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GEORGE ELLIOTT HOWARD'S INSTITUTIONAL SOCIOLOGY  
OF MARRIAGE AND DIVORCE<sup>1</sup>

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"The fact is we are behind the times."

-- G. E. Howard

In 1904, with the publication of *A History of Matrimonial Institutions*, George Elliott Howard became an internationally recognized expert on marriage and family. Howard's work marked the start of serious sociological study of marriage and family at the University of Nebraska, a tradition that continues to the present day. This paper introduces Howard's theoretical perspective on marriage as a social institution, locates his work within a new wave of empirically rigorous and intellectually robust American sociology, and notes Howard's practical focus as a sociological spokesperson on "the divorce question."

Howard's three-volume *magnum opus* appeared in the spring of 1904, near the end of his one-year appointment as Professorial Lecturer in History at the University of Chicago. September 1904 found Howard at the University of Nebraska as Professor of Institutional History. He became Professor and Head of the Department of Political Science and Sociology in 1906.

Howard's capital as a sociologist multiplied rapidly during this period. He rejoined his former colleague from Stanford University, Edward A. Ross. Ross moved to Nebraska in 1901 at the invitation of Chancellor Benjamin Andrews, following Ross' controversial dismissal from Stanford (Howard was forced to resign from Stanford for supporting Ross). Howard's Nebraska circle also included Roscoe Pound, the founder of American sociological jurisprudence. Pound was appointed Dean of the University of Nebraska College of Law in 1903.

Howard's sociological work took root in the progressive intellectual milieu that characterized the University of Nebraska at the turn of the century. In September 1904, he accepted Albion Small's invitation to address the prestigious Congress of Arts and Science at the St. Louis Exposition on the topic of "Social Control and the Function of the Family." Howard went on to ask, "Is the Freer Granting of Divorce an Evil?" in a landmark paper presented in December 1908 at the third annual meeting of the American Sociological Society. As the nation's acknowledged expert on family and society, Howard returned to the American Sociological Society in 1911 to present his further thoughts on "Social Control of the Domestic Relations." In 1917, the historian-turned-sociologist was honored by election to the presidency of the American Sociological Society. The foundation of this accomplishment was Howard's solid interdisciplinary preparation.

Howard's rigorous interdisciplinary training and expertise are particularly manifest in his *History of Matrimonial Institutions*. C. Wright Mills

(1959) and Anthony Giddens (1987) would no doubt agree that Howard was a prototypical exemplar of the sociological imagination. Howard adopted an historical, comparative framework with a view toward building an empirical basis for the critique of present-day institutional patterns. Trained in history at the University of Nebraska (A.B. 1876, Ph.D. 1894), Howard also completed historical and juridical studies in Germany and France during 1876-1878. *A History of Matrimonial Institutions* is a *tour de force* in the interrelated fields of history, law, anthropology, and sociology.

#### THE SCHOLARLY CONTEXT OF HOWARD'S STUDY OF MARRIAGE

The significance of Howard's work is best illustrated in the context of sociological perspectives on marriage and family prevalent at the time of its publication. By the last quarter of the nineteenth century, American sociology was understood by the public largely in terms of its presumed ability to explain and solve social problems (O'Neill 1973). The proffered explanations and solutions, however, often combined sociological insight with a strong dose of Christian morality. Charles Ellwood's turn-of-the-century Nebraska lectures on "Sociology and Charity" illustrate the crusading moral thrust of Christian sociology.<sup>2</sup> Such sociologists saw immorality as the cause of most social ills. They proposed strict adherence to religious and moral doctrines as the inevitable solution to social problems.

Charles and Carrie Thwing's (1886) *The Family: An Historical and Social Study*, for example, was a monolithic Christian statement on the nature and problems of the family. Thwing and Thwing were typical of the social moralist's interest in sociological questions. Both an educator and a minister, Charles Thwing believed that the family was a sacred institution whose form was dictated by divine design. The Thwings argued the Christian case against the dissolution of marriage, and proposed complete abolition of divorce.

The work of Walter F. Willcox (1897) represented an alternative line of sociological thinking. He suggested that the Euro-American nuclear family was not a divine model which had existed or should exist unaltered. Instead, Willcox, along with a new generation of sociologists, viewed family structure as constantly evolving to new forms of social adaptability (O'Neill 1973). The increasing number of divorces was seen not as a measure of immorality, but as an indicator of social evolution.

While the methodology of religious reformers relied heavily on scriptural interpretation, other sociologists turned to new empirical methods. Willcox's (1897) analysis, for example, was based on statistical data revealing empirical patterns of divorce and remarriage. Although the available statistical data were severely limited by today's standards, earnest attempts were made to ground sociological analyses in empirical reality rather than religious faith.

The methodology of historical analysis was also increasingly accepted by social scientific students of family and marriage. Edward Westermarck's (1901) classic study, *The History of Human Marriage*, was a paradigm

example. Westermarck diligently gathered information from widely diverse historical sources. Synthesizing these "bits" of data, he constructed and compared images of various family types. In C. Wright Mills' (1948) view, however, Westermarck abstracted the family from its historical and social context, resulting in a flawed account of the historical development of family patterns. This charge could not be leveled at the intellectually scrupulous George E. Howard.

Howard's study of marriage systematically capitalized on the emerging trends (i.e., historical excavation and empirical grounding) in sociology with impressive results. Enlightened investigations such as Howard's resulted during this period in the discovery of complex social patterns in a range of institutional spheres. Howard provided developmental explications of the institutions of marriage and divorce by attending carefully to the empirical evidence found in public records, especially laws and court cases. Factual data demonstrating the prevalence of various forms and reasons for marriage and divorce are integrated into Howard's historical framework. To this foundation, Howard added a critical, comprehensive analysis of the existing theories of family form and development. The scholarly result became the definitive text for serious students of marriage and family for years to come.

#### HOWARD'S HISTORY OF MATRIMONIAL INSTITUTIONS

Howard's *History of Matrimonial Institutions* was a model of dedicated, rigorous, progressive, old-school scholarship. It was a perfect complement to the more speculative, combative, discipline-defining, intellectual fireworks authored by his Nebraska colleague, E.A. Ross, in *Social Control; Foundations of Sociology*; and *Sin and Society* during the same period.<sup>3</sup> Howard's three-volume work was published in 1904 by the University of Chicago Press (and in London by T. Fisher Unwin). It was widely reviewed in the newspapers and leading intellectual periodicals of the world's major cities, including Munich, Berlin, Paris, Edinburgh, Glasgow, and Toronto. Howard pasted reviews in his scrapbook from *The London Times*, *The New York Times*, *The Manchester Guardian*, *The Boston Globe*, and dozens of other newspapers and popular magazines that recommended his work to the "intelligent public."<sup>4</sup>

Howard's massive book won high praise in scholarly journals. Typical of the response was William I. Thomas' (1904: 129-31) review in the *American Journal of Sociology*:

This work is veritably a *magnum opus*. No work of similar scope has heretofore been attempted and Dr. Howard has carried out his plan with great ability and conscientiousness -- evidently at the cost of an almost inestimable amount of labor.... It would be difficult to name a recent work which is of so great interest at once to the historian, to the sociologist, and to the man of law as this one.

As Thomas was himself a leading and controversial analyst of "sex and society," his praise was particularly powerful at the time (cf. Thomas 1907; Deegan 1988: 178-86, 202-208). Similar accolades followed in the *American Historical Review* (Baldwin 1905), *Annals of the American Academy of Political and Social Science* (Kelsey 1904), *Quarterly Journal of Economics* (Webster 1904), and the *Political Science Quarterly* (Smith 1905).

The intellectual foundations of Howard's *Matrimonial Institutions* lie deep in his sociological approach to history. He later reflected in 1927:

To me the function of the historian is not merely to establish isolated events; but to discover the causes and consequences of social decision, of social action. For me the chief function of the history teacher is to trace the evolution of institutions. In fact it is but fair to say that the phrase "institutional history" as a term of classification first arose forty years ago in my own usage of it.<sup>5</sup>

Howard's well-known work on marriage and family was preceded in 1897 by a detailed study on the *Local Constitutional History of the United States*. In that book, Howard observed, "my theory of institutional history is embodied."<sup>6</sup> Howard's studies in history and law prefigured his subsequent institutional sociological analysis of marriage and divorce.

#### THE ORGANIZATION OF HOWARD'S STUDY OF MARRIAGE

Howard's *Matrimonial Institutions* provides a scholarly examination of marriage in "its three homes," Teutonic Europe, England, and the United States. In more than 1,400 pages, it reviews marriage theory, documents the evolution of family structures, and provides examples of specific laws and legal decisions governing the shape of the institution. The final volume provides a 139-page bibliographic index,<sup>7</sup> an index of more than 430 relevant court cases, and a detailed subject index.

The first part of the treatise is a critical analysis of leading marriage theories. Conflicting views presented by Henry Sumner Maine, Johann Bachofen, and Edward Westermarck are examined in detail. Sir Henry Maine's Patriarchal Theory states that in the "primitive family" the father exercised life and death power over his wife and children. As social organization became more complex, that patriarchal power evolved to other institutions. The tribe took its organizational structure from the family, and the state from the tribe. Hence, Maine's conception of the family was one of historical stability and centrality.

Unlike Maine, the Swiss scholar Johann Bachofen believed that the organization of the family had changed over time. He proposed that family life first existed in a "horde" which utilized common marriage rather than current forms of pairing. The second stage of development, "mother right" (*Mutterrecht*) witnessed a rise in the political and religious influence of the mother. In "father right" (*Vaterrecht*), the final stage of development, the

current patriarchal structure evolved. Howard concluded that the theories advanced by Maine and Bachofen contained methodological and logical fallacies. He embraced a theory of "original pairing" proposed by Edward Westermarck.

Westermarck's *History of Human Marriage* (1901) was a leading statement on the history and theory of family, and utilized a methodological approach similar to Howard's (Mills 1948). Westermarck believed that while the exact form of marriage had changed under various social conditions, it always centered around the "monogamous family." Howard admitted many historical exceptions to this position, but maintained that it offered the best available explanation of marriage and family organization and disorganization.

The second part of Howard's work contains detailed information on the development of the modern marriage institution. He examined divorce under English and ecclesiastical law, and the obligatory civil marriage in the New England colonies in the United States. Through a painstaking review of custom and law, Howard demonstrated the historical linkage between the Teutonic marriage customs and the then current form of marriage in the United States and England.

The third part details specific court cases and laws concerning divorce in the United States. The study, in Howard's own words, is based on analysis of divorce legislation "covering the entire body of state and territorial laws enacted since the American Revolution."<sup>8</sup> The final chapters outlined problems of marriage and family, and proposed uniform federal legislation to help remedy the high divorce rate. In today's terminology, Howard would argue that marriage is a social construction, not a God-given creation. Thus, the institution of marriage is malleable through social action designed to create structural change not only in marriage and divorce, but also in related, supporting institutions.

#### THE PROGRESSIVE RECONSTRUCTION OF MARRIAGE

Howard perceived that changes in legal institutions were not a sufficient remedy to marital problems in the absence of interrelated changes in economic, educational, religious, domestic, and political spheres. Howard advocated responsible marriage and the equality of women. He recommended raising the age of consent, and requiring pre-nuptial counseling and education in an attempt to place marriage on a "higher moral plane." His positions caused heated controversy in the religious community and in sectors of the public not ready to accept his progressive vision.

Howard (1904: III, 235-236) steadfastly believed in the equality of women, stating that an equal partnership would create bonds stronger than those in a repressive marriage:

The liberation of woman in every one of its aspects profoundly involves the destiny of the family.... Is it not almost certain that in the more salubrious air of freedom and equality there is being

evolved a higher type of family, knit together by ties -- sexual, moral, and spiritual -- far more tenacious than those fostered by the regime of subjection?

Howard sided with socialist-feminist writers (e.g., Charlotte Perkins Gilman, Olive Schreiner) who supported the position that "the problem of marriage and the family can be solved only by grasping their relations to the economic system" (Howard 1904: III, 246).

Howard urged women to seek education in order to develop skills for economic independence as well as the ability to assist in family decision-making. He does not advocate that women engage in full-time educational or occupational pursuits, but simply that they do not "view marriage as their sole vocation or...become merely child-bearing animals" (Howard 1904: III, 244).<sup>9</sup> Ideally, marriage would become a "union of hearts and heads" in which women shared equal responsibilities.

#### HOWARD'S APPLICATION OF HIS RESEARCH

The publication of *A History of Matrimonial Institutions* launched Howard into a position of national prominence. His expertise extended from sociology to legislative and judicial arenas. The "divorce problem" was a major concern in the United States and public sentiment encouraged a search for a nationally-coordinated legislative resolution. Howard observed in his 1905 address to the Nebraska Bar Association:

Again -- to express the result in terms of the divorce rate -- in 1867, it is estimated, there were 173 divorces to 100,000 married couples, while in 1886 the number had risen to 250. As a matter of fact, in the last named years, the average divorce rate in the United States was higher than for any other country collecting statistics, except Japan.<sup>10</sup>

Howard intended his theoretical views to have concrete, practical effect in devising an *effective* social response to family discord:

In 1905, Howard addressed the Nebraska Bar Association on the topic, "The Problem of Uniform Divorce Laws in the United States." He advised his lawyer audience:

Loose divorce laws may invite crime. Nevertheless, it is fallacious to represent the institution of divorce as in itself a menace to social morality. It is a result and not a cause; a remedy, and not a disease (*Daily Nebraskan* 1905).

Simultaneously, he warned that while uniform divorce laws were a positive step, legal and legislative reform could not carry the burden alone, asserting that:

The fundamental causes of divorce lie far beyond the reach of the statute-maker. They are rooted deeply in the imperfections of human nature and the social system (*Daily Nebraskan* 1905).

Given this caveat, Howard's *Matrimonial Institutions* found ready application and timely relevance among lawyers considering the overhaul of divorce legislation.

When the National Congress on Uniform Divorce Laws (1906), which Howard endorsed,<sup>11</sup> convened in Philadelphia, Howard's treatise was the recognized authority on the problems of marriage and divorce. Roscoe Pound, Nebraska Law School Dean and representative to the Congress, reported on his return that:

In every instance Dr. Howard's work on marriage was referred to as the authority. It was considered by every member present to be the first of all works on that subject (*Daily Nebraskan* 1906).

Howard urged lawmakers to do positively what they could within the limitations of legislation. He observed, "Beyond question, the chief cause of divorce is bad marriage laws and bad marriages."<sup>12</sup> Lawyers could at least address the legal facets of the situation. Howard recommended practical, consequential action based upon his analyses.

#### HOWARD'S LEADERSHIP IN EMANCIPATORY SOCIOLOGY

Because mainstream sociologists of the late nineteenth century often held views consistent with Christian morality and fundamentalist conservatism, Howard and those like him found themselves at odds with many older and established members of the new sociological profession. In 1908, the tide turned when the new wave of empirically rigorous, critically progressive sociologists took the old guard by siege at the third annual meeting of the American Sociological Society. The theme of the meeting, "The Family" (American Sociological Society 1909), provoked high interest in light of the rapidly rising divorce rate and Howard's (1909a) succinct reiteration of his position on the divorce question in a paper titled "Is the Freer Granting of Divorce an Evil?"

William Graham Sumner's opening presidential address provided a traditional, conservative view of the family, tracing its pattern through religious writings and developing an image of Christian influence on family form and social values. Sumner concluded that secular "changes in social and political philosophy have lowered the family" (Sumner 1909: 15). Although Sumner intended to set the tone of the meeting, subsequent presentations called for adaptive changes in family structure and new institutional arrangements to accommodate the rapidly changing social system. Charlotte Perkins Gilman attacked sexism in the current family structure and demanded marital equality. Charles Zueblin continued Gilman's theme by stressing economic independence for women. O'Neill

(1973: 191) suggests:

One may well imagine Sumner's discomfiture as he listened to the polemics, but the next four papers must have been even more disturbing, for these severely factual reports on the Pittsburgh Survey illustrated in great detail how the factory system was affecting the traditional family.

Howard's (1909a) presentation followed these critical papers and became the focal-point of the conference. Howard was critiqued by influential scholars and lay persons, including Walter G. Smith, James P. Lichtenberger, and Edward A. Ross. Smith castigated Howard for "condoning a social revolution that was destroying the divinely constituted order of things" (O'Neill 1973: 192).

Howard had the last word in the discussion of his paper, concluding that the family was slowly evolving from a state of patriarchy to a state of mutual independence. In this transition, traditional cohesion is lost. "The family bond is no longer coercion but persuasion" (Howard 1909a: 772). But he pointed out that "The old legal patriarchal bonds have not yet been adequately replaced by spiritual ties" which leads to a "frequent and disastrous clash of ideals" resulting in divorce (Howard 1909a: 772). Without significant institutional change, however, marriage, family, and divorce remained -- and continue to remain -- highly problematic in American society. The problem of disrupted family relations went unsolved, but a new pragmatic and progressive vision of emancipatory sociology had made its case. Unfortunately, this creative vision was shunted aside in subsequent years by promoters of misplaced empiricism and ineffectual scientism.<sup>13</sup>

Howard's paper explored themes already developed in *A History of Matrimonial Institutions*, and it is not surprising that he encountered criticism from conservative scholars and religious leaders, including Walter G. Smith (who resigned amid much national publicity from the board of trustees at the University of Pennsylvania rather than countenance the University's hiring of Howard supporter James P. Lichtenberger). A subsequent article by Howard (1909b) in *McClure's Magazine* insured wide-ranging discussion of Howard's views by members of the public at large.

Howard's "new doctrine of divorce" attracted many outspoken followers. E.A. Ross (1909) and J.P. Lichtenberger (1909) avowed the superiority of sociology's "scientific method" over previous religious studies of marriage and divorce. By 1910, leading American sociologists generally agreed that the family was in a state of evolution rather than "crisis." One notable dissenter to the new doctrine was former Nebraska professor Charles A. Ellwood.

Ellwood, a devout Christian, simultaneously held conflicting views on the topic of divorce. While his Christian background compelled him to speak out for the traditional view of marriage, his sociological dedication required him to defend the doctrine of change. He attempted unsuccessfully to reconcile his contradictory views by weakly arguing that the end of the

evolutionary process was a new and higher form of family.

In spite of religious opposition and conservative political opposition, Howard's work was a milestone and a clear signal of change in the sociological study of family. It drove a decisive wedge between Christian sociologists, on the one hand, and the empirically-oriented, theoretically progressive sociologists, on the other. Howard's empirically solid, theoretically rigorous, and politically courageous investigations helped to clearly differentiate a new vision of socially and intellectually responsible sociology.<sup>14</sup>

Interestingly, the notion that the institutionalized patterns of marriage and family are today "in crisis" rather than evolution, transformation, or change, is again heard with disturbing frequency and some force in the halls of academe. Howard's careful empiricism and theoretical vigor are surprisingly durable antidotes to those like Berger and Berger (1984) who argue that the family is "in crisis" simply because emergent and alternative family patterns (cf., Barrett and McIntosh 1982; Bernard [1972] 1982; Deegan 1987; Deegan and Hill 1987, 1988; Hill 1985, 1987; Poster 1978) differ from the ecclesiastical ideal of the patriarchal, monogamous, heterosexual, natural child-birth, nuclear family. This is an especially propitious time to dust off the library copies of Howard's groundbreaking treatise and reconsider his contributions and conclusions in light of current sociological and ideological debates about marriage and family. It appears true again, as Howard once observed, "The fact is we are behind the times."<sup>15</sup>

## NOTES

1. I am particularly indebted to Professor Mary Jo Deegan in whose graduate seminar this paper has its origins. The assistance of Joseph Svoboda in the University of Nebraska Archives is gratefully acknowledged. For additional insight into Howard's sociological career, see his "Sociology in the University of Nebraska," elsewhere in this issue.
2. See Ellwood's 1899 lectures on "Sociology and Charity," elsewhere in this issue.
3. See Keith's paper on E.A. Ross' intellectual contributions at the University of Nebraska, elsewhere in this issue.
4. Scrapbooks, Box 3, Department of History, George E. Howard Papers, University of Nebraska Archives, Lincoln, Nebraska. Hereafter, "Howard Papers."
5. G.E. Howard, "Sociology in the University of Nebraska," elsewhere in this issue.
6. *Ibid.*
7. This extraordinary bibliography was updated in Howard's (1914) equally impressive *Family and Marriage: An Analytical Reference Syllabus*.
8. G.E. Howard, "Sociology in the University of Nebraska," elsewhere in this issue.
9. Putting his ideas to practice, Howard encouraged egalitarian instruc-

tion for women, first mentoring and then promoting the sociological career of his student, Hattie Plum Williams, who later succeeded him as chair of the Nebraska department. Elsewhere in this issue, see Howard's history of the Nebraska department, and Hill's account of Williams' research for the Wickersham Commission.

10. G.E. Howard, "The Problem of Uniform Divorce Law in the United States," typescript, Howard Papers, Box 1. The address was later published in the 1906 volume of *American Lawyer*. For comparative purposes, the 1984 divorce rate was 2150 per 100,000 married women (U.S. Bureau of the Census. *Statistical Abstract of the United States: 1988*. Washington, DC: U.S. Government Printing Office, 1987, p. 83).
11. G.E. Howard, "The Problem of Uniform Divorce Law in the United States," *op cit*.
12. *Ibid*.
13. While useful in some respects, it must be acknowledged that O'Neill's (1973) study is fundamentally an apology for the often misplaced, abstracted empiricism of much modern sociology.
14. The vision of sociology as a cooperative, emancipatory discipline was also the hallmark of sociologist Jane Addams and most of her colleagues in Chicago (Deegan 1988).
15. G.E. Howard, "The Problem of Uniform Divorce Law in the United States," *op cit*.

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RESEARCH BY BUREAUCRACY: HATTIE PLUM WILLIAMS  
AND THE NATIONAL COMMISSION ON LAW OBSERVANCE AND  
ENFORCEMENT, 1929-1931<sup>1</sup>

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INTRODUCTION

This paper explores the bureaucratized research activities (1929-1931) of the National Commission on Law Observance and Enforcement (NCLOE) from the perspective of Hattie Plum Williams' sociobiographical experience. Williams was a doctoral student of George E. Howard and earned her Ph.D. in 1915 -- the first doctorate in sociology awarded by the University of Nebraska. That same year, she joined the Nebraska faculty and eventually became Chair of the Department (1922-1928).<sup>2</sup> In 1931, at age 53, this full professor was called upon to be an unpaid fieldworker, gathering data according to rigid protocols stipulated by the NCLOE. Archival reconstruction of Williams' "view from the bottom" of the university and NCLOE bureaucracies is the special focus of this paper. This perspective purposefully opens the disciplinary record to examine a neglected woman's work in sociology (Long 1987).

Max Weber (1958) astutely saw that bureaucratic organization gives maximum instrumentality to occupants of top positions in hierarchical structures. Universities and national crime commissions are not exempt from this insight. Weber also asserted that modern bureaucracies move increasingly toward legal-rational norms of conduct. Rosabeth Moss Kanter (1979) observes, however, that Weber's thesis was true for men but not for women. Women in bureaucracies, she demonstrated, were more likely to be treated under paternal norms.

This result is doubly problematic for women scholars conducting sociological investigations in large, patriarchal, bureaucratically-organized universities. Hierarchical structures shape not only their day-to-day experience as researchers, but also pattern the subsequent historical accounts (if any) of their scholarly labors. Too frequently, women's experiences in educational bureaucracies -- and the published disciplinary accounts of their work -- follow anything but legal-rational norms. The story of Hattie Plum Williams' efforts on behalf of the NCLOE is a dramatic illustration of bureaucratically-generated slights and inequities in the everyday lives of many women sociologists.

A NATIONAL CRIME COMMISSION

In 1929, at the behest of President Herbert Hoover, the NCLOE undertook a multi-faceted national investigation of crime as the United States wrestled with the Great Depression and widespread, flagrant noncom-