

MIGRATORY DIVORCES

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No aspect of our divorce problem gets more attention than what is known as the migratory divorce. Rarely does one come across any denunciation of the practice of divorce or the legislation related to it without finding the gaining of divorce by moving from one jurisdiction to another featured. It is apparent that for some reason emotional protest against liberal divorce *mores*, or against the conservative statutes and decisions relating to divorce, centers upon the migratory divorce problem. This is interesting because these two approaches to a common emphasis represent such different reactions to divorce. Those who regard our divorce legislation as already too liberal, and those who insist that it has fallen behind human needs in our changing culture, find evidence for their opposite positions in our migratory divorce situation.

This reaction is all the more interesting when one notices the exaggeration of the numerical importance of migratory divorces. Even though the problem is one that cannot be reduced with certainty to statistical statement, there is the best of reasons for believing that the number of persons who move from one jurisdiction to another merely for the getting of divorce is a small portion of those who seek release from marriage ties through court procedure. Lichtenberger estimates that the number of migratory divorces is not over three per cent.¹ Hankins considers migration merely for the purpose of getting a divorce so infrequent that except in the case of Nevada this procedure influences little the divorce rate of the states concerned.² Marshall and May testify that "The data give small support to any idea that large numbers of plaintiffs migrate to Ohio—or for that matter to the local county—to establish the residence jurisdictionally requisite to filing the original petition."³ The American population is exceedingly mobile, and it would be most inaccurate to consider as migratory all divorces obtained by those who have moved

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¹ LICHTENBERGER, DIVORCE (1931) 307.

² HANKINS, 5 ENCYCLOPAEDIA OF THE SOCIAL SCIENCES (1931) 182-183.

³ MARSHALL AND MAY, THE DIVORCE COURT—OHIO (1933) 126-127.

from the state where they were married to some other jurisdiction. We can only count those whose change of residence has been motivated by the desire to obtain a divorce under more liberal legislation than that enforced in their former domicile. It happens that the divorces that attract newspaper publicity, on account of the standing or the notoriety of the persons involved, and make the headlines, are in large proportion migratory divorces. Perhaps these men and women seek divorce more quickly than it could be obtained in the state where they have resided, or maybe they wish to give as grounds for the divorce marital conditions that would not be legally accepted where they have been living. The consequence of this publicity is that popular thinking tends to exaggerate the numerical significance of migratory divorces, leading some who disbelieve in the right of divorce to advocate federal divorce legislation in order to have throughout the country a uniform and more stringent barrier to divorce.

It would, however, be a misinterpretation of the significance of migratory divorces to define their importance on the basis of their ratio to the non-migratory divorces, even though it is true that the news character of individual migratory divorces explains the interest that people commonly take in this special feature of the divorce problem. There are deeper, more substantial reasons for serious investigation of the migratory divorce problem. To some degree the more liberal states and the foreign countries that provide opportunity for easier divorce serve as social experiments, for it must not be forgotten that though the purpose of the legislative program may be to invite people to come within the jurisdiction for the purpose of getting a divorce, the same opportunity of divorce is offered to the native citizens. This, by itself, justifies the study of these more liberal divorce policies, even though their significance to the permanent residents may be lessened by the fact that the prevailing *mores* are less favorable to easy divorce than the laws by themselves would indicate. At least it is clear that the mere existence of a freer opportunity for divorce does not operate to entice people unless reinforced by other social influences that lead people to seek divorce. This fact gives evidence that one can never rationally deal with the divorce problem as something created by legislation, even though here as elsewhere laws do have an influence.

There is a much more significant reason why the problem of migratory divorces should be studied than that it is an experiment in legislation. The migratory divorce has meaning in that it reveals the need felt by some for different conditions for dealing with failure in domestic relations. The jurisdictions that cater to those seeking a divorce also react upon the status and stability of marriage throughout the country. It is this *mores-aspect* of the migratory divorce problem that challenges the attention and interest of the student of contemporary social life.

The connection of the migratory divorce problem with our common group feeling and thinking is neither simple nor consistent. We can place people in different categories as to their reactions to the opportunities for divorce offered by the more

liberal legislation, as is suggested by the terms "conservative" and "radical" so often used to define the two extreme attitudes regarding the problem of divorce in general. There are divisions of sentiment based on religious, economic, sectional, and cultural background, and even to some extent on the rural or urban environment. These variations forbid the narrow interpretation of migratory divorce legislation that partisans insist upon and make it clear that the individual is apt to look upon the getting of a migratory divorce from a complex of personal feeling toward divorce in general. At any rate we do not get far in our understanding of the social significance of the migratory divorce unless it is related to the divorce situation in its widest aspects.

Whatever else divorce may be, it is fundamentally the recognition of the hazard of human mating. No one can look at modern life with seeing eyes without recognizing the risk of unhappiness and failure that goes with our institution of marriage. If this were not true there would be no reason for divorce legislation. Unwillingness to provide legislation making possible escape from matrimonial dissatisfaction comes either from callous indifference to human suffering or from the insistence that for the social good the individual must surrender personal inclination and continue marriage responsibilities as an obligation even when affection or compatibility has disappeared from the union. No one who believes in monogamic marriage enjoys this fact of hazard, but there can be no sincere discussion of any divorce problem when there is refusal to face it.

There is always a disposition among those happily married to underestimate the difficulty of bringing two human beings, male and female, into the adjustment necessary along many lines to render their living together even tolerable, and still more to make it a positive success in fellowship. The law attempts to recognize in the way that seems best for the group life taken as a whole this undeniable risk of marriage failure without at the same time so influencing those who enter marriage and those who feel the problems that result from their union as to encourage them to accept defeat easily.

It is these facts that make it imperative that problems arising from migratory divorces be considered in relation to the divorce situation in general rather than detached from the social environment out of which they spring. It is obvious, of course, that such analysis cannot confine itself to the *mores* in the jurisdiction where legislation providing for migratory divorces is enacted, but that there must also be recognition of influences operating in more conservative communities that lead certain individuals to move away that they may have the advantages of the more liberal legislation. From this point of view there are two influences that operate to explain the use that is made of liberal divorce laws. On the one hand we have restriction both as to the grounds for divorce⁴ and the time required for the court's final decree.

⁴ MARSHALL AND MAY, *THE DIVORCE COURT—OHIO* (1933) 368. "Whatever the rituals that may be enforced, whatever the formal words used, it is in practice true that the bulk of Ohio divorces are matters

These handicaps for the person seeking to free himself or herself from the marriage tie range from the absolute denial of any cause for divorce that will fall within the statutes to an irksome, time-consuming procedure,⁵ possibly involving a rehearsal of marital difficulties from which one or both of the persons concerned shrink. Under such circumstances it seems to many an easy and a prudent way to get the needed freedom by moving into the jurisdiction that offers divorce under more favorable terms. The other influence is the mobility of the American people which makes it feasible for many to go where divorce laws are freer. It is this facility of travel, and we must add communication in order to include Mexican divorces, that suggests the passing of a liberal divorce code designed specifically to attract divorce seekers.

It is not enough to relate the special divorce problem of this discussion to the larger divorce situation. The migratory divorce situation must also be interpreted with an understanding of the prevailing marriage situation. Just as the individual divorce is the outward expression of a matrimonial failure, so the social problem is a disclosure of the unsuccessful functioning of marriage as an institution. Therefore we are never justified in merely thinking of the faults and deficiencies of individuals who ask for divorce and, by heaping the blame upon them, avoiding the necessity of analyzing a complex situation in which there are conditions adverse to marriage happiness which make some of the divorce seekers victims rather than authors of their marital misfortunes. Immediately, when we view the divorce problem from this angle, we find it necessary to survey not only divorce and marriage in all their aspects but also the total social experience of the people and period in which we are interested. This does not deny, as we shall state later, that some people are more liable to trouble in marriage than others or that the group of the divorced, generalized as a class, reveal personality defects and social inadequacy. Although people differ in their readiness to meet the strains of marital adjustment and differ in the opportunities they have had to prepare themselves for the experience, there are also environmental conditions constantly changing that make it easier or harder for people to achieve happiness in marriage. Even though individuals break under varying amounts of marital strain, this fact must not hide the significance of cultural conditions that increase or decrease this strain.

We are so sensitive to the problems of contemporary civilization that it is easy to keep out of mind the significance of the persistency of divorce from the primitive level of culture onward to the present. Divorce has not always been permitted, and even when allowed it has not always presented any considerable problem, but for the most part throughout the human experience of which we have record, there has been evidence, in greater or less degree, of the possibility of marital failure, and, as

of mutual consent—especially if that term be made to include the situation in which one party actively desires the divorce and the other party, for various reasons, does not actively oppose it.”

⁵MARSHALL AND MAY, *THE DIVORCE COURT—MARYLAND* (1932) 258: “The sluggish cases are a bit puzzling. Why, in city or in counties, should about one-fifth of these suits require more than three months to reach the examiner?”

a rule, it has seemed socially expedient to recognize these mishaps and permit divorce. Religious ideas of the significance of marriage have been the most compelling motive for denying divorce, and even when these have operated, a way out of marital trouble has often been provided by separation or the annulment of the marriage.

Primitive experience not only discloses how thoroughly tied up with the social situation the problem of divorce in any of its aspects is, but also reveals the influence of the status of woman upon the conditions and the practices of divorce-getting. An example of this is the tendency under matrilocal residence for divorce to emphasize the disposition and interests of the woman, while, on the contrary, in the case of patrilocal residence divorce has been commonly a masculine prerogative. The influence of the status of woman, not as a theory or sentiment but as actually recognized by the *mores*, constantly shows itself throughout the evolution of culture. This is so impressive that no student of contemporary divorce problems can fail to realize the significance of changes in woman's status as they affect marriage experience.

There is no way by which we can make a satisfying comparison between the marital satisfaction characteristic of one period as compared with another, but we can estimate the differences in the stability of marriage as an institution. When we connect the prevailing instability with the effects that come from the changing status of woman, we realize that under the conditions of present-day American culture the actual position of woman does not determine the strain that marriage as an institution has to meet, but rather that the characteristics of contemporary marriage *mores*, including both marriage and divorce legislation, and the changes in woman's status as they accord or clash, determine the incentives toward marriage satisfactions or marital irritations and discontent and create many of the difficulties of marriage in its present-day functioning as a social institution. In our modern life the emphasis is placed upon the changing status of woman merely on account of the fact that the *mores* have been so thoroughly standardized to masculine interests and points of view that the disturbing trends come necessarily from the movement of women toward greater equality. Anyone who is content with thinking of the divorce problem as the mere expression of weakness, selfishness, and immaturity, and of laws providing for migratory divorces as catering to these faults of human nature, misses the point. He also over-simplifies who insists that the high divorce rate is evidence of an inherent inadequacy in marriage as an institution to meet human needs in a modern civilization. The influence of the *mores* also must be brought into the picture.

When the problem is conceived in these wider ranges, it is apparent that there is inconsistency in our cultural attitudes and that much of our social feeling and thinking antagonizes the advancement of woman's status that other influences tend to force. This collision of cultural pressures actually shows itself in the clashes of persons attempting to work out the intimacy of a love fellowship, and through con-

fusions and conflicts of individuals who respond to both influences. Although woman's advance in this country has by no means been consistent, it seems fair to say that nowhere has she moved more rapidly toward equality with man than in the United States and Canada. Legislation all along the line, as well as court decisions, has reflected this change in social status, but rarely has either kept pace with the progress women have made. Moreover this evolution has shown state and sectional differences, and the law likewise has shown these variations. Undoubtedly here we find an explanation of the origin of the easier divorce laws. The lag in recognizing the greater demands of the freer modern women in some of the older sections of the United States has provided opportunity for the exploiting of a situation which in one way or another must influence everywhere the marriage relationship.

Undoubtedly the offering of the more liberal divorce code has lessened the protest that was bound to come from those who felt most keenly the denial or the restricting of divorce in the more conservative jurisdictions. Since those who have availed themselves of the more liberal provisions for divorce have been so largely persons of wealth, distinction, and influence, there has been nothing like the aggressive attacks on the more severe divorce code that would have come had there been no way of escape. This includes not only the ease of getting a divorce but also the grounds for a divorce. People have escaped humiliation and the admission of details of marital failure that seemed greatly to their interest not to bring to the court. Even when they were assured that a divorce could be had in the jurisdiction where they were living they have frequently felt the advantage of going elsewhere so that divorce could be procured without the rehearsal of experiences that were sure to have considerable publicity. The reluctance of legislation to provide as a ground for divorce the unhappy situation which can best be defined as incompatibility—certainly the most common cause of the desire to be divorced—has added to the attraction of laws that are closer to a frank recognition of this motive than the laws and decisions in jurisdictions that are more conservative.

The influence of this greater liberality moves in two directions. This makes generalization of the effects of migratory divorces two-sided. The mere existence of the opportunity to go elsewhere and get a divorce has acted as a revelation of the strength of desire of a part of our population for easier, quicker, and franker ways of withdrawing from marriage ties. To what extent this has been a stimulus that has tended to liberalize the law in the more conservative sections one cannot know with certainty, but without question it has had an influence. The spectacular migratory divorce cases that have drawn public attention have at least made people generally appreciate the desire for a more liberal divorce program among a portion of our people.

The advance in woman's status becomes a disturbing influence in marriage experience unless there be a corresponding change in the quality of the fellowship.

It is the effort of individuals to make this adjustment that becomes the chief center of tension in modern marriage. Naturally the tendency is for women to be more forward looking and sensitive in their domestic expectations than men, since they are the ones who are made conscious of the changes taking place. It is in this sense that we can say that modern marriage is becoming more difficult. No advantage comes from any social policy which shies from these facts. Of course any influence that retards woman's advance or even drives the *mores* as they affect her back to earlier conditions temporarily lessens the strain. The difficulty of this attack upon the modern divorce problem is that the momentum of modern life naturally flows in the exactly opposite direction and the solutions of temporary expediency often create a greater fundamental division in our *mores* with the consequence that in one way or another they finally bring all the more domestic maladjustment.

The certainty of this becomes the clearer as we consider the functions of marriage in the modern world. It would be false to insist that marriage is becoming less a social enterprise and more personal, because the institution has always had its group significance interwoven with its values to individual persons. We can say that as people think about marriage they tend to regard its satisfactions as something coming to them personally rather than dwelling upon the status as something indispensable to the group itself. This shift is one of emphasis, but even so it leads to an appraisal of the marriage relationship that invites disappointment and discontent. Where, for example, the economic function of the family as a producing unit has precedence, there is less room for the emotional cravings and reactions, since belonging to the relationship is itself of great value. To the modern man and woman the success and the failure of marriage increasingly hinge upon the emotional significance of the union aside from its other contributions. There are great differences between persons in this respect, but the general trend is unmistakable, and the more open women are to the influences of modern life that are moving them toward social equality with men, the more sensitive they are to any domestic situation that antagonizes the modern trend.

Back of this, as has so often been brought out by students of the family, is the opportunity for an independent livelihood which is a substantial part of the progress women have made. As they have been released from the urge to marry because of the economic pressure that has made the handicap of the unmarried grievous, they increasingly seek union for motives that were necessarily subordinated under the earlier conditions. It does not do to dismiss this lightly by stigmatizing it as romanticism, since it has deep rootage in human nature and undoubtedly would have come to be a strong motive for marriage earlier had it not been for the inadequacy of cultural resources. In any case, this has to be kept in mind whenever at present we interpret divorces from any angle. It especially must be considered in any discussion of migratory divorces, because a proportion of those who seek more liberal divorce opportunity have failed in marriage from their insistence upon emo-

tional satisfactions that the more conservative law refuses to take seriously. An example of this is the importance that the law finds in the physical break of marriage fellowship as contrasted with the spiritual. These two are ordinarily so interwoven that it is arbitrary to distinguish them so sharply. It is just this that the law does when it accepts the significance of adultery while refusing the equal significance in the spiritual repudiation of the marriage relationship. The stressing of the body is in accord with the social function of marriage in the past. The denial of what best can be described as the spiritual aspects of marriage, or at least the unwillingness to regard these of equal importance, comes from the failure to register a contemporary feeling regarding marriage which we have every reason to suppose that the future will increasingly emphasize.

The basis of physical loyalty in marriage is certainly becoming more and more the spiritual compatibility of two human beings who in their fellowship range through all the satisfactions of intimate relationship rather than a union representing the mere commitment of the body. This has been pointedly stated by Reverend W. F. Geikie-Cobb in these words: "Contrast with this punctilious solicitude for the physical, joined as it is, to a cynical disregard of the psychical, with the lofty view of matrimonial union in the Roman Civil Law as given by Gaius in the third century of our era, who lays down that 'Marriage is the union of a man and a woman, a partnership of their whole life, an equal sharing of divine and human rights.' But the best opinion of Englishmen was well expressed in the House of Lords in 1820 by the then Lord Chancellor who urged the ecclesiastical leader in that House to express his agreement with him that 'the spiritual and moral sides of marriage are incomparably more important than the physical side,' and to abandon 'the monstrous medieval paradox' implied in assent to divorce for a breach of the less important obligation while denying divorce for a breach of the more important."⁶

There is convincing evidence that divorce has other features than the clashing of standards or attitudes. The hazard of marriage is increased or decreased by the attitudes, the fitness, the characteristics of the individuals who enter upon the experience. Popenoe has collected statistical facts that point to the conclusion that the divorce seekers taken as a class are biologically inferior. However, it is interesting to notice that even this group profits from experience, for the author finds that the divorced people who remarry enjoy nearly as great success as the rest of the population has in its first marriage.⁷

It is also well to remember how misleading it is to consider marriage an ordeal which the divorced have not been able to meet with success. Too often the fundamental problem is not the marriage relationship but life itself. Their career after divorce shows that they are still beset by troubles.⁸ What they do gain from their

⁶ Geikie-Cobb, *The Psychical Hygiene of Marriage* (Feb. 1935) 1 MARRIAGE HYGIENE 219.

⁷ Popenoe, *Divorce as a Biologist Views It* (Feb. 1935) 1 MARRIAGE HYGIENE 247-253.

⁸ WALLER, *THE OLD LOVE AND THE NEW* (1930).

experience apparently in many cases is a greater maturity which permits them to make better adjustment when they marry a second time.

Legislation can define and regulate marriage, but its positive contribution to domestic satisfaction is limited and chiefly indirect. It can do more by insisting upon more adequate preparation for the experience than by refusing to recognize marriage failure where it exists. Legislators have been known to express their conviction that they who enter marriage selfishly and recklessly should be forced to suffer the penalties of their carelessness. Such a conception of the divorce problem is too naïve to be taken seriously. Although thoughtful, well-integrated people enter marriage less likely to fail than those who are self-centered, irresponsible, and impetuous, this does not mean that the marriage hazard exists only for those who are socially indifferent. Sometimes marriage failure suggests the principle of amphimixis as we find it in inheritance. The traits of personality that seem sound when taken by themselves become the cause of incompatibility through union.⁹

From whatever position we advance to the investigation of migratory divorces we find that the inherent hazard of marriage and the reluctance of legislation to recognize this in all its aspects has distinct relation to the special problem in which we are interested. Rightly, law-makers and the law-interpreters seek to encourage the stability of family life and to offer nothing that invites people who can live together as married to seek divorce. In so far as this leads to the blocking of ways of escape for those who suffer from marital frustrations, the possibility of migratory divorce becomes a sort of social safety valve. Whatever else may be its significance, the migratory divorce situation challenges both our social and our legal thinking.

⁹NOYES, *MODERN CLINICAL PSYCHIATRY* (1934) 453.