their wives. They distrusted the new "commonality" men found so readily in younger, less-burdened women. These women and thousands like them valued a different commonality in marriage: one based on a shared economy, a working partnership, and a mutual commitment to children. A commonality based on personal inclination and sexual attraction was threatening to women who had labored all their lives in the narrow confines of home or factory, who had children to feed and care for, and who were, to some degree, economically dependent on their husbands.

None of the women in the debate argued that women should imitate male sexual behavior. On the contrary, many insisted on the need for a more serious, responsible approach to sex and marriage. Gnipova criticized women for contributing to their own sexual exploitation. "You permitted this yourselves, comrade women. . . . We value ourselves too cheaply." "One man

⁹⁸ Ibid., p. 142. ⁹⁹ Ibid., p. 169.

should not have four women," she argued, "But should wait two months for one. The question is, how can we avoid being exchanged like gypsies?" Gnipova pleaded for an end to male promiscuity so that "our children will not suffer and our households will not be ruined."¹⁰⁰

Ruined households and suffering children were recurrent themes in the discussion over the draft Code. An older peasant delegate from Siberia named Shurupova described the consequences of divorce in her speech to the VTsIK. "There is no danger for the man," she declared, "for he meets another and will live with her. But for the woman it is horribly difficult to live under such conditions. All she gets is poverty, and poverty gets you nowhere." She noted that the country desperately needed children's homes, but added, "If the state took responsibility for this now it would fail." In the absence of adequate state resources, Shurupova put the blame on men. "Our side makes mistakes," she said, "but all the same, the majority of the guilty ones are men." Shurupova argued that a man must support his children no matter how many ex-wives he had. She flatly told the male delegates, "If you love tobogganing, then you have to pull your sled uphill."¹⁰¹

Women sought to preserve the family insofar as it represented the very real personal bonds between parents and children. The "withering away" of the family did not represent an abstract restructuring of gender relations, but the ever-present possibility that they would be unable to feed their children. Women's opposition to divorce and free union was based on their desperate need for full access to their husbands' wages. One working-class wife noted with grim honesty, "Women, in the majority of cases, are more backward, less skilled, and therefore less independent than men. . . . To marry, to bear children, to be enslaved by the kitchen, and then to be thrown aside by your husband – this is very painful for women. This is why I am against easy divorce."¹⁰² Another woman, working in the Zhenotdel in a rural area, read an article of Alexandra Kollontai's in her local paper, and expressed similar disapproval. She wrote, "It seems to me that her [Kollontai's] view is directed toward the destruc-

¹⁰⁰ Ibid. ¹⁰¹ Ibid., pp. 138–139.

¹⁰² "Chto Predlagaiut Rabotnitsy," *Rabotnitsa*, 15 (1926): 16.

tion of the family. She proposes 'free love' and 'free union.' Her opinion is that the spiritual life of a person, insofar as it is vast and complex, cannot be satisfied by union with one, but that a person needs several 'partners.' . . . In our opinion, in the countryside, this is simply called debauchery." She wrote, "We need to struggle for the preservation of the family. Alimony is necessary as long as the state cannot take all children under its protection."¹⁰³

Many women spoke directly against free union, insisting that a limit be placed on the number of divorces possible under the law. One textile worker said, "My request from the other women workers is to pass a decree ending serial marriages."¹⁰⁴ A cleaning woman in Moscow wrote a letter expressing the same sentiment: "We must restrict divorce because it damages the state and the mother."¹⁰⁵ Other women went even further, demanding that people who had extramarital affairs be punished. A group of ten housewives argued that the government should "strengthen the punishment for husbands who got involved with other women, and also establish punishment for these women."¹⁰⁶

These women fiercely defended a strict sexual morality and were willing to enforce it by repressive measures against both men and women. Rejecting several of the more progressive features of Soviet family law, they sought to limit divorce, establish punitive measures for extramarital relations, and limit men's responsibility for children born out of wedlock. Ironically, they sought to reestablish many features of the patriarchal system of tsarist law.

Women's sexual conservatism was a direct result of the gap between law and life. Their financial positions were so precarious that they could ill afford the personal freedom inherent in Soviet divorce law. Their own family incomes, shakily balanced on the thin line separating subsistence from ruin, could not withstand the loss of the male wage. Under these circumstances, the suppression of female sexuality outside of marriage served not only male interests, but the economic interests of the entire

¹⁰³ "Mysli Krest'ianka," *Krest'ianka*, 6 (1926): 7.

¹⁰⁴ 1925 VTsIK, p. 143.

¹⁰⁵ "Chto Predlagaiut Rabotnitsy," *Rabotnitsa*, 13 (1926): 14..

¹⁰⁶ "Chto Predlagaiut Rabotnitsy," *Rabotnitsa*, 15 (1926): 16.

family. Women's sexual conservatism served as a strategy to preserve the family as an economic unit.

Paternity

Like alimony, the issue of collective versus single paternity also provoked both material and moral concerns. The various groups held a curious mixture of views on this issue. Kostenko and Kartyshev, peasant delegates to the 1925 VTsIK, sought to minimize the liability of any one household and therefore argued that all the men who had been sexually involved with a woman should be made to pay. Men should bear the consequences of their actions, Kostenko said; collective paternity would serve as a deterrent against male promiscuity. Making no secret of his sympathy for the well-to-do peasant, Kartyshev feared that the courts would recognize the richest man even if he was not the responsible party.¹⁰⁷ One woman delegate argued that collective paternity would better serve the interests of the child. "Joint support is a better guarantee that the woman will receive some sort of support."¹⁰⁸ The Zhenotdel and others, male and female, argued the opposite: it would be easier to collect child support from one man rather than several.

Iakhontov, a jurist who supported the draft, strongly favored single paternity. He argued that mothers could more easily collect their payments, and expressed dismay that some people opposed recognition of de facto marriage while supporting collective paternity: "I am surprised at those comrades who talk about strengthening the family and support joint paternity. How can a normal relationship between mother and child develop when the court awards paternity to five men, stating that the mother has had simultaneous relations with all five? This will hardly strengthen the family."¹⁰⁹ Iakhontov considered collective paternity to be more progressive than single paternity, but argued that it could only work when the cultural and moral level of the population was advanced. The country, he concluded, was not ready for this provision.

¹⁰⁷ 1925 VTsIK, p. 132.

¹⁰⁸ Ibid., p. 142. ¹⁰⁹ Ibid., p. 159.

The role of law

The notion that the country was culturally too backward to accept certain aspects of the law was shared by many of the jurists, especially those in the protectionist group. They argued that the law must be used to guide the population toward socialism. Krasikov, the staunchest proponent of this view, claimed that the law should "bring the population along definite channels and provide clear norms."¹¹⁰ Krasikov argued that as long as the state could not assume the role of the family, Soviet law, like bourgeois law, had to be "a compulsory device." "It is not a dissertation, not advice, not a pious well-intentioned wish," he sternly admonished, "it is a rule, a constraint, a directive subject to fulfillment."¹¹¹

The jurists in the protectionist group suspected that without clear direction, the people would either fall into promiscuous patterns of behavior or return to the reactionary leadership of the church. They distrusted spontaneity as a reliable source of revolutionary change. Krasikov pointed out, that in 1917, many people were not ready to abolish church marriage, but "this did not mean that we should not lead them."¹¹² He noted too that although the population displayed spontaneous tendencies toward de facto marriage, this was not necessarily a positive development.

The progressive jurists, on the other hand, took the position that law could not fundamentally transform the reality of peoples' lives. Vol'fson directly contradicted Krasikov's normative view of law with his libertarian assertion that the purpose of family law was "not to instruct citizens in good behavior." If people opted to live in de facto marriages the law could not deter them. Vol'fson wrote, "The mistake of the proponents of 'normative' marriage lies in a peculiar juridical fetishism, in the belief that this or that definition of law can change life."¹¹³ Underlying this approach, however, was the agreeable belief that the

¹¹⁰ Ibid., p. 126.

¹¹¹ 1926 *VTSIK*, p. 587. See also comments of Raigorodskii in *Leningradskaya pravda*, December 12, 1925, p. 6.

¹¹² 1925 *VTSIK*, p. 126.

¹¹³ F. Vol'fson, "K Peresmotru Semeinogo Kodeksa," pp. 5–6. See also

new forms of existence were positive indications of the advance toward socialist society. Brandenburgskii sanguinely predicted, "Undoubtedly we are moving toward an end to state interference in people's social lives. . . . It is ridiculous to say that the forms can strengthen marriage or give it greater continuity. Not even the bourgeois countries have accomplished this."¹¹⁴ Thus Brandenburgskii's view of law had two components. First, the law could not create stable marriage even if this were a desirable goal. Law was essentially a superstructural form that evolved from the basic conditions of life. And second, these new forms of life were desirable, for they pointed to the dwindling role of the family, the law, and the state.

Brandenburgskii and the progressive jurists put forward the libertarian idea of law. New Soviet citizens were spontaneously moving toward freer forms of social relations, and it was the duty of the law to reflect this positive trend. Krasikov, on the other hand, representing the protectionists, had little faith in the spontaneous movement of the masses toward socialism. Law needed to establish prescriptive norms that would take into account, and ultimately remedy, the backward nature of Soviet social and economic life.¹¹⁵

"A new revolutionary life" or "A ruined family hearth?"

The new Code on Marriage, the Family, and Guardianship was finally ratified by the VTsIK in November 1926 and passed into law in January 1927. In a last ditch effort to block its passage, Riazanov moved to exclude recognition of de facto marriage

A. M. Kollontai, "Brak i Byt," *Rabochii sud*, 5 (1926): 368; and comments of Iakovchenko in "Perelom v Diskussii o Brake," p. 261.

¹¹⁴ Brandenburgskii, "Brak i ego Pravovye Posledstviia," in *Sbornik*, p. 21.

¹¹⁵ Peter Maggs and Olympiad Ioffe describe these differences more fully in their discussion of legal nihilism and normativism in *Soviet Law in Theory and Practice* (Oceana, London, New York, 1983): 34–39. Legal normativism was officially recognized as the only acceptable doctrine of law in 1938. It was most fully articulated by Vyshinskii, the prosecutor of the Moscow trials.

from the final version, but the delegates voted him down. The final Code differed from the draft in some minor details, but the most important provisions of the draft – the recognition of de facto marriage, the establishment of joint property, and the simplified divorce procedure were all preserved. Unlike the draft, the final version stated that registration of marriage was in the interests of the state and society, and it offered a clear definition of de facto marriage based on cohabitation, a joint household, mutual upbringing of children, and third-party recognition of the marriage. In place of the unlimited term of alimony established by the 1918 Code and subsequent drafts, it limited alimony for the disabled to one year, and for the needy or unemployed, to six months. It slightly expanded the rights and obligations of support to include not only needy brothers and sisters, and children and parents, but grandparents and grandchildren as well. Thus the final version of the Code reflected many of the concerns expressed by delegates about firm marriage norms, women's special needs, and limits on alimony, although it largely ignored peasant objections to divorce, alimony, and child support.

The ratified Code revealed the contrast between the libertarian vision of social relations and the material reality of life, incorporating in its provisions both the vision and the reality. The provisions on divorce and de facto marriage, for example, epitomized the uneasy balance between social freedom and its painful consequences. On the one hand, the socialist-libertarian tradition insisted that all impediments to divorce be removed; on the other hand, material reality demanded that the law remedy the plight of abandoned women and children. Even the progressive jurists, active proponents of the socialist-libertarian tradition, expressed this conflict within their own diverse and vacillating perspectives on de facto marriage. Whether they saw it as a sign of the revolutionary future or of social breakdown, their arguments to recognize de facto marriage contained both perspectives, unconscious of the contradiction.

The Soviet heirs to the libertarian vision were confronted with the state's inability to assume a major role in social welfare. Until the state was prepared to make contraception, children's homes, and employment available to women, any attempt to free them from their dependence on the traditional family was doomed to

failure. Equality under the law was not enough. Ironically, the legal efforts to undermine the coercive bonds of “bourgeois marriage” intensified women’s difficulties and placed them in an even more vulnerable position. The women’s group argued convincingly that freedom of divorce for a woman without any means of support only benefited men. The paradox was tragic: Increased sexual and social freedom not only favored the man, but made the woman’s burden harder to bear.

Alexandra Kollontai was the only leading figure who actively promoted the idea that the state should assume the burden of child care immediately. She proposed the creation of a general fund, through a tax of 2 rubles per person, to be used to establish nurseries, children’s homes, and support for single mothers. Kollontai argued that alimony protected only those women whose husbands were rich enough to support them. “How can a peasant guarantee his wife alimony if for six months of the year he lives on bread and *kvass* (sour milk)?” she asked, “Or a worker whose salary barely suffices to support himself?” Displaying a brand of personal politics, Kollontai sharply confronted the men in her audience: “One can scarcely find a single one of you, who reaching age 30, has not had three de facto wives already. Which one will you support, Comrades Brandenburgskii and Krylenko?” Kollontai believed that alimony was demeaning to women and that all relationships, including casual sexual ties, should receive the same legal protection.¹¹⁶

Her proposal was widely discussed and just as widely criticized. Brandenburgskii, in a speech to the Zhenotdel, cogently replied that the state would need at least 120 million rubles a year to place all the needy children in state institutions. If the state taxed all adult males, the levy per person would be almost equal to the amount of the current income tax. “Therefore,” Brandenburgskii reasoned, “beginning with an innocent figure of 2 rubles a year per person, we end by doubling taxes.” Brandenburgskii added that “this would be the most unpopular tax we could establish” among the peasantry. “The proposed plan is a good one,” he concluded, “but for the time being, it is unacceptable.”¹¹⁷

Yet peasant opposition to a tax increase was only part of the

¹¹⁶ Kollontai, “Brak i byt,” pp. 364–377.

¹¹⁷ Brandenburgskii, *Brak i sem’ia*, p. 18. See also Baskakova, peasant delegate to the 1926 VTsIK, p. 632.

problem. The peasants regarded the fundamental premises of the Code as intrusive and threatening. All the major provisions of the Code – alimony, divorce, and domicile provisions – assumed individualized, independent social relations based on a modern, industrial economy. Reflecting the historic ascendancy of town over country, the Code presupposed family relations based on wage labor. The Code simply could not be justly enforced in the countryside.

The peasants were not opposed, on principle, to the intervention of the state in social affairs. One delegate to the VTsIK, from Tula province, suggested that if the responsible party in the *dvor* was unable to pay child support or alimony, the state should make up the difference. A peasant woman from the Urals wrote, "It is not necessary to award support to a mother of a child born from a union with a married man. The child in such cases should be placed in a children's home."¹¹⁸ If the state wanted to support extramarital relations, children born out of wedlock, and sexual "freedom," and did not insist that the household bear the consequences, the peasants did not object. Yet as long as the state could not "make up the difference," both the peasants and the women's group had no recourse but to defend the traditional family.

The progressive jurists quickly grew impatient with such views. Brandenburgskii said that the peasant woman from the Urals advanced a "monstrous argument": "This is the old position that exists in bourgeois law," he noted dismissively.¹¹⁹ Krylenko, in a fit of irritation with the peasants, burst out, "We have heard suggestions that tempt one to shrug one's shoulders. These suggestions establish limits on divorce, continuing and compulsory marriage in the name of the *dvor*, compulsory marriage as law, and do not take de facto marriage into account. This just shows the character of people's thinking."¹²⁰

The progressive jurists were, to a certain extent, blinded by their own ideals. They hastened to applaud "new, revolutionary forms of life" when, in fact, social reality was far more complex. They were impatient with the "backward" ideas of women and peasants, although ironically, these groups unconsciously advanced a message any Marxist should have understood: Until

¹¹⁸ Brandenburgskii, *Brak i sem'ia*, p. 15.

¹¹⁹ Ibid.

¹²⁰ 1925 VTsIK, p. 173.

the state could assume a greater role in social welfare, until agricultural relations were based on wage labor, neither peasants nor women were prepared to accept the material consequences of greater social freedom.

The protectionists recognized the unhappy consequences of freedom; they sympathized with the complaints of women and peasants. But they had no alternate program to the draft Code. As Marxists, they realized that Russia was too backward to implement the draft Code, yet they denied the logical outcome of their own position: namely, the decision to adopt laws that did correspond to social reality. Peasant customary law conformed to social reality in the countryside, reflecting and reinforcing centuries of patriarchal relations. And it was no coincidence that many of the suggestions made by working women and peasants recalled the more repressive features of prerevolutionary family law. Yet as socialists, the protectionists clearly found these alternatives unacceptable.

Progressive jurists such as Krylenko hammered on this weak point in the protectionist critique. Krylenko insightfully noted that while the protectionists spoke out against the draft, they actually objected to the 1918 Family Code. In a powerful challenge to the draft's opponents, Krylenko demanded, "Would it please you to establish a difference between the legitimate and the illegitimate child? Would it please you to establish a difference in the rights of these children to support? . . . Would it please you to limit the right to divorce? To forbid divorce?" Krylenko accurately observed that the protectionists criticized frequent divorce and the problems of alimony and child support, but their critique applied as surely to the 1918 Code as to the draft.¹²¹

The protectionists offered the most realistic assessment of social relations in the 1920s. They saw that sexual freedom without proper material guarantees was a disaster for women and children. But they were caught in an inescapable bind: Their analysis as Marxists contradicted their programmatic needs as

¹²¹ N. V. Krylenko, *Proekt kodeksa o brake i sem'e. Doklad prochitannyi v otdele rabotnits TsK VKP (B)*. 12 Ianvaria 1926 (Moscow, 1926): 99, 13. See also Ia. Brandenburgskii, A. Sol'ts, N. Krylenko, S. Prushtskii, *Sem'ia i novyi byt: spory o proekte novogo kodeksa zakonov o sem'e i brake*, pp. 21–23.

Party leaders. Trapped by two unsatisfactory choices, the protectionists were incapable of offering an alternative program. They could propose laws that reflected the social relations of a backward peasantry and a small, impoverished working class. Or, they could adopt laws that embodied the social ideals of the Revolution. The first choice was unacceptable in a socialist country, and the second only exacerbated the already painful difficulties of social life. Yet the protectionists did not stand alone. All the participants in the debate faced the same dilemma. They faced it with different degrees of consciousness, but all were caught within the tragic contradiction of trying to build socialism in an underdeveloped country.

7

Controlling reproduction: Women versus the state

The primary means of regulating the birthrate within the family was artificially induced miscarriage or abortion.

Soviet demographers A. G. Vishnevskii and A. G. Volkov commenting on the 1920s and early 1930s¹

In the spring of 1920, when abortion was still prohibited in the Soviet Union, Nikolai Semashko, the commissar of health, was deluged by letters concerning the frightening popularity of the practice. One worker from a factory staffed largely by young women wrote, "Within the past six months, among 100 to 150 young people under age 25, I have seen 15 to 20 percent of them making abortions without a doctor's help. They simply use household products: They drink bleach and other poisonous mixtures."² The letters, from Party members as well as workers, indicated that the law against abortion did little to deter women who wanted to terminate their pregnancies.

The practice of abortion had been widespread in Russia prior to the Revolution despite the strict legal prohibition against it.³

¹ A. G. Vishnevskii, A. G. Volkov, *Vospriyvodstvo naseleniya SSSR* (Moscow, 1983): 173.

² N. Semashko, "Eshche o Bol'nom Voprose," *Kommunistka*, 3–4 (1920): 19, 20.

³ Laura Engelstein, "Abortion and the Civic Order: The Legal and Medical Debates," in Barbara Clements, Barbara Engel, Christine Worobec, eds., *Russia's Women. Accommodation, Resistance, Transformation* (University of California Press, Berkeley, 1991): 191, writes that physicians at the Pirogov Society Congress in 1910 believed that abortion, common in all social classes, had reached "epidemic proportions." See also pp. 192, 195.