

DIVORCE AND LAW.

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The divorce problem has grown to be one of the most serious questions confronting this country. An increasingly greater number of divorces per year is being granted here than by all the rest of Christendom put together. A bulletin recently issued by the census bureau brings the data on marriage and divorce down to 1916. For that year there were 112,036 decrees granted, or about 112 per 100,000 population, as against 84 in 1906, 73 in 1900, and 53 in 1890. The percentage of marriages for these years ending in divorce was for 1890—5.82, for 1900—7.84, for 1906—8.23, for 1916—10.66. Between the years 1890—1916, the number of divorces to the population increased nearly 100 per cent, while the number of marriages to the population increased only about 15 per cent. The average reader will get a clearer idea of the situation by extending the period of comparison, and by dealing with sum totals. For the two decades 1887-1906, there were 945,625 divorces reported. For the twenty years 1867-1886, there were but 328,716, or a little over one-third the number reported in the later period. In the year 1866 there were approximately 10,000 divorces, while in 1916 there were nearly twelve times as many. The rate of divorce appears to be increasing about $3\frac{1}{2}$ times as fast as the population. The rate itself, also, is annually increasing, and continuously operative, which is suggestive, at least, of ultimate universal divorce. A simple mathematical calculation will show that if the present rate of increase obtains to the year 1926, there will have been granted during the third score of years under review nearly, if not quite, 3,000,000 decrees, and that if the same proportionate rate of increase holds to the end of the present century, nearly three-fourths of all marriages will terminate in divorce.

These facts and forecasts are enough to excite the gravest concern in every well wisher of his country. For, this wholesale undoing of the home can not but menace the stability of its institutions and the character of its civilization. "The foundations of national glory," said King George V. the other day, "are set in the homes of the people. They will remain unshaken while the family life of our nation is strong and simple and pure." Great words and as true of America as of England. How can we grapple with and check the growth of this Titanic evil spreading to all sections of the country, and among all races, classes and conditions of its people? So far the main, if not the sole, hope has centered in legislation. The legislative remedies proposed approach the problem from various angles. What would result if some of the proposals were actually crystalized into law, is a legitimate subject for speculation, and especially so since almost, if not quite, everything as yet suggested has been tried in other parts of the world, in comparatively recent years.

Perhaps the greatest interest, at the present time, centers about a system of uniform or national divorce laws. In February, 1906, what came to be known as a divorce congress met in Washington, and after a preliminary organization adjourned to meet in Philadelphia the following November. At this session the provisions of a statute to lay before the National Congress to be enacted were agreed upon. Six causes—adultery, bigamy, conviction of crime, intolerable cruelty, wilful desertion for two years, and habitual drunkenness were recognized as justifiable grounds for dissolving the marriage relation. This proposed statute is the basis of agitation for a uniform law. Under our present heterogeneous system of laws more than forty causes for absolute divorce are recognized in the several States.

In the interest of order and decency there is great need of some such legislation, either by the Federal Government or by concerted action among the States, preferably

for many reasons the latter. At present there are forty-seven distinct systems of laws and jurisdictions regarding divorce. These permit divorce for from a dozen causes in Kentucky to but one in New York. Of itself this single fact will suggest many reasons why a uniform system should obtain in the States. If no moral issues were involved, property rights and the legal status of those affected by divorce demand it. A citizen of New York State may cross into Connecticut, obtain a divorce and marry; but if he returns to New York, his divorced wife can prosecute him for bigamy. The Connecticut divorce is not recognized by the courts of that State. A man can, therefore, have a legal wife in New York and another in Connecticut—rather a stigma on some of the governmental ideas prevailing in the American Commonwealth. But even if it were possible to secure uniform legislation and have legal relations and conditions the same in all the States, it would not, in all probability, materially affect the divorce rate. The differences among the States, the character of the people, and the social ideals would continue to exist. These were not created by law, and they could not be abolished—perhaps not even seriously affected—by it. But we are not shut up solely to speculation on this point.* In 1874 Switzerland so revised her constitution as to give the Federal authorities power to pass national marriage and divorce laws. Prior to that time the Cantons had independent systems. The result has been disappointing. Since 1876 the divorce rate has steadily increased. The rate has not even been uniform in the several Cantons. In at least one of them it has been much greater under the new than under the old system of divergent laws. In Germany a uniform law went into effect in 1900. For that year there was a decrease in the empire of 1505 decrees, but from 1901 to 1906 the increase went on far more rapidly than under the old regime.

*For a number of the following suggestions and accompanying data, I am indebted to Wright's Report on Marriage and Divorce; to Prof. Wilcox's *The Divorce Problem*; and to Dr. Howard's *Marriage Institutions*, Vol. III.

In the census bureau report for 1906 there is a hint of the possible effect of a uniform law in this country. For the two decades, 1887-1906, only twenty-one divorces out of every hundred were obtained by those who had not been married in the State in which the decree had been obtained. The bulletin for 1916 shows a slight increase here. Twenty-six per cent. of divorces granted were outside of the State in which the marriage took place. But this does not necessarily mean that all of the twenty-one or twenty-six migrated for the purpose of obtaining a divorce. The general movement of population for economic or other causes not connected with divorce undoubtedly influenced the result. The census of 1900 showed just twenty-one per cent. of the nation's population living outside the State of birth. Putting then, all the facts together, there does not seem to be much ground for believing that even if the country had a uniform law, there would be, under modern conditions, an appreciably less divorce rate after the States had once adjusted themselves to it.

Another group of thinkers hold that the prohibition of remarriage of divorced persons would go far to solve the problem. The late Hon. E. J. Phelps, in a very suggestive paper written a short time before his death, expressed the opinion that if the right to remarry was taken away, 99/100 of divorces would never be applied for. The desire to remarry on the part of one or both, he held to be the foundation of the proceeding. The soundness of this opinion may be judged from the following facts: Alsace-Lorraine was annexed to Germany in 1874, at which time the German divorce laws became effective. Previous to this date the French law, which permitted separation without the right to remarry, was operative. The change from separation to divorce had but little effect on the rate of increase. In France, however, the opposite was true. Here divorce was made legal in 1884, and the number leaped from 3,000 separations to 6,000 divorces in a year. And by the census of 1901 the annual average divorce was

found to be 8,864. The population of France, in the meantime, had increased in the whole sixteen years only a little over two millions. In Belgium, for the decade 1872 to 1881, there were twenty-four separations and divorces to every 100,000 marriages, while in France, that permitted only separation, there were thirty-three. Thus countries having similar conditions, but different laws as to remarriage, present about the same rate of divorce and separation.

There is another class of statistics bearing on this point that is suggestive. An investigation, made some years ago, showed that out of 1,000 widowers in Switzerland, 583 married within a year, while but 555 divorced men remarried. For women the figures were slightly reversed—117 more divorced women remarrying within a year than widows. Still more recent data, from our own country is to be considered. In Connecticut, for the year 1889, two hundred and eighty-six divorced persons remarried, which were but a trifle over one-third as many as obtained divorces that year. Practically the same proportion held there the following year. The census of 1900 showed 200,000 divorced people in the United States, or about the divorce crop for one and one-half years at the rate of 66,000 per annum then prevailing. Now, whatever value these statistics may or may not have, they do make clear one thing, viz: that not all, nor even the majority, of divorces are obtained for the purpose of immediate remarriage. So far then as the evidence goes, there is little ground to hope for much beneficial result from the prohibition of remarriage.

Another class of social reformers hold that restrictions on divorces will greatly improve the situation. Some European experiments are interesting when viewed in the light of this proposed remedy. Prior to 1858 the enormous expense of a divorce in England practically prohibited it except for the very rich. Two suits in court and a hearing before Parliament were necessary before a mar-

riage could be dissolved. Under such restrictions divorce was rare. But in 1857 a law was enacted which, though it did not change the causes for divorce, did provide a special court for the hearing of such cases, and also for a great reduction of expenses. The effect of this law was instantaneous. The number of divorces leaped in a few months to several hundred. Some six years earlier France passed a law granting to the poor the right to plead in suits of separation without cost. A similar increase in applications took place. These facts indicate that law can decrease the rate of divorce by increasing the expense of a suit to practically a prohibitory amount. Such legislation, however, is open to the serious objection of one law for the rich and another for the poor, which in theory, at least, puts it out of question for this country.

But what may be expected from limiting the grounds of divorce? In New York City, for the buroughs of Manhattan and the Bronx where divorce is granted only for adultery committed within the State, there were for 1895, two hundred and two, and for 1904, eight hundred and forty-three decrees issued. After the necessary deduction for increase in population is made, the percentage of increase of divorce for the decade remains greater than that of any other American city. On the other hand, the total number of divorces for 1904, in the two buroughs of New York, was but a little over one-third the number granted in Chicago, with nearly a million less population, for the same year. Any reflection these figures may seem to make on Chicago is partly relieved by the fact that between the first and last year of the decade in that city the rate barely doubled, while in New York it more than quadrupled. It may also be a question as to whether, if the New York law had been in force in all the States, there would not have been an even greater increase there. That there should be stricter laws in many of the States is evident enough. The census report shows that only 15 per cent. of divorces granted were contested. The country has almost reached

the point of divorce by consent. The laws of Georgia, at least, might well be so amended as to require that the testimony of the plaintiff in an uncontested suit shall be corroborated, and that the prosecution be required to appear for or against the defendant, and, if guilty of a misdemeanor, make a case against said defendant. Common decency would seem to demand some such restriction on the present procedure in this State. But even given this, when all the evidence is in for a restrictive law, it does not appear that its influence would be of much consequence, except in the case of expense.

Restriction on marriage as a remedy has, also, had earnest advocates. No illustration of the direct effect of such legislation on divorce is at hand, but there is a striking one as to its influence on morality. Some seventy-five years ago, the authorities in Bavaria were given power to refuse marriage to any one who could not furnish reasonable evidence of ability to support a family. The number of marriages rapidly decreased, but along with it there was an accompanying increase in illegitimate births. Nearly a fourth of all the children in the kingdom were born out of wedlock. In 1861 the law was repealed. Marriages at once leaped from 38,000 to 59,000, with a corresponding decrease in illegitimacy. As human nature is much the same the world over, different results could hardly be expected from a trial of such legislation in this country. Students of social conditions will watch with keen interest the effect on morality and divorce of the eugenic marriage laws recently enacted in Wisconsin. Can that State make a race of supermen or of gods by a legislative act? Time will tell.

Many think there already exists in this country about every needful restriction on marriage. And in the main this is true. Some additional restraint on obtaining the marriage license in most of the States, and a law against clandestine marriages, might work good. Perhaps, also, the marriage age, with or without parental consent, should

be raised in some of the States. But it must be admitted that in some, where the age of permission is shockingly young, the divorce rate is not so high as in others which have fixed a more mature year. Mississippi, where the age of consent is ten years, as compared with Kansas, where it is eighteen, may serve as an example. It is almost certain that no kind of legal restriction on marriage, however desirable, would have much appreciable influence on the rate of divorce. Taking then all the facts into consideration, the conclusion is well nigh irresistible that the direct effect of law on divorce is hardly perceptible. The most it can do is to educate public opinion. If it is wise, it may be an effective means of doing this.

This conclusion will be greatly strengthened, if that is necessary, by a consideration of the causes of the phenomenal increase in divorces in this country. Among these the emancipation of women holds a foremost place. Where the mental and economic independence of women are most complete, as in New England and the Middle Western States, there divorce is found to be most frequent. About 66 per cent. of divorces granted in these sections are to women. Closely related to this is the wide-spread discontent among both men and women. The impossibility of a great majority of married people entering into the larger world opening to them by an ever-increasing intelligence, and awakening social aspiration tends to a growing dissatisfaction with the family ties.

It is probably true, also, as some students of the subject have suggested, that many of the disputes between husband and wife are, at bottom, a clashing of Roman and Teutonic ideals of marriage. The Roman regarded himself as owner and master of his wife. In a modified form, which merges the legal personality of the wife in that of the husband, this conception is still quite common. Over against this is the Teutonic ideal of equality of man and woman. In this the freedom and individuality of both husband and wife are emphasized. It bases the family on

the harmonious wills of two equals. It is quite evident that a successful family life on this democratic basis demands more fidelity and adaptation than where a single will rules. When these are wanting under this democratic regime, disruption is almost inevitable.

In this connection there may be mentioned the rapid growth of the Miltonic idea of marriage, that of two beings with spiritual affinities. Not a few shining lights in the literary and social world boldly assert that neither Church nor State has a right to interfere with a man or woman obtaining a spiritual mate, however many marriages may have to be broken to do so. Almost any issue of the daily papers will offer evidence of the increasing number of those who are setting up this creed as a working principle of married life.

Another thing that helps to swell the number of divorces is the decreasing number of children in modern families. Where there are none at all, no bond exists to hold the pair together except respect for the marriage vow, and the romantic passion. If there are but one or two, either party feels capable of assuming the burden of their care.

The home also ceases to be the immovable institution it once was. Rarely is it now, as formerly, an anchored establishment filled with treasures endeared by age and memories to disturb which is heart-breaking. No halloved associations cling to flats or apartment houses. Moving is a common experience. And as for the large army domiciled in hotels and boarding houses, the packing of trunks and changing of locations are almost daily occurrences.

Then the spread of Socialism and the growing influence of Socialistic literature operates strongly in favor of divorce. The militant socialist considers the monogamic family a failure. To him it is a troublesome obstacle to common ownership, and wholly incompatible with the social unity that ought to exist in the State. The

larger social body must be composed of individual members, free and equal, and it cannot tolerate within itself a smaller body with special group interests of its own and with special coercive powers over each and every constituent part. The influence of the prophets of this militant socialism, Robert Owen, Bebel, Gronlund, Morris, Bax, Murhead, and others, is steadily growing. The spread of their doctrines is to be judged less by the ballot than by the trend of politics in the country. More significant still is the influence of this school on conservative students of Sociology. Many of these seem to have swallowed whole the dogma that individualism is the *sine qua non* of all social progress; and that in the family that is to be, all coercive ties must yield to voluntary spiritual ones.

The rise, too, of a very prolific realistic literature undoubtedly exerts a powerful influence for divorce over many who know little and care less about Socialism *per se*, or its program. The books of Margaret Lee, C. J. Bellamy, Dr. Barry, Mona Caird, Grant Allen, and others, which give expression to all sorts of ideas, from the interchange of wives in a Socialistic community to a cynical indifference as to whether women continue to marry at all if they will only consent to assume the responsibility of motherhood are, beyond all question, searing the public conscience to the enormity of immorality, and as a result, influencing the ideals and eventually the careers of unnumbered men and women.

Now, if these be the forces that have given the divorce evil such an impetus in this country, and certainly they are among the principal ones, it is clear that not much can be expected from law, in a direct way, as a remedial agent. For every one of these forces, or causes, is beyond the reach of law. And to legislate against the results they produce would be like a physician trying to heal a malignant disease merely by treating its symptoms. Divorce is not our real problem—it is rather a symptom of it, or perhaps better, the method society has hit upon for dealing with it. We shall never make much headway as

long as we confuse the real problem with the State's method of solving it. So long as we exalt the method to the place of the problem, and direct all our energies and thought to suiting the method to our taste, the evil itself will continue to spread like a green bay tree. From any and every standpoint then, the conclusion seems irresistible, that the chief benefit of law is not so much in remedial effect as in educating public opinion and fixing proper moral standards.

Before ever much can be accomplished in the way of relief, the causes of divorce must be grappled with and eradicated. The planting of flowers and shrubs around a cess-pool may make it an attractive feature of the backyard, but it will continue to breathe out death to the members of the household. It must be gotten rid of in some way if it ceases to breed disease and death. And if divorce is ever checked in this country, attention will have to be centered on causes rather than on methods that at most can only make results less hideous. And the only way of dealing with the causes, that has yet proven practical, is the slow, and often difficult, one of moral education. A new, or rather the old, conception of marriage needs to be reinstated in the thinking of the people. The church, with all the other educational forces of the country, must contrive, somehow, to bring into prominence the religious character of the institution, which, except among Roman Catholics and Episcopalians, has nearly disappeared. There needs to be a truer appreciation of the character of the **vow** taken and obligations assumed in marriage. The vow must be recognized as made to God as well as to each other, and the obligation more a racial matter than a civil contract. Of necessity, it must be the latter in the interest of social law and order. But an institution that is the fountain source of human life, that involves the perpetuity and progress of the race, and that originates its ideals and safeguards, is altogether too big and comprehensive an affair for any

community or state to have supreme or even the chief jurisdiction over. And somehow this truth must be fixed in the conscience of the people.

Then, too, a co-operation of the church and all the educational forces of the country in training in the duties and relations of the home life is imperative. The ten commandments should be made the basis of all moral education. Self sacrifice, the secret of all worthy achievement, of all endurance of manhood or womanhood, of all self conquest, and of all inward peace, should be inculcated as the true ideal of life. A deep student of this phase of the subject published, some years ago, a conversation she had held not long before with the mother of a wilful daughter. "I fear," said the lady to the mother, "your daughter will have difficulty in finding a husband to suit her." "Oh, doubtless she will have to try several times," was the unblushing reply. "The young woman is still under forty, has already tried two or three times, and at last report was still unsuited," was the naive comment of the student. The same writer tells of another woman who, on being urged not to marry an unworthy man, replied: "If I don't like him, I don't have to stay married." When the youth of the country are growing up with such ideas and ideals, how can we reasonably hope for stability in family life? For it is morally certain that where such wilfulness, or downright selfishness, exists, no effort for harmony and adjustment will be made, and no incentive to found a home and rear a family can be possible.

To repeat then, the real problem is not divorce. It is rather the low standards and ideals of life, and the base, ignoble conception of marriage obtaining in modern society. Divorce is simply the method the State has fixed upon for dealing with this serious condition. It is worse than useless to decry the State's method of solving the problem. The only possible thing it can do to relieve a most undesirable situation is to dissolve what to it is

merely a social or civil contract that has been the occasion of the trouble. The one great concern of all who seek the welfare of the country and of the race, should be to unite all the religious and educational forces in the land in a mighty effort to establish in the minds of the rising generation the true and sacred character of marriage, right standards of morals, and self-denials and self-sacrifice as the only worthy ideals of life. Thus only can we reasonably hope to obtain sufficient motive for the performance of all the admitted duties of home life, and at the same time that forbearance and strength equal to all the strain these will impose on men and women of flesh and blood.

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