

POLITICAL AND RELIGIOUS DIFFERENCES  
AS GROUNDS FOR DIVORCE

. . . with the accent on Communism

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The manifold impact of Communism on our society has created variant problems for the judiciary. It is, therefore, not surprising that the issue of "communism as grounds for divorce" has been raised occasionally in divorce litigation. The recent case of *Donaldson v. Donaldson*<sup>1</sup> dealt directly with this question. This was an action by the wife against the husband for a divorce. The defendant answered with a cross complaint requesting that he be awarded the divorce and custody of a minor child. The plaintiff's complaint was dismissed and the counter claim allowed. The Supreme Court held that the fact the wife was a member of the communist party at the time of her marriage and refused to continue in the religious beliefs of her birth did not entitle the husband to a divorce. The decree was reversed and remanded. The court said:

"Neither a religious belief (or the lack of such belief) nor a political or social opinion is of itself grounds for divorce in this jurisdiction."

In arriving at this conclusion the court pointed out that the only provision of the statute under which the counter complaint might possibly lie was that which provided "Cruel treatment of either party by the other, or personal indignities rendering life burdensome"<sup>2</sup> are grounds for divorce. Thus, the court was of the opinion that divergent political opinions, *per se*, do not constitute the essential elements of either (1) cruel treatment, or (2) personal indignities.<sup>3</sup>

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<sup>1</sup> 231 P.2d 607 (Wash. 1951). See case note, 14 GA. B. J. 238 (Nov. 1951).

<sup>2</sup> LAWS OF WASH., 1949, c. 215, §2, p. 698, REM.SUPP. 1949 §997-2.

<sup>3</sup> Cf. New York Herald Tribune, March 8, 1952, p. 1. "A court in Potsdam, East Germany, has ruled a man may divorce his wife for not being sufficiently Marxist, even though he may have admitted adultery. . . . The wife's 'politically weak conduct' drove him to turn away from her, it said."

Certain questions immediately arise from an opinion of this sort. Is the basis of the court's opinion the judicial determination that the essential elements of what constitutes cruel treatment do not encompass the incompatibility that results because of political disparity, so that other courts with different opinions might arrive at a different conclusion? Do the divorce statutes conceive of political differences as grounds for divorce? If they do, are there any policy factors that would preclude their inclusion into divorce regulation?

The law is scant with opinions where the issue of political differences have been raised in divorce proceedings. Besides the *Donaldson* case, one other case raised the subject of political differences as grounds for divorce. That was *Braun v. Braun*<sup>4</sup> and likewise was decided in the state of Washington. The court held:

"The trial court apparently and properly disregarded the charges that the appellant was a communist, which certainly would not constitute cruelty *per se* and be grounds for divorce."<sup>5</sup>

The decisions in these two cases seem to be correct by the application of the process of applying rules developed in analogous situations. It is surprising, considering the frenzy with which some hold political convictions, that the question has not been raised previously, and in more detail. Reasonable research indicates that these two cases consist of the "law" on this aspect of the topic. But, there has developed in our law the principle that religious differences between spouses are not, *per se*, grounds for divorce. And the close analogy between political differences and religious differences can clearly be seen. The desire for a divorce would stem from incompatibility due to a state of mind of one of the spouses which the other finds impossible to bear. There seems to be no perceptible difference between the basis for divorce on the grounds of one's religious beliefs and because of one's political convictions.

<sup>4</sup> 31 Wash.2d 468, 197 P.2d 442, 443 (1948).

<sup>5</sup> It is not clear from this case to what extent the issue of communism was pressed on the court. This appears to be a minor point in the decision. But the language is clear and seems to be more than dictum.

As a general proposition, divorce may be granted for three distinct reasons. The first because of fault between parties. An example would be the ephemeral concept mental cruelty."<sup>6</sup> The second ground would be misfortune. *E.g.*, impotency.<sup>7</sup> And thirdly, some states allow for separation on the basis of agreement between parties.<sup>8</sup> As has previously been pointed out, the Washington court was of the opinion that the only relevant part of the statute under which political differences could be treated as possible grounds for divorce was that relating to mental cruelty. Therefore, it should be kept in mind that any basis for allowing divorce because of religious or political differences would be on the grounds of mental cruelty, or a corollary thereof. Thus, in considering the total question, it is important to keep constantly in mind the statutory provisions and the scope accorded them by the judiciary, particularly to mental cruelty.

Since the *Donaldson* case held that political differences do not constitute the requisite grounds for divorce, it would be wise to inquire to what extent the courts have held that religious differences were sufficient grounds; and if they are grounds, what restrictions or limitations have been placed thereon. The dictum in *Haymond v. Haymond*<sup>9</sup> constitutes a good beginning.

"In view of the constitutional provision securing to 'all men the right to worship almighty God according to the dictates of their own conscience' and asserting that no human authority ought in any case whatever to control or interfere with the rights of conscience in matters of religion, we do not think that questions as to the doctrines or practices of the Sanctificationists ought to have been permitted to enter to any extent into the trial. . . . If her conduct as a wife was such as to furnish her husband grounds for divorce, the acts themselves would be the only proper subjects of investigation, *without any regard to the religious convictions that led to them.*" (Emphasis added)

<sup>6</sup> See 27 C.J.S., Divorce, §24, *et seq.*, p. 543.

<sup>7</sup> See 27 C.J.S., Divorce, §19, p. 540.

<sup>8</sup> See 27 C.J.S., Divorce, §42, p. 581.

<sup>9</sup> *Haymond v. Haymond*, 74 Tex. 414, 12 S.W. 90 (1889).

The broad doctrine announced in this case (though not original thereto) seems to set the pattern for the courts' application of religious differences as grounds for divorce. *Smith v. Smith*<sup>10</sup> serves as an illustration. Here the wife became a member of the sect known as Jehovah's Witnesses, and zealously carried out her faith to the extent of disrupting and destroying the family life. Such actions were held to constitute cruel treatment towards the husband, and the court affirmed a judgment granting a divorce to the husband with custody of the two minor children. The actions of the wife amounted to cruelty, and the naked facts of religious incompatibility was not the moving cause for the divorce.<sup>11</sup> Comparable is *Johnson v. Johnson*,<sup>12</sup> where the wife had become a "Seventh Day Adventist" and also joined a sect known as the "Holiness People." As a result of her new found beliefs, she refused to have sexual intercourse with her husband until she received word from God that the husband likewise had become converted.<sup>13</sup> She also neglected the household duties, disrupted the family schedule, and was no longer the efficient housewife and mother she had been before; and that it appears all these consequences directly resulted from her active participation and belief in her religion. A divorce was not granted, even under a statute where grounds for divorce was "indignities to his person . . . rendering life . . . burdensome."<sup>14</sup> In *Krauss v. Krauss*<sup>15</sup> the husband, a Jew, became converted to Christianity. He devoted himself entirely to the new faith with zest, to the extent that he allowed his business to deteriorate, and stayed away from home at long periods of time

<sup>10</sup> 61 Ariz. 373, 149 P.2d 683 (1944).

<sup>11</sup> The apropos part of the divorce statute under which the case was considered set out as grounds for divorce, "Where the husband or the wife is guilty of excesses, cruel treatment or outrages towards the other whether by the use of personal violence or other means." §27-802, ARIZ. CODE ANN., 1939.

<sup>12</sup> 31 Pa.Super.Ct. 53 (1906).

<sup>13</sup> See also *Prall v. Prall*, 58 Fla. 496, 50 So. 867, 26 L.R.A. (N.S.) 577 (1909). The refusal to have marital relations due to the wife's membership in an organization of which the members were deemed "wedded to Christ" was not grounds for desertion.

<sup>14</sup> Act of Pa. Assembly, June 25, 1895, P.L. 308.

<sup>15</sup> 163 La. 218, 111 So. 683 (1927). See annotation, 58 A.L.R. 457.

studying in various schools. Because of these activities his family was forced to a lower social station in life and compelled to live in less comfortable surroundings. The court said:

"If the plaintiff's evidence went no further than to show religious differences, that would end the case. The law has not designated and indeed could make diverse religious opinions a legal cause for separation. The fundamental law of the land guarantees freedom of religion and the right to worship according to the dictates of one's own conscience."

But the decree was granted because of the conditions arising from the religious differences.<sup>16</sup>

A divorce was granted where the wife, believing it to be her duty, insisted on being a Christian Science "Healer";<sup>17</sup> where the wife was a Protestant and her husband criticised the church to which she belonged;<sup>18</sup> where the husband was a Roman Catholic and the wife was a Protestant and the two could not get along together;<sup>19</sup> and where the husband was profane to the wife who was a devout churchgoer.<sup>20</sup>

A divorce was not granted where one spouse refused to conform to an antenuptial agreement as to the rearing of the children in the Catholic church,<sup>21</sup> and where the husband was a Methodist and the wife a Roman Catholic and they quarreled about his insistence on singing in the choir, among other things.<sup>22</sup>

<sup>16</sup> *Ibid.*, 111 So. at 685. "The court will look . . . to the nature and character of the treatment itself in determining the question as to whether it amounts to such cruelties to warrant a separation."

<sup>17</sup> *Robinson v. Robinson*, 66 N.H. 600, 23 Atl. 362, 15 L.R.A. 121, 49 Am.St.Rep. 632 (1891).

<sup>18</sup> *DeCloedt v. DeCloedt*, 24 Idaho 277, 133 Pac. 664 (1913).

<sup>19</sup> *Edmonds v. Edmonds*, 193 Iowa 87, 185 N.W. 2 (1921).

<sup>20</sup> *Payne v. Payne*, 4 Humph. 500 (Tenn. 1844).

<sup>21</sup> *Mirizio v. Mirizio*, 242 N.Y. 74, 150 N.E. 605 (1926). See, Carty, *The Enforceability of Antenuptial Agreements for the Religious Instruction of Children*, 2 DUKE B.J. 70 (Dec. 1951).

<sup>22</sup> *Meffert v. Meffert*, 118 Ark. 582, 177 S.W. 1 (1915); see, also, *Lawrence v. Lawrence*, 3 Paige 267 (N.Y. 1832). The master properly excluded evidence that the sole difficulty was the refusal of the husband to allow the wife to attend the Presbyterian church. See also, *Hill v. Hill*, 203 Ky. 182, 261 S.W. 1115 (1924).

It must be strongly emphasized, however, that in the cases where a divorce was granted, the reason was not the religious differences, *per se*, but because of the resultant difficulties that sprung from such differences. No court has said that a complaint based on the religious differences alone between spouses constitutes adequate grounds for a divorce decree. Each court has, more or less, said the *facts* of each case must stand on their separate footing and whether or not mental cruelty resulted depends upon the extent and nature of the facts alleged to have constituted the cruelty. The test seems to be:

“Whether or not mental suffering constitutes mental cruelty depends upon the sound sense of justice of the trial court, and in each case, it is a question of fact to be deduced from the circumstances.”<sup>23</sup>

And religious differences, *per se*, do not constitute the requisite mental suffering.

Nor is this conclusion altered by a New Jersey decision which denied to a mother custody of two minor children after a divorce decree was granted.<sup>24</sup> It was held that a belief in atheistic communistic doctrines renders a parent unfit to receive custody of her child.<sup>25</sup> It does not appear that the moving cause for the divorce was the “atheistic communistic” doctrines or that the court considered the religious and political disparity as the focal point for the divorce. The issue of political and religious beliefs arose to determine the character of the mother in determining her claim of custody.

From the survey of the cases two conclusions can be postulated:

1. Neither religious nor political differences of themselves between spouses constitute grounds for divorce under the interpretations given the mental cruelty provisions of the statutes.
2. Difficulties flowing from such differences may be grounds for divorce if in themselves such dif-

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<sup>23</sup> Ungemach v. Ungemach, 61 Cal.App.2d 29, 142 P.2d 99 (1943).

<sup>24</sup> Eaton v. Eaton, 122 N.J.Eq. 142, 191 Atl. 839 (1936).

<sup>25</sup> See note, 49 HARV. L. REV. 831, where Eaton v. Eaton, *supra* note 24, is criticized.

ficulties constitute mental cruelty, aside from their political or religious relationship.

While the *Donaldson* and *Braun* cases (the only two considering political differences) did not refer to the apparently strong analogy in the series of religious difference cases, the analogy is implicit in the decisions. The Washington court had asserted in an earlier case that the test for determining whether religious fanaticism constitutes cruel treatment is this: Did the belief cause a disruption or destruction of family life?<sup>26</sup> Thus, the Washington court adopted the unanimous view by requiring something more than religious differences *per se*. The decisions in the communism cases followed quite naturally and logically.

Whether the reluctance stems from a feeling that religious and political differences by their very nature should not constitute grounds for divorce, that the liberality of divorce has reached its outermost limits, that there may be some constitutional objections to divorces on these bases, the courts still maintain the position that an allegation of religious or political differences in a complaint is mere surplusage and is not to become an issue before the court.

### Statutes

Reasonable arguments may be given for extending divorce on the basis of religious or political differences between spouses. But any such extension must necessarily fall within the confines of the divorce provisions of the statutes. Recall that the Washington court refused a divorce decree because of political differences as either (1) cruel treatment, or (2) personal indignities. Most divorce statutes are set out in general terms, thus it is incumbent upon the judiciary to give them explicit meaning. Political or religious differences as grounds for divorce could only fall into that category generally stated as "mental cruelty." Practically all American jurisdictions today recognize some kind of cruelty as grounds for divorce.<sup>27</sup> *Extreme cruelty*

<sup>26</sup> *Mertens v. Mertens*, 227 P.2d 724 (Wash. 1951).

<sup>27</sup> 2 VERNIER, AMERICAN FAMILY LAWS, § 66, pp. 24-29 (1931). VERNIER, AMERICAN FAMILY LAWS, § 66, p. 40 (Supplement 1948).

is recognized in fifteen jurisdictions,<sup>28</sup> *cruel and inhuman treatment* in six jurisdictions,<sup>29</sup> *mental cruelty* in nine states,<sup>30</sup> and *cruelty by the use of physical violence or other means* in two states.<sup>31</sup> There are ten jurisdictions that proscribe the standard of *indignities* as grounds for divorce.<sup>32</sup> It is thus impossible to determine any definite standard from the plain wordings of the statute because they are couched in summary and ambiguous language, which leaves much room for judicial interpolation. For example, while Nevada provides for a standard of "extreme cruelty,"<sup>33</sup> the divorce rate there is unquestionably high, due in some respects to the liberality of interpretation.<sup>34</sup>

Furthermore, the earlier belief that physical violence had to accompany the cruelty has declined as a condition precedent to divorce.<sup>35</sup> The conduct amounting to cruelty must be "unjustifiable conduct . . . which so grievously wounds the mental feelings of the other . . . as to seriously impair the bodily health, or . . . such as utterly destroys the legitimate ends and objects of matrimony."<sup>36</sup> This leaves, in effect, a requirement of judicial determination of whether conduct other than physical violence or a reasonable apprehension thereof is sufficient.<sup>37</sup> It is the province of the trial judge to look to the evidence in light of the circumstances and apply the law to the facts of the case.<sup>38</sup> Thus,

<sup>28</sup> California, Delaware, Hawaii, Idaho, Montana, Nebraska, New Hampshire, North Dakota, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota.

<sup>29</sup> Alaska, Indiana, Minnesota, New Mexico, Texas, Wisconsin.

<sup>30</sup> California, Colorado, Montana, South Dakota, Utah, Nebraska, Wisconsin, Arizona, Michigan.

<sup>31</sup> Arizona, Michigan.

<sup>32</sup> NEV. COMP. LAWS 1929, § 9460.

<sup>33</sup> For a general summarization of mental cruelty statutes see, Ramsey, *Mental Cruelty as Grounds for Divorce*, 5 ARK. L. REV. 419 (Fall 1951).

<sup>34</sup> There is nothing in the terms of the statutes that would seem to require violence as a condition precedent to divorce.

<sup>35</sup> *Carpenter v. Carpenter*, 30 Kan. 712, 2 Pac. 122, 144, 46 Am.Rep. 108 (1883).

<sup>36</sup> See *supra* note 15, *Krauss v. Krauss*; and *supra* note 26, *Mertens v. Mertens*.

<sup>37</sup> *Stewart v. Stewart*, 175 Ind. 412, 94 N.E. 564 (1911). "Cruel and inhuman . . . is . . . a relative term, and of necessity must depend upon circumstances of each particular case."

"indifferent aversion and profane language may constitute cruelty."<sup>39</sup>

The term "indignities" while encompassing a broad scope, have been defined rather narrowly by the courts. "The cases emphasize a course of conduct evidencing intentional and deliberate neglect, estrangement, and settled hatred."<sup>40</sup> It seems that in those states using this term, the good sense of justice and prudence of the trial courts are relied on to give it meaning.<sup>41</sup> The suggestion, though, that the cases emphasize a course of conduct of an intentional character narrows considerably the relief proffered.<sup>42</sup>

This note is in no sense intended to be a summarization of mental cruelty statutes in the United States. Rather, a brief outline of the scope of the phrase "cruelty" as used in divorce statutes, with an emphasis on the latitude left the courts in the application of the standards to particular facts and circumstances. The statutes, as a whole, fail to spell out in detail the particular facts requisite as conditions for divorce. The courts are left with seemingly discretionary power to "fill in the gaps" and give the statutes definite meaning. Therefore, it would seem possible, if circumstances warranted, to draw into the statute the fact of political or religious affiliation with a "non-accepted" group as a ground for divorce. The justification of this brief outline of cruelty statutes is that if religious and political differences are to be used as a basis of divorce, it must be done so by the osmosis process into the cruelty provisions. The reticent factor is not the statutes, but the reluctance of the judiciary.

<sup>39</sup> *Thompson v. Thompson*, 16 Wash.2d 78, 132 P.2d 734 (1943); also *Sabot v. Sabot*, 97 Wash. 395, 166 Pac. 624 (1917).

<sup>40</sup> *Ramsey, op cit. supra* note 34. See *Trenchard v. Trenchard*, 245 Ill. 313, 92 N.E. 243 (1910).

<sup>41</sup> *Bova v. Bova*, 135 S.W.2d 384 (Mo.App. 1940). "It is impossible to lay down any rule that will apply to all cases in determining what indignities are grounds of divorce because they render the condition of the injured party intolerable . . . [E]ach case [is] to be determined according to its own peculiar circumstances."

<sup>42</sup> *Ramsey, op cit. supra* note 34. "These decisions do, however, require the conduct complained of to be intentional which as has been seen is not a uniform requirement under the ordinary cruelty statutes."

### Political and Religious Differences as Cruelty

It is to be presumed that the matter of divorce is a subjective matter manifested by overt acts provable in court. Those acts which to one spouse would be cruel, reprehensible and inhuman, may be tolerable and inconsequential to another. Thus, the subjective attitude of one of the spouses should be the moving test as to whether or not a divorce should be granted. Ridiculous reasons should be given no credence in court. But when a factor of obvious friction enters a home and make compatibility no longer possible, the courts should listen with sympathetic ear and grant the deserving party relief.

Consider the case of Mrs. X. She has been married to her husband for ten years. They have gotten along reasonably well. Mr. X, being dissatisfied with social and political conditions drifts into the Communist party. He becomes an active member thereof. In no way does he lessen his affection for his wife. He still gives her the same living allowance and in all ways acts the same. But Mr. X's recent affiliation becomes known to the community. Perhaps he is summoned to testify before a congressional hearing investigating labor conditions in Mr. X's community. Mrs. X finds herself in an embarrassing situation. She feels the Communist party constitutes a threat to our country and is directly responsible for the Korean War. She feels she cannot honestly live with a man who supports such foreign and anti-American doctrine. She applies to the court for a divorce on the grounds of mental cruelty, alleging the cause to be her husband's political affiliations. The decree is denied!

Such a decree would be denied in every jurisdiction today, if the "law" concerning political and religious differences as grounds for divorce remains unaltered. From a reading of the decisions, one can detect two motivating factors which cause the courts' hesitancy to allow these elements to constitute sufficient grounds for divorce.

The first factor was spelled out in the case of *Eaton v. Eaton*.<sup>43</sup> There the fitness of the mother as custodian

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<sup>43</sup> *Supra* note 24.

of the children was challenged because of her atheistic communist beliefs, and was the reasons for denying her custody of the children. On commenting to this case it was suggested:

“. . . [T]here would seem to be no such relation between the parent's political creed and the child's welfare as would justify an inquiry into the former's beliefs, in view of the attendant risk of prejudice when the issue of Communism is raised.”<sup>44</sup>

The argument, *sub silentio*, is that because of an overt distaste for Communism a litigant would not get a fair and impartial judgment before a judicial tribunal. No doubt this would be true in some instances. But it is to be wondered if a judge would be more antipathetical towards a Communist husband than to a drunken or unfaithful one. The trial judge's attitude of the conduct of the defendant is not the important factor. (Indeed the “attendant risk” of judicial prejudice is presented in most every type of controversial litigation.) The initial factor in a divorce trial is what the spouse seeking the divorce thinks of the other, and whether she actually suffered mental cruelty merely because of a political or religious belief. If such is the case, and such wrong is a legal wrong, then a divorce should be granted. It is quite possible that any trial judge might disfavor a litigant who is a Communist. But if that communism has in fact caused mental cruelty as to justify a severing of marital relations, the political or religious beliefs of the jurist would be inconsequential. To argue that Communism is a disfavored belief and thus should not be a basis for judicial relief overlooks the very essence of the reason for divorce provisions which seem to be grounded in the wise public policy of allowing persons to disband a legal relationship when intolerable circumstances become present in the marital status. And also it indicates a stringent narrow mindedness as to the ability of our courts and jurists.

The second reason for viewing with skepticism religious or political differences as grounds for divorce can be found

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<sup>44</sup> *Supra* note 25.

in the opinion of *Krauss v. Krauss*.<sup>45</sup> "The fundamental law of the land guarantees freedom of religion and the right to worship according to the dictates of one's own conscience." Impliedly expressed is that the right to political freedom is also guaranteed by the Constitution. Thus, a judicial discrimination based on a religious or political ground would be invalid as violative of the 1st and 14th amendments.

If a divorced Communist husband were to complain that he was severed from his spouse because of political beliefs and thus was denied equal protection of the laws, his argument might gain some support. He might feel himself the subject of discrimination not visited on a Socialist, Progressive, Dixiecrat, *et al.* But again, such an argument overlooks the subjective nature of a divorce proceeding. It is not intended here to delve into constitutional ramifications or to predict a decision involving communism. But Chief Justice Vinson's remarks are apt:

"The fact that the statute identifies persons by their political affiliations and beliefs, which are circumstances ordinarily irrelevant to permissible subjects of governmental action, does not lead to the conclusion that such circumstances are never relevant."<sup>46</sup>

It is submitted that every man has a constitutional right to be a drunkard if he wants to, but this causes no hesitancy on the part of trial courts to grant a divorce if the circumstances warrant. Divorce based on political beliefs would in no way encroach upon the right of a man to believe or worship as he desires. He is not being punished for his opinions or subjected to ridicule. In no respect are punitive measures imposed, but he may be subjected to personal and social sanctions. However, the former may be the case in many divorces based on grounds wholly anterior to the subject of discussion. It would equally be an invasion of rights to force a person to suffer the public indignities concomitant with having a spouse who is a Communist, and not being allowed to gain a divorce.

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<sup>45</sup> *Supra* note 15.

The marital status, among other things, is a legal relationship. The legislatures in their wisdom have devised standards which may be applied to dissolve the relationship. As has been seen, such standards are ambiguous and "mental cruelty" has come to embrace many variant circumstances. But the underlying principle would appear to stand as ascertainable. It would mean a condition of mind created in one spouse that makes that spouse believe it is no longer possible to live with the other. To say that "Communism" or "Sanctificationism" cannot create such an attitude is an idealistic expression of judicial naivetè.<sup>47</sup>

Returning to the case of Mrs. X and assuming that she has suffered mental anxiety, it is unfortunate that relief cannot be had in the courts (or to get relief it will be necessary to present further evidence). The barrier to divorcing her husband would seem to be unfair, if the real purpose of divorce statutes is to allow separation when certain conditions manifest themselves in family life. To draw arbitrarily the line here seems to evade the overall intent and purposes of divorce machinery. "Mental cruelty" could cover the resultant difficulties occasioned because of religious or political differences if the courts were inclined to be more liberal in their interpretation of what mental cruelty really is. It could be expected that such a liberality of interpretation, if indeed such is liberal interpretation, would result in advantage being taken of the latitude given to grant a divorce because of religious or political differences. But such can be expected in most any type of regulation. It cannot truthfully be said that no divorce has ever been given when it was not deserved. We must anticipate only the justice in allowing divorce when actually needed or deserved. It would be unfair to punish those innocent parties for fear of the few who might abuse the privilege, and who might take advantage of this basis for divorce rather than proceed within the proper limits of the law. The law

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<sup>46</sup> American Communications Association v. Douds, 339 U.S. 382, 391 (1950). This is not a divorce case.

<sup>47</sup> This, in effect, is what the courts have suggested—that the differences cannot create a condition of mind in any case that would justify the granting of a divorce. See, Donaldson v. Donaldson, *supra* note 1.

should take recognition of that actual suffering that can occur because of diverse religious and political differences, instead of indulging in speculation of what might happen.

### Conclusion

The picture is not one of hopelessness for a married person with a spouse indulging in religious or political activities repugnant to the other. From a sampling of the opinions it is certain that religious or political differences, *per se*, will not constitute the requisite grounds for divorce. Yet, if a party can show that some type of collateral suffering has occurred, incident to the political or religious activities that cause a disruption of the family, or cause pernicious mischief to the family life, or lower the social life of the other spouse, *inter alia*, a divorce will be granted on the basis of mental cruelty. Therefore, if a wife can show that her husband is a Communist, that she can not get employment because of his activities, that her friends shun her and her relatives ignore her, and, thus, she has become a nervous wreck, most jurisdictions would allow a divorce. The reason for the divorce would be the resulting conditions caused by the political or religious differences, and not the differences in beliefs themselves. Thus the attorney for the complaining spouse, before instituting proceedings, should make certain such conditions exist and the complaint so specifies.

Actually, in most instances the only time a divorce would be desired would be when these conditions do exist. And that it could then be had seems clear. In most instances it would be the tangible circumstances resulting from diverse opinions that would make one desire a divorce. But it is when mental cruelty results as a *per se* consequence of political or religious differences, not contingent on consequential acts, that divorce relief is denied, and where possibly, we argue, it should be offered.

But it seems sufficient to say that no complaint in any disparity will now bring relief. The courts have been uniformly cold to the suggestion that such disparity constitutes sufficient grounds for divorce. Nor is there any apparent judicial inclination to alter this attitude.