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### Divorce Laws and the Increase of Divorce

Evans Holbrook

*University of Michigan Law School*

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## DIVORCE LAWS AND THE INCREASE OF DIVORCE.

**T**HERE is do doubt that divorce is anathema in the United States at the present time, and has been for some years past.

The tremendous increase in the rate of divorce, which far exceeds the rate of increase of our population, is by most people regarded as a serious evil, and the undue advertising given to occasional malodorous divorces in high life has brought the general subject of the legal sundering of marital ties into considerable prominence and disfavor. This increase in the number of divorces has been the subject of editorials, of sermons, of investigations by various unofficial bodies and by the United States government. It is only very recently that the brave sociologist has been found to say a word in favor of this institution which has been so severely condemned. The condemnation has been both upon religious grounds, as was the case when Cardinal Gibbons described divorce as "a monster licensed by the laws of Christian states to break hearts, wreck homes and ruin souls,"<sup>1</sup> and upon more materialistic grounds, as when President Roosevelt, in an address to the Inter-Church Conference, said "Questions like the tariff and the currency are of literally no consequence whatsoever compared with the vital question of having the unit of our social life, the home, preserved. It is impossible to overstate the importance of the cause you represent. If the average husband and wife fulfill their duties toward one another and toward their children as Christianity teaches them, then we may rest absolutely assured that the other problems will solve themselves. But if we have solved every other problem in the wisest possible way it shall profit us nothing if we have lost our own national soul, and we will have lost it if we do not have the question of the relations of the family put upon the proper basis."<sup>2</sup>

Along with the condemnation of the divorce evil has gone a very general disposition to condemn our divorce laws as being responsible for the evil. The committee on resolutions of the Congress on Uniform Divorce Laws in its report to the Congress at its adjourned session in Philadelphia, November 13, 1906, speaks of the "many evils engendered by the lax and unphilosophic system prevailing

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<sup>1</sup> Quoted by Mr. Justice Brown in his address to the Maryland State Bar Association, published in *Law Notes*, Vol. XIII, p. 128 (October, 1909).

<sup>2</sup> Special Report of the Census Office on Marriage and Divorce, 1867-1906. Part I, p. 4. This report, issued in two volumes in 1908 and 1909, contains the statistics which form the basis for this article, and is hereafter cited as Report on Marriage and Divorce.

in many of the states."<sup>3</sup> On this phase of the question also our late president gave his views in his special message to Congress on January 30, 1905, in the following words: "There is a wide-spread conviction that the divorce laws are dangerously lax and indifferently administered in some of the States, resulting in a diminishing regard for the sanctity of the marriage relation."<sup>4</sup> It can hardly be doubted that this view obtains very generally throughout the United States, namely that the great increase in the number of divorces is largely due to the fact that the divorce laws in most of the states are less strict than they should be. And it is also a very general belief, as is shown by numerous expressions in editorial discussions of this subject, that the great increase in divorce during the last twenty years has been due to an increased laxity in the requirements for divorce. The great publicity given to a few disgraceful divorces obtained in a spectacular manner by prominent people has left the impression that all divorces are of this kind, and that the law permits any dissatisfied spouse to obtain freedom from the marriage yoke by merely expressing a desire to withdraw from partnership. It is believed that this view is accepted even by many lawyers. The statistics on this subject have recently become available for the period from 1887 to 1906<sup>5</sup> and an examination of the facts thus disclosed does not lend any support to this common misconception of the true state of affairs. After the publication in 1889 of the Report on Marriage and Divorce, 1867-1886, by Carroll D. Wright, then Commissioner of Labor, an examination of the effect of legislation on divorce, as shown by the statistics contained in this Report, was made by Dr. Walter F. Willcox, of Cornell University.<sup>6</sup> Dr. Willcox at that time pointed out very clearly that the influence of legislation upon divorces granted during the twenty years from 1867 to 1886 was practically negligible. The present article is the outcome of a desire to make a like examination of the facts disclosed by the later report (covering the succeeding twenty years) and to present to the profession the results of such examination.

The astounding increase in the number of divorces granted in the last twenty years, as compared with the twenty years covered by Commissioner Wright's report, calls for some explanation. The figures may be given briefly. In the twenty years from 1867 to 1886,

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<sup>3</sup> Proceedings of Adjourned Meeting of the National Congress on Uniform Divorce Laws, p. 16.

<sup>4</sup> Reprinted in Report on Marriage and Divorce, I, 4.

<sup>5</sup> Report on Marriage and Divorce, see note 2 supra.

<sup>6</sup> The Divorce Problem; Columbia University Studies in History, Economics and Public Law, Vol. I, p. 29.

A Study in Vital Statistics, 8 Political Science Quarterly, 69.

328,716 divorces were granted in the United States; in the twenty years from 1887 to 1906, 945,625. A more significant statement of the increase is made by expressing the rate in terms of the number of divorces granted per one hundred thousand of married population. On this basis the figures are as follows: in 1870 there were 81 divorces granted for every one hundred thousand of married population; in 1880, 107; in 1890, 148; in 1900, 200. In other words the divorce rate in 1900 was about two and one-half times as great as it was in 1870. The question which naturally arises and which is of particular interest to the lawyer is how much of this increase is due to lax divorce laws, and especially how much of it is due to any increased laxness in such laws. The answer to these questions may possibly throw some light upon the expectation that the number of divorces will be largely decreased by restrictive legislation.

Of course it must be granted that the divorce laws are in one sense responsible for all of the divorces, because if there were no such statutes there would be no divorce, as is now, and for thirty-one years has been the case in South Carolina, where all divorces were prohibited by the constitution adopted in 1878. But it can hardly be assumed that any person in this generation would suggest the total abolition of divorce as a cure for the divorce evil. It is commonly stated that the result in South Carolina has not been such as to lead to similar actions by other states. Indeed, many observers report that the sanctity of the marriage relation is no greater in that state than it is in the states where divorces may be obtained. And the experience of South Carolina cannot be envied if it was a result of that experience which led to the enactment of a statute prohibiting a married man from leaving by will more than one-fourth of his estate to his concubine. Nor can it be proved that in jurisdictions such as New York, where adultery is the only ground upon which an absolute divorce may be obtained, the general standard of conduct and morals is appreciably higher than in other states with more liberal divorce laws.

And it must be noted, on the other hand, that the recent increase in divorce has been in the face of the general course of divorce legislation. There have been a few changes in the direction of greater liberality, but most of the changes, as we shall see, have been in the opposite direction, and have made for greater strictness. In spite of this statutory current against easy divorce, the number of divorces has steadily grown, and it is interesting to study the effect, or lack of effect, of the various changes in the laws of the several states. The effect of such legislation upon the increase or decrease in the divorce rate can perhaps best be shown by taking a few spe-

cific instances in which laws have been enacted which would result in making divorces either easier or more difficult to obtain. During the twenty years covered by the recent report of the Census Office, there have been changes in the divorce laws of the several states which may be grouped roughly into four classes: *First*, those in which the length of time required to complete the offense of desertion has been decreased; *Second*, those in which the term of residence required before bringing suit has been decreased; *Third*, those in which this residence requirement has been increased; *Fourth*, those in which greater restrictions have been imposed upon the remarriage of divorced persons. In examining the results of such changes it is but proper to call attention in advance to some inevitable inaccuracies which may possibly affect to a slight degree the conclusions to be drawn from the facts as shown by the statistics. The reports on the number of divorces granted in the various states are always by calendar years. Changes in the divorce law may in different states go into effect at various times of the year. For instance in one state a change in the law may have taken effect in March. In another state a like change may not have gone into effect until December. In the first case the change could affect the number of divorces granted in that year. In the second case such an effect would be most unlikely. But in this investigation it is impossible to deal with the figures in any way except upon the basis of taking the calendar year as a unit, and it is believed that the possible inaccuracies resulting from such method of treatment are not very serious.

It is possible also that other causes than those brought about by statutory changes may have some effect at various times in increasing or decreasing the number of divorces granted, as is shown, for instance, by Dr. Willcox in his study referred to above where he points out that periods of commercial depression and of hard times have a very obvious effect in lessening the number of divorces.<sup>7</sup> But whatever the effect of these inaccuracies may be it is believed that the figures are sufficient to show that the effect of legislation upon the divorce rate is much less than is generally supposed.

#### 1. *Decrease in period of desertion.*

*New Jersey*—The period of desertion was reduced from three years to two in 1890.<sup>8</sup> The succeeding year showed a considerable increase in the number of divorces granted for desertion, as would be expected, for practically a double quota of desertion-terms would be completed during that year, and thus become available as grounds

<sup>7</sup> 8 *Political Science Quarterly*, 69, 81-2.

<sup>8</sup> *Laws 1890*, p. 34.

for divorce. But in subsequent years the increase in divorces for desertion is considerably less than the increase in the total number of divorces, as will be seen by reference to the following figures: (the change in the law is marked by the vertical line).

Year:	1886	'87	'88	'89	'90		'91	'92	'93	'94	'95	'96
Divorces granted												
for desertion:	171	147	130	141	158		210	219	225	214	250	234
Total number												
of divorces:	286	226	201	238	251		272	306	311	342	332	352

*Minnesota*—The decrease from three years to one in 1895<sup>9</sup> resulted in an immediate and permanent increase, both in number and in proportion, of divorces on the ground of desertion.

Year:	1891	'92	'93	'94	'95		'96	'97	'98	'99	1900
Divorces granted											
for desertion:	232	204	212	189	248		499	465	435	512	515
Total number											
of divorces:	569	581	555	539	632		876	860	829	936	989

*Virginia*—The period of desertion was reduced from five years to three in 1894,<sup>10</sup> and there followed an immediate and permanent increase, both in number and proportion, of divorces granted upon that ground, as will be seen from the following figures; but there was no disproportionate increase in the total number of divorces granted. This may perhaps indicate that in many cases in which under the old law a divorce might have been obtained on another ground, the new law was taken advantage of to make desertion the ground. As a matter of fact there was a marked decrease in the number of divorces granted for cruelty and for adultery.

Year:	1890	'91	'92	'93	'94		'95	'96	'97	'98	'99
Divorces granted											
for desertion:	121	141	137	141	197		249	255	258	331	314
Total number											
of divorces:	386	380	381	407	486		523	525	539	606	604

*Arizona*—Here a double effect of legislation may be observed. By the Revised Statutes of 1901<sup>11</sup> the period of desertion was increased from six months to two years; naturally the number of divorces on this ground fell off sharply, because the bringing of actions in all cases in which desertion had then begun was postponed for a year and a half. In 1903, by an act approved March 18th<sup>12</sup> the period

<sup>9</sup> Laws 1895, ch. 40.

<sup>10</sup> Laws 1894, ch. 365.

<sup>11</sup> § 3113.

<sup>12</sup> Laws 1903, ch. 33, § 4.

was reduced to one year. The following year shows a slight increase, a large part of which is perhaps to be accounted for by the fact that the suits postponed by the law of 1901 were just being brought to judgment.

Year:	1897	'98	'99	'00	'01	'02	'03	'04	'05	'06
Divorces granted										
for desertion:	46	65	76	93	94	60	87	102	100	112
Total number										
of divorces:	111	122	142	158	179	136	185	215	226	214

These instances show that in two states where the period of desertion was reduced forty and sixty-six percent respectively there was a considerable increase in the number of divorces granted for desertion. In two other cases the result was either negligible or did not follow at all.

II. *Decrease in residence requirement.*

*New Jersey*—In 1889 the period of residence required before an action for divorce could be brought was reduced from three years to two, but there was no unusual increase in the number of divorces granted, the number for each year of the five years preceding and the five years following the change in the law being as follows:

1885	'86	'87	'88	'89	'90	'91	'92	'93	'94
186	286	226	201	238	251	272	306	311	342

*Mississippi*—Until 1892, two years' residence on the part of the complainant was required in suits for divorce on the ground of desertion. Since that date, one year has been required. No increase in the number of divorces granted upon that ground followed the change; indeed the average number of such divorces in the three years preceding the change was greater than the average for the three years following:

1888	'89	'90	'91	'92	'93	'94	'95	'96	'97
269	330	306	291	238	274	258	289	369	453

In neither of these cases was there any apparent effect of the greater facility for obtaining divorce.

III. *Increase in residence requirement.*

There are ten states in which there has been some increase in the period of residence required before the filing of a bill for divorce. The results of this legislation have been tabulated and appear below. The figures in the various states are not here referred to any particular year, but in each case the number of divorces granted in each of the five years previous to the change of law and in each of

the five years following the change, is given, the change in the law being indicated by the vertical line, as in the previous tabulations:<sup>13</sup>

Arizona .....	{ 66	95	60	84	111	111	122	142	158	179
	{ 111	122	142	158	179	136	185	215	226	214
California .....	785	896	1033	1074	1031	1062	1120	1070	1253	1280
District of Columbia...	143	162	170	200	186	97	136	68	72	86
Georgia .....	229	352	438	431	497	449	393	394	434	428
Michigan .....	1383	1239	1227	1339	1488	1241	1459	1592	1571	1732
New Mexico .....	102	108	99	82	107	107	129	117	145	153
North Dakota .....	241	308	390	450	386	202	174	193	242	265
Rhode Island .....	409	420	484	516	421	210	412	461	368	
South Dakota .....	195	208	228	357	412	331	292	278	316	314
Wyoming .....	63	84	99	122	144	94	160	137	145	143

It could reasonably be expected that in states which had long been noted for the number of divorces granted to non-residents, or new residents, there would be a considerable falling off in the number of divorces, and this result is shown by the figures for the states of North Dakota, South Dakota and Rhode Island, all of which have long enjoyed the unsavory reputation of being havens of refuge for the unhappily married. Of the other states, the district of Columbia and Michigan show a decrease in the number of divorces granted after the raising of the residence requirement. The residence requirement in Michigan related only to divorces granted for causes arising outside the state. The decrease in the number of divorces granted lasted for only two years and since that time the increase in divorce has been fairly constant, at about the rate which existed before the change of law. In the case of the District of Columbia the figures shown above cannot be taken to represent the result of an increase in residence requirement alone because in 1901 an

<sup>13</sup> The changes in the various states are as follows:

Arizona. The residence requirement was increased from six months to one year by the Act of Congress of May 25th, 1896. But it was not until 1901 that the like requirement appeared in the territorial revised statutes (§ 3114). If the year 1896 is taken as the date of this change, the upper line of figures will represent the situation; if the change was in 1901, the lower line.

California. Requirement increased from 6 months to 1 year, Laws 1901, p. 52.

District of Columbia. Requirement increased from 2 to 3 years, Code of 1901, § 971.

Michigan. Requirement increases from 1 to 2 years for causes arising outside the state, Laws 1887, p. 151.

New Mexico. Requirement increased from 6 months to 1 year, Act of Congress of May 25th, 1896.

North Dakota. Requirement increased from 90 days to 1 year, Laws 1899, p. 94.

Rhode Island. Requirement increased from 1 year to 2, Laws 1902, ch. 971, § 4.

South Dakota. Requirement increased from 90 days to 6 months, Laws 1893, p. 97.

[This requirement has recently (Laws 1907, ch. 132) been further increased to 1 year.]

Wyoming. Requirement increased from 6 months to 1 year, Laws of 1901, ch. 2.

entirely new divorce law was adopted in the district, under which an absolute divorce can be obtained only upon the ground of adultery.

In the other five states there was either no decrease at all in the number of divorces granted or else there was only such decrease as would be likely to result from the postponement of suits in which the period of residence had not yet been entirely completed.

So here also in cases where the change in the law has been in the direction of greater strictness there has been, except in the case of the District of Columbia and in the anomalous cases of the "divorce colony" states of Rhode Island and the Dakotas, no such marked decrease in the number of divorces as might have been expected and as was doubtless hoped for by the proponents of the stricter requirement.

#### IV. *Restrictions on Marriage of Divorced Persons.*

The speedy remarriage of one or both of the parties to a divorce suit has often caused scandal; a comparatively small number of such cases has attracted a comparatively large amount of attention because of the prominence of the parties concerned, and this notoriety has led to the general belief that a very large proportion of divorces are obtained for the express purpose of contracting new and pleasanter or more profitable alliances. There is very little ground for believing that such divorces form an undue proportion of the total number granted; such statistics as are available point to the contrary:<sup>14</sup> but the belief certainly exists and it is doubtless true that a considerable number of divorces are granted for just such a purpose. In order to prevent this evil (and an evil it certainly is, though of much less extent than is popularly believed) several states have placed restraints on the marriage of divorced persons. These restraints have usually been for a stated period only, and the result has generally been obtained in one of two ways: by prohibiting remarriage within a stated time, or by providing that an absolute decree of divorce shall not be entered until a stated time after the entry of a decree *nisi*. In a few states, such requirements have been in existence for many years; in others, they are of more recent date, and the effect of these latter is shown in the following table. In this table as in that under III. above, the vertical line is placed after the year in which the restriction on marriage was adopted, or increased, as the case may be, and the figures given denote the number of divorces granted in each of the five years preceding the change and the five years following the change, except in three cases where the change has been

<sup>14</sup> Report on Marriage and Divorce, I, p. 49 and Columbia University Studies, Vol. I, p. 27.

so recent that data are not available for all of the five years following.<sup>15</sup>

Alabama .....	1057	1299	1467	1365	1555	1876	1925	2162		
California .....	1120	1070	1253	1280	1484	1411	1506	1649	1732	1733
Colorado .....	724	849	939	935	280	598	422	531	607	663
District of Columbia...	143	162	170	200	186	97	136	68	72	86
Idaho .....	136	204	243	223	296	281	296	320		
Illinois .....	5252	5393	5653	5592	5715	5943				
Minnesota .....	860	829	936	989	923	1122	1098	1027	1046	1066
Wisconsin .....	1134	1217	1328	1343	1453	1383	1464	1459	1478	1458

A considerable and permanent decrease in the number of divorces granted is to be seen in Colorado and the District of Columbia just after the enactment of the restriction on remarriage and it may be argued that in those jurisdictions at least, the restriction had a very definite effect. But in both cases the restriction was only one of a number of changes made in the divorce law: in Colorado there were a number of small changes made in 1893, and it is impossible to apportion their results accurately; probably the falling off in the number of decrees is, in part at least, attributable to this marriage restriction. In the District of Columbia, it is impossible to draw any conclusion on this point from the marked decrease from 186 to 97, for it followed a complete and revolutionary change in the divorce code, striking out all grounds for absolute divorce save that of adultery. In the other states shown in the table, there is either a very slight decrease, with no permanent effect at all, or else a normal increase. So also in this instance of greater strictness in the law, no marked results follow: the greater strictness does not appreciably lessen the number of divorces except in the case where the strictness goes too far, as would doubtless be the general judgment upon the new code of the District of Columbia.

<sup>15</sup> The changes in the law are as follows:

**Alabama.** Until 1903 remarriage could be permitted or refused in the discretion of the court, Civil Code, § 2325. Ch. 30 of Laws of 1903, p. 49, prohibits either party from remarrying within 60 days or during the pendency of an appeal.

**California.** On February 25th, 1897, § 61 of the Civil Code was amended to prohibit the remarriage of divorced persons within one year; this was held in 1902 (*Estate of Wood*, 137 Calif. 129) to have no extra-territorial effect, and in 1903 two new sections (131 and 132) were added to the Code, providing for a decree nisi to become absolute in one year.

**Colorado.** By Laws 1893, ch. 80, § 10, remarriage within 1 year is prohibited.

**District of Columbia.** By Code of March 3rd, 1901, § 966, the innocent party only is permitted to remarry.

**Idaho.** By Laws 1903, p. 10, remarriage within 6 months is prohibited.

**Illinois.** By Laws 1905, p. 194, remarriage within 1 year is prohibited.

**Minnesota.** By Laws 1901, p. 285, remarriage within 6 months is prohibited.

**Wisconsin.** By Laws 1901, ch. 271, remarriage within 1 year is prohibited.

The result of searching these four fields of inquiry must be admitted to be practically negative. We have found changes in the law which ought to produce marked effects in the increase or decrease of the number of divorce decrees; the results of these changes we find to be extremely slight or else entirely lacking, except in the anomalous cases of Rhode Island and the Dakotas, which are, or were, confessedly refuges for the unhappily mated, and in the case of the District of Columbia, where an entirely new code was forced on the District by one over-zealous senator at the close of the session in 1901. The lack of significance of these exceptions may be appreciated if we note that, for the period from 1887 to 1906 the total number of divorces granted in all these anomalous divorce-colony states, Rhode Island, the two Dakotas, and Nevada, all of the famous divorce states put together, amounted to barely two percent of the total number granted in the United States during that period. The fact of the matter is that divorce has become a problem far beyond any control by mere legislation, and those who hope to remedy the evil, as they call it, by the adoption of a model divorce code, seem doomed to disappointment. At least there is no great hope held out by the results of such statutory changes as have already been tried. The tide of divorce has gone on, steadily increasing in spite of the increase of legal restrictions, and the question is now certainly an ominous one. But it is doubtful if it is a question that can be met and settled by the legislator, unless he tries to settle it in some way different from his well-worn attempts at regulating the evil condition after the evil has been done. Perhaps the sociologists should be listened to, who say that the way to prevent the evil of divorce is to regulate marriage rather than divorce.

EVANS HOLBROOK.

UNIVERSITY OF MICHIGAN.