The family became a major political issue in the UK during the 1990s as policy makers began to recognize the rapid pace of family change. In the space of a generation the numbers marrying have halved, the numbers divorcing trebled and the proportion of children born outside marriage quadrupled (Scott, Braun and Alwin, 1998). Declining marriage and increased childbearing outside marriage are inextricably linked to the growth of cohabitation, and increases in divorce, cohabitation and extra-marital childbearing have all contributed to the separation of marriage and parenthood. Between 1970 and 1990, the percentage of lone mother families more than doubled. Indeed, it is tempting to write of the ‘rise and decline of marriage’ in the twentieth century, with marriage becoming virtually universal in the immediate post-war decades and seemingly becoming much less popular in the closing years of the century. Such judgements may be premature, but it is the broad trends associated with the decline of marriage and rise of cohabitation that have promoted the fin de siècle anxiety about marriage and the family, now continuing into the twenty-first century.

Pessimism about the family has permeated both political and academic commentary over the last decade, in contrast to the optimistic assessments of the late 1960s and early 1970s (e.g. Fletcher, 1966). In the 1980s, British researchers followed Americans in providing evidence of the detrimental impact of divorce on the educational achievement, employment and personal relationships of children and young adults (e.g. Richards and Dyson, 1982; Maclean and Wadsworth, 1988; Kiernan, 1992). It has been generally agreed that behaviour has become more individualistic. Policy makers clearly expressed their fear of increasing individualism during the 1990s, which they
automatically assumed to be selfish and the natural antithesis of interdependence (Smart and Neale, 1997). During the course of the debates over the 1996 Family Law Act, Baroness Young expressed the view that ‘for one party simple to decide to go off with another person ... reflects the growing self-first disease which is debasing our society’ (Hansard, Lords, 29/2/96). This kind of assumption about the nature of the impulse behind the changes in behaviour in respect of the family has not gone unquestioned, for example Giddens (1992) has accepted the idea of growing individualism but has interpreted it as a more democratic development. However, for politicians, men’s failure to maintain, on the one hand, together with women’s increased economic autonomy, on the other, have been sufficient to inspire concern about the fate of the traditional, male breadwinner family, rather than optimism about its transformation. This has led to questions being asked about the role that family law might play in promoting family change.

This chapter reviews ideas about the nature of the relationship between English law and behaviour (the position in Scotland is different), prior to examining the trends in family law. It is argued that the major reform of family law in the 1960s did play a significant role in legitimizing a trend towards greater individualism in intimate relationships. The story since divorce law reform in 1969 has broadly been one of an attempt to separate the treatment of men and women as husbands and wives, which has become increasingly individualized, from their position as fathers and mothers, which has increasingly emphasized the importance of parental responsibility. However, it is argued that such a separation is not easy to achieve. The broad trend in family law represents an attempt to come to terms with rapid family change, but ambivalence remains as to whether to recognize the profound changes in the marriage system, or to try and put the clock back.

The relationship between law and behaviour

The anxiety about the role played by family law in respect of relationship breakdown is similar to that about the effect of the public law of social security and the increase in female employment on family structure: that is, it is feared that it has permitted certain kinds of behaviour and thus promoted family breakdown. This view has been argued particularly strongly in the case of social policies by American academics and polemists, who have charged that these have exacerbated women’s move towards individualism and away from ‘familialism’ (e.g. Murray, 1985; Popenoe, 1988). However, both American and British research has