The Lawyer's Bookshelf

## Framing American Divorce: From the Revolutionary Generation To The Victorians

reviewed By Bari B. Brandes And Joel R. Brandes By Norma Basch. University of California Press, Berkeley, Calif. 237 pages. $29.95.

[The New York Law Journal](http://www.nylj.com/)Friday, October 8, 1999

Many attorneys specialize in an area of practice but, due to constraints of time or oth.er factors, know only a rudimentary history of that area, usually consisting of legislation and case law. This is akin to accepting the state of affairs in a given field as though it were produced in a vacuum, bereft of social or cultural influence. Education in the social history of a given area of practice not only gives the individual attorney a depth of understanding about the reasoning behind particular procedures and standards for determination, but also gives him or her the power to either justify or challenge those standards.

In Framing American Divorce: From the Revolutionary Generation to the Victorians, Norma Basch, a professor of history at Rutgers University, sets out to delineate the history of divorce in the United States and parallel its proliferation with the increased visibility and power of the American woman. The book focuses on the various roles and public portrayals of women in American society. The author explains how the very times these women lived through, particularly the Revolutionary and Civil Wars, enabled them to move outside their gender- based cultural role and take some control over their lives, if even in the most basic of ways. To call this a feminist text, however, would do a disservice both to the nature of the work and quality of the author's scholarship.

The book is divided into three parts: the rules, mediations and representations. "The Rules" explores the effect of American politics during the Revolutionary War, which laid the foundation for a common notion of independence. That notion influenced both the nation and the individual, and this basis for national identity clashed and combined with the legal and religious traditions brought over from Europe. Here Professor Basch lays the groundwork for her theories of social evolution from cultural revolution. "Mediations" examines the legal process of divorce in New York and Indiana, as examples of legal restrictiveness and permissiveness, respectively. The author shows how women and men both adapted to and shaped the process itself, for where the legal remedies were lacking, social remedies often prevailed, and the legislature was forced to create more accessible solutions. The development of legal standards and the new role of women were directly created, as opposed to merely influenced, by the conflation of old legal and social beliefs with the power and energy of a new nation. "Representations" focuses on popular notions and representations of divorce and how individual cases captured the public's attention as both displays of social and legal process and vicarious escape. Here the reader has the advantage of looking at the socialization of divorce and the popular interest in those cases, both from a modern standpoint and on the timeline of political and cultural development.

Professor Basch expores the public's view of divorce changed on a cultural scale-from an evil to be avoided to a practical solution-and how the perception of the role of women changed at the same time. This came from the challenges that American society as a whole faced, through war, through the rigors of frontier life and through the popular notion of self-determination as it conflicted with the dictates of religion. At the same time, she often uses well-known divorce cases of the day to demonstrate how women were perceived by the fledgling justice system and by the new American society. Divorce moved on a wides cultural continuum from secrecy and shame to popular (and populist) entertainment, spawning both a trade in trial pamphlets and a national obsession with scandalous court cases, which extends to the present day.

The book presents a thorough, well-documented exploration of America's legal past and sets forth a careful explanation of why society progressed in the speed and manner that it did. Nothing is presented as theory, however; the author sees the change less as a matter of perception from a particular standpoint and more as a timeline of progress, leading to the inevitable, ever- nearer gender equality we have today.

This is a strange hybrid of text and short story, as it delves into the popular case histories, which the author uses as dramatic displays of popular perception, while explaining every action therein as stemming from its proper cultural designation. This is not, however, a quick read, and at times the author becomes so concerned with explaining the social influences of the day that the reader may get lost.

Framing American Divorce is thick with information concerning the day-to-day lives of people, both individually and as participants in the new governmental model. It examines the internal conflict between a national ideal of personal freedom and a history of religiousness and social conservativism. Although it is much like a textbook and often reads that way, the reader is continually rewarded with information and insight, and this book serves as a very useful historical resource for anyone involved in either matrimonial law or women's issues. The author is talented enough to transport the reader back to the courtrooms, legislatures and homes of the 18th and 19th centuries, and ultimately, this is what makes the text rather enjoyable. Professor Basch is a thoughtful, careful, thorough scholar, and her work often leads the reader through her theories without the awareness of having already accepted her #12; propositions. Upon scrutiny, the reader is hard put to object. Perhaps, then, that is the very best that can be said about any legal text. This book closely examines American political and social history and yet, along the way, the conflict is reduced to academics. That may be so because the end result is already before us, but Professor Basch presents a credible explanation for how we got here.

Bari B. Brandes is a partner at The Law Firm of Joel R. Brandes PC in Garden City and New York City, and collaborates with Joel R. Brandes on the 13- volume treatise Law and the Family New York (Westgroup) and a monthly column for this newspaper.