

Divorce

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JURISPRUDENCE

[It has occurred to the editor that a section dealing with Law as jurisprudence might, from time to time, be desirable in the Law Review. Since the point of view adopted must necessarily be different from that taken in the usual analysis of a legal problem from existing statutes and decisions in the civil law, the following introductory statements are made in the interest of clarity and explanation.

In treating of man two essential and co-existing factors must be taken into consideration—the natural and the supernatural (physical and spiritual, legal and moral). Abnormal situations arise where emphasis is given one factor to the overbalancing exclusion of the other. A situation where extreme attention is granted the supernatural usually is governed by considerations and affected by matter beyond our intended scope. That results in such a situation may be far removed from those in the antithetical situation is all that is necessary to mention. Practically important is discussion of current overemphasis of the natural factor.

These factors affecting man are not independent and unqualified one by the other; rather they are mutual and best described as complementary. Analogies are not difficult to find. Electric lighting is obtained from a light bulb and conducted electric current. Neither the light bulb nor the current alone can be effective to cause electric lighting. A moving picture results from a combination of film and movie projector. One without the other is wholly incapable of causing such a consequence. Like these material results of coordinated material forces, there are ends man should achieve by reason of his being a human being, for instance life on earth as a rational being. Such desirable ends are unattainable unless the essential factors of man are allowed mutual and complementary interplay in solving human problems. That such interplay is not occurring is abundantly evidenced by the news items in every daily paper. The ubiquitous philosophy of materialism which is today compounding its advance threatens to thwart rational human achievement on an increasing scale.

The legal order is uniquely situated in the sphere of human activity. It has to do with things material but it takes its precepts from the supernatural, that is, the moral order wherein is found the Natural Moral Law. It is as if it were an intermediate; administering, qualifying and defining material activities by the dictates of the non-material. So long as the Law thus functions, it fulfills its destiny. However, were the Law to ignore the moral order and instead take its dictates from another material order such as

economics or sociology, there would be an illfitting relationship which would prevent desirable attainment of ends. The supernatural would have been replaced with the natural. The comments which will appear in the Jurisprudence section of this Law Review will have as their basic thesis the fact that when Law deviates from the norm supplied by the Natural Moral Law, no good will be accomplished. A few instances of Law thus deviating are: divorce, sterilization and the church-state controversy. An instance of tentative deviation is being dictated by the economic order in euthanasia. For example of Law completely out of its orb, study Russian Communism.—EDITOR]

DIVORCE*

No more fitting example exists to illustrate Law in operation contrary to univocal moral dictates than divorce *a vinculo*. The conclusion arrived at herein is that absolutely NO divorce *a vinculo* can properly be granted by human authority. All that is necessary to support this proposition is a retreat to reason.

With slight reflection it can be appreciated that widespread divorce tends: (1) to render difficult, if not impossible, the proper education of children; (2) to destroy the spirit of union and love that should exist between husband and wife; (3) to encourage unlawful indulgence of passion and lead to commission of crimes; and (4) to lessen the dignity of womanhood. Divorce also tends to the ultimate collapse of the state through its destruction of the family, for as governments are evolved from society, society owes its being to families.

It is unnecessary to insult the intellect by following these charges with proof, for there can be no one to offer challenge to these conclusions of widespread divorce. The real difficulty appears not in the condemnation of widespread divorce, but in outlawing divorce in any case. Proponents of divorce persuasively argue their case from particular examples, not from any concept of general evil. For instance, they say, if divorce is allowed for only the most urgent reasons such

*This comment takes only one of the possible approaches to the problem and deals only lightly with it. Following are suggestions for further reading.

Catholic Encyclopedia, Vol. V, p. 54, "Divorce"; Vol. IX, p. 691, "Marriage."

LE BUFFE, *The American Philosophy of Law*, Ch. XII, pp. 278-283.

SULLIVAN, *Special Ethics*, Thesis XXX.

ROBINSON, *Elements of American Jurisprudence*, No. 41; *Elementary Law*, Nos. 121, 150, 172, 174, 504.

BLACKSTONE, 1 *Comm.*, Ch. XV, pp. 433-445.

KENT, 2 *Comm.*, Lects. XXVI, XXVII, XXVIII.

CRONIN, *Science of Ethics*, Vol. 11, Chs. XIII, XIV.

ANDREWS, *American Law*, Vol. 11, Ch. XVIII.

RICKABY, *Moral Philosophy*, Pt. 2, Ch. VI.

HOLLAND, *Natural Law*, Lect. VI, sec. 2.

RUTHERFORD, *Institutes*, Vol. 1, Ch. XV, pp. 314-359.

as sterility or adultery, very few divorces will take place and the consequences of divorce will be practically eliminated, or; at least divorce should be allowed in the case of sterility if sterility frustrates the primary end of marriage, or; frequently marriage entails very great evils for one of the parties; surely in such a case divorce should be allowed. It is argued that individual cases present such a pathetic plea that it is unjust to withhold divorce. The error of such a stand is lack of perspective; for once it is granted that divorce should be allowed for the "hard" cases, there is no way of avoiding the logical conclusion of widespread divorce. An analogy may here be helpful. "A child hears his father lie to the rent collector. He uses this as an excuse for his lying to his father, to his teacher, to his associates. His father established a pattern; the boy follows that pattern; the boys who are associated with him copy and copy and copy . . . in an endless chain of evil."¹ So also is it with divorce. Because of the manner in which the human race is interlocked, an individual's conduct becomes a pattern for others. Not many years ago the Law finally took compassion on the misery of mismatched marriages, usurped jurisdiction, and granted a divorce; but it at the same time announced that this action was only on the strictest of grounds. In that beginning divorces were granted only because of adultery. The die was cast. The pattern was perpetuated and amplified under one of two heads. Either the strict grounds were maintained and professional compromisers were used to provide evidence that the grounds were met (co-existent were laxer grounds for annulment) or the grounds broke down until divorce could be granted when one of the couple eats apples in bed. The Law says, "You may have a divorce and you may remarry if your marriage is literally driving you insane," and soon it is found that a husband's repetition of jokes fulfills such a condition. Once divorce has succeeded in putting its wedge into society, there can be no halting its cleavage.

Clearly then, divorce *a vinculo*, by patronizing the individual, tends to the ultimate destruction of society. Who then is there that can uphold such a condition? For those persistent advocates adverse to this stand who still maintain that it is inhuman to require continued cohabitation when only evil results from such a union, it is sufficient to state that divorce *a mensa et thoro* can be obtained.

Paradoxical as it may appear, the Wisconsin Supreme Court has reflected the attitude of this paper in the following words: "(marriage) . . . which God will not and man cannot dissolve, until death shall part them."²

HOWARD H. BOYLE, JR.

¹ Lord, D. A., S.J., *About Divorce*, p. 34.

² *Campbell v. Campbell*, 37 Wis. 206 at p. 214, 88 A.L.R. 200 (1875).