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## It's down to the judges to mend our divorce laws - they trashed them in the first place

By [Steve Doughty](#)

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One of the country's most senior commercial judges yesterday launched a campaign in support of a transaction tax to curb the excesses of City bankers.

Dame Ruby Farnsbarns said: 'My message is, squeeze them until the pips squeak.'

Dame Ruby, who sits in the High Court Chancery Division as Mrs Justice Farnsbarns, is to launch a pressure group which will commission research on banking taxation. It will eventually lobby for reform of tax law.



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**'Mend it, don't end it': Judge Sir Paul Coleridge plans to start a pressure group to promote marriage**

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Well, no she didn't and no she won't. Mrs Justice Farnsbarns does not exist, and if she did she would rapidly find herself in deep career trouble. A judge simply cannot launch controversial political campaigns, and particularly not about matters on which she is required to give daily judgements in court.

Which brings us to Sir Paul Coleridge, and his plan to start a pressure group which will promote marriage and discourage divorce. It was Sir Paul who told The Times that 'my message is, mend it, don't end it', and Sir

Paul whose new organisation will commission research about relationships and go on to lobby in favour of marriage.

Sir Paul sits as Mr Justice Coleridge in the Family Division of the High Court and deals daily with divorce cases, some of them very prominent and expensive.

The fact that no-one considers this odd says a lot about our judiciary and even more about our politicians.

Judges have taken the lead in developing family law for 20 years now. It was in the early 1990s that a judicial quango called the Law Commission, which was set up to provide ministers with advice on updating arcane areas of the law, began recommending sweeping reforms for no-fault divorce to take the tears out of family break-up.

It is the judiciary, not elected politicians, who have decided that the courts should take no account of adultery or other marital misbehaviour in divorce cases.

In a business contract, a party that breaks the rules is penalised. In marriage, the most far-reaching and solemn contract anyone can make, as far as the courts are concerned the rules don't matter.

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This is why a man who has to hand over a large slice of his income to an unfaithful ex-wife who is both living with a well-off partner and denying her former husband access to his children will sometimes feel driven to dress up as Batman and stop the traffic on Tower Bridge.

It is the judges who have decided that divorce settlements must be equalised so a wife can get a bigger share of money she has not earned. It is the judges who have given legal status to the pre-nup, introducing to the law the assumption that marriage is not for life.

So where have the politicians been in all this?

They seem frozen and terrified when it comes to discussing families and marriage. The last attempt to legislate was made by John Major, who pushed through a no-fault divorce law based on the Law Commission's advice.

This proved predictably unworkable and was later quietly killed off.

Both Tory and Labour Chancellors contributed to the abolition with minimum debate of Married Couples Allowance, a move that did so much to symbolise the state's dismissive view of marriage.

There has been virtually no high-level argument over the decline of marriage to a historic low. Politicians seem to think it a coincidence that the crisis of marriage has gone alongside the spread of family breakdown.



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**Honourable: Iain Duncan Smith is alone in the Cabinet in his support for married couples**

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They know the consequences of fatherless childhoods for educational failure, poverty, crime, antisocial behaviour, benefit dependency, and all the rest, but they seem to think it has all happened by chance.

Where is the politician with the courage to take on the dismal chorus of lawyers, activists and quangocrats who have decided that 'stable relationships' are just as good as marriage?

Iain Duncan Smith, who has run a lonely campaign to support married families both in and out of office, is an honourable exception to the rule. But David Cameron's profession of support for marriage will continue to look like empty posturing as long as he fails to make good his promise of tax breaks for married couples.

There is a failure of courage here, a reluctance to make a stand when focus groups do not guarantee there will be a reward in the opinion polls.

So it is left to Sir Paul to speak up for marriage, to condemn divorce, to point to the fragility of cohabitation, and to warn of the damage done to nearly four million children whose home life has to be settled by the courts.

Our democracy has not been improved by two decades of judicial activism and the proliferation of judges who think they know better than elected politicians. But, on marriage and the family, elected politicians have shrunk from their job, and we have to be thankful that there is a High Court judge who will stick his neck out.

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It is the judges who have decided that divorce settlements must be equalised so a wife can get a bigger share of money she has not earned-----who writes this stuff. After 12 years with a work shy husband, no savings, no pension plan, living in a house that I bought - who got half of everything. You guessed it. Glad though I was to get rid of him he cost me my pension which I had to cash in to buy half of the house I had already bought. In addition I had to work five years past pension age just to put by some savings, He really cleaned me out. I AM SICK OF THIS ASSUMPTION THAT IT IS ALWAYS THE MAN WHO SUFFERS AND THE WOMAN WHO GETS THE ILL GOTTEN GAINS. I agree that the law is wrong and should pay some attention to contribution in the marriage but not that the woman is always the gold digger. this is after all the 21st century

- interesting , a rethink needed , 04/1/2012 21:47

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If you are suggesting that Labours Constitutional Reform Act 2005 should be repealed, I would tend to agree. But not with much else.

- Trudi, Worcs, 04/1/2012 19:57

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