THE DIVORCE PROBLEM

by

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THE DIVORCE PROBLEM.

Introduction.

The writer has been moved to a selection of the above theme for an M.A. Thesis by the following reasons. First, because he has been long interested in the social problems arising out of human relationships of which Divorce is one of the most intimate and far reaching; and secondly, because, in addition, it offers a wide and diversified field of research, not only in the immediate realms of Economics and Sociology, but in all the related branches of knowledge which have as their object a better understanding of human relationships and their concomitant effects.

That only by such a comprehensive study can any adequate treatment of the Divorce problem be made is one of the main contentions of this Thesis. A second important principle stated is that owing to the variable nature of the human factors concerned it is extremely difficult, if not quite impossible, to formulate any one law which will cover all conditions and circumstances of Divorce. A third point may also be noticed here. It is obvious that for the ordinary
student of this problem access to the actual facts of the case is extremely difficult for two reasons, viz., (1) because of the natural secrecy of the marital difficulties, and (2) for the further reason that most frequently the parties immediately concerned are ignorant of the primary causes of their inability to succeed in the married estate. Thus it is undoubtedly true that often the legal reasons adduced for divorce purposes are not the real ones at all; they are secondary — an outgrowth of hidden causes. That deliberate steps are taken to secure desired ends in this respect is no denial of the foregoing. Neither is the student aided much in his analysis by official statistics for apart from their quantitative value they afford little or no insight into the maelstrom of conflicting emotions, impulses and desires which animate human conduct generally. Nor is there much agreement on this subject between the various authorities and writers. Some, like Freud speak of the dominating impulse of human behaviour in terms of sex; others, as e.g., Adler, put the main emphasis on the ego instincts instead. Numerous additional concepts of dynamic human "urges" will be presented in the Thesis. Upon one point it would seem there can be greater unanimity; it is this: that it is very unlikely that a solution to the Divorce problem will be found in any formulae emanating from the Church, the laboratory, or legislature as such, but rather that society, through its own evolving experience, will learn to adjust itself to the changing conditions of life. The problem is not a static one; it is dynamic and hence is not
likely to be solved by the mere *ipse dixit* of any given age or institution.

It scarcely requires to be said in view of the complexity of the subject that no one writer, let alone the present one, can attempt an adequate treatment of the many branches of knowledge involved. An honest effort has been made to cull from available sources sufficient information for a general or *bird's eye* view of the subject. Furthermore, an equally earnest attempt has been made to avoid a biased and prejudiced attitude and to weigh the data as accurately and as justly as personal ability allows. This has seemed especially essential at the present time when so much controversy is raging both in and out of the church on this matter. The Thesis will, it is hoped, indicate that in both, or all, camps a mixture of truth and error exists.

The general purpose of this Thesis is to survey the Divorce problem in a more or less analytical manner. It limits itself to no particular country or state on the ground that it is assumed that the fundamental instincts and "urges" of human nature are possessed in common by all people, and that the accidents of time and birth do not affect the basic desires of humanity very much, but modify their expression in the light and to the degree of the knowledge possessed and the nature of the particular environment concerned. It seems to the writer that Japan with its record of having the greatest percentage of divorces, and the United States of America, and Canada with their increasing divorce curve in the upward
direction, have basically a common problem, so far as the inherent biological desires are concerned. This aspect will be further treated under the heading of Biology in the Thesis. An attempt will be made to interpret the biological aspect of sexual life and its implications for Society.

One other division of the subject requires a few words of explanation before a general plan of the Thesis is presented. This touches upon the relation of Abnormal Psychology to the Divorce problem. The writer feels that the divorce situation has received much more attention from the standpoint of economics, law, ecclesiasticism, feminism, etc., than from that of Abnormal Psychology. It seems strange to given him that so much attention should have been to the external side of divorce and, comparatively, so little to the nature of inner causes, many of which are physiological in their nature. The point is that too many people have recourse to the Divorce Court for relief from their difficulties who, as a matter of fact, should be under the care of medical and psychiatric experts. It is not suggested, of course that all or any of the marital troubles are entirely due to glandular, muscular or nervous defects, but it is held that psycho-pathic defects may quite largely enter into the home life of married couples and tend to destroy what otherwise might have been a satisfactory marriage. When the whole story is told of the findings of Abnormal Psychology in this connection the writer is convinced that there will be a widespread demand for a sounder training along lines of Mental hygiene, sex life, and
Behaviourism in general, than is now offered.

The whole trend of this Thesis is to point out the very complex elements which enter into the question of Divorce.

Concerning the Thesis as a whole it should be said that the problem of Divorce became more difficult as the work proceeded. There seems to be no book dealing with the problem in all its complexities, hence this Thesis is a synthesis of materials from many different quarters. The writer has attempted a general survey of the problem from an historical, psychological, philosophical and statistical point of view.

In Section I he has sought to show some of the underlying principles of marriage among all classes of peoples, and, in a general way some of the earlier proceedings of divorce, thus relating the modern problem to the old one.

In Section II the biological nature of sexual attraction is discussed showing that "marriage and the family are a complex resultant from the interaction of many fundamental needs."

Section III studies the sexual function as "one of the great actuating forces of life." Maladjustment of this vital urge spells disaster for many people. The problem of Birth Control is touched upon and related to the problem of divorce.

Section IV was originally intended to be the main part of the Thesis, but it was found necessary to curtail it. This section emphasizes the need of many people for expert
help in making adequate response to life problems as a whole.

Section V takes the ground that Divorce has its ethical aspects. It is claimed that under certain conditions marriage may even be immoral; from a social point of view morality is race-loyalty. Furthermore Divorce, as a question of right and wrong, morality or immorality, should be judged in the light of the evolution of the ethical standard.

Section VI opens up the question of the Church and its relation to Divorce.

Under Section VII the more commonly named and understood causes of divorce are enumerated and various statistics given.

Finally, in Section VIII certain suggestions and solutions of the Divorce problem are offered.

In presenting this Thesis the writer once more wishes to express his sense of inadequacy in dealing with so great a problem. In no sense does he feel that any degree of finality has been attained but rather it is with a deep conviction that despite his best efforts the problem attacked in this paper has only been touched upon in the briefest and most superficial manner.
"Individual marriage has its foundations in economic relations... In the established traditions of modern Europe the sexual and the economic aspects of marriage are combined in one and the same relation; the former is, further conventionally regarded as being the primary one, and the economic aspect as subordinate, subsidiary, and necessary to it...

The institution, its origin and development have been almost exclusively viewed and discussed by social historians in terms of the operation of the sexual instinct and of the sentiments connected with those instincts, such as the exercise of personal choice, the effects of jealousy, the manifestations of romantic love. The origin, like the biological foundation, of individual marriage being essentially economic, those psychological factors are the products of the association rather than the causes or conditions that have given rise to it. Individual economic association between sexual partners has inevitably tended to establish individual sexual claims; those claims have brought about new restrictions on sexual relations. The married woman tends in time to become prohibited or tabued to all but her individual associate.
"Those restrictions, which, as we shall see, have been extremely slow in developing, and have not become fully established until quite late stages in the growth of advanced societies, have contributed to that identification of the sexual with the economic aspect of marriage which is assumed in European tradition. Marriage is with us the only recognised and licit sexual relation. It is in theory the only avenue to the satisfaction of the sexual impulses and their derivative sentiments; and it is to a large extent in practice, for sexual relations outside marriage are attended by the risks, the disabilities and disadvantages which are inseparable from defiance of traditionally established codes and of the existing social order. But in primitive society, marriage is nothing of the sort. It is neither the entrance into sexual life, nor even the condition of access to any given individual of the opposite sex. In all uncultured societies, where advanced retrospective claims have not become developed, and the females are not regularly betrothed or actually married before they have reached the age of puberty, girls and women who are not married are under no restrictions as to their sexual relations, and are held to be entirely free to dispose of themselves as they please in that respect.

"To that rule there does not exist any known exception. Were any authenticated instance known of a primitive society, uninfluenced by the usages and sentiments of a more highly developed culture, where chastity is regarded as obligatory on unmarried or unbetrothed females, the fact
would be of momentous importance. For we should be compelled
to regard it as an example of the appearance in mankind,
apart from social causes, of a sentiment entirely absent in
animals; and we should therefore have no option than to
account for it by some form of the theories which were current
before scientific conceptions and methods had become applied
to the development of the human race.

"The doctrine of organic evolution changed completely
the theoretical premises of social anthropology, and,
shortly after that doctrine was established by Darwin, a
galaxy of brilliant and distinguished scholars placed the
social history of the human race upon a scientific basis by
showing that the organization of primitive society and the
conception upon which it was founded differed profoundly
from those obtaining in modern European society, and that the
institutions and corresponding conceptions and sentiments
obtaining in the latter were the result of a gradual develop-
ment from a state of society in which they did not originally
exist.

"We possess many thousands of accounts and statements
referring to the sexual habits of uncultured and imperfectly
known races; those statements come from all sorts and
conditions of witnesses, many of them entirely devoid of
scientific notions or regard for accuracy, many of them zeal-
ously anxious to represent the conceptions of sexual morality
obtaining among European peoples as innate and universal. An enormous number of those statements and reports is of necessity inaccurate, misleading and false. Yet out of that multitude of highly untrustworthy and questionable documents which represent an innate regard for chastity as imposing continence upon unmarried females in primitive societies, there are probably not a dozen that cannot be shown to be irrelevant or erroneous. That remarkable fact, which, far more than we might have seemed entitled to expect, confirms our confidence in the methods of anthropological science has been very clearly brought out by Dr. Westermarck.

Alleged instances of the observance of chastity before Marriage among Primitive People.

"Dr. Westermarck's enumeration of primitive peoples who are alleged to show an innate regard for chastity by imposing restrictions on the sexual relations of unmarried females and requiring virginity in a bride includes the Turks, the Circassians, the modern Egyptians, the Algerians, the Berbers, and other Muslim peoples of Africa, several Asiatic races with hoary patriarchal institutions, and even those peoples who practice the infibulation of girls. Several other examples refer to Roman Catholics and to other populations which have long been Christians. With those illustrations we are not concerned in estimating the sexual customs of primitive humanity. Nor are we in the present connection concerned with those people among whom the practice of betrothing girls in childhood obtains in the aristocratic classes of monarchical
societies, such as those of the slave-trading African kingdoms of the West Coast of Africa, for it is, as we shall see, the very practice of those societies that have long departed from primitive conditions, which has led to the conceptions and usages which obtain in that respect in advanced cultures. We shall have to note, however, that in those societies the claims to the pre-nuptial chastity of the bride and all that it involves are confined to the ruling classes and to chiefs, and when, therefore, Dr. Westermarck represents them as the general usage and sentiment among the Yoruba, the Ewe, and peoples of the Gold Coast and Slave Coast, or, still more unwarrantedly, among the Tongans, Samoans, and other Polynesians, the statements are profoundly inaccurate and misleading. The same is true of several Californian tribes among whom a regular aristocratic class became established, and who, in order to safeguard their exclusiveness required a high bride-price for their daughters, and strictly prevented all access to them save on the price of that guarantee of wealth. It is equally irrelevant to adduce as illustrations of the observance of chastity in the prenuptial state instances of peoples where such a state does not exist. With several peoples whose economic conditions are exceedingly simple, such as some tribes of New Guinea, some forest tribes like the Veddas of Ceylon, boys and girls are mated as soon as they attain the age of puberty, and often before. Those unions are in nowise regarded as binding, and
the youthful spouses are at liberty to separate, and take other partners, which they sometimes do. Females who have no husbands, are, among those people, accounted free as regard their sexual relations. While, therefore, there cannot be said to exist either pre-nuptial chastity or unchastity, neither can it be said that any account is taken of unspotted purity."

Briffault brings forward many examples the implication of which is that, generally speaking, intercourse between unmarried people of primitive culture is almost entirely unrestricted, yet that after marriage fidelity and chastity are the general rule.

"Again, statements to the effect that even the unmarried girls are chaste or are strictly guarded had in the great majority of cases reference to their attitude towards strangers and towards Europeans in particular and afford no criterion as to their conduct within the tribe."

"Intercourse was almost promiscuous," says Mr. Bandelier, "'with members of the tribe. Towards the outsiders the strictest abstinence was observed; and the fact, which has been overlooked and misunderstood, explains the prevailing idea that before the coming of the white man the Indians - North American tribes - were both chaste and moral, while the contrary is the truth.""

Briffault shows that" among the Indians of the Utah reservation, the Carribean races of the Mosquito Coast, the native tribes of Mexico, the tribes of Orinoco, the Jivaros of Ecuador, the

Baralong Bechuanas, the Masai and many others - great liberty of sexual intercourse within the pale of their recognised boundaries, while at the same time any co-habitation with those outside the tribal or social limit is dealt with severely.¹

"A considerable number of Dr. Westermarck's examples consist of statements to the effect that it is rare to come upon prenuptial children; or that a girl is blamed for having such a child, or even severely punished or put to death. But it is a fact familiar to ethnologists that with a large number of uncultured peoples, although sexual relations are wholly unrestricted before marriage, it is a rule that pregnancy must be avoided or that children resulting from such intercourse are killed at birth. The rule is most stringently enforced amongst peoples with whom prenuptial intercourse is not merely permitted but is even obligatory and regularly organised. Some tribes present examples of the most severe and barbarous penalties inflicted on unmarried mothers. "'Thus the baziba of the Southern shores of Lake Victoria, 'look,' we are told,'upon illegitimate intercourse between the sexes before marriage as the most serious offence to their laws.' 'The guilty party are bound hand and foot and cast into a lake, or are buried alive in a swamp.' But it appears after all that such punishment has not reference to 'illegitimate intercourse' at all, but to the bearing of prenuptial children; unless such a child is actually born, no notice whatever is taken of the relation. After marriage

sexual relations among the Baziba were, as with the Bayankole, polyandrous. A like severity is shown by the Bakyiga, though the girl is merely driven away from the clan. 'The harsh treatment meted out to a girl who conceived before marriage was due to the fear of ghosts, for her deed would anger the dead of the clan, who might cause illness among the living if the crime was not thus severely punished.' Similarly among the Banyora, the Bakoki, the Busoga, if the girl refused to tell and the man could not be found, she was taken out of the kraal and sent away to friends, for her presence would bring ill luck to her home; the children would die or the cows cast their calves. So likewise among the Creeks, Cherokees and other tribes of the plains, a young woman's chances of marriage were greatly augmented by the fact that she had had many lovers; but the unmarried women destroyed their offspring for the express purpose of prolonging their period of unfettered sexual freedom. No evidence, therefore, could be more irrelevant as regards prenuptial chastity than the rarity of prenuptial offspring or the habitual disposal of them by infanticide.

"When those invalid instances are eliminated, Dr. Westermarck's enumeration of statements concerning peoples who are said to enforce prenuptial chastity is reduced to very moderate dimensions, and the probability of their accuracy is diminished in an even greater degree. In several other instances adduced, the fact that the reverse of what
2. Ibid. p.29.
is suggested by Dr. Westermarck is the case is established beyond a doubt; in other instances the authorities referred to by him do not say what he ascribes to them, and sometimes they say the exact opposite. Dr. Westermarck adduces from Petroff a statement ascribed to Father Veniaminoff, in which it is asserted that among the Aleutians "girls or unmarried females who give birth to illegitimate children were to be killed for shame and hidden." The passage to which the above statement appears to refer runs in part as follows, "the Aleutians are disposed to sensuality. Before the doctrines of the Christian religion had enlightened them, their unbridled passions had free play; only the nearest kinship set a bound to their sensual desires. The introduction of Christianity has, it is true, abolished their singular manner of entertaining guests - sharing marital rights of the husband, and also polygamy, but not their disposition to promiscuity. Infanticide is indeed very rare. For down to the present day the belief is prevalent that if a girl, in order to hide her shame, should kill her child before or after birth, countless misfortunes would be brought down upon the whole village to which she belongs, and that the sacrificed child would be heard every night crying. 'All other testimonies as to the sexual morality of the Aleutians are in entire agreement with that of Father Veniaminoff." 1

It is interesting to compare with the above statements those of Thomas. 2 "Westermarck, after having discussed at

length the hypothesis of promiscuity says, 'Having now examined all the groups of social phenomena adduced as evidence for the hypothesis of promiscuity, we have found that, in point of fact, they are no evidence. Not one of the customs alleged as relics of an ancient state of indiscriminate cohabitation of the sexes, or "communal marriage" presupposes the former existence of that state,' and further on he says, 'it is not, of course, impossible that, among some people, intercourse between the sexes may have been almost promiscuous. But there is not a shred of genuine evidence for the notion that promiscuity ever formed a general stage in the social history of mankind.' It needs scarcely be pointed out how totally opposed this conclusion of Mr. Westermarck is to that arrived at by other workers."

The general conclusion one must derive from Briffault's investigations in this respect is that, broadly speaking, prenuptial chastity did not, and does not exist among primitive peoples, except where some very special conditions obtained. The obvious inference is that modern conceptions of prenuptial chastity are but the result of a long development of custom and that the multiplicity of regulations built up around the sexual relations of modern men and women are not and cannot be regarded as infallible rules, but as expedients which necessitate continual readjustments to changing conditions. We shall now continue with Briffault as he seeks to distinguish between marriage and other sexual relations.
Marriage and other Sexual Relations.

"Since sexual relations within the prescribed limits of marriage classes are much more free before than after marriage it is manifest that the primary purpose of that institution cannot have been the satisfaction of those impulses. Of the Angami-Nagas it is stated that 'chastity begins with marriage,' and among the tribes of Upper Burma 'it is claimed that unchastity after marriage does not exist owing to their freedom of experiment before marriage. As Dr. Starcke observes, 'if marriage were decided by sexual relations, it would be difficult to understand for what reasons marriages were contracted in those communities in which altogether licentious life is permitted to the unmarried.'

"The sexual freedom which precedes marriage may lead to it; and it has been represented that such freedom may be regarded as a crude way of affording young people an opportunity of effecting a choice of more permanent partners. In many instances those relations may, of course, be followed by a more stable association, but among a large number of primitive peoples there is no relation between the freedom of intercourse which takes place before marriage and the establishment of marriage relations. The women, among North American Indians 'do not seem to be in any hurry to get themselves married. They took care to avoid by the use of abortifacients, any risks of

2. Ibid. p.70.
contracting ties for some years. The same anxiety, that no permanent connection should result from free intercourse was manifested by men and women among the Guaycurus and Guanos of Brazil. Among the Masai the risk that prenuptial freedom should lead to marriage alliances was very strictly guarded against by tribal law.

In view of recent discussions concerning "Trial Marriages" it is interesting to note that, "the ancient Peruvians had likewise a regular system of trial marriage. The agreement was binding for one year only; at the end of that period both parties were free to contract other engagements if they so desired. Previous cohabitation was regarded as so essential a preliminary to marriage that a woman who had married without such due preparation was not regarded as respectably wedded, and was liable to have the fact thrown in her face if the marriage did not turn out a happy one. "Among the ancient Egyptians, marriages were not definitely concluded until after a 'trial year'."

"We thus find every degree of transition between general pre-sexual relations wholly unconnected with prospective marriage, the right of experiment, or "trial marriage," and a recognised freedom of relations between prospective spouses." It is difficult to draw a line between these

2. Ibid., p.73.
customs and call one or the other marriage. "It is, in fact, practically impossible to frame any definition of marriage which will apply strictly to all forms of the relation in uncultured societies, at the same time excluding the most casual sexual congress. Dr. Westermarck has attempted to lay down such a definition, and proposes to regard marriage as 'a more or less durable connection between male and female lasting beyond the mere act of propagation till after the birth of the offspring.' But where the whole distinction, as we conceive it between the sex relations which are, and those which are not, marriage turns precisely upon their degree of permanency, the use of such a phrase as 'more or less' entirely abolishes the character of the definition.

"The same difficulty in drawing a distinction between marriage and other sexual relations is experienced in regard to many people in every part of the world. Among the Chevsurs, e.g., few people are to be met that have not been married more than ten times. Among the Gnods it is difficult to say what is and what is not marriage."

Such examples might be greatly multiplied. As Dr. Westermarck puts it, 'there are unions which, though legally recognised as marriages, do not endure long enough to deserve to be called so in the natural history sense of the term.'

2. Ibid., p.75.
3. " p.78.
5. " p.80
"The birth of offspring has certainly a consolidating effect upon individual unions. Indeed, it is considered by most uncultured peoples as constituting the consummation and establishment of the marriage relation, and a sexual association is not regarded as a marriage until children are born." \(^1\)

"Of some peoples it is said that they draw no distinction between marriage and cohabitation, or that the fact of cohabitation constitutes individual marriage. But with the majority of even the most primitive peoples a distinction is drawn, as with ourselves, between the two relations, and the distinctive character of the marriage relation lies with them, as in our own society, in the establishment of a social and juridical relationship. The nature of that juridic foundation of the marriage relation necessarily varies according to social and cultural conditions. The distinction drawn between individual marriage and other sex relations is thus, in essential respects, of the same nature in primitive societies as our own. In England at the present time (1927) a man and a woman may cohabit in the most devoted manner for fifty years, and rear a family, yet unless the union has been legally registered, they are not married and their children are bastards; whereas the most transient association, or even one not attended with any cohabitation at all, constitutes, if established according to legal requirements, a true and valid marriage. The distinction

2. Ibid. p.94.
does not rest upon the association or upon its permanency, or even upon the formation of a family group, but solely upon a juridic and legal transaction and relation. The nature of the distinction is the same in the most primitive societies. It is not the fact of the association, or its duration, but the establishment of a juridic relation which constitutes marriage and differentiates it from relations between the sexes which are not regarded as such. Individual marriage is, in its origin, not rooted in any form of association between sexual partners, or in any groups, or family, resulting from such association, but is, even in its most primitive and rudimentary forms, distinguished as a juridic relation, irrespectively of its stability or any group or family which may or may not be formed from sexual relations that are not thus juridically established.

"There is, however, a difference between the primitive and the advanced view of the distinction. In the latter, not only is the marriage relation a legally constituted one, but all other relations between the sexes have come to be regarded as illegal or illegitimate and are therefore subject to censure and condemnation. In the primitive form of the relation, while certain relations constituting juridic marriage are regarded as established by a legal act, it does not follow that other relations are therefore regarded as illegitimate, or as a breach of usage, or in any way censurable. Among the North American Indians, the Guaycurus, in the Solomon Islands, abortion and infanticide were freely employed
by the young women in order to avoid establishing that juridic relationship which would have constituted a legal bond between the man and the woman's family, and given the former a certain claim upon the woman. The practice was no wise open to condemnation, and the freedom exercised by the woman was in every way as legitimate as the contracting of a juridic connection. Or again, among the Line Islanders and the Hawaiians, juridic marriage served certain specialized economic purposes in regard to the transmission of a landed property by inheritance, and was not entered into by the majority of the people who had no interest in such transactions. There is no ground for supposing that, in those instances, the one sort of union was more durable and the other less durable. We are told, on the contrary, that they were all equally transient and loose. The distinction lay in the juridic conditions attending these unions, and not in the degree of their durability. Very commonly, and in quite primitive societies, the juridic relation is not established until relatively late in life, on the ground of purely economic considerations; but sexual relations not so established, that is to say, prenuptial relations, are not in any way regarded as irregular or derogatory. A tendency, however, must inevitably develop, apart from other factors and considerations, for a juridically established relation to cause a depreciation in the esteem in which relations not so established are held; the correlative of a sanctioned and legitimate union comes in time to be an

unsanctioned and illegitimate one, although that opposition did not originally exist. Several other causes have brought about the condemnation and suppression of extra-connubial relations between the sexes, but the juridic character of the sanction upon which individual marriage is founded has also been a contributory cause which has helped to render all other relations illegitimate and morally censurable, and to give to marriage the character which it has ultimately required of the sole recognised form of sexual association.

Economic Grounds of Sexual Selection.

One of the simplest questions that can be asked is, "Why do men and women marry?" The answer is a matter of wide differences of opinion. Briffault offers the following contribution: "The matrimonial alliances of aristocratic and wealthy families in feudal Europe, which were based solely upon considerations of social and economic interest and expediency, those 'mariages de convenance,' in which mutual attraction and even ordinary suitability in regard to age or appearance were excluded as irrelevant, have been regarded as a profanation of marriage, and as trampling upon the motives which should be its foundation. But the same principles that governed those alliances determined the marriages of the even more barbaric heathen predecessors of medieval Europeans, and they govern marriage institutions in the most primitive and uncultured societies which we know. The answer of the Australian aborigines to the question why they desire a wife will bear repeating, for the purposes of primitive individual 1. Op. Cit., p.96.
marriage could not be more clearly and accurately stated. If a native is asked why he is anxious to possess a wife, he invariably answers, 'to fetch me wood and water and prepare my 'mudlima' (food). By the Australian black marriage is regarded chiefly in the light of an association contributing to his wants. The same is true in regard to all uncultured peoples. Among the natives of Northern Papua 'a woman is acquired in the first place as a worker and only incidentally as a wife.' In the Island of Rook 'interest is the only motive of marriage,' the wife hopes that her husband with his hunting and fishing will give her all in abundance, the husband on the other hand, expects to find everything well prepared when he returns to the hut. In the Pelew Islands 'marriage is regarded as a matter of business, love is left to youth.' In the Loyalty Islands the choice of a wife is chiefly determined by her skill as a gardener. Among the Ainu of Japan, laziness on the part of the wife and failure to obtain good crops are recognised as just grounds for divorce. Among the Chins of Upper Burma 'the only questions asked by the parents of the young man regarding the girl is as to how thoroughly and quickly she can clean a hill-side of weeds, or how long it takes her to plant a patch of millet.'

"With the Eskimo, 'in a man's choice of a wife the feelings are not taken into account, he 'marries because he requires a woman's help to prepare his skins, make his clothes, and so forth.' Among the North American Indians 'industry and capacity for work are above all valued, and next fertility.'
'In Brazil the chief qualities that are valued in a wife are that she should understand gardening and be able to brew good beer.' Among the natives of the Tanganyika Territory marriage 'is regarded entirely as a prosaic and material step in which sentiment can be allowed no part.' It is 'entirely an economic affair.' Among the Bangoro 'marriages are seldom, if ever, the outcome of love, but are entered into for utilitarian and economic reasons.' And among the Bahima 'there is no question of love.' In Uganda, 'where there is great demand for native labour, and the men earn good wages in factories and government contracts there is a tendency to avoid marriage. The economic motive for individual marriage having disappeared there is no other left; they there no longer desire to marry.'

One may query at this point, in connection with the prominence given to the economic motive in marriage whether or not the sexual desires of those peoples are met freely outside the recognised limits of marriage.

Briffault adduces numerous instances of husband selection by the wife. "In contrast with the choice of a wife by the man is the selection of a husband by the woman. Throughout Southern Papua and in the adjacent islands of Torres Straits it is a rule, to which there appears to be no exceptions, that all advances and propositions of marriage must come from the woman and not from the man. Among the Gakai of Perak 'the women used to seek their own husbands.

2. Ibid., p.168-169.
Among the Ainu of Yezo it was the rule of women to propose. 'So likewise among the Elgoa it is the recognized etiquette that all advances with a view to marriage must come from the woman, and it would be very bad form for a man to propose.'

Griffault would assume that under matriarchal conditions, prior to the development of patriarchal organization, it is the general rule that the women should take the initiative in contracting sexual associations, and this primarily for economic reasons.

"If the conditions of such primitive matriarchal societies and the motives leading to an economic association of sexual partners be rightly considered, it will be seen that the woman is far more interested than is the man in forming such an association. Marriage is primitively an economic association and depends not upon sentimental and sexual impulses. But even so, those economic grounds are the biological foundation of the sentiments and instincts. It is irrelevant, from a biological point of view, to adduce the 'passive' character of female germ cells and the 'active' character of male germs in support of a general social law that the male instincts must needs be the more active factor in bringing about mating association. The somewhat fantastic use of biological analogies might be applicable in reference to the sexual instincts of the male, but has no bearing on the mating instincts, which are essentially opposed to them. The relevant biological facts are that wherever, in the animal kingdom, mating takes place and there is a more or less prolonged association of the sexes, it is in relation to the requirements of the female and not in relation to those of the male that.

such an association invariably takes place. It is the female's economic need which, from the outset, has given rise to that extension of the maternal instinct which constitutes the mating instinct and which in its higher form is analogous to the order of human sentiments that is spoken of as sexual love. Thus whether the motives which lead to the permanent association are economic or sentimental amounts, so far as the female is concerned, to much the same thing; for the sentiments are, in their origin, but a manifestation and expression of the economic motive. And although in most primitive social phases those sentiments cannot assume the form they have acquired through cultural development in the most civilized races, and appear to be rudimentary, there can be little doubt that it is in the female and not in the male that they have in the first place manifested themselves and developed.

In view of the pronounced opinions of Briffault regarding the freedom of pre-nuptial sexual relations among primitive peoples generally it is interesting to compare Goodsell's statement regarding the 'Theory of Promiscuity.' He speaks of Bachofen who took the ground that aboriginal men lived in hordes like other gregarious animals and that complete promiscuity in sex relations prevailed. This theory, he continues, has been since held by Mr. McLennan in his "Primitive Marriage," and Mr. Lewis Morgan in his book on "Ancient Society" who "both maintain that in the beginning of

human history sexual intercourse was quite unrestricted and sexual unions were transitory." Goodsell then goes on to say that "Westermarck, in his valuable work on Human Marriage has sifted this evidence very carefully and concludes (1) that no case of a people living in unrestricted sexual communism can be found today; (2) that the customs which point to promiscuity admit of different and more satisfactory explanations," and Goodsell draws the conclusion that the "more the matter is investigated, the more questionable it becomes that primitive groups generally lived in a condition of absolute promiscuity, although great laxity in marital relations undoubtedly prevailed among them."¹

Relation of the sexes in Greek and Roman life.

In his book, The Greek View of Woman, G.L. Dickensen tells us that in the State of Sparta "the woman was specially trained for maternity, and connections outside the marriage tie were sanctioned by custom and opinion, if they were such as were likely to lead to healthy offspring, and that the child was registered as a member of the State rather than as a member of the family."² Plato would compel every man to marry between the ages of thirty and thirty-five, under the penalty of fine and civil disabilities. He, too, would regulate by law both the age at which marriages should take place and the number of children that should be produced.


"The modern conception that the marriage relation is a matter of private concern and that any individual has a right to wed whom and when he will, and to produce children at his own discretion, regardless of all considerations of health and decency, was one altogether alien to the Greeks. In theory at least, and to some extent in practice (as, for example, in the case of Sparta), they recognised that the production of children was a business of supreme import to the State, and that it was right and proper that it should be regulated by law with a view to the advantage of the whole community."  

"And if now we turn from considering the family in its relation to the state to regard it in its relation to the individual, we are struck once more by a divergence from the modern point of view, or rather from the view which is supposed to prevail particularly by writers of fiction, at any rate, in modern English life. In ancient Greece, so far as our knowledge goes, there was little or no romance connected with the marriage tie. Marriage was a means of producing legitimate children, that is how it is defined by Demosthenes; and we have no evidence that it was ever regarded as anything more. In Athens we know that marriages were commonly arranged by the father, much as they are in modern France, on grounds of age, property, connection and the like, and without any regard for the parties concerned."

"And an interesting passage in Xenophon indicates a point of view quite consonant with this accepted practice.

"God," he says, "ordained the institution of marriage; but on what grounds? Not in the least for the sake of the personal relation that might be established between the husband and wife, but for ends quite external and indifferent to any affection that might exist between them. First, for the perpetuation of the human race; secondly, to raise up protectors for the father in his old age, thirdly, to secure an appropriate division of labour, the man performing the outdoor work, the woman guarding and superintending and each thus fulfilling duly the function for which they were designed by nature."

In the same essay are quoted the following lines from the "Medea."

'Of all things that have life and sense we women are most wretched. For we are compelled to buy with gold a husband who is also - worst of all! - the master of our person. And on his character, good or bad, our whole fate depends. For divorce is regarded as a disgrace to a woman and she cannot repudiate her husband.'

In conclusion of his essay Dickenson refers to Demosthenes where he said that every man 'requires beside his wife at least two mistresses,' and comments that "this statement, made as a matter of course in open court, is perhaps the most curious illustration we possess of the distinction between the Greek civilization and our own, as

2. Ibid., p.10.
regards not the fact itself but the light in which it was viewed.

Marriage and The Roman Lady.

"At Rome," according to W. Warde Fowler, "in all periods of her history, a iustum matrimonium, i.e., a marriage sanctioned by law and religion, and therefore entirely legal in all its results, was a matter of great moment, not to be achieved without many forms and ceremonies. Behind the Roman marriage lay the idea of the service of the family and the State." A Roman would no doubt fall in love, but his passion had nothing to do with his life of duty as a Roman. The beauty and gravitas of married life are still felt and still found, but the depths of human feeling are not stirred by them. Love lies beyond, is a fact outside the pale of the ordered life of the family or State.

"At the same time divorce, which had probably never been impossible though it must have been rare, about the year 169 B.C., began to be a common practice. The virtuous Emilius Paullus put his wife away on the ground that "a woman might be excellent in the eyes of her neighbours, but that only a husband could tell where the shoe pinched." Cato's view of the conjugal relation seemed to be that of regarding the wife "rather as a necessary agent for providing the State with children than as a helpmate to be tended and revered.


And this being so, we are not surprised to find that men are already beginning to dislike and avoid marriage; a most dangerous symptom, with which a century later Augustus found it impossible to cope. More and more the notion gained ground that a clever woman who wished to make a figure in society, to be the centre of her own monde, could not well realize her ambition simply as a married woman. She would probably marry, play fast and loose with the married state, neglect her children if she had any and after one or two divorces, die or disappear. So powerfully did this idea of the incompatibility of culture and wifehood gain possession of the Roman mind in the last century B.C. that Augustus found his struggle with it the most difficult task he had. "Even if we put aside as untrustworthy a great deal of what is told us of the relations of men and women in this period, it must be confessed that there is quite sufficient evidence to show that they were loose in the extreme and show an altogether unhealthy condition of family and social life. Husbands divorced their wives on the smallest pretexts and wives divorced their husbands."

In dealing with the rise of the family of Western civilization Dealey states, "this family, though influenced somewhat by Hebraic and Greek teachings, is fundamentally based on Roman and Germanic standards and customs. In the first five hundred years of Roman legal development, four forms of

marriage arose, one after the other, illustrating in their varying standards the changing ideals of domestic relationships. (1) The earliest known form of marriage, the conferratio, was confined to the patricians, and in the main represented a familiar patriarchal ceremonial form; it included traces of survivals of capture marriage, the procession escorting the bride to the bridegroom's home and religious ceremonies such as her introduction to the hearth and ancestral gods of her new family. This form disappeared from common use quite early in Roman history except that it long survived as a sacred form of marriage for those families that aspired to priestly office. Among the population below the patrician rank prevailed two other forms of marriage ceremony and these in time became common among patricians also. (2) In one of these the coemptio, or purchase form, the parties concerned, in the presence of a magistrate and witnesses, went through a form of the sale of the bride to the groom, a survival, doubtless, of an earlier practice of a real purchase. In this form, which also became obsolete somewhat early, the State is present in the magistrate, who, however, acts merely as a recorder of sale and purchase and had no other authority over the marriage. (3) A still more popular form existed in the Usus, in which the law assumed that a legal marriage existed after cohabitation as man and wife for the space of one year. Under these three forms of marriage the wife came to be directly under the power and authority of her husband (in manu viri). Divorce was possible but was rarely used in the first form, though more common under the other two.
The power of divorce lay with the husband, though he was guided in his decision by a family council composed of relatives of both parties. Whatever dowry he received with his wife was generally returned at divorce. (4). At an uncertain date, but about the time when Rome definitely embarked on a policy of territorial extension beyond Italy through conquest, a new form of marriage arose (matrimonium sine conventione in manum mariti) which soon became and remained the dominant form throughout the later Republic and the Empire. Under the Usus marriage, a wife by absenting herself for three consecutive nights from the bed of her husband, continued to be his wife, but did not pass under his legal authority, remaining under the authority of her own family. This fourth form of marriage consisted in a Usus marriage in which the privilege of the trinoctium had not been used, but yet the wife legally did not become subject to her husband. This became, therefore, a marriage contracted at the will of the parties directly concerned, in which both man and wife were equal partners, since the wife was legally independent of her husband, and remained under the authority of her own family or guardian. These last three forms of marriage were perfectly legal and respectable; in each case there was a formal betrothal; but by slow change of custom the wife gradually became a free person equal in the eyes of the law to her husband, and marriage was a mutual private contract needing no authorization from either priest or magistrate."  

Marriage in The Middle Age and Modern Times.

"The christian ideal of marriage during the Middle Ages was to regard it as a Sacrament. The early Church Fathers regarded marriage and women as obstacles in the path of saintly living. Whereas the early Church had exercised but little influence over marriage, the ceremony later became religious and was performed by the priest in the parish church. Marriage was finally enumerated as one of the sacraments of the church and the whole subject placed under ecclesiastical jurisdiction. This point of view known as the sacramental theory, regards marriage as indissoluble." ¹ The question of the Roman Catholic doctrine of Nullity will be discussed later under Ecclesiasticism. It is sufficient to indicate here that as the Protestant Reformation weakened the authority of the Church, that of the State strengthened. "This resulted in the civil authority taking over many powers formerly exercised by the Church. The trend of modern times has been consistently toward a separation of Church and State, and this movement has reflected itself in a changing attitude toward marriage. A Civil marriage Act was passed by the England of Cromwell. On the Continent, this development was largely a result of the French Revolution, and the 19th Century witnessed the triumph of the idea throughout Europe. Although the laws regarding divorce had long remained practically undisturbed, the principle involved in the new theory began

¹ Burch and Patterson - American Social Problems, p.313.
to produce its results later. Ecclesiastical Courts, like those of the Feudal nobles, had long lost all power, for their jurisdiction had been usurped by the state courts. When divorce was finally recognised, the Civil Courts were the only proper legal agencies to grant the right."

"Coming down to modern times it is interesting to compare the view of Bernard Shaw, with the foregoing, on the relation of state and marriage. "It is on marriage that the secular state is likely to clash most sensationaly with the Churches, because the Churches claim that marriage is a metaphysical business governed by an absolute right and wrong which has been revealed to them by God, and which the State must therefore enforce without regard to circumstances. But to this the State will never consent, except in so far as clerical notions happen to be working fairly well and to be shared by the secular rulers. Marriage is for the State simply a license to two citizens to beget children. To say that the State must not concern itself with the question of how many people the community is to consist of, and, when a change is desired, at what rate the number should be increased or reduced, is to treat the nation as no sane person would dream of treating a ferryman. If the ferryman's boat will hold only ten passengers, and you tell him that it has been revealed to you by God that he must take all who want to cross over, even though they number a thousand, the ferryman will not argue with you, he will refuse to take more than ten, and"


will smite you with his oar if you attempt to detain his boat and shove a couple more passengers into it. And, obviously, the ten already aboard will help him for their own sakes."

In concluding this section the following remarks from Latourneau's "Evolution of Marriage" are offered. "However dissimilar may be the countries or the epochs, the union of man and woman begins, with very rare exceptions, by the complete slavery of the latter, and her assimilation to domestic animals over which man has all possible rights, a fortiori that of driving her away. Then as the ages move on their course we see societies which become by degrees civilized, and in proportion to this advance the condition of woman improves. At first the man could kill her if she displeased him; then, cases of adultery apart, he contented himself with repudiating her; next, the severity of this right of repudiation, at first unlimited, was mitigated, then it was restricted to certain well defined cases; some rights were even granted to the repudiated woman. At length her own right was recognised to seek divorce in order to escape from intolerable treatment. At last a return was made to divorce by mutual consent, which had been allowed in a good number of primitive societies, before a rigid legislation, generally theocratic, had crystallized, in codifying them, some of the old barbaric customs. The Catholic prejudice itself, absurd as it was, in regard to marriage became humanized by time. Doubtless the Church continued to condemn Divorce, but she allowed a good number of

cases of nullity of marriage, undoing thus with one hand what she attempted to build up with the other and willingly or not, compounding and compromising with the "world."

THE BIOLOGICAL BASIS OF THE FAMILY

- Section II -

The family is not an invention of man - it has been worked out independently by different organisms. "The biological basis of the family is to be interpreted in its relation to the great underlying physiological processes of all organic life, to development; to the interchange of matter and energy; to behaviour; to reproduction.

"All organisms show two different sets of activities. (1) They live individually; (2) They reproduce. Each individual has its own life career; it grows, develops, seeks, and takes nutrition; pursues its varied business and desires; become mature; most finally become old and die; And, in addition, each produces new individuals that shall take his place when his individual career is closed.

"The life career of some organisms is so simple, and their reproduction is so simple that there is little interference. The rotifer, e.g., simply drops a piece of itself - which grows into an individual. There is, no mating and there is no farther relation of parent to offspring. But some modification takes place - part of the nutrition goes into these pieces and their separation may be a severe operation for the parent."
"And even in such cases the beginning of the family may appear. In some animals the piece or germ remains attached to the parent body, these, growing and developing through the parent mouth and sharing the parent career. Several such offspring may remain attached to one parent; then we have a veritable incipient family, though with but one parent. Abudding hydra - a colonial infusorian, shows us such an embryo family.

"Animals that require two parents find the matter much more complex. Why most of us require not merely one parent but two is one of the great and, perhaps, unanswered problems of biology. This increases enormously the variety and complexity of life; multiplies by thousands its problems and difficulties, perhaps also its interests and satisfactions. There is added to the life career the problem of finding and uniting with a mate. This requires specialized functions, specialized reactions. The seeking of the mate becomes one of the chief impulses, changing the development and behaviour of organisms, playing everywhere a tremendous role. It seems one of the chief bases of structural and mental evolution; it cannot be left out of account whether we are dealing with the family or with any other product of evolution.

"At its lowest, reproduction from two parents is still carried out in a relatively simple way. In some organisms the individuals simply cast their germ cells abroad - thus many plants and aquatic animals. As conditions of life grow more complex this does not suffice. Most mates seek and
find each other. This becomes one of the main features in a life career. A difference arises between the two mates, a difference not present in the lower grades. One does most of the seeking, and carries minute germ cells that move and actively unite with the others. This is the male. The other, the female, produces and carries large germ cells, in which she stores up food for the development of the young. Here appears the deepest duality of life, the difference of the sexes.

"The life career in both sexes is much altered by the mode of reproduction, but in the male far less than in the female. The production of the large germ cells, the storing of food within them, the carrying of them, and their deposition—these things form for the female a large part of the business of life. The special problems of feminism begin far back in the animal series.

"The life career of the female becomes still more profoundly altered when the egg, even after union with the germ cell from the male, remains attached to the body of the mother, receiving protection and nutrition, till a certain stage of development is reached. We find among all animals all stages in this union. In some it goes but a little way. The female carries the egg merely till it is ready to hatch, then casts it abroad. In others the union becomes longer and more intimate, till we reach the conditions found in the group to which man belongs, the mammals. Here the young is long identified with the parent. The offspring is not cast on its own resources until it has reached a rather advanced
"This intimate union of parent and offspring for a long period, has large consequences. The development of the offspring is greatly changed. And the parent is modified hardly less; her entire physiology, metabolic, glandular, nervous, mental, is tremendously influenced.

In this union of parent and offspring we have another major factor in development and behaviour, comparable to that due to mating. But this union affects directly but one of the parents, the female; the family at its beginning includes but mother and offspring. Save for the mating requirements the male still retains his freedom.

"But the chain binding the male to his mate gradually brings him, too, under the domination of the developing young. Her life career so weighted down becomes inadequate to nutrition and protection. The life career of the male, already greatly modified for the seeking of the female, becomes further changed toward retaining possession of her; toward feeding and protecting her while she is carrying and guarding the young. This situation we find widespread; in fishes, in birds, in mammals; the male protects and aids the female.

The Economic Dependence of the Female has begun.

"Parallel with this we find another step. The wide reaching influence of the young on the mother does not disappear at once on its separation from her body. It remains a source of reaction; an object of interest, after it has become free.
The parent from which it has separated continues to protect it, to supply it food, to keep it under conditions favorable to its farther development. The mother wasp prepares food for the future young, a spider, or larva that has been stupified; deposits the eggs in this. The bird mother builds a nest, keeps the eggs warm, feeds the young. The family has now developed farther. But in the simple cases it still consists mainly of the offspring with but one of the two parents, the female.

"But the male, too, becomes drawn into this work. The female and her behaviour have become the strongest source of stimuli for the male. Her concern with the offspring deeply influences him. At times his relation to the progeny appears but indirect. He protects the females; the progeny too are protected. In places it is more direct. The drawing of the life activities of the male into the circle of family life appears, as we survey the animal kingdom, in curious, isolated and unexpected ways. The male catfish of certain species takes the eggs in his mouth and there holds and protects them until the young can take care of themselves. Certain male toads take the eggs on their backs and there carry them until the young animals hatch and escape. In various fish the male helps build and guard the nest, and takes part in protecting the swimming young. Some male birds help build the nest, feed the female while she keeps the eggs warm; take their turn at that work; help to feed the young. In some mammals the male concerns himself little or hardly at all with these domestic matters; in others he
plays an active role in providing a home and caring for the young.

"Along with this intertwining of the life careers of parents and offspring, there come changes in the relations of the two parents to each other. In some animals the relation is but a passing one: the male seeks the female; then after union of the germ cells, separates from her; they consort no more; and the next mating will be with another individual, or as chance may direct. But as the development of the young comes to be dependent on the parent or parents, as the parents feed, protect and guide the young, the behaviour of each become correlated with that of the other; they cooperate. The mating relation is continued between the same parents. We find here, perhaps, two main lines of evolution. In one group, typically, each male mates with another limited number of females, which he protects from enemies and defends from other males. The polyamous family has arisen (Deer are examples). - the herd or flock, headed by a single male, as in cattle, in seals, and in many mammals.

"The polygamous family presents biological difficulties. Since in most species the number of males and females is approximately the same, the appropriation of several females by one male results in the exclusion of many males from propagation; results consequently in perpetual war among the males. Since in the nature of the case it is the more powerful warriors among the males that become parents of the next generation, this method of organization results
in selective elimination in favor of the warlike; cuts out pacificists; operates against the development of the virtues of peace; keeps society at war. As might be expected in such polygamous families the males have little direct concern with the care of the young beyond the protection of the flock as a whole. Their business is mainly fighting and propagation.

"Where, however, the male becomes more directly involved in the business of caring for the individual young produced by a particular mother, cooperation between a single male and a single female becomes the rule. Care of their common young keeps them together; the mating relation continues, successive children may be born to the same pair. What we usually think of the family has come into existence; two parents and their offspring living together, carrying on their life careers in unison; sharing nutriment and protection; cooperating in activities. Such families are found in a great number of diverse groups; they are by no means peculiarly a human institution."

"In birds, in many mammals, mating occurs only at particular periods of the year, and the young are dependent for but a short time; the family then remains a unit only for the same length of time. Then the parents separate from the children, and the two parents part, carrying on independent careers."

"But there exist or arise in many animals powerful biological influences that favor a cooperative career of the parents lasting for more than one season, or for life. The attraction of the mates for each other, combined with the
effect of habit, itself acts powerfully in this direction. In the eagles, hawks, and other birds of prey this keeps the mates together for life - a permanent monogamous marriage is here found. Successive families of young are produced, though there intervene periods in which the parents are without young, the union of mates is for life.

"In other animals this tendency towards a permanent cooperative union on the part of two parents is powerfully reinforced by the long period of dependence of the young. The development of the offspring to maturity requires not one season but many. The two parents caring jointly for the offspring, remain together. The offspring come not in broods, but singly. Successive children overlap in their developmental careers. There is no time when the two parents can separate without breaking in upon the functions they have undertaken in relation to the young. Such is the situation in its highest development in man.

"Meanwhile, too, the life career in such organisms has become full of complex activities of other sorts requiring for their proper performance the undistracted attention of the individual, and all this is intertwined with the care, protection and guidance of the young. To break the mating relation at any particular time is to bring all this into confusion; is to leave children and mate in distress; to leave unfulfilled the mating influence; is to force the separated mates anew into the intensely distracting pursuit of finding a new mate. All this is avoided by the mates remaining together. Even as age comes on, and the last of the offspring has taken up its
own career, so that biological relations with progeny no longer require cooperation on the part of the parents, long use and habit, the persistence of the need for companionship, keep together the two parents. Marriage is life long, even though the care of the offspring is not. Permanent monogamous marriage has arisen independently through similar functional requirements in the mammals and in the birds; the biological needs giving origin to it being much the more numerous and powerful in the higher mammals. Thus it is emphatically not true, as so often asserted with assumed finality, that the only function of marriage is the production of children. On the contrary, marriage and the family are a complex resultant from the interaction of many functional needs. The satisfaction of the powerful mating impulse, one of the chief factors in organic evolution, reinforced as it is by many structural and functional complexes that have arisen in connection with it, is one of the major elements concerned. The thwarting of all that is connected with this impulse profoundly affects and deranges the life career. No institution that leaves this function unfulfilled can be considered a biologically adequate one.

"The monogamous family, with a life long union of the mates, appears as the final terms in a long evolutionary series."

"In some quarters we meet an aspiration for a system showing the essential features of that found in the insects, in which from the beginning the social group as a whole shall care for the offspring making the family unnecessary. In this way the individual parents are to be relieved; set free each to pursue his or her life career without interference from
offspring or mate. As we find it in popular modern proposals, this aspiration appears largely dominated by the desire to set free and give full satisfaction to the mating impulses; to facilitate changes of mates, making it unnecessary for them to remain tied to one another longer than fancy dictates.

"If we examine this aspect of the matter in the animals that have fully carried out this system of public care for the progeny we find a surprising result. The system has resulted not in the freeing of the mating impulses, but in their suppression, their almost complete extinction; in the essential desexualization of society. Only a few isolated individuals continue to be occupied with mating and propagation; the rank and file are sexless. If man must look to this result, possibly the enthusiasm for this system will abate.

"In these ants and bees the functions of the parents have become purely propagatory; beyond this they have practically no life career. One female in the state is selected as mother. She is fostered and fed and protected for the young she produces; the other females are destroyed or transformed by special treatment into non-sexual individuals. The males as such play a role only in that one of them fertilizes the single group-mother; after one has done this, all other males may be destroyed; or in other cases they too are transformed, like the females, into neutral individuals. Society is non-sexual; carried on, not by husbands and wives, fathers and mothers, but by one. The whole distracting business of mating, of marrying and giving in marriage, is cut out of these societies;
the individuals can apply themselves whole-heartedly to their life careers. The young produced by the group mother are cared for by certain of these neutral workers who make this their life business. The family does not exist; it is a state in evolution that has been left behind, transcended. The attainment of some such situation appears to be the aspiration of certain groups of men.

Having reviewed the biological basis of the family brief reference will now be made to its historical development.

The family has often been called the unit of society because it is the smallest organized group of individuals, and because it is the most constant factor among varying social organizations. There seems to be general agreement on this point. "The primary and most important social institution is the family." "The family has been and presumably will continue to be the heart and centre of social life."

The family as an institution has always taken its characteristics from the society of which it is a part. Among early peoples, whose numbers were small and whose social order was simple, the family was likely to carry out its functions through the fact that it was an economic, and educational, and a religious unit of social life.

Systems of tracing Descent.

"There are two chief systems of tracing descent found in the history of society. They are the metronymic and the patronymic. In the former descent is traced through mothers; in the latter, descent is traced through the fathers. Until the appearance of Bachofen's great work, "Das Mutterrecht," in 1861, it was generally held that the patriarchal form familiar to us in the Biblical records and in the classical nations of antiquity was the original form of the family. He found evidences, as he thought, of an early period in human society when women rather than men dominated the family. His researches were supplemented by McLennan in 1876 and by Morgan in 1877."

In the metronymic form of the family "a child does not belong to the kindred of his father as in our patronymic form of the family, but to, the kindred of his mother. On the other hand, control of the family rests not with the mother, but with the mother's male kindred, although the women exercise much greater influence in the affairs of the group than under the patriarchal forms of family."  

The patronymic family hands down its family name through the father.

"The transition from the metronymic to the patronymic form of family was due to a number of causes. "War led to the custom of wife capture ... This was succeeded by wife purchase. In either case the wife was regarded as the property of her husband. A third cause of the decline of the position of woman lay in the development of pastoral life. This necessitated a

larger area and removed the wife from the protecting influence of her original family." 

"The dominance of the male once established, religion entered in as a mighty force in the metronymic family. In the patronymic family, however, ancestor worship gathered into a focus of mighty power all the potentialities of male self-aggrandizement. It debased woman, and gave rein to all the aggressive propensities of the male. Sons had been desired from the economic point of view, as workers and to feed the flock; from the social point of view, they were valuable as fighters; now they were desired intensely in order to carry on the worship of the ancestral spirits. The woman was accursed who did not bear sons. The unchaste wife was not only a criminal in the eyes of the family and the group, but was a sinner in the sight of the gods. While ancestor worship survived, death was the only possible fate of the adulteress. One great thing it accomplished, however, albeit at great cost, it established female wedded chastity."

The various forms of family relationships have been summarized by Blackmar and Gillan as follows:

A pairing arrangement of short duration.

Group marriage - a group of brothers married to a group of sisters as reported by Captain Cook of the Hawaiian Islands.

Polyandry, or the family relation in which one woman has more than one husband, practised in Thibet and a section in India.

1. Burch and Patterson - American Social Problem - p. 52
2. Blackmar and Gillan - Outline of Sociology. p. 120.
Polygyny, or the possession by one man of several wives.

Monogamy in which relation one and one woman form family relations for life. This appears to have been the prevailing form of marriage in all ages and in all places. Other forms of marriage, such as polygyny and polyandry, are merely local or temporary deviations from the usual form. In most civilized countries the monogamic family is now and has been for centuries the only sanctioned form of marriage.

Continued Modification of the Family.

The family at an early stage was a producing unit of society, both by reason of the chase and the products of the soil. Later, in the pastoral and agricultural periods, arose a family ownership of property. The home increasingly became an economic centre, and, until the advent of the Industrial Revolution, a place of economic unity where practically all the wants of the family were met by home manufactures or home products in which the members cooperated to maintain the needed supply. It is the break down of this economic unity of the family and the diffusion of the family's working power over many different areas of activity that constitutes one of the main sources of modern problems, and has, in ways to be outlined in this Thesis, augmented the problem of Divorce.

Blackmar and Gillen summarize these economic changes and their effects upon the family as follows: The changes which have come into our economic life in the past fifty years have seriously affected family life. The increased earning capacity of women and the opportunities offered them to make their own living, by enabling them to be more independent, have impaired

the old time unity of the family group. With the advent of factory life, however, and the consequent massing of laborers, the economic function of the home has become of steadily decreasing importance. Hence it has come to pass that millions of our women do their work outside the home. In mill, office, and shop they spend their days rather than in the home. Industry has well nigh destroyed the economic basis, of the home. It has made the woman who has remained in the home more independent economically. Often it has taken the husband and father away from the home so that he can no longer help to rear the family. He no longer is the important social factor in the home that he once was. Furthermore, the influence of the family and home upon the children has been much interfered with by the change from the domestic to the factory system of industry. Once the children contributed to the support of the family by working with their parents in the home. Now, if they share in the economic burdens of the family, they must leave its fostering care. List among other factors involving changes in home life are the school, an increase in rented homes, liberalization of thought, and the decrease in the size of the family. All these have been influential factors in creating conditions in the social order wherein divorce, among other problems, tended to become accentuated.

Divorce strikes at the heart of the family as it breaks down the monogamic relation, scatters the sentiment which clusters, normally around home life and, where children are
involved, deprives them very frequently of proper parental control. The home has been the school of the child to a very large extent. It was as Beach states, "the beginner of intellectual and moral education."

2. Beach, W.G. - Introduction to Sociology - p.185.
THE PROBLEM OF DIVORCE IN RELATION TO THE SEXUAL FUNCTION.

- Section III -

Thus far we have dealt with marriage and the family in a very general way. Whatever the particular form in which men and women have associated it is quite evident that the impulse to mate is rooted in a biological urge, and that both male and female are inevitably modified so far as their life careers are concerned by the insistent demands of their sex nature. The home and the family have been the normal spheres for the satisfaction of these basal instincts, and so long as there has been no failure in the home life in this respect apparently the mates have been able to remain in cooperation together, other things being equal. That there has been and is all too little harmony in sex relations, however, in many homes, and that factor has been a disorganizing force in family life, and a responsible element in many divorce problems, is evident from many sources. We shall now discuss the Divorce problem in relation to the Sexual Function.

Sex is one of the great actuating forces of life. It runs through life as a deep undercurrent, rising to the surface sometimes in the rich and beautiful fruitage of
whole some love, and sometimes finding expression in all sorts of perversions and lusts. Because of neglect of this serious question of sex thousands of people have unduly suffered and there has been a terrible wastage of human power and happiness. Because of the taboo of silence which former propriety imposed upon sex matters, generally, the subject was regarded as something unclean with the consequent reaction in many lives of false modesty, prudery, and countless social evils. "Here many of us have suffered because of neglect, or because we have not been able to solve our problems. Yet here where we most need sympathetic understanding we have it least.

"So serious is the situation that there are some who hold that more men and women are suffering in this sphere than from all economic causes combined, such as poverty, unemployment, bad housing, etc; that more people are being victimized than because of race prejudice, for it affects all races; and that more casualties result from the conflicts of sex than resulted from all the battles of the world war. From this, which is for many the strongest dynamic drive in all life, there may spring man's highest aspiration but also his greatest menace. From this same root of sex there may grow lust or selfish gratification, the violation of personality, the prostitution of womanhood, the debasement and enslavement of manhood, jealousy, hatred, and the lowest depths of vice and crime to which humanity may sink. The tragedies of life, the literatures of the world, the scriptures of all religions are stained with the record of man's undoing through ignorance or the perversion of this powerful instinct. Man has either to
It is not surprising, therefore to discover how largely the sexual function has entered into those cases where Divorce has culminated the home and family life. In a chapter on the Relation of Physiology to Justice, Albert Wilson, M.D., states, "When divorce cases are measured by physiological, rather than by Norman, Roman, or even Ecclesiastical laws, then do we clearly perceive the true nature of this social disease. Marriage is regarded by the Church, especially the Church of Rome, as a permanently binding moral and spiritual agreement. I have no wish to minimise the important bearing of religion on marriage, more correctly on married life; but I wish to clear the air as to the legal control by a spiritual body over a physiological function, which has many complex bearings, both pathological and psychological."

Discussing "misfits in marriage" Dr. Wilson, goes on to say, "A balance of sexing properties appears to be essential to produce normal individuals. It is when this equilibrium is disturbed that we get abnormal factors - masculine women, and effeminate men.

"The disturbed equilibrium drives out the normal ego and lets in all sorts of lower emotions - in fact even what has been ably defined as the "beast." It is thus that we can perhaps understand brutal males, even though we may not explain them. It is thus that we can understand the weak

2. Albert Wilson, M.D. - Unfinished Man, p.162.
emotional woman who falls, or more correctly, runs into temptation. She is only discharging the duties of disturbed functions. This disturbed equilibrium is to a large extent the key of the divorce courts, and accounts for the many misfits in marriage. There is no question that marriage consists of three levels: the animal, the emotional, and the intellectual or social. If any one plane is displaced the marriage becomes an anxious speculation."

The social aspect of the sexual function is brought out by C.W. Malchow, in his book The Sexual Life. In this work Malchow shows the close relation of sexual functioning to the general welfare of the persons concerned. As this is one side of the divorce problem not emphasized in general literature upon the subject I shall take the liberty of quoting him somewhat in extenso.

"Society and civilization are founded and built upon the home, and the home is not a mansion or a hovel, but it is the result of the assumption of the sexual relation. If the home cannot or does not supply the sexual and most of the social needs of its founders then it cannot be called home in the full sense of the word.

"The preservation of self is perhaps the strongest human instinct and is often alluded to as the 'first law of nature.' If we go but a step farther we find closely allied and intimately interwoven with this trait the desire to prolong

3. Ibid. - p.19.
or to perpetuate self in the species, and with this basis we have the manifestation of sexuality, the sexual sense, or the instinct for propagation."

"Our mental state, however, is susceptible to other influences, being of a social nature, we are to a certain extent dependent upon one another, and are susceptible to and exert influences which affect our mental tranquility. Amicable and desirable social relations partake of mutuality, and the more we have in common with each other, the more capable do we become for mutual helpfulness, while the degree of amicability is in direct ratio with the desire and the ability for gratification."

"Nowhere do we find a better exemplification of this fact than in the sexual relation."

"The fact that a complex organization, such as man, is in itself incapable of reproducing its kind, but is dependent upon a similar organic body for the fulfillment of this function, renders it a social creature because it cannot by itself attain its aim. This dependence one upon the other for its natural existence is the basis of society."

"We may as well acknowledge that this is the 'ruling passion' of adult life, for at all times and in all ages men have fought and women endured, while more sacrifices have been made for the sake of the feeling entertained by a member of one sex for a person of the opposite (regardless of what name may be applied to it) than for any other attribute. Indeed, at

2. Ibid., p.25.
certain periods in every life all other desires pale into insignificance when compared to this, the strongest, greatest and withal the most vital and sacred of human longings. In the natural order of things each sex is incapable, without the presence of the other, of indefinitely prolonging physical life, and this consciousness constitutes an affinity, one for the other, which is as constant and unerring as that mysterious force which causes the needle of the mariner's compass to be forever inclined toward the pole. This powerful magnet is the sexual sense, by whose mystical influence our lives are shaped and guided, and than which none other so largely contributes to our several destinies nor makes or mars a happy, joyful and contented life."

"This sense, like the others, is by cultivation, refined, intensified, and made remarkably discriminative; or by prolonged habitual restriction and suppression a deficiency may be caused in the mental balance of people that should be considered morbid. The sexual sense and its development is a far greater causative factor in the production of mental states than is commonly supposed."

"An attraction that is wholly physical cannot be conducive to a tranquil, and leads to unbalance; while a purely mental affinity without any bodily attractiveness permits of no physical activity to perform a physiological function, and so destroys necessary harmony, which is a fundamental requisite to a normal state."


2. Ibid. p.33-34.
"When merely the body of the person is the object of desire and sensual pleasure the sole aim, there is an incompleteness resulting, which when the force of the passion has been exhausted prevents the bond from becoming constant and enduring; and this condition should not be termed love, as it is only lust."

"The prolonged suppression of the voice of nature which cries out for parentage and which is stilled by and demands the exercise of the copulative function, is not consistent with a desirable mind capable of proper reasoning, but leads to thoughts which deviate from the natural channel and enter pathways that traverse the labyrinth of a flighty, chimerical existence, and the result is prudery, eccentricity, misplaced sympathy and an imagination that departs from the normal and becomes depressingly fantastic."

"The physical effect of the exercise of the copulative function is rarely sufficiently considered, nor are the bodily imperfections which may be attributed to its deprivation duly considered."

"As an instance of one of many thousands of cases in which great misery is the direct result of ignorance of human nature and want of the knowledge which is necessary for the creation of the essential condition for the copulative act the following communication may be cited as fairly typical: (Quoted in part only).

"Is it possible for a woman who is absolutely devoid of the sex nature so to cultivate the same that the marital obligation will not be abortive to her? I am thirty years old
and have been married four years. My life so far has been more than an ordinarily happy one, but within the past year I have felt sometimes that my husband was in some way growing apart from me, and after much thought I have reached the conclusion that the growing estrangement is owing to the fact that I cannot respond as a wife should. He is never unreasonable, never brutal, and yet I submit to his wishes with such a loathing that I fairly hate myself for it. I know in my heart that the time will come when I shall lose his love, and I shall owe it to the fact that I was born a stone, instead of a flesh and blood woman. Oh! if you can only suggest something, if you can tell me how to avert this impending wreck of my life there is nothing I can write that will express my gratitude. It is a cry for help from one who is in mental agony."

Malchow comments on the letter thus: "In all probability this is one of the numerous cases of unequalized sexuality in which two mature people in the prime of life and vigorous health do not 'come together' as they should, and in consequence their lives are embittered, as the greatest pleasure that life affords is denied them."

More will be said regarding such cases of apparent frigidity under the heading of Abnormal Psychology. That such experiences are fairly common, and enter in the field of the Divorce court is one of the contentions of this Thesis.

Malchow contends that much of the so called 'incompatibility' is due to unequal sex promptings. Much of the sexual inefficiency at the time of marriage he describes as follows: "Briefly stated, we have at this period for companions, on the
one hand, a man with a highly developed sexual sense of several years' duration; a mind cognizant of sexuality; generative organs accustomed to functional activity, with an intimate relation between the two that makes them greatly influential, acutely sensitive and readily responsive each to the other; but who has little understanding of feminity and less knowledge of sexual hygiene.

"On the other hand, a woman whose previous education and environment precluded a proper understanding of sexuality; who does not recognize the origin of, nor properly interpret her feelings; whose sexual organs are comparatively rudimentary and incapable of timely activity; who has many misgivings and seeks to avoid that which would prove most beneficial, but invites and tolerates such acts as cause great perturbation and excitement without affording proper relief.

"With these conditions - and they are the usual ones - it is practically impossible to obtain the full physiological or beneficial results of intercourse in the beginning, and if these are not eventually experienced, indifference, disgust or repugnance takes the place of what should be connubial bliss."

Malchow states "that the conditions of women in regard to their marital relations vary with the individual, and for convenience married women have been divided into the following classes:

First. Women so situated and constructed, both physically and mentally, that they respond to the caresses of the husband at all times.

Second. Those who can under reasonable circumstances, by a
voluntary effort hasten or retard the climax to meet the varying conditions under which they live.

Third. Those who are unable to properly participate, bring into requisition any physical or mental methods to produce simultaneous orgasm, or harmonious relations, but are left excited, nervous and unsatisfied after coition.

Fourth. Women whose sexual passion does not become aroused; who do not derive any pleasure or benefit from copulation, and who cannot conceive how the act can be pleasurable for any one."

"This division is somewhat arbitrary, as it is possible for a woman to be put in any one of these classes at different times during her marital life. It is also impossible to determine the proportion of women in any of these classes, but it has been estimated that the first class embraces 5%; the second, 50%; the third, 30%; and the last 15% of all women.

"According to this estimate nearly one half the women are living lives that can be neither healthful nor congenial, and whose homes are lacking in a fundamental requisite for happiness.

"Granting for the sake of argument, that the proportion of congenial homes is larger than given, it is still a wonder, not that divorce is common but rather that it is not obtained with greater frequency. The women of the third class, or those who are unable to bring themselves to the point where there will be eager participation in the pleasure of sexual intercourse are in considerable numbers, or as the proportion is estimated at 30%. If daring enough to brave society's comments, they sometimes, especially when a more congenial alliance seems in prospect, enter the courts
and pray for divorce and thus proclaim and establish the fact that their marriage is a failure."

Malchow brings his book to a close with statements such as these: "Perhaps the greatest source of sin and misery in domestic life is to be traced to unsatisfactory sexual conditions." "A careful study of the cases of domestic infelicity will reveal the fact that the discord arises from unequalized sexuality."

Closely associated with the sexual function is Birth Control. Brief reference will be made to this problem and an attempt made to discover its relation to the Divorce question. Where medical opinions differ it is not to be expected that the writer of this Thesis can do other than give as impartially as possible such evidence as he has discovered.

1 "Havelock Ellis, writes of Birth Control, "it is an attempt by open-eyed intelligence and foresight to attain those ends which Nature through untold generations has been painfully yet tirelessly struggling for. The deliberate cooperation of man in the natural task of birth control represents an identification of the human will with what we may, if we choose, regard as the divinely appointed law of the world. " "On the other hand there are those who are equally as emphatic in their denunciation of the practice."

In an article entitled "The Doctor looks at Companionate Marriage," the following statements are made by Dr. Collins.

"He (Judge Lindsey) believes that 'scientific contraception' promises what may be developed into the most revolutionary change in human affairs that history has ever recorded." Judge Lindsey is entitled to an opinion and to an expression of it. But those who are inclined to accept it in this instance should keep clearly in mind that there is no such thing as 'scientific contraception.' These nature thwarters would have us believe that there are of preventing conception which are sure and which can be utilized without injury. Nothing could be further from the truth. There is only one sure way - abstinence. Some methods are safer than others, but there are objections to them all; some are hygienic; others are hedonistic. It must suffice to say that, unless applied skilfully and used with great circumspection, the method that insure the greatest safety carries with it danger of injuries to tissues whose concern is reproduction.

"There are still many of us who believe that the children who are born of pure love are the children who radiate love and genius; regulation of their advent by considerations of time, conventions and material propitiousness would mean the destruction of the love element, which would be replaced by worldly wisdom and economic senses."

Another interesting comparison is afforded by the statement of Dr. J. Matthews Duncan, quoted by Sherwood Eddy in his book Sex and Youth, that "the average healthy woman with no knowledge of family limitation, if she lets nature take its course, will give birth to fifteen children in the course of her normal life." Sherwood Eddy's comment is: "Fifteen children would kill the average mother and bankrupt the average father."

"The most important question that has to do with the marriages that fail is the matter of divorce. The most important question that has to do with providing favorable conditions for happy marriage is the matter of birth control."

"Even in instances where the limitation aspects of birth control are obviously indicated, the very fact of limitation may frequently create conditions which will warrant a return to normal child bearing. For example, there are a great many women who are weak, ill, or debilitated from too frequently recurring pregnancies: others are trying to maintain families on an income already inadequate: and still others who are struggling with domestic tragedies which would be aggravated by the arrival of more children."

"The forces in modern life which make for birth control are so strong that only convincing reasons will make people desist from it. It is said to be unnatural and

intrinsically immoral. This word "unnatural" perplexes me. Why, civilization involves the chaining of natural forces and their conversion to man's uses. Surely the whole question turns on whether these artificial means are for the good or harm of the individual and the community. The justifiable use of birth control would seem to be to limit the number of children, when such is desirable, and to spread out their arrival in such a way as to serve their true interests and those of the home."

"The example of Holland is often brought forward as evidence in favor of such a tendency of birth control, since in that country the widespread practice of birth control has been accompanied by an increase in the health and stature of the people." Havelock Ellis, M.D., "As I go to the slum districts, the misery there strikes me like a blow. What all the women are longing for is that they shall have only enough children to rear properly and decently."

"After many years of study of social problems I am convinced that the birth control movement is the most intelligent and scientific charitable and philanthropic enterprise now functioning in the field of altruistic endeavor."

Many such testimonies to the need and helpfulness of birth control are available from all walks of life, and one cannot easily escape the conclusion that as adequate

1. Lord Dawson of Penn (Physician to King George).
2. Quoted in J.F. Cooper's Book The Technique of Contraception - p.4.
3. Ibid., p.8 - Sir. W.A. Lane - quoted p.8.
knowledge of the purpose and technique of Birth Control becomes more widely known among people in general it may be made an effective factor in removing many of the obstacles to marital success. One can safely assume that where there is continued child bearing leading as so frequently it does to debility, overstrain, disease, overcrowding, underfeeding, and usually an abridgment, if not a complete absence of ordinary privileges and comforts of life the conditions are ripe for unhappiness in the home, and where possible a revolt against marriage itself. "Besides poverty as a factor in the causation of disease, domestic troubles often play a considerable part. While divorce is fairly common, its cost is still beyond the reach of the unskilled laborer, who often resorts to desertion which has been called 'the poor man's divorce.' Only those who are directly in contact with social service or with the work of courts of domestic relations realize the extent of this evil." 

"According to Dr. De Lee, more than 25,000 women die every year in this country (United States) from childbirth. There are more deaths from this cause, per thousand in the United States than in any other civilized country. About one half of the deaths due to childbirth are in cases where pregnancy never should have occurred. The other half are from infections contracted at the time of birth. A large number of the victims are the weak and debilitated."

1. Cooper, J.F., M.D. - The Technique of Contraception, p.27.
2. Ibid., p.34.
It does not lie within the province of this Thesis to carry the discussion of Birth Control further. Sufficient has been said to show that as a practice it cannot be separated from a discussion of the sexual function, and that as a means of human welfare it may under proper conditions be a great asset. Happier homes will mean less divorce.

Birth Control "enables a man to form a union of faithful devotion with the woman of his choice at an earlier age than would otherwise be possible, and it further enables him, throughout the whole of married life to continue such relationships under circumstances which might otherwise render them injurious or else undesirable to his wife."¹

"Birth Control has contributed toward increase in population, race improvement in the general physique and health of the Dutch people, and a raising of moral standards. The number of marriages has increased, the age of marriage has been lowered, and divorces are more rare."² Aletta Jacobs writes "Holland was the first country to practice scientific birth control on a large scale and our experience of forty-five years enables us to answer the objections which have been raised."³

2. Outlook - Vol.148, p.130 - Divorce and Birth Control.
3. Eddy, Sherwood, - Sex and Youth - p.76
It is the writer's firm conviction that one of the most important aspects of the Divorce problem is that with which Abnormal psychology deals. The study of abnormal conduct reveals an array of factors ordinarily overlooked by those interested in social conduct, and all too frequently ignored by legislative bodies and juridical authorities. Often the persons most concerned with the desired divorce are unaware of the more fundamental principles underlying their desires and their conduct. Too frequently recourse is had to legal action for relief from pressing problems of marital life when, in reality the medical doctor and the psychiatrist are needed. The present section of this Thesis is an attempt to relate some of the findings of Abnormal Psychology to the Divorce problem in general.

In his book, "Outline of Abnormal Psychology," Dr. Bridges, in defining abnormal Psychology writes as follows: "without taking sides on a controversial question, it may be defined provisionally as the description, classification, and explanation of unusual forms of behaviour (or consciousness), that is, behaviour (or consciousness) that deviates considerably

from the norm or central tendency. It should be noted that Abnormal Psychology, thus defined includes not only the psychology of mental diseases, but also the psychology of mental anomalies that are not diseases." For the purpose of this Thesis the term, "deviation from central tendencies," will be held sufficient to denote abnormal from normal conduct, i.e., any thought or conduct that may be regarded as deviating from the central tendencies of a large aggregate of people more or less similarly circumstanced will be deemed abnormal. No further account of the controversy as to what is normal or abnormal will be entered upon here.

C. V. Hamilton, M.D. in his work, "Objective Psycho-Pathology," writes that "It is a traditional assumption that the nervous patient's habitual modes of responding to various baffling disadvantages which enter into his life are important determinants of his nervousness: common sense interpretations of experience ascribe the inner tension, morning lassitude, easy fatigability, 'nervous' headaches and insufficiencies of gastro-intestinal function to maladjustive responses to such disadvantages. These non-scientific explanations of nervousness and of its somatic consequences are more or less consistent with even the most conservative scientific opinions as to the possibility of automatic interference with vegetative functions during moments when the organism must concentrate all of its adjustive forces to overcome externally arising disadvantages.

1. Hamilton, G.V. - Objective Psycho-Pathology, p.249.
One of the problems that has engaged my attention is this: what types of reaction to baffling situations do mammals in general - both human and infra-human - present when confronted by baffling disadvantages? What light, if any, would such information throw upon the maladjustive reaction of nervous patients?" Hamilton's method of studying behaviour is described by him as follows: "It consists in imprisoning the subject within an enclosure from which there are four apparently possible places of exit, but from which escape can be effected during any given trial through only one of these places. The situation is, for the imprisoned subject, somewhat similar to that which we obtain for a convict if he were to find himself alone in a prison yard which has four gates leading to the outside world and freedom, any one of which gates may prove, on examination, to be either locked or unlocked. My method requires three of the four apparently possible places of exit to be actually impossible of exit during any given trial, and requires the one proper-place-to-try-for-exit to vary from trial to trial in such a manner as to render it impossible for even an adult human subject to avoid a good deal of effort. The average adult human subject will experience baffled effort in his efforts to escape from the enclosure in two-thirds of a sufficiently large number of trials to overcome the factors of chance-successes. Since the

one—right-place—to-try—for exit is never the same for any two successive trials, there is opportunity for displaying ability to reason. Each of the subjects investigated, with the exception of one child and one gopher, was given ten trials daily for ten successive days.

General Survey of Result.

"One generalization which holds good for the human as well as for the animal subjects of these experiments is this: A mammalian's first or first few encounters with an unfamiliar and baffling type of disadvantage usually evokes a reaction which can be identified as one of the innately determined reaction-types to which we commonly refer as instinctive responses. Failure to overcome or escape this disadvantage means, of course, baffled adjustive effort, and this becomes, in itself, a partial determinant of subsequent responses. The baffled subjects disclosed, in addition to their initial instinctive activities, five different general types of reaction to the experimental situation. Only one of these reactive types could be classified as a rational adaptation to the baffling."

The following are the five reactive types as classified by Hamilton.

1. Persistent Repetition of Non-Adjustive Activities.

This type of reaction consisted in repeated efforts to escape through an impossible place of exit during a given

trial; or in trying a group of two or three impossible places in a fixed order again and again, or in persistently avoiding the untried (for a given trial) possible place.

This tendency persistently to repeat a non-adjustive response to a baffling disadvantage was isolated in the behaviour of individuals of all twelve of the mammalian species studied. It was most frequently apparent in the behaviour of the rodents and least frequently so in that of the mature human subjects.

The factor most conducive to the exhibition of persistent repetition of non-adjustive activities was any concurrent emotional response, whether this was due to the baffling as such or to adventitious stimuli. A subject which seldom or never manifested this tendency under ordinary conditions would stupidly return again and again to a blocked exit place if anything occurred to excite him.

Clinical Manifestation of the Tendency to Persistent Repetition of Non-adjustive Activities.

The significance of the fact that this tendency is importantly a part of the mammalian reactive equipment and that it lends itself to experimental examination becomes apparent when we take into account the fact that it is present to a striking degree in the behaviour of perhaps the majority of nervous patients.

I invited attention to this fact in 1910, in effort to explain the symptoms of certain neurasthenic syndromes in terms of Wundt's tridimensional theory of the feelings, and during the psycho-pathologic survey of 1921 I found that 50.5%
of all patients who presented themselves for the diagnosis and treatment of nervous disorders were exhibiting this type of non-adjustive reaction to an apparently pathologic degree. The nervous woman who reacts to her husband's infidelity or his lack of sympathy, or to some other grievance-inciting disadvantage, and who repeats the same type of reaction endlessly without effecting terminative adjustments thereto, will serve to illustrate the point that I have in mind. We may safely assume, I believe, that such a patient is reacting to the troublesome situations as to an emergency and that this involves autonomic interference with various vegetative functions ... there is reason to believe that a sense of grievance is the psychical component of a low-intensity anger reaction which owes its undue persistence largely to the fact that it is currently subjected to inhibitions which prevent it from completing itself in terminative overt activity. It is probable that most, if not all affective reactions that are evoked by disadvantages which are characteristically encountered by the human species are components of emergency reactions and that they involve changes of visceral innervation which ought, normally, to increase the organism's chance of quickly overcoming or escaping the inciting disadvantages. Persistent failure of adjustive activities leads to persistence of the affective reaction, and this, in turn, means pathologically persistent autonomic interference with vegetative functions.
2. A compound Reaction which includes Alternating Variation of Adjustive Effort and Persistent Repetition of the Non-adjustive Effort.

"This alternation of two separately identifiable types of reaction stands out so clearly in the behaviour of the baffled mammalian that it deserves classification as a unit of the behaviouristic analysis. When a mammalian finds itself imprisoned, as under the conditions of my experiments - it may return again and again to one apparently possible place of exit and attack it persistently, then vary its adjustive efforts by attacking other apparent places of exit, then return to the first place and attack it repeatedly, again vary its activities in a hit and miss way, etc., alternating the two types of reaction in a very striking manner. Members of all species exhibited this type of reaction, although there were individual subjects in whose behaviour it was not apparent.

Clinical Manifestations of the Tendency to Alternate Variability of Adjustive Effort with Persistent Repetition of a Non-adjustive Reaction.

"This tendency is apparent in practically all nervous patients who exhibit persistent non-adjustive affective reactions to baffling disadvantages. An educated, plausible woman who takes pride in her ability to attack her personal problems in a systematic manner will often mislead her physician by her account of the planful, dispassionate quest she is making for satisfactory adjustment to her difficulties. It will usually be found that such a patient
is thus wisely varying her adjustive efforts only part of the
time, and that there is an almost rythmical recrudescence of
the non-adjustive affective response that she herself, recog-
nises but is too vain to acknowledge as a somehow futile and
pathogenic activity of her reactive equipment. The neurotic
woman who is firmly resolved to do something less futile about
her husband's incurable lack of ambition than to respond to it
as a grievance-inciting disadvantage persistently falls away
from this good resolution. The tendency to do so is easily
detected, once the physician recognises its identity as a unit
of behaviouristic analysis.

3 . The tendency to Stereotype a Systematic Mode of
Searching for an Escape from a Disadvantage Without
Eliminating Obviously Non-adjustive Activities.

"It would seem that the mammalian, both primate and
infra-primate, has a repertoire of more or less distinct
reactive tendencies for meeting baffling situations, and that
where a specifically adaptive adjustment is not learned, now
one, now another of these tendencies comes to expression.  

The tendency under discussion has no very great clinical
importance of which I am aware. It is encountered occasionally
in a futile, rather stupid type of nervous patient who is
found to have stereotyped a habit of invariably running through
the same gamut of non-adjustive reactions on the way to one
which satisfies him temporarily. I have in mind a man who
keeps himself neurasthenic by endlessly repeating stereotyped
cycles of reactions to his wife's extravagance. Each cycle
includes, successively, several days of aggrieved sulking,

then several days of half-hearted scolding and, finally, a storm of angry threats which evoke temporarily satisfying spousal promises of reform."

4. Infra-rational Trial and Error Reaction to Baffling Disadvantage.

The nervous patient usually attacks a baffling problem by the infra-rational trial and error method when he first encounters it, and then reacts secondarily to the baffling of effort which this involves by falling back upon the still less adequate method of persistently repeating a wholly non-adjustive, essentially affective response to the situation. A little unemotional hard thinking at the outset would often prevent serious nervous reactions to difficult personal problems.

5. Reactions Determined by Rational Elaboration of Experience.

A realizing sense of the biologic value of the capacity for rational reactions is, perhaps, the most important therapeutic resource that any psycho-pathologist can possess.

When a Disadvantage is of a kind to act over longer periods of time, and is too subtle to be adequately met by affectively reinforced instinctive modes of response, there must be developed a habit of reacting rationally thereto if the individual is to escape nervousness.

"We must not forget that many disadvantages are encountered in civilized life which cannot be removed without undue sacrifice of major value of one sort or another. A 1

A patient whose incorrigibly adulterous husband was directly to blame for her quite serious nervous system could not take legal action against him without thereby ruining his business. To ruin his business was to deprive her children of educational and other advantages which meant more to her than to her own health. Her husband's conduct persistently evoked in her jealousy and grievance reactions and consequent, equally persistent, disturbances of cardiovascular and gastro-intestinal functions. In the circumstances that obtained, no permissible overt behaviour would withdraw her from the pathogenic situation. It seemed to me that the only thing to do was to effect, for the patient, a change in the reactive value of the husband's infidelity. The patient was convinced that only the functioning of the highest of all the list of possible human reactive tendencies could effect this change. Her recovery did not include freedom from an underlying sense of deprivation, but it freed her from the somatic consequences of persistent, non-adjustive affective reactions of a primitive and wholly inadequate type."

It does not seem necessary here, to enter into the details of perverted sexual behaviour as discussed by Hamilton. That such perverted behaviour exists and plays no small part in marital relations of certain types of people is well known to students of the subject. It is desired, however, to point out that this element must be considered, where present, in any serious study of the divorce problem. At present there
does not seem to be sufficient recognition of the burden and suffering which such perverted conduct may be responsible for. It is hoped that the day will soon come when a Court of Domestic relations will afford at least a sympathetic hearing for those so circumstanced. Similarly such a Court of Domestic Relations, properly constituted could render inestimable service in diagnosing and solving problems of the nature suggested by Hamilton.

The woman quoted by Malchow, whose sexual frigidity was so vexatious to herself and to her husband is a further example of the need of more enlightened understanding on the part of many people. Hamilton gives a very lucid example of sexual anesthesiain Case I. He discovered that certain revolting experiences she had undergone in her early youth and for which there had been no true amnesia, had "conditioned her to react to all sexual urges as to forbidden things, which must be denied representation in awareness in the form of consciously held desires. She had even been conditioned to inhibit the rise of normal sensual feelings to which her husband subjected her at her own solicitation." This woman explained her symptoms as follows: "A haunting sense of craving something intensely, without which life is utterly bleak, but no idea as to what it is she craves. A persistent feeling she has nothing to live for. Attacks during which she feels weak and fears that she will die for the lack of the will

1. Section 3, p.55-56.
to live. Fear of suicide. Sometimes she is afraid to go to sleep. A lonely depressed feeling which comes over her in waves."

This woman, admitted, however, she loved her husband, and was fond of her two children, but that the sexual act seemed 'rather a nasty and degrading thing to do.' After adequate explanation of "the mechanisms of conditioned responsiveness, and "her lonely, empty, unsatisfied, depressed moods" ascribed "to her failure to obtain what she really craved, viz., biologically complete responsiveness to the husband whom she loved and whose caresses she sought and received but could not respond to in a normal way - the sexual anesthesia was overcome and the nervous symptoms abated.

It is well known, too, through such methods as used in Psycho-analysis, how far reaching are the effects of unwise teaching concerning sexual matters in young people.

Further illustrations of the Psycho-pathic cases studied by Hamilton, particularly in relation to baffled major cravings of a sexual nature are Cases 2, 3, 4, 5, 6, 7, 8, 64, 69, 77, 87, 89, 101, et al.

A brief reference will be made to Rosanoff's Manual of Psychiatry.

"An interesting relationship is also to be observed between certain psychoses and the state of widowhood, divorces

and separations. Table 4, copied from statistics furnished by the New York State Commission, shows that the percentages of the widowed, divorced, and separated were highest in the general paralysis and alcoholic groups.

<table>
<thead>
<tr>
<th>Psychoses</th>
<th>Single Males</th>
<th>Single Females</th>
<th>Widowed Males</th>
<th>Widowed Females</th>
<th>Divorced Males</th>
<th>Divorced Females</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Paralysis</td>
<td>26.0</td>
<td>14.8</td>
<td>5.5</td>
<td>21.3</td>
<td>6.7</td>
<td>5.5</td>
</tr>
<tr>
<td>Alcoholic psychoses</td>
<td>39.5</td>
<td>11.9</td>
<td>9.8</td>
<td>23.1</td>
<td>6.6</td>
<td>9.7</td>
</tr>
<tr>
<td>Dementia praecox</td>
<td>81.4</td>
<td>58.0</td>
<td>2.0</td>
<td>6.6</td>
<td>2.2</td>
<td>3.3</td>
</tr>
<tr>
<td>Manic-depr. psychoses</td>
<td>60.1</td>
<td>41.3</td>
<td>4.5</td>
<td>9.2</td>
<td>2.1</td>
<td>3.1</td>
</tr>
</tbody>
</table>

In summing up this phase of the divorce problem it is scarcely necessary to add that the writer does not regard all Divorce as the product of pathological causes; divorce is rather the result of a complication of causes, each divorce problem requiring to be studied in relation to its own set of circumstances. Hamilton, e.g., plainly shows that all unsatisfied major cravings are not sexual. His case No.93 was one of Persistent Non-adjustive fear reactions and hyperthyroidism. She suffered from fear reactions, and "her case seemed clearly to be one in which a hyperthyroidism had appeared abruptly as a somatic reaction to fear stimuli. One
is forced to the conclusion that the sooner more consideration
is given to the physiological and psychological factors
underlying both good and bad conduct, or to use less naive
language, social or antisocial behaviour the better it will
be for society as a whole. The widespread nature of nervous
or mental diseases is understood from the report issued from
the Surgeon General's Office "relative to the second examin-
ation of the first million recruits drafted in 1917. Twelve
percent of these were rejected on account of nervous or
mental diseases. The number disqualified for service finally
reached a total of over sixty-seven thousand."

"Although the incidence of mental as compared with
other diseases prevalent in the community cannot be established
with absolute accuracy, sufficient evidence has been presented
to warrant the statement that from the standpoint of the
public health we are dealing with no problem of equal importance
today. It can, I think, be said without any fear of contra-
diction that no other disease or group of diseases is of equal
importance from a social or economic point of view."

"The intimate relation between mental diseases,
alcoholism, ignorance, poverty, prostitution, criminality,
mental defects, etc., suggests social and economic problems
of far reaching importance, each one meriting separate and
special consideration. These problems, while perhaps
especially sociological in origin, have at the same time an

1. Taylor, W.S. - Readings in Abnormal Psychology, p.13
2. Ibid. - p.12
important educational bearing, invade the realm of psychology and depend largely, if not entirely, upon psychiatry for a solution."

ETHICS AND THE DIVORCE PROBLEM

- Section V -

The question has been raised by various writers regarding the ethics of the present marriage system. When one regards the widespread numbers of people who are not biologically fitted to continue the race may not something be said in favor of a system which shall not only encourage, but obligate divorce of such inefficient members of the race?

Under this aspect of the Divorce problem two main lines of study will be followed. These are:

1. The Evolutionary Ethics of Marriage and Divorce.
2. The Evolution of the Ethical Standard.

The Evolutionary Ethics of Marriage and Divorce.

Discussing this subject in the Living Age, Woods Hutchinson writes: "My contentions are briefly:

1. That marriage is essentially neither a religious nor a civil institution but a purely biologic one.

2. That marriage consists in the union of the sexes for such a term, and under such conditions, as will result in the production of the maximum number of offspring capable of surviving, in each particular species, climate, and grade of civilization.

3. That marriage is therefore to be regarded neither from the point of view of the male, nor from that of the female, but solely from that of the race.

4. The duration of marriage is usually determined by the length of time during which the offspring require the care and protection of both parents in order to properly equip them for the struggle of life.

5. Monogamous marriage, lasting for life, is the highest type as yet evolved, and has survived all other forms and become that adopted by every dominant race, on account of its resulting in the largest number of most efficient offspring.

"The proof of the first proposition is readily furnished. Marriage is obviously not a creature of either Church or State, for the very soundest of reasons, that it anti-dates them both. Instead of being a creature of either of these institutions, it created them both, and is infinitely older and more fundamental than either.

"Both the decalogue and the common law simply recognise and regulate it. The only reason why we imagine that it is either the State or the Church which gives sanction to marriage, is that our memories are so short and our
historical knowledge is so exceedingly limited.

"The law, generally speaking, has been comparatively rational, and has been satisfied to modify marriage in accordance with changing needs of the race. "Not, however, with the Church. When she first appropriated it, marriage was a perfectly rational and even attractive institution. She has done her best ever since to render it irrational and intolerable. While she deserves great credit for her steadfast insistence upon the "sanctity" of the marriage vow under all circumstances, her supreme contempt for reason has led her to insist upon the irrevocability of the bond to a degree which has been most disastrous, both to mortals and to happiness. Her contention that marriage should usually be for life is entirely rational, in accordance with the teachings of biology, and has exercised an admirable influence, but her insistence that the tie was practically irrevocable and that divorced persons could never re-marry was simply absurd, and its effects have been even worse than its logic.

"Not only is the bare fact of marriage or sexual union present in all and every species, but in all the higher and many even of intermediate forms a definite term is fixed for the union, with rights possessed by both parties under it and penalties for its violation. Moreover, every form of conjugal union which the ingenuity of man has been able to devise can be found to exist in full perfection among the lower animals. From promiscuity, through union simply for the mating season, to polygamy, polyandry, and finally monogamy and monandry, every possible phase and form of the institution
can be studied outside the human species as I have shown in 1
previous paper. The same results appear to have been
reached by experience there as in our own species, namely,
that in proportion as the species rise in the scale of
aggressiveness and intelligence promiscuity, or mere mating-
season unions, tends to disappear and a lasting type of
polygamy or, as in an overwhelming majority, a fairly well
settled form of monogamy, in many cases even lasting for
life is reached.

"In my judgement a grave oversight has usually
been committed by even pure anthropologists and sociologists,
when discussing this question, in ignoring the generations
of pre-human experience and experiment upon this very point,
the results of which are possessed by even the lowest savage.
It seems to have been taken for granted with astonishing
naivete that primitive man began with a perfectly clean slate
and unbiased mind. The only adequate and rational way to
approach the origins of marriage in the human species is to
consider man, to begin with, as on the level of the highest
type of mammals - his close cousins - and as starting from
that point. When this is once done, and primitive man is
compared with the anthropoid apes, even the monkeys, it
becomes apparent at once that instead of starting from promis-
cuity, he began with a rather high type of monogamy, as
possibly a modified form of polygamy, such as is even now to
be studied in the gorilla, the chimpanzee and the orang-outang.
To start with the supposition that he began far below the
level of these his cousins is as absurd as it is baseless. So I think we should be perfectly safe in saying that primitive man, although with certain promiscuous proclivities in his blood, would be by age-long training, decidedly disposed towards monogamy of a rather high type."

To what attitude then towards marriage, the marriage of civilization monogamy, does our study of its origin and growth bring us? One of profoundest respect and confidence. Its sanctions are just as binding upon evolutionary grounds as upon ecclesiastical or legal. Its universal sway today over the minds and hearts of men rests not upon the fiat of any petty prince, or pope; but upon its own inherent superiority over any form of mating, as sternly proved by the experience of millions of past generations, human and pre-human. The right of one man to choose one woman to love and protect all his life long, of the woman to choose her knight and worshipper, and of each to expect of the other unswerving faithfulness and comradeship until death do them part, is founded upon the life of the ages.

"Nor is this evolutionary sanction in any sense a low or selfish one. Far from it. It is ennobling and altruistic in the highest degree, for it looks to the benefit not of the individual, but of the race, not of the life that now is, but of that which is to come. Marriage is neither for the pleasure of the man nor for the protection of the woman, but for the welfare of the children, and neither of the parties thereto has any individual rights which are entitled to half
the consideration of those of the children.

"No institution, of course, can promote the good of
the race and seriously antagonize that of the individuals com-
posing it, and marriage adds enormously to the effectiveness,
the dignity and the pleasure of life both for husband and wife.
Yet to contract a marriage upon any of these grounds without
giving chief regard to the mental and physical vigor, the
sanity and the efficiency of the probable offspring thereof
is far more profoundly immoral upon biological grounds than
upon religious or ecclesiastical.

"Morality from an evolutionary point of view is
simply that course of conduct which experience has shown to
promote the interests of the race - is race loyalty in fact.

"On the other hand, we should, on biologic grounds,
gravely reprobate any attempt to dissolve a union, in racial
respects suitable and fit, upon merely personal grounds, such
as imaginary loss of affection for one's partner, or incompat-
ibility of temper. Husband and wife unite not to enjoy
themselves, but to rear and train happy worthy offspring.
Any flinching from this purpose and aim is biologically
immoral. To attempt to secure a divorce because one's plighted
mate has become distasteful or uncongenial, even upon the
best of aesthetic grounds - still more, because one imagines
that one has fallen in love with some other man or woman is
the basest and most contemptible of treasons, not only to the
injured partner, but to the organic law of the universe."
"So far evolutionary ethics stand shoulder to shoulder with the law and the church, indeed push beyond them; but here they part company abruptly. While holding that union should usually be for life, or at least until children have been reared and trained, sent out into the world, and that they should not be dissolved save upon some grave and weighty racial grounds, they have no sympathy whatever with that spirit of churchy fanaticism which declares divorce to be always and everywhere an evil, and forbids the remarriage of divorced persons. On the contrary, they hold that divorce is as yet not common and easy enough, and that after certain, by no means infrequent, conditions have developed, divorce becomes not merely tolerable but imperative, and the further continuance of the marriage relation immoral. These conditions are simply the discovery, or development, in either husband or wife of any grave physical, mental, or moral defect, which, ought not to be perpetuated in the coming generation. The existence, e.g., of epilepsy, insanity, moral perversion, incurable viciousness of temper, habitual drunkenness, criminal conduct of any sort, or habitual laziness and shiftlessness, ought to render divorce not merely obtainable, but obligatory. Some day the conscience of the community will be educated up this standard, but at present it is contented with the crude old barbaric standard of the church that adultery is adequate ground for the dissolution of the marriage tie.
"Not merely biology, but all modern and rational ethics have, of course, absolutely no sympathy with the cowardly morality which bids such a wife turn and kiss the hand that strikes her, in the hope of ultimately "saving" the contemptible "soul." Indeed, they denounce it as immoral in the last degree, and hold that no woman has the right to remain in any marital relation which smothers her self-respect. Far from urging such a one to practice the slave-virtues of forbearance, long-suffering and other such doglike qualities, we unhesitatingly declare that any woman who willingly and knowingly bears a child to a drunken or criminal husband is herself committing a crime against the race. And from this the race should save her. As Bernard Shaw suggests, an endowment of motherhood, is the duty of the community.

"It is certainly a sardonic commentary on the consistency of society, that abundant funds and organizations are at hand for taking care of the bastard and the orphan, but practically none for the support of the legitimate children of noble mothers who ought to be protected from vicious and unnatural fathers.

"Towards the terrified shrieks in ecclesiastical and other circles against the rising tide of divorce, which is going to sweep society out of existence and destroy the home, the attitude of biological ethics is one of cheerful scepticism. In the first place, fully one-half of the divorces which are now obtained are the evening up of old scores of ten, fifteen, or twenty years past of ecclesiastical tyranny
and legal outrage. In the second place, over seventy percent of all divorces granted to the wife on grounds of cruel and inhuman treatment, and as such are not only absolutely justifiable, but urgently demanded - broadly speaking, two-thirds of all divorces are granted on grounds which are abundantly valid from a biological and racial point of view. The increased frequency of divorces so far has been an almost unqualified benefit, instead of evil.

"To imagine that ease of divorce will cause a general loosening of the marriage tie is pure superstition, baseless to, the verge of absurdity. To say that the legal or ceremonial tie is what holds couples together is about as logical as to declare the varnish which covers the weld to be the force that holds the welded iron together.

"If by a single stroke all marriage ties were struck off or declared illegal eight-tenths of all couples would be remarried within forty-eight hours, and seven-tenths could not be kept asunder with bayonets. Eighty percent of all marriages are a success from a biological point of view."

Whilst agreeing with the major principles expressed in the above article by Woods Hutchinson there are certain statements which, in the mind of the writer, call for comment.

He is inclined to think that marriage "consists in the union of the sexes for such a term, and under such conditions as will result in the production of the maximum number of children," etc. Would Mr. Hutchinson say that couples who have been what is ordinarily termed "married," and have lived harmoniously in that relationship, yet without
children are for that reason not married? Furthermore, without disparaging the great importance of children may it not be true that the development of the two adults concerned in any marriage relation is of greater importance that Hutchinson would have us believe. According to him, it is the race, and the race only that is concerned in marriage. "Marriage is to be regarded neither from the point of view of the male, nor from that of the female." But one cannot separate the race from the sum total of the couples sexually united. What concerns the one equally concerns the other. It would seem that the male and female are entitled to some consideration by the race itself if their development and welfare are to reach a high peak. Furthermore, when the statement is made that the duration of marriage is usually determined by the length of time during which the offspring require the care and protection of both parents, etc., it is difficult to reconcile it with his following statement that "Monogamous marriage, lasting for life (not merely for the child-bearing and child raising periods) is the highest type as yet evolved." Marriage surely does not terminate when the offspring have come to the period of self-dependence! Hutchinson claims that when the church "first appropriated it, marriage was a perfectly rational and even attractive institution. She has done her best ever since to render it irrational and intolerable. These statements are so general that they obscure rather than elucidate the point he has in mind. He is equally obscure when he remarks of man that he began with a rather

high type of monogamy, or possibly a modified form of polygamy." He offers no evidence whatever to prove his contention. Again, when he claims that "to imagine that ease of divorce will cause a general loosening of the marriage tie is pure superstition, baseless to the verge of absurdity," he overstates his case and ignores history.

2. The Evolution of the Ethical Standard.

The Divorce problem has become inextricably involved in questions of ethical nature. So frequently it is made a moral issue. Is Divorce right or wrong? Evolutionary Ethics would state the final decision lies along the lines of racial fitness; if the marriage leads to the good of the race it is ethical; if not, it is unethical. The question lying behind this distinction is concerned with the nature of "good" or "bad" per se. In other words how shall we finally determine what the good of the race is. By what standard? So frequently the standard of the church or law or nation is adduced to represent finality in ethical conduct that a brief reference to the evolution of the ethical standard seems justifiable here.

several phases. Now the general features of the ethical idea according to our analysis are that every man as a responsible agent stands under certain obligations, whether to himself, to others, or to society as a whole, defined by the requirements of the common good; or, in other words, that men are deemed good or bad in accordance as they do or do not recognize certain rights and duties important to the welfare of society as a whole. Obligation is the general expression for the relations in which men accordingly stand, and it is (a) the way in which obligation is conceived - and (b) in the conduct which it covers, that ethical evolution is principally seen."

"The problem for modern thought is immeasurably more complex than that of the ancient world. It is to be solved by tracing moral ideas to the conditions of racial life from which they spring, and maintaining as valid those which correspond to the permanent conditions of human progress.

"To summarize the whole evolution in the fewest possible words, it would appear that at the outset customary rules have not acquired the distinctive character of moral laws. Next, moral obligations are recognized, but are not yet founded on any general ethical principle. Up to this point the morality of primitive social tradition persists, wherein "love and hate," the social and anti-social impulses are blended. In a third stage, moral principles and ideals of character and conduct are formed. The anti-social elements of morality are suppressed. On the other hand, neither the
origin nor the function of morality is as yet understood. It
remains for philosophical criticism, beginning in classical
antiquity and revived in the modern world, to trace ethical
conceptions to their sources in human nature, and remodel them
in accordance with the principle that every rule of conduct
must be based upon the demonstrable need of human life. We
may describe the whole process as one in which, by successive
steps, the full meaning of the ethical principle becomes clear.
"At the beginning is custom with its blend of the ethical and
unethical accepted without criticism and guiding life without
system or general plan. At the end is the rational order of
conduct founded on the conditions of human development, and
directed to the furtherance of that development as its supreme
end. If finally we put together the results of the intellectual
movement which reveal the conditions of development and
of the ethical which makes its furtherance the purpose of
life, we recognize that the evolution of mind in man from
being a blind, unconscious, fitful process has become a
purposive, self-directed movement. This is the fundamental
change effected in the course of human history."  

Any discussion of the right and wrong, the good or
the evil of Divorce as a moral act must take into full consid-
eration the relative nature of all moral codes. Time and
place both play a part in the determination of ethical principles.

2. Ibid. p.278.
Darcy, in his, "Short Study of Ethics," expresses this principle as follows:

"Whether we consider the great things of life or the small, every situation which affords an opportunity for conduct, that is, for a voluntary act, has its best, which is, under the circumstances, the good. This good is for the man, at the time, his proximate good. Now this proximate is a stage in the realization of the ultimate end. The ethical principle is therefore no rigid standard. It is a standard that moves with every movement of the human spirit, that adapts itself to all groups of circumstances, no matter how various which can condition human activity. So far it is relative. Yet in so far as the principle prevails, it tends to bring about a state of things which approximates ever more and more to the circumstances which correspond to the Ultimate Good. So far it is absolute, or rather, in its fullest truth it is absolute. It is thus a principle for the moment, and a progressive principle at the same time. It is progressive in the true sense of the term, because it is not only applicable to every movement in the human spirit, but tends to an end."

In conclusion, then, of this brief discussion of the ethical side of the Divorce problem, one can fairly argue that judgment of the divorce situation must not be warped by pre-conceived notions, or the dicta of past or present authority, but must be based upon the fullest knowledge possible of all its factors, and with the definite understanding that owing

1. Darcy - Short Study of Ethics, p.3.
to the recognized relativity of moral standards no absolute one can be set up regarding what is right or wrong, for all situations. The Divorce problem must be decided, as far as possible, by the sum total of circumstances as they arise from time to time.
DIVORCE AND ECCLESIASTICISM

- Section VI -

In this section reference will be made to the divorce problem from the point of view of the Church in general. That the Church plays a most important role in this great question is beyond a shadow of doubt. Whether that role is rational and based on sound sociological principles is a matter of opinion, but it is certain that as conditions which create divorce develop the Church's attitude will be of no small social importance. It is impossible in a Thesis of this nature to make more than a brief reference to this angle of the problem.

T.A. Lacey, in an article entitled, "The Christian Tradition of Divorces," states, "that it is impossible to incorporate the teaching and practice of the Church concerning marriage into the laws of the kingdom of England, for the sufficient reason that these laws touch all Englishmen alike, whereas, the rules of the Church are for Christians only, and not all Englishmen are Christians. It is, however, both possible and right to give advice concerning the law, based on

knowledge and experience which are derived from the teaching and practice of the Church.

This teaching and practice throw light on two matters:

A. A matter of fact, and B. questions of morality.

A. The Church has steadily borne witness to the fact that marriage, ratified and consummated, sets up a permanent and indestructible relation between husband and wife, described by the saying that they become 'one flesh.' This indicates what is known as a 'blood relation,' analogous to that between brothers and sisters, and equally indefeasable. It is a natural relation; for nothing else can be meant by the statement of the Gospel that it was so ordered 'from the beginning,' or the equivalent statement that marriage was 'instituted of God in the time of man's innocency.'

It follows that the relation of husband and wife is indissoluble. St. Augustine was inclined to think that this quality is attached only to the marriage of Christians, being due to the sacramental virtue which marriage acquires in them, but he has had few followers in this peculiar opinion, and the general sense of the Church has been against him.

B. The moral teaching of the Church about marriage includes two rules:

I. Husband and wife are required to live together in family life until they are parted by death.

II. Monogamy is strictly enjoined, so that marriage with one person is a bar to marriage with another.
Both rules are peremptory; but, like all rules of morality, they are subject to modification. No man is bound to do, what is impossible, and a rule which in any given case it is morally impossible to observe ceases in that case to be obligatory.

I. The obligation of mutual consort is taught by our Lord in the Gospel without reservation; but one exception is recognised in the text of St. Matthew, probably by way of a gloss, in the case of fornication committed by a wife (Matthew, 19, 3-9) the rule is relaxed. The Church has recognised other exceptions also, and notably in the case of cruelty. In these cases the Church has sanctioned divorce, the separation of husband and wife.

"The principle evidently is that, when it is shown to be morally impossible for husband and wife to live together, they may have permission to live apart. No arbitrary limit can be set to the causes which make the common life impossible. The determination of reasons for divorce depends on conclusions of moral expediency or of public policy, and the determination has varied the practice of the Church."

"This relaxation of the rule does not imply that the marriage is dissolved; in other words, that the relation of husband and wife has ceased. This is clearly taught by our Lord in the Gospel when He says that "a man who marries a divorced wife commits adultery"(Matt.19.9), thus recognising her still as a wife; and to this teaching the Church has been almost uniformly faithful."
II. The rule of monogamy also has been relaxed in certain cases.

1. St. Paul reluctantly allowed a woman whose husband was dead to contract a new marriage (I Cor. 7:39-40). This permission has been generally accorded by the Church to both parties alike, except in the case of the clergy. Persons so married are known as σύγαμος (sýgamos) and a disapprobation like that of St. Paul's is sometimes expressed by a modification of the marriage ceremony.

2. As a consequence of St. Paul's obscure ruling about a Christian husband or wife whose unbelieving partner has insisted on divorce (I Cor. 7:15), a large part of the Church has allowed the Christian party in such cases to contract a new marriage. This is known as Privilegium Paulinum.

3. Origen In (Matt. tom. 14, 23) mentions the fact that some rulers of the Church in his day allowed a woman, presumably after divorce, to marry a second time while her husband still lived. This was contrary to St. Paul's teaching, he says, but it was done not altogether without reason, for the avoidance of worse evils.

4. From some date later than the Council in Trullo (A.D. 692) the Eastern Churches have generally taken up and followed the precedent mentioned by Origen. The practice varies. In Russia and Roumania permission to marry has been very freely accorded to divorced persons; among the Greeks more rarely; in Serbia, seldom and reluctantly.
5. Theodore of Canterbury (Poenitiale XI) allowed a second marriage in certain cases of divorce or desertion, and in the case of a wife carried away captive; but if a captured wife returned, she was to be taken back, and the second wife was to be dismissed. Some Frankish Councils of the eighth century gave an even larger liberty.

6. Gregory the Second (Ep.XIII) writing to St. Boniface allowed a second marriage to a man whose wife was prevented by infirmity from rendering the debitum, if he were found to be incapable of continence.

7. After the ninth century the whole Western Church uniformly withheld all such permission of marriage after divorce. The only exception allowed was in the case of a marriage ratified but not consummated, when one of the parties had obtained permission to enter a religious order. The other party was then allowed to contract a new marriage.

8. In the sixteenth century, the Lutherans referred the whole law of marriage to the civil authority, and accepted the full measure of divorce and consequent remarriage allowed by the Roman Jus Civile, newly received in Germany. The Reformed taught that divorce should be allowed only on account of some heinous crime, adultery or malicious desertion, objected to the enforced celibacy resulting from canonical divorce, and fully allowed marriage to the injured party.

The conclusion appears to be:

1. That divorce may be allowed when the continuance of marital intercourse is morally impossible;
2. That divorce does not destroy the relation of
husband and wife;

3. That for the avoidance of worse evils divorced persons can receive special permission to contract a second marriage, but that such permission ought to be given cautiously and reluctantly, being in the nature of a dispensation."

We shall now consider the problem of divorce in relation to the Roman Dogma of Nullity, as outlined by R.H. Charles. The following excerpts constitute a summary of his work.

"Before I enter on the changed aspects of the controversy in question, I may state simply two of the main conclusions to which I was led in that former study. (Teaching of the New Testament on Divorce).

The first was that marriage is dissoluble when there is an absolute breach of its essential conditions - that is, when the husband is disloyal to his wife or the wife to her husband, the marriage is ipso facto thereby dissolved; and the State in issuing the decree of divorce is not putting asunder those whom God hath joined together, but is recognising the already existing fact, that, by the disloyalty of either or both, the persons in question have already put themselves asunder.

The second conclusion was that the guiltless has the right to contract a fresh marriage with the benediction of the Church. As I have already stated, it was the recent Roman declaration of nullity on inadequate grounds - grounds on which our English Courts of Justice would certainly refuse a

divorce - that led me to study afresh the teaching of our Lord on this subject.

"In the following pages it will be my task to prove that the conflicting views of the Reformed and Eastern Churches and of the Church of Rome on marriage are to be traced respectively to the narratives in Matt. 19:3-9 and Mark 10:2-12, which record our Lord's controversy with the Pharisees on this subject, and that thus this present conflict is not of recent origin but reaches back to the middle of the first century of the Christian era. The reformed Churches, following Matthew for the most part, allows of divorce in the case of unchastity and also the remarriage of the guiltless, whereas the Roman Church, deriving its views ultimately from Mark forbids divorce altogether.

"The Divorce problem was a burning question about the time of Christ. Two great Jewish schools were divided on the subject. Both the school of Hillel and Shammai held that Divorce was absolutely legitimate, and the right to remarry.

But these two schools differed widely as to the grounds on which a man might rightly divorce his wife. The school of Shammai maintained that divorce was only legitimate when the wife was guilty of some form of unchastity; the school of Hillel that a man might legitimately divorce his wife for any cause.

"We have further found that the narrative in Mark stands alone and is unhistorical, being obviously rewritten
to prove a dogma, which the true history of the facts could not in any respect justify. Seeing, therefore, that the idea that marriage was indissoluble, however, grave might be the unfaithfulness of either spouse, was derived from the narrative in Mark, and that Mark is untrustworthy and unhistorical in this respect, it follows that there is no evidence in the Gospels of any kind to prove that marriage is indissoluble, when there is an essential breach of the marriage vows.

"The Roman dogma of nullity is derived from the combination of this false dogma of the indissolubility of marriage with a series of fantastic impediments devised by the 1 Medieval Church to a valid marriage.

"But this is not all. When this fiction was linked up with the numerous fantastic impediments which the Medieval Church devised to a valid marriage, it gave birth to the extraordinary dogma of nullity which is the peculiar property of the Roman Church, and which in the hands of the Roman Curia has been the source of intolerable moral scandals during the past six hundred years as well as of a large revenue. There is undoubtedly a reasonable and indisputable doctrine of nullity, such as our Supreme Courts of Justice recognise, but it has nothing in common with the lawless and immoral dogma of Rome."

The Reformed Churches do not regard marriage as a Sacrament instituted by Christ, but as a primitive ordinance of God Himself, whereby the most sacred human relation is

1. Op. Cit., p.34
created that can exist on earth.

"Accordingly they consecrate and crown it with the benediction of the Church - that is, the body of all faithful people - and regard a merely civil marriage, as valid indeed, but lacking in the blessing of the Christian community - that blessing that attends on an act, truly religious in itself, and invoking the witness of both God and men to vows given and received.

"When two persons are united together in marriage they cannot break this bond because one of them offends or has become distasteful to the other. They are bound together by the most sacred vows and under the most solemn sanctions. In God's presence they made them, by His help they can, and therefore they ought to fulfil them. Marriage is not a mere product of, a passing fancy or of a transient passion, which must sooner or later lose its force, and which at the outset often lends an ideal character to very ordinary men and women. When this temporary attraction passes away, then it is the task of the wife or husband to love and to trust the other, and to rise to greater heights of character, in order to draw the other higher too. Marriage creates the most sacred human relation on earth."

When one compares language of this sort, however ideal it is, with what was stated under the section Evolutionary Ethics, or contrasts it with many of the facts of actual life, one wonders if Dr. Charles has forgotten the utter inability of certain types of men and women, through mental
defectiveness, abnormal physiological conditions and a train of other causes, to respond in such a way. Dr. Charles adds: "Men and women can learn in this relation to become forbearing, just, loving, great, and to attain to heights of unselfishness which are normally beyond the range of celibate life. It is God that instituted this way for bringing out what is noblest and divinest in man, and we cannot for a moment question God's wisdom therein. Difficulties to the true man and the true woman become faith's opportunities, when met in the right spirit.

God has ordained from the beginning that the twain should be one flesh - a union that can be severed only by unchastity, or by something that makes their union impossible. So do all the Churches ordain, save that of Rome, and all Christian States save two or three that are in the thralls of Rome in matters ecclesiastical. They recognise that, where this solemn bond has been irretrievably broken or made impossible, then divorce complete and absolute must follow. Should children have been born prior to the divorce, they are of course legitimate by the law both of God and man.

MARRIAGE ACCORDING TO THE ROMAN CHURCH: ITS PECULIAR DOGMA OF NULLITY.

Dr. Charles points out the distinction between divorce and a decree of nullity. Divorce according to the teaching of the Reformed and Eastern Churches, as well as of the New Testament, and of course of the Old Testament, annuls a true marriage, whereas a decree of nullity declares that there was no marriage at all. Now all the Churches do agree
that some marriages are null and void from the outset - as, for instance, when one of the pair has already a spouse, and that spouse still living, or when one of the pair is impotent, or insane, or has been forcibly coerced, or when one is allied to the other by degrees of relationship forbidden by all the Churches. But it is not with such fundamental impediments that make true marriage impossible that we are concerned, but with the various trivialities which Rome has transformed into impediments, and which, it maintains, render marriage null and void, unless a dispensation from Rome has been previously secured. "Rome on the one hand, declares that marriage is indissoluble, and on the other, it has devised a series of artificial, fanciful, and often grotesque impediments to a valid marriage." "What it has considered as radical impediments in one country, are not impediments in another, and what it has decreed as such impediments in one century, is brushed aside as trivialities in another (for examples see p.72 ff. of Charles' Book, Divorce and Nullity).

Let us adduce from present and past history a few actual examples of the Roman methods of dealing with marriage, when it declares it null and void.

I. One ground for declaring nullity is, consanguinity or blood relationship, even of remote character. In the year 1914, the marriage of two Roman Catholic French Canadians in Quebec, who had been married for ten years was declared null and void, and they were accorded the liberty to contract fresh

marriage forthwith.

"The Privy Council in 1921, reversed the decree of nullity, and declared the above marriage to be valid. (The ground for the declaration of nullity was that they were third cousins. These two Canadians had no knowledge of the fact that they were third cousins when they were married. Notwithstanding, owing to the operation of a now obsolete Roman canon, for Roman canons change from time to time, and from country to country, their marriage was declared null and void on the ground of this remote relationship.").

II. Nullity owing to spiritual Affinities.

But it is not only blood-relationships, even of a remote character, but spiritual affinities such as are constituted by two persons being godparents to the same child, that can render marriage null and void. Thus in the fourteenth century Pope John XXII (1316-1334) practically in the same breath annulled a royal marriage because the parents had been godparents to the same child, and granted the royal treasurer a formal dispensation to marry a lady who had twice been godparent with him to different children. The Vatican makes and unmakes at its own caprice what it calls the laws of God."

III. Owing to a married Jew or Jewess becoming a Christian, the Jewish marriage becomes invalid. Another glaring breach of the Divine law of marriage is to be found in the declaration of Rome that, if the wife of a Jew becomes a Christian, the Jewish marriage is thenceforth completely dissolved.

IV. Rome is ready to declare a marriage null and void on the grounds of coercion (for details see Charles, p.81 ff). The above is written, not in any spirit of criticism, or to uphold theological contentions, but merely for the light it throws on this angle of the Divorce problem.

Writing in Harper's magazine under the caption, "Whom God hath Joined," Dorothy Dunbar Bromley quotes Dr. Parkes Cadman thus, "Christ has spoken. Divorce is nothing but a sign of carnal lust. It invariably leads to greater unhappiness and misery. Women get divorces in a vain effort to escape their God-given-duty, the bearing and rearing of children." Miss Bromley then quotes another churchman, "Where there is a divorce always look for a third person." The final and clinching argument against divorce is 'that the welfare of society demands the sacrifice of the individual' - to quote Bishop Fiske, while Rev. Spence B. Meeser writing in the Methodist Review declares, 'It is better that any person should continue bound for life, to one whom he may be ill-mated than that the sanctity of the marriage relation and the well-being of the family should be destroyed to relieve him.' These gentlemen seem to forget that the welfare of society must depend upon the welfare of members. Furthermore they take it for granted that the present pattern of Christian marriage cannot possibly be improved upon. 'For we know,' says Bishop Manning, 'that civilization depends upon the sanctity of the

home.' May we remind him that 'the sanctity of the home' places marriage on a purely physical plane."

I shall conclude this section with an extract from the Report of the Federal Council of the Churches of Christ as compiled by its special Committee.

"The Church shares in the general concern over the rising tide divorce and the disturbed condition of the home which it indicates. There has been no consensus of opinion and no common attitude toward divorce, or the safeguards which should surround the solemnization of matrimony, or the relative standards of civil and religious marriage.

The leaders of the Churches also realize the lack of information on the more vital problems of sex relations, marriage, home life and divorce. We do not know accurately whether there is a trend toward promiscuity, whether young people are less restrained than a generation ago, whether the rising curve of divorce is as critical as it seems to be, or perhaps a symptom of readjustment."

It is undoubtedly true that the Church, in general, is recognizing more and more that the deeper causes of home disturbances lie back in the fields of biology, psychology, history and economics, and that to gather a richer fruitage of social values in domestic life it becomes increasingly necessary to understand the roots and sources from which such fruitage alone can come.

In this section the writer will endeavour to present statistical information that has been gathered from numerous sources. No attempt to exhaust this field of our study has been made owing to the mass of data that would thus need to be recorded. It is hoped that sufficient information will be given to throw some light on the main features of divorce activities.

In her book Marriage and Divorce, Miss Julia E. Johnsen presents a useful compilation of articles on marriage and divorce, reference to these writings will be made by reciting the page number of the book Marriage and Divorce.

Under the heading, Chief Grounds of Divorce, it is stated that the United States of America "Government figures show that desertion is the principal ground for divorce, with cruelty second in the list; these two causes account for nearly two-thirds (65%) of all divorces granted. Of divorces granted to the husband, desertion has been the cause in practically one-half of the cases; adultery the cause of

1. Johnsen, J.E. Marriage and Divorce.
one-fifth, and cruelty in a little more than one-sixth of all cases. But of divorces granted to the wife because of the husband's adultery constituted 7.5% of all the cases, as against 20.3% granted to the husband for the same cause."

This does not necessarily prove that the wives were necessarily more adulterous than the husbands, but may be due to the fact that it was more discoverable in the women's cases than the men.

"Drunkenness as a cause for divorce has been a minor factor. A little more than one-half of all divorced couples had no children."

Causes of Divorce in American Cities.

"Dr. W.J. Hickson, psychiatrist, gives as causes of divorce:

1. Feeblemindedness plus dementia praecox.
2. Dementia Praecox.
3. Feeblemindedness.

Dr. Bridges, in his Abnormal Psychology says, "that Demential Praecox is so named because it is supposed to be a form of mental deterioration developing during puberty and adolescence; but the deterioration is often more apparent than real, and it may occur much later in life.

Judge W.L. Morgan named causes of divorce as follows:

1. Poverty.
2. Neglect of women by their husbands.
3. Low mentality.
4. Drink.
5. Nagging.
6. Sex, couples improperly mated.

Rev. J.G. Benson lists as causes:

1. Relatives.
2. Emotional, related to physical incompatibility.
3. The survival of primitive, more or less military idea of marriage in a democratic age. The woman rebels.

Rev. Hall Ferris - who claims to have traced 20,000 cases, and was Director of the Bureau of Domestic Relations, Detroit:

1. Hasty marriage.
2. Lack of religion.
3. Drink.
4. Uncontrolled temper.

Judge Bradley Hull, Director of Domestic Relations, Cleveland: emphasised three causes of divorce:

1. The economic Pinch.
2. Nerves.
3. Faulty education.

2. Ibid., p.33
3. Ibid., p.34
4. " p.35
It may be noted that the above reasons are not only very general but they serve to show the wide diversity of opinions concerning the cause or causes of divorce and also illustrate many different conditions under which the problem may arise. There is marked tendency for writers to overstate some particular cause, or to allow their bias to color their judgment. In the book Marriage and Divorce attention is drawn to this fact. "They point to Nevada, where there are more divorces than marriage, not to Georgia where marriages outnumber divorces nineteen to one, nor to New York State where marriages outnumber divorces twenty-two to one, nor to the District of Columbia, where marriages outnumber divorces thirty-five to one. They are alarmists, making the worst of a bad matter, and in their search for causes they are uniformly superficial. It is they who have attributed divorce to the movies, to yellow journalism, to jazz, to the Ford car, and to irreligion, especially irreligion. Even a judge of a court of domestic relations once declared 'The whole trouble is, Americans have put God out of their lives.' Whereas, during the very period when Church membership has increased, divorce has increased."

America's Need of a Federal Marriage and Divorce Law.

There are those who see, so far as the United States is concerned a cause of divorce in the present chaotic state of the marriage and divorce laws in the United States of America.

2. Ibid. p.177.
"The marriage and divorce laws of the United States, in their inharmonious variety, bear some resemblance to a patchwork quilt. They are the work of something like forty-nine artisans working without a foreman and without a common plan. These marriage and divorce laws as a whole have dire results because of this lack of harmony."

"Each state legislature, as a state was formed, went about the business of fixing the marriage status of its citizens, exactly as it fixed contractual rights and property rights, without meeting on any common ground or starting from any common source, unless the somewhat remote ecclesiastical court of England may be regarded as a common source. Few states made any provision for the recognition of the status of citizens of other states with reference to marriage, any more than they did for the rights of adjoining land owners, except by a sort of gentlemen's agreement called "comity between the states."

The regulations prescribed by the various states, each of them sovereign in their law-making power, related to

1. The existence of the marital contract.
2. The qualification for marriage.
3. The pre-requisites to valid marriage.
4. The valid dissolution of the marriage.

With reference to every one of these conditions, forty-nine jurisdictions have forty-nine sets of laws. This would be of little moment if the citizens of one state always remained in that state, or if the removal therefrom was
accompanied by expatriation. But our constantly shifting population makes an altogether different problem, for we are citizens of the United States in whatsoever state we reside. Fundamentally, this is wrong, for it is necessary to moral rectitude that a marriage in one state shall be regarded as a marriage in every state. The problem of the marriage and divorce evil has two horns - the viciousness of the state laws - and their variableness.

"The grounds for divorce vary from none in South Carolina, and one in New York, up to fourteen in New Hampshire; Oregon goes one step beyond, however, for in addition to the named grounds, divorce may be granted for any cause which the court deems sufficient."

"To my mind, there are two ways to remedy the condition above described - the enactment of the same identical law in every state of the Union, or the enactment of one law by Congress covering so much of the subject as is necessary to be uniform."

In connection with this we may add the following information supplied by the Journal of Social Hygiene and quoted in Marriage and Divorce.

"A recent compilation of statistics concerning marriage and divorce in the several states reveal the following:

13,000 girls, 15 years old, legally married.
50,000 " 15, " " " " (not stated re sex).

2. Ibid. p.243.
1,600 boys, 15 years old, legally married.
3,000 " 16, "  "  "

"No minority age limit for marriage in seventeen states.

Legal marriage age for girls, 12 years, and boys, 15 years, in nine states.

No prohibition of the feeble minded in nineteen states. Where prohibited, the feeble minded may marry on his or her sworn statement of legal mental capacity.

In 35 states there is no prohibition of intermarriage of the white, black, brown, yellow, and red races.

Inherited diseases of children of feeble minded, tubercular, and otherwise diseased parents, whose marriage was and would be now legal in most states, cost $50,000,000, for care each year.

Divorce, not obtainable on any ground in one State, is granted in another on evidence of bad temper of husband or wife."


Divorce in Japan.

G.L. Koehn is quoted in Marriage and Divorce regarding divorce in Japan as follows:

"If I should attempt to moralize at all, it would be with the example of Japan before me. She has an exceedingly high rate of divorce now - previously it was even higher. In 1897 the rate per one hundred thousand was 227. In 1903..."
there were 140 to every 100,000. The latest statistics give
109.

The new code in Japan, introduced in 1898 has
tended to reduce somewhat the frequency of divorce, but even
now there is one divorce to every six marriages.

There are ten distinct grounds for divorce in
Japan; moreover the courts give legal recognition to the old
Japanese custom of divorce by mutual consent and the statistics
on that line are appalling. During the six year period from
1899-1905, the records show that the Courts granted 1,430
divorces, while 445,890 divorces by mutual consent were
recognised during the same period.

Furthermore, 11% of the marriages are dissolved
after a period of from six to twelve months, 18% from one
to two years, 12.8% from two to three years. Seemingly the
largest number were scarcely given a fair trial."

World Divorce on Increase.

On page 201 of the same book the statistics below
are given:

"In the United States the ratio is one divorce to
every eight marriages. In France, where divorce is said to
be "neat, quick and secret," the quoted price being something
less than $1,000, the ratio is one to five, the number rising
in one year (1918-1919) from 7,851 to 11,514. In England
the number rose from 2,222 in 1918 to 7,044 in 1921; in
Germany from 13,344 in 1918 to 36,542 in 1920; in Switzerland
from 1,699 in 1918 to 2,241 in 1920; in Sweden from 1,098 in
1918 to 1,455 in 1922. Norway alone has the distinction of showing a decrease from 594 in 1918 to 587 in 1922."

Divorces in Canada.

Statistics of divorces, secured from the authorities of six provinces where divorces are granted by the courts and from the Dominion statutes for Ontario and Quebec, and compiled by the General Statistics Branch of the Dominion Bureau of Statistics, show an increase of 140 in the number of divorces granted in Canada during 1927 over the previous year. A total of 748 divorces was granted during the calendar year 1927, as compared with 608 during the calendar year 1926 - an increase of 23.0 p.c. The 1927 total is the largest number so far recorded in any one year.

The increase in divorces granted from 1916 to 1921 has been ascribed to the unsettling psychological effects of the war period and the long separations of men from their wives, combined with the new facilities for obtaining divorce, provided by a decision of the Judicial Committee of the Privy Council, which enabled the courts of Alberta and Saskatchewan to grant divorces. Decreases in the totals in 1922 and 1923 appeared to indicate a decline which might be ascribed to the passage of war-time conditions, but the comparatively large increases in 1924, 1925, 1926 and 1927, eight years after the Armistice, must evidently be attributed to the greater ease with which decrees may now be obtained and possibly, to a more lenient view of such proceedings on the part of the community. (See Jurisdiction in Divorce in Canada page 5).
The number of divorces granted during 1927, by provinces, (Table 1) was 197 in British Columbia, 182 in Ontario, 148 in Alberta, 102 in Manitoba, 60 in Saskatchewan, 29 in Nova Scotia, 17 in New Brunswick, 13 in Quebec and none in Prince Edward Island, where, indeed only one divorce has been granted since Confederation.

The largest increases in divorces granted during the year were in Ontario and British Columbia, in which provinces the 1927 figures showed increases of 69 and 30 respectively. Increases were also shown in all other provinces except Alberta, Manitoba showing an increase of 17, Saskatchewan 12, Nova Scotia 10, New Brunswick 5 and Quebec 3. A decrease of 6 took place in Alberta.

The Sex of Applicants for Divorces. - Previous to 1924 Canada's divorce statistics differed from those of most other countries in that they showed that a majority of the divorces granted were at the petition of the husband. In 1924 wives obtained 51.2% of the decrees granted, but in 1925 husbands were again in a majority of the successful petitioners with 50.6%. In 1926 wives received relief in 52% of the cases adjudged, this condition being possibly due to the passing of the Divorce Act, 1925, which removed certain anomalies which formerly operated to the prejudice of wives. A comparison of Canadian divorce statistics with those of New Zealand and the United States shows that of the decrees granted in the former country from 1922 to 1925, wives received 57.7, 56.6, 58.7, and 51. In 1927 wives obtained 52.6% of the decrees granted.
55.9% respectively, while figures for the latter country for the four year period from 1922 to 1925 show the decisions granted to wives as being 68.0%, 67.3, 68.5 and 69.9 of the total respectively. In the United States the proportion of two divorces granted to wives to one granted to husbands has remained fairly constant since 1889.

A possible indication of the grounds of petitions and decrees may be had from statistics of divorce in New Zealand, where a proportionately larger number of divorces were granted in 1925 to husbands on grounds of adultery, while a preponderance of decrees based on separation were granted to wives. The numbers of divorces granted on grounds of desertion form about 27% of the total numbers granted to husbands and 36% of those granted to wives. In the United States, however, 42% of the divorces granted to wives are on grounds of cruelty, while 46% of those granted to husbands are on the ground of desertion. In the latter country, as in New Zealand, a correspondingly larger proportion of decrees are granted to husbands on grounds of adultery than to wives.

Divorces Granted in United States to Persons Married in Canada -

A fact which throws considerable new light on the situation in Canada is found in the Marriage and Divorce Bulletin of the United States Bureau of the Census. The statistics of this publication indicate the surprisingly large extent to which divorces are granted in that country to persons married in Canada. Thus, in 1922, no fewer than
1,368 divorce decrees were granted to couples married in Canada, a number more than 2\(\frac{1}{2}\) times as large as the total number granted in Canada in the same year. This number also formed 36.2% of the number of divorces granted in United States during the year to couples married in foreign countries, while, at the same time the percentage of the Canadian-born population to the total foreign-born amounted to only 8.1%. The Bulletin goes on to say, "It is possible that many Canadians acquire a residence in the United States for the sole purpose of obtaining divorce because, in general, divorce laws are more liberal in the United States than in Canada." Of the 1,368 divorces granted in 1922 to couples who had been married in Canada, no fewer than 462 were granted by the courts of the State of Michigan, while 135 were granted in the State of Washington and 128 in California. No later figures than the above have been published in connection with the dissolution of marriages contracted outside of the United States.

March 7, 1928 - DAK.
1. DIVORCES GRANTED IN CANADA 1913 - 1927.
(Final Decrees)

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<td>1923</td>
<td>105</td>
<td>11</td>
<td>87</td>
<td>41</td>
<td>22</td>
<td>81</td>
<td>19</td>
<td>139</td>
</tr>
<tr>
<td>1924</td>
<td>114</td>
<td>13</td>
<td>118</td>
<td>28</td>
<td>42</td>
<td>77</td>
<td>15</td>
<td>136</td>
</tr>
<tr>
<td>1925</td>
<td>121</td>
<td>13</td>
<td>101</td>
<td>42</td>
<td>30</td>
<td>79</td>
<td>15</td>
<td>150</td>
</tr>
<tr>
<td>1926</td>
<td>113</td>
<td>10</td>
<td>154</td>
<td>48</td>
<td>19</td>
<td>85</td>
<td>12</td>
<td>167</td>
</tr>
<tr>
<td>1927</td>
<td>182</td>
<td>13</td>
<td>148</td>
<td>60</td>
<td>29</td>
<td>102</td>
<td>17</td>
<td>197</td>
</tr>
</tbody>
</table>

Note - In Prince Edward Island, only one divorce was granted between 1868 and 1925; this was granted in 1913.
II. DIVORCES GRANTED IN CANADA, 1925 - 1927
BY PROVINCES AND SEX OF PLAINTIFF.
(Final Decrees)

<table>
<thead>
<tr>
<th>Provinces</th>
<th>To Husbands</th>
<th>To Wives</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1925</td>
<td>1926</td>
<td>1927</td>
</tr>
<tr>
<td>Prince Edward Is.</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Nova Scotia.</td>
<td>13</td>
<td>6</td>
<td>14</td>
</tr>
<tr>
<td>New Brunswick.</td>
<td>9</td>
<td>5</td>
<td>11</td>
</tr>
<tr>
<td>Quebec.</td>
<td>4</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>Ontario.</td>
<td>61</td>
<td>54</td>
<td>64</td>
</tr>
<tr>
<td>Manitoba.</td>
<td>36</td>
<td>44</td>
<td>46</td>
</tr>
<tr>
<td>Saskatchewan.</td>
<td>27</td>
<td>27</td>
<td>40</td>
</tr>
<tr>
<td>Alberta.</td>
<td>58</td>
<td>79</td>
<td>82</td>
</tr>
<tr>
<td>British Columbia.</td>
<td>771</td>
<td>75</td>
<td>91</td>
</tr>
<tr>
<td>Canada</td>
<td>279</td>
<td>292</td>
<td>355</td>
</tr>
</tbody>
</table>

COMPARISONS WITH OTHER COUNTRIES.

In Table 3 are added comparative figures of divorces and marriages in England and Wales, Australia, New Zealand and Canada for the years 1916 and subsequently the percentage of divorces to marriages taking place in the same year, as here given, is seen in the case of England and Wales to have increased during those years from 0.35% to 0.94%; in Australia from
from 1.53% to 3.36%; in New Zealand from 2.41% to 5.75% and in Canada from 0.1% to 0.9%. Similar figures for the United States, where, of course, the total number of divorces is unusually large owing to the comparative ease with which they may be obtained, show increases from 27,919 in 1897 to 42,937 in 1896, 72,062 in 1906, 112,036 in 1916, 148,815 in 1922, 165,096 in 1923, 170,952 in 1924, 175,449 in 1925 and 180,853 in 1926. The percentage of divorces to marriages increased from 10.8 to 14.8 during the years 1916 to 1925, divorces during this period increasing by 56.7% (In 1925 divorces granted to women in the United States constituted 69.9% of the total granted as compared with 68.5% in 1924.

III. NUMBER OF MARRIAGES AND DIVORCES IN ENGLAND AND WALES, AUSTRALIA, NEW ZEALAND AND CANADA IN RECENT YEARS.

<table>
<thead>
<tr>
<th>Year</th>
<th>England and Wales</th>
<th>Australia</th>
<th>New Zealand</th>
<th>Canada</th>
</tr>
</thead>
<tbody>
<tr>
<td>1916</td>
<td>279,846</td>
<td>990</td>
<td>40,289</td>
<td>617</td>
</tr>
<tr>
<td>1917</td>
<td>258,855</td>
<td>703</td>
<td>33,666</td>
<td>652</td>
</tr>
<tr>
<td>1918</td>
<td>287,163</td>
<td>1111</td>
<td>33,141</td>
<td>697</td>
</tr>
<tr>
<td>1919</td>
<td>369,411</td>
<td>654</td>
<td>40,540</td>
<td>891</td>
</tr>
<tr>
<td>1920</td>
<td>379,658</td>
<td>3090</td>
<td>51,552</td>
<td>1168</td>
</tr>
<tr>
<td>1921</td>
<td>320,352</td>
<td>3522</td>
<td>46,869</td>
<td>1502</td>
</tr>
<tr>
<td>1922</td>
<td>299,524</td>
<td>2588</td>
<td>44,731</td>
<td>1338</td>
</tr>
<tr>
<td>1923</td>
<td>292,408</td>
<td>2667</td>
<td>44,541</td>
<td>1480</td>
</tr>
<tr>
<td>1924</td>
<td>296,416</td>
<td>2236</td>
<td>45,869</td>
<td>1544</td>
</tr>
<tr>
<td>1925</td>
<td>295,689</td>
<td>2605</td>
<td>46,899</td>
<td>-</td>
</tr>
<tr>
<td>1926</td>
<td>279,860</td>
<td>2622</td>
<td>47,867</td>
<td>-</td>
</tr>
<tr>
<td>1927</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

* estimated.
English Legislation.

It was not until 1857, when the Divorce and Matrimonial Causes Act was passed in England, that a right to divorce in that country was created. Divorce as we now understand it had formerly the significance of judicial separation. By this Act of 1857 the Court of Divorce and Matrimonial Causes was created and all jurisdiction in matrimonial matters, formerly exercised by the Ecclesiastical Courts, was transferred to it by the Act.

The Divorce and Matrimonial Causes Act of 1857 had no force in the colonies of British North America before Confederation except in those colonies where such legislation had been enacted.

Canada.

By Sec. 91 of the British North America Act (26), the Dominion Parliament was granted jurisdiction over the matter of marriage and divorce, while by Sec. 92 (12) Provincial Legislatures were empowered to legislate upon the solemnization of marriage in their respective provinces.

The Dominion Parliament, however, from 1867 until 1924, had passed no Act granting the right to obtain divorce nor had any court with jurisdiction in divorce matters been created in the Dominion or in any province by Dominion Legislation. Matrimonial relief may, however, be obtained, and granted under authority of the B.N.A. Act, by petition to the
The Dominion Parliament by C.41 of the Statutes of 1925, added a new and important provision to the Canadian law respecting divorce. The law in force until the passage of the Divorce Act, in so far as it concerned causes for divorce proceedings, has provided that, while a husband may obtain a divorce on grounds of adultery, it is necessary for a wife to prove both adultery and desertion. This anomaly has been removed, sec. 2 of the Divorce Act stating "In any court having jurisdiction to grant divorce a vinculo matrimonii any wife may commence an action praying that her marriage may be dissolved on the ground that her husband has since the celebration thereof been guilty of adultery." The granting of a divorce in such cases, of course, is dependent on sufficient evidence that the wife has not been an accessory to or connived at such adultery or that the action is not prosecuted in collusion with the husband or the woman with whom he is alleged to have committed adultery. In addition "the court shall not be bound to pronounce such decree if it finds that the wife during the marriage has been guilty of adultery or ......... of unreasonable delay or of cruelty towards the husband or of having deserted or wilfully separated herself from the husband before the adultery complained of and without reasonable excuse, or of such wilful neglect or misconduct as has conduced to the adultery."

**Nova Scotia and New Brunswick.**

By Sec.129 of the B.N.A. Act, all laws in force in Canada, Nova Scotia and New Brunswick and all courts, etc. were to continue to exist in the provinces of Ontario, Quebec, Nova
Scotia and New Brunswick after Confederation. The provinces of Nova Scotia and New Brunswick, therefore, having enacted legislation respecting divorce and possessing courts exercising jurisdiction over such matters before Confederation and having continued to exercise jurisdiction through courts of Divorce and Matrimonial Causes, are now in the same position as they were then. A court was established in Nova Scotia under C.126 of the Revised Statutes (third series) of Nova Scotia, 1864, as the Court of Marriage and Divorce, the name of which was changed by C.13 of the statutes of 1866 to the Court for Divorce and Matrimonial Causes. The Court of Divorce and Matrimonial Causes in New Brunswick was likewise set up by an Act passed in 1860 (an Act to amend the Law relating to Divorce and Matrimonial Causes). (Sec. R.S., N.B., 1903, C.115).

Prince Edward Island.

In Prince Edward Island a court having jurisdiction in divorce was constituted by an Act of 1835 (5 Wm.IV,C.10). This law has not been repealed since that time, but the power vested in the Governor and Executive Council to establish a divorce court has never been exercised. Persons living in Prince Edward Island, who are desirous of seeking dissolution of marriage must do so by petition to the Dominion Parliament.

British Columbia.

The colony of British Columbia acquired jurisdiction in matrimonial causes following a proclamation of the Governor giving force in the province to the civil and criminal law of England as it existed on Nov.19, 1858. The province has continued to exercise jurisdiction over divorce through the courts.
established before Confederation. (See Rev. Statutes of B.C., 1924, C.75).

Manitoba.

The divorce law of England, as it existed on July 15, 1870, was introduced into Manitoba by an Act of the Dominion Parliament, 51 Vict., C.33. The court of King's Bench of Manitoba has the same jurisdiction in divorce as the courts have in England under the Divorce and Matrimonial Causes Act 1857.

Alberta and Saskatchewan.

The Dominion Parliament, by 49 Vict. C. 25, enacted that the laws of England as existing on July 15, 1870 should be in force in the Northwest Territories. In 1918 the Appellate Division of the Supreme Court of Alberta held that the effect of the above Act and of legislation passed creating the province was to make the Divorce and Matrimonial Causes Act of 1857 and amendments up to July 15, 1870 apply to the province of Alberta. This decision was confirmed on appeal to the Imperial Privy Council. Subsequent judgments by the Saskatchewan Court of Appeal held that the English law as it existed on July 15, 1870 had force in the province and that the rights conferred under it might be enforced by the Court of King's Bench. The provinces of Alberta and Saskatchewan, therefore, are in the same position in the matter of jurisdiction over divorce.

Ontario and Quebec.

In Ontario and Quebec it is considered that the courts have no jurisdiction to entertain an application for divorce
and no attempt has been made in Ontario to establish such power. In Quebec the courts have assumed power, not to dissolve but, in some cases, to annul marriage or to entertain petitions for separation. The power to annul a marriage is exercised by the courts of Ontario in certain cases only (see 7 Edw. VII, c.23; R.S.O. 1914, C.148; 9 Geo.V, C.35). Persons seeking divorce in Ontario and Quebec, (as well as in Prince Edward Island) must do so by petition to the Dominion Parliament.

Grounds of Divorce in British Columbia.

"Under the Ordinance of 1867, the Supreme Court of British Columbia was given jurisdiction to give the relief and exercise the power conferred by the Imperial Act of 1858. By this Act, Judicial Separation may be granted to either party on the ground of adultery, cruelty or desertion without cause for two years and upwards, but divorce may only be granted on the ground of desertion." Marriage and Divorce Laws. A monograph prepared for the Social Service Committee of Canada by E.F. Raney, M.A.

DIVORCE COURTS IN CANADA.

"Those who have followed the proceedings of the Dominion Parliament even casually must have been struck by the large place given to the matter of divorce. Mr. J.S. Woodsworth, (Winnipeg, North Centre) is responsible for forcing this question upon the attention of Parliament and the country. His informed criticism of the anomalies, injustices and even
absurdities of the present system of granting divorces in Ontario and Quebec has already set the public thinking of some better way. Only in these two provinces have we no provision for divorce courts. If any one wants a divorce, a petition must be presented to Parliament asking leave to introduce a private bill. A committee of the Senate, composed of men, deals with these bills. This year already 217 petitions were presented, of which 216 were granted, (96 to husbands and 130 to wives). Of this total 186 were from Ontario and 30 from Quebec. Mr. Woodsworth wants to see divorce courts established in Ontario and Quebec for these amongst other reasons: In a court you have men dealing with the case who are accustomed to weighing evidence, whereas in the Senate Committee it may be that not more than one or two have this qualification. In a court provision may be made for granting of alimony, and for custody maintenance of children - whereas under the present system those dealing with the case may not even be aware that there are children, and they are left uncared for. In a court the poor have the same chance as the rich to obtain the protection and relief of the law, whilst at present only those who are comparatively well off can afford to claim such rights.

Divorce and Alimony.

The whole question of alimony requires much more investigation. The following is a further extract from Marriage and Divorce:


2. Johnsen, J.E., - Marriage and Divorce, p.245-5.
In passing it may be interesting to note that in the United States as a whole permanent alimony was asked in only 20.2% of the cases, and granted in 15.2% (or to the wife, asked in 19.9%), and that this is a very considerable increase over the previous twenty year period, (1887-1906) whose figures were 13.2% asked, 9.2 granted. Whether this is due to an increase of wealth, or of mercenary spirit, or of illiberality we can not say, but the substantial increase is note worthy. The disposition of the states in respect to alimony is like wise interesting. To the husband: North Carolina, 3-10 of 1%; Wisconsin 25.1%. To the wife: Pennsylvania 3-10 of 1%; Michigan 60.9%.

The relation of alimony to divorce is as follows:
North Carolina, proportionate decrease, 1916, in divorces, 9.3%.
Wisconsin, proportionate increase, 1916, in divorces, 18%;
Pennsylvania, proportionate increase, 1916; in divorces, 64.5%.
Michigan, proportionate increase, 1916, in divorces, 63.5%.
North Carolina neither divorce nor alimony seems popular.

The award of alimony and its incidents is continually an illustration of the application of false analogies and absurd measures in the administration of law. Alimony is relief, primarily accorded in the exercise of an inherent incident of the general jurisdiction of a court having power in matrimonial controversies.

Alimony should be a provision, founded upon principle and not upon vagary. It should be, perhaps, an allowance adequate for a reasonable support of an innocent and

injured wife, first, to keep her from becoming a public charge, and second, to avoid the hardship of being deprived of the station which she would enjoy if the marriage relation in which she has been innocent, had continued.

But it is not compensation for injury and should not be so regarded. As there is no fixed property right, it is not compensation for deprivation of property; and should not be so regarded. As a provision, it should not be vindictive, nor a penalty, nor should it be an inducement to the formation of a new marital relation with another at the expense of the discarded spouse nor should it outlast a substantial change of circumstances for the worse of the party charged with the payment, nor for the better of the party to whom it is awarded. The spectacle of a remarried woman collecting alimony for her own use from a former husband, or a woman of independent means collecting it from a husband of impoverished condition, is foreign to the purpose or principle of true alimony.

The Problem of the Child.

This is a vital problem and exceedingly difficult to solve. In Section VIII I have outlined the procedure followed in this respect by the Swedish authorities. They regard the children, finally, as the property of the nation, and the court assumes the responsibility of placing the children in such conditions, or places, as best subserve the future interest of the state. Maternal, or paternal desires for the children are subordinated to national need and the children's welfare. The only principle, apparently to guide one in
this problem, is the conservation of the children's welfare, plus the final good of the State. If the court, awarding the divorce decides on impartial grounds, the final disposition of the children it ought to ensure their adequate support by some means or other. The Swedish principle seems to offer the best solution. (See Thesis page 148).
SUGGESTED SOLUTIONS OF THE DIVORCE PROBLEM.

- Section VIII -

It is but natural to expect that where so many different reasons have offered been in explanation of the causes of divorce there will likewise be a very great variety of suggestions and solutions presented for the amelioration, if not the actual solving of this great problem.

I shall begin this section with a reference to Judge Lindsey's book, Companionate Marriage, in which he criticizes the present marriage system and offers what he terms the companionate marriage as a way out of the present chaos in marital relationships.

In his preface, Judge Lindsey states, "Companionate Marriage is legal marriage, with legalized Birth Control, and with the right to divorce by mutual consent for childless couples, usually without the payment of alimony." This emphasises three major factors in his solution of the problem.


1. Companionate Marriage is defined by Lindsey as follows: "The Companionate is legal marriage; and every
childless marriage wherein, by mutual agreement, the parties can obtain a divorce if they want it, is a Companionate."

"Under the Companionate, with birth control legalized and more generally understood, most persons would marry as they marry now, in the belief that their marriage would prove permanent. They would merely be provided with a way out in the event they didn't." "But suppose the Legislature of the State of Colorado should pass a law that would place scientific birth control information easily within reach; and suppose it should pass another law which would permit divorce by mutual consent without red tape or difficulties to childless couples; and suppose it should pass another law that would make it out of the question to extract alimony indefinitely in the event of divorce - a law that would give them no financial or economic hold on each other while childless, and that would leave them, while childless, legally as independent of each other as they were before marriage. What would happen then?"

"It is very simple. Millie and John would marry, just as thousands like them do right now, with the intention to delay the birth of children, and also with the knowledge that would enable them to make good on that intention."

Lindsey has three "essential Legislative enactments or Bills" in mind.

1. Lindsey, Judge Ben. - Companionate Marriage, p.140-141.
2. Ibid., p.138.
1. "A Bill for an Act to repeal the present stupid laws against Birth Control, and to legalize and regulate the right of Birth Control clinics to carry on and give advice to married women, etc."

2. "Second Bill to Amend the laws relating to Divorce. This Bill would add a clause providing that 'where couples are childless, and where the efforts of the magistrate to bring about a reconciliation have failed, and where the couple mutually desire a divorce the divorce shall be granted without further expense, or needless delay.'"

3. "A Third Bill to regulate the property status of the divorce. It would deal with the right of the wife to support and alimony. It would withhold or grant such support and alimony according to the conditions of the case. Such a bill might provide that the property rights of childless couples should, at the discretion of the court, ordinarily be the same as the property rights of single persons."

"The passing of three such bills would establish the Companionate, as we now illegally have it, on a legal basis."

Lindsey draws a distinction between his Companionate Marriage and the Procreative Marriage, the latter being the Family. People could have their choice as to which of the two forms of marriage they desired.

"The important thing to understand is that a couple entering marriage may be mistaken in their belief that they have a basis for life-long union, and that in the Companionate

such persons would not have to bet so heavily on that belief."

Discussing divorce by Mutual Consent Lindsey replies to a critic who asks, "Suppose one member of the marriage wanted to quit while the other did not? If divorce were granted in the Companionate under such conditions, it would not really be by 'mutual consent' would it?" Lindsey replies: "Broadly speaking, it seems hardly conceivable that it could often be wise to maintain a marriage, especially a childless marriage, when it had ceased to be marriage by mutual consent. Lacking mutual consent in marriage, then the one alternative in logic and in fact would seem to be divorce by mutual consent. So why not call it that?"

It is difficult to see how Lindsey can argue that in such a case divorce could be secured by mutual consent when one of the parties did not wish the divorce.

It is interesting and important to recall the experience of the Japanese people regarding divorce by mutual consent. The fact was that under that code divorces increased enormously and many couples did not even give the experiment a fair trial.

"Our present marriage code absolutely necessitates divorce as its corollary. Marriages are entered into lightly and irresponsibly and blindly because marriage is the one erotic outlet which society permits. Such marriages have in them the seeds of polygamy and divorce; and they are perhaps rather

2. Ibid., p.255.
3.
more likely to have polygamous than monogamous tendencies. The tendency of such marriages towards impermanence has to be met by a system of easy divorce which can be entered upon as easily and irresponsibly as marriage itself."

Discussing his idea of Monogamy, Lindsey says: "The point is that marriages in which the partners cling to a common course and goal in life, and travel their path through to the end together, toward a common destination and over a common road, are monogamous. The mere fact of outside sex relations, either by the socially permitted road of divorce or the socially forbidden road of liason, is not what makes a marriage polygamous. What makes a marriage polygamous is the scattering of its spiritual energies towards other intruding persons, for whatever cause, and regardless of whether there have or have not been physical sex relations with such persons. If there be no such scattering there is no polygamy, even if there be physical adultery. Polygamy is a state of mind, a way of thought - so is monogamy. The view of the Christian Church that the mere fact of physical adultery is in every case a proper ground for divorce is, to my mind, thoroughly immoral. The really proper and moral ground for divorce is the fact that the parties of the marriage have already been torn apart spiritually."

On page 279 Lindsey quotes Havelock Ellis as summing up Christian marriage with 'splendid insight' as follows "The

2. Ibid., p.276.
Protestant conception of marriage is narrowed down to a kind of legal sex contract which is held to be sufficiently sanctified by the promise of exclusive and permanent mutual sex love. Such a promise, even in the union of the most devoted lovers, is a fiction. It can never be kept, and the recognition that it cannot be kept combined with the cowardly fear to acknowledge that fact, plunges our marriages into deceit and misery."

In complete opposition to Lindsey with his ideas of Companionate Marriage, Legalized Birth Control, and Divorce by Mutual Consent, Groves has written a book entitled *The Marriage Crisis*. This writer seeks to analyse the ideas of marriage and divorce as outlined by Judge Lindsey and to discover some better way of conserving social interests and family life.

Will divorce by mutual consent, by solving our marriage problems, add to our happiness and make our life together saner and more wholesome?" With this question this book is concerned.

Groves points out that marriage is a normal expectation of young people, and that it has unescapable social elements. Marriage cannot be based on the needs of sick people, but upon the needs of society as well as the individual. Failure in marriage is often due to defective social conditions. That we are facing a crisis in marriage is true. He thinks strain on our present marriage system is largely due to a


Pleasure philosophy. Historically marriage has protected three major interests, viz., rights of property, rights of sex, rights of affection, i.e., marriage has had its economic, its physical and its love aspects, and the prevailing social conditions of any period have determined the relative importance of each of these elements. Today the family performs a diminishing economic function as an organization. Marriage now appears as something society imposes upon the individual in return for physical pleasures. Birth control appears as the rival of the family marriage. Affection is the only sure anchor of marriage.

Groves says further that there is nothing new in the idea of making marriage experimental. Nearly thirty years Mrs. Elsie Clews Parsons advocated early trial marriage with conditions attached similar to those suggested by Judge Lindsey.

Groves criticizes trial marriage on the grounds that:

1. Not one such union has yet proved satisfactory over a two year period, of those whom he has personally known.
2. Physical attraction alone provides a very insecure foundation for marriage.
3. No demand is put upon them that they consider seriously their differences of race, class, religion, or taste, or any of the complicating conditions that have so well provided for them in a successful orthodox marriage.

Why worry, where no permanent risk is involved? The very idea of impermanence of marriage relations would be a temptation to some.

4. The idea of scientific contraception is apt to be a spur to seek sex experience by itself.

5. Contraception has not removed, but rather increased the need of a distinction between bare sex comradeship and the fellowship of affection.

6. It is this distinction between sex alliance and love that the trial marriage erases.

7. It is psychologically impossible to give to another completest abandonment when it is mutually understood that the intimacy is experimental.

8. Trial marriage thus introduces an extra hazard - that of uncertainty from the very beginning. "An avowal of lack of complete confidence is always in an intimate association, whether it be matrimony or friendship.

9. The general acceptance of the trial marriage idea and the removal by public opinion of all restrictions will not in the least change the fact that human nature increasingly demands affection for the building of an enduring comradeship, although trial marriage is rich in sex appeal, it is contrary to the spirit of love.

10. From every angle temporary marriage with the possibility of being dissolved by mutual consent is built upon an unjustifiable confidence in present day birth control practices.
11. There is the need for protecting the wife for at least nine months after separation.

12. The distress of the divorce situation at present is not the difficulty of separation, but the confession of failure of adjustment.

13. Trial marriage places the risk upon the woman, for the reason that it is the female’s interests which are most preserved by family relationships. Furthermore, each alliance consumes time, wastes resources and handicaps the woman in competition with her younger sisters for a permanent marriage relation.

14. Her biological failure, through protracted Birth Control, leaves her without the realization of impulses that would have awakened with the coming of the child, through which she would have entered into the deeper satisfactions of life.

Groves thinks that the solution of the marriage and divorce difficulties lies in the direction enhancing affection. "The new motive upon which marriage must more universally depend for its attraction must be affection. We must discover the sources which undermine affection, and recognise the resources in the hands of moral leaders for its conservation.

"First of all, there is need of building upright ideas about life. Second, there is a ‘challenge to parents and social leaders to treat more wisely and with more success the

problem of sex.""

There is need of more serious instruction in preparation for marriage and for parenthood.

"Experimental marriage is a bid for sex commitment, while the only solution of our matrimonial ills in accord with the forward movement is the greater stressing of affection as the hope of marriage."

"What we need is not a method by which those who fail may more easily get rid of their matrimonial ties, but a better chance for men and women to achieve the matrimonial success for which they hunger. It will prove a great mistake for society to standardize its matrimonial regulations to failure." What is needed is better education for the family life and the application of modern science "to problems of human adjustment." "What we do need is an opportunity for those who are of the normal group to obtain impartial advice based as largely as possible upon the experience of the specialist well fitted to deal with family problems. We are in great need of reliable information concerning normal family life. This is hard to get, but without it our education for parents will be largely hit or miss. There seems to be only one way to get this material and that is by providing a place where family problems can be carried for scientific counsel.

"Other suggestions by Groves are: A more wholesome attitude

2. Ibid., p.189.
3. " p.207.
towards sex, household standardization, greater matrimonial freedom." It is unfortunate that many people cling to the custom of insisting upon what is literal isolation, as compared with the freedom permitted before marriage. The petty jealousies and unreasonable tension caused by these artificial barriers are seldom valued at their true significance. Affection must construct security without the suspicion and sense of exclusiveness which has characterized marriage in the past. 

Reform of Divorce. "The divorce problem cannot be satisfactorily solved either by making divorce more stringent or loosening it until it becomes merely consent on the part of the individuals concerned, without any social scrutiny. What we need is not a lax method of divorce which puts a premium upon incompatibility and encourages restlessness and impatience but a new way of looking at the problem itself. Instead of the court concerning itself with the question of offense that has been committed which justifies one of the individuals separating from the other, the proper question is, "Why are not these people happy together, and what can be done, if anything, to bring them into satisfactory adjustment? Such an attitude turns the court from an atmosphere of criminal procedure to a fact-finding and social-adjusting institution as it operates in our progressive cities. The divorce request needs to be interpreted as an expression of social difficulty which calls for expert help. Any scheme that leads to an automatic, irresponsible, self-directed method of divorce

must become a mischievous influence, leading men and women to a hasty decision to separate, when a calm and impartial review of their case by officials of experience in such matters would quickly bring the quarrelling individuals to recognize that their happiness can come not from separation, but from more discerning comradeship." No other way offers hope in dealing justly with the human interests involved. The right divorce program can neither be making divorce impossible to obtain for those who must have it or some form of separation, since they cannot live together, nor in offering it so freely that it is accepted as a matter of course, but by treating it as a form of maladjustment which calls for social surgery only as a last resort." Finally Groves suggests: "Painless Childbirth, assistance with children, family insurance and security, better housing and the encouragement of aesthetic values.

Sweden's Solution of Divorce.

"The new marriage laws adopted by Sweden a few years ago imply, especially in one respect, a pronounced advance on what is still the rule in this country. Marriage (in Sweden) is, in the last instance, a wholly human and social affair, representing a voluntary agreement between two free individuals, and being, like all such agreements, subject to cancellation by mutual consent. On this point the new law is most explicit. The chief and most easily effective reason for a divorce is

2. Ibid., p.226.
that man and wife have discovered a mutual unwillingness or inability to go on living together. Having reached that stage, all they have to do is to report their case to the proper tribunal and ask for a separation. To get this, they need give no reason whatsoever as long as the application is supported by both of them. What here is called collusion and made an absolute obstacle to divorce, is there held prima-facie evidence that the relief asked should be granted. Men and women who are thus able to agree on a peaceful dissolution of an impossible union, are officially excused from washing their dirty family linen in open court. In Sweden the procedure is the same for the simplest day laborer and a member of the Royal House, and poverty need not pay for what wealth cannot buy."

"The probationary separation of a year prescribed for a divorce based on mutual consent is a common feature of most similar proceedings not carrying a charge of actual guilt. A notable feature of the law is that, if they should change their minds at any time during that twelve-month, all they have to do is to come together again. In doing so, they are in no danger of violating the court's order for a separation. If, on the other hand, they remain firm in their desire to part at the end of the year, a full decree is automatically granted to whichever one of them applies for it, and still the court refrains discreetly from any examination of the causes that have sundered them."

"The causes established for a divorce wanted by only one of the parties fall under such heads as lack of support,
alcoholism, vice, incompatibility. In all cases of this kind, the complaining party is called on for proofs of the charges made, and when these are held valid by the court, the final divorce is preceded by the usual term of separation. There is, however, another set of causes deemed grave enough, when proved, to warrant the immediate issuing of a full decree. Adultery is among these, and so are physical violence and wilful desertion for a term of at least two years. Equal validity is attached to causes like presumably incurable insanity, conviction of serious crime, and venereal disease. A wife or a husband may obtain an immediate decree of divorce if the other partner has remained absent without explanation for more than three years. Divorced persons may remarry unless explicitly prevented from doing so by an order of the court."

"How the new, almost unprecedented novel provisions for the dissolution of marriage will work in practice remains to be seen. There has, beyond doubt, been an increase in the number of divorces from 785 in 1914 to 1265 in 1921. During the period of 1901-10, the percentage of marriages brought to an end by divorce was 1.15. In 1923 that percentage had risen to 3.23. On the other hand, the enactment of the new general law has also been followed by a hardly less marked increase in the number of marriages contracted. Data of this kind is not available beyond 1917, but in that year the net gain of new marriages over those ended by death or divorce was 9534, while the year before the law went into effect the corresponding gain was only 7000. The Swedes realize keenly
that an increased frequency of divorce is no evil in itself, if thereby can be obtained a corresponding or still greater increase in the number of successful, durable, and fruitful marriages."

"The spirit of the new law is one of complete equality between husband and wife. According to one of its paragraphs, they "owe each other mutual faith and support and must take common counsel for the welfare of the family." Both are explicitly obliged to contribute to the support of the home, and with equal explicitness the care of that home and the children is classified as a form of contribution no less valid than cash payments. This implies a tremendous improvement in the wife's status, and so does another provision to the effect that the husband must furnish her, in agreed periodical payments of decent size, with the funds needed for her own private uses as well as for the maintenance of the home. This provision is mutual, like everything else in the law, and if the wife has large means, and the husband not enough for his private needs, she is obliged to make similar allowances to him on a basis determined by their social status and the extent of their common income. What either one of them thus obtains from the other for private use becomes strictly private property as if it had been earned outside the home."

"The wife has the same right as the man to choose an outside calling of her own, to go into business, to hold

property, to conduct financial or legal transactions. She has equal right with him in deciding every question reacting to the welfare of the home or family. In cases of serious disagreement, neither one of them possesses final authority, but must submit their differences to a mediator provided by the Church, the state, or the court. Both have the right to hold property separately and independently of each other, but whatever is not specifically exempted by contract or otherwise becomes common to the extent of making the other partner heir to one-half of in case of death. On account of this mutual interest in property otherwise private, both are obliged to keep each other posted on their respective assets and what is done with them. In case of neglect or mismanagement, either one of them can obtain a court decree establishing a complete division of all their property. In other words, a husband has no longer the right to keep his wife in ignorance of his business affairs, and she can take legal steps to prevent him wasting his property on speculations, through unwarranted gift, by mismanagement or neglect, or otherwise. Thus the family is made a true partnership in which there is no senior or junior except in so far as greater experience or knowledge gives one a natural ascendancy over the other."

"The status of the children resembles that of the property. Both parents have the same right to determine their ways of living, their forms of education and so on. The law, however, makes a distinction between guardianship and care. The former term relates to the management of property belonging to the children - the second term covers everything else

1. Ibid. p.549.
connected with their mode of living. The guardianship is placed in the hands of the father, while the care and support of the children devolves equally on both parents. In case of divorce, the court decides which parent shall have the guardianship of the children, or the care, or both. And, what is quite notable, the fact that one parent is held responsible for the divorce does not make it obligatory on the court to hand the children over to the other one. The law makes it clear that the children are regarded more or less as belonging to the nation rather than to the parents as individuals, and all provisions are dictated in the last instance by concern for those in whose hands the future of the country will rest. Mere paternal or maternal passion is not held sufficient guarantee of superior fitness for the rearing of children."

Among other suggestions put forward with a view to solving the divorce problem, and to render unsuccessful marriage less frequent are those mentioned by T.A. Bosanquet in the Nineteenth Century viz., wider publicity marriages, guarding more effectually the avenues to marriage, proof of the identity or condition of the parties proposing to be married. Bosanquet suggests that the ease with which divorced couples can remarry swells the list of divorces. Speaking of a certain case in point he states, "who can say whether N- would have so readily forgotten her duty to her husband during his absence in India if she had known from the first that she could never become the wife of the latter

(living in England) or be received into decent society for the future." Concluding his article, Bosanquet writes, "So long as our law encourages the hole-and-corner marriages in churches and chapels or in Registrars' offices with which we are all familiar, and no check is put upon the marriage of adulterer's paramour, so long will ill-considered and clandestine and illegal marriages abound - so long will there be a plentiful supply of scandal for our newspapers and of work for our matrimonial and criminal courts."  

As one surveys the complex problem of divorce certain convictions arise. The first is that the Divorce problem is a world problem. It is co-extensive with the human race. It is a world problem and should be studied as such. While allowances must necessarily be made for differences of race, creed and standards it seems indisputably true that the problem has many fundamental factors common to human beings the world over. The biologic needs of men and women, the sexual urges, the instincts of gregariousness, acquisition, jealousy, are but a few of the impulses which animate human conduct generally. As a world problem a road towards its solution will undoubtedly be opened as the different countries seek conference one with the other as to fundamental causes and more or less common solutions of Divorce.  

In the second place it is a complex problem. There has been too much tendency for theologians, lawyers, doctors, reformers, etc., to view the problem from the one angle in 

2. Ibid. p.1061.
which they were primarily interested. This thesis has been
an attempt to show that no single cause can be made responsible
for the divorce problem as a whole. Physiological maladjust-
ment, deeply rooted psychological forces, the growing emancip-
ation of women, with their increasing economic independence
of men, the disruption of social forces caused by and following
the war; the breakdown of traditional and orthodox religious
ideas, the increase of luxury, easier and cheaper travel,
the radio, and the increasing knowledge of contraceptives and
the use of new and powerful economic forces, have all been
influential factors in creating the present divorce situation.
The greatest caution needs to be exercised in attributing
divorce to any one specific cause. This complexity of divorce
necessitates, to my mind, a sort of clearing house for divorce
applicants. In the United States there are Courts of Domestic
Relations. In these Courts people are assisted to solve their
domestic difficulties. Such Courts of Domestic Relations
should be capably manned, and no sort of public disapproval
should be directed towards those who seek their aid.

Thirdly, too much care can not be taken to secure
the best kind of marriages. Certainly it is imperative that
no marriage license should ever be issued apart from the
presentation of a clean medical sheet by both parties. The
ideal would be to have a marriage board whose chief function
should be to assist applicants for marriage to reach at
least a normal standard of physical and mental efficiency.
It is absurd to suppose that men and women whose physical and
mental condition has been the cause of their inefficiency in
the ordinary battle of life shall by any manner or means make a real success of married life unassisted, yet at the present time people who are constant failures in every day life are able to be married without question. One has to remember, however, that where any serious effort may be made to check over applicants for marriage, there is always the grave possibility and probability that ways of escape will be found by those who seek to evade such a procedure. It is my belief, however, that the great mass of the people would endeavour to work towards the effective elimination of the unfit and misfit. The important thing to remember is the complexity of the problem.

It is my firm conviction that no one law can be found or made that will cover all cases of divorce. Each divorce case should be considered and dealt with on its own merits. It seems to me that it is not a question of making divorce easier or harder, it is a question of discovering the individual needs of the people concerned.

This raises the question of Legislation. What shall be the grounds for Divorce? Shall there be a Federal law for all, or each Province with its own? All that I feel competent to say is that whether there be one or many laws in connection with Divorce nothing should be done that will interfere with the conditions which will secure the best results for the couples concerned.

In concluding this Thesis the writer feels that the problem of divorce is by no means a hopeless one. The increase
of divorce may, it is true, be sympto of deep pathological causes; on the other hand, it may be the expression of a growth - a throwing off of age-lock shackles, and the forerunner of an emancipation of both sexes in accordance with the needs of new social conceptions. It cannot be said, I feel, in view of the facts now known concerning the diverse impulses which make for human conduct, that all Divorce is evil. Neither can it be said that Divorce does not do harm. It is a sign of maladjustment - it is a case requiring "social surgery."

Divorce may afford relief to some, but I believe it is a blow to society's welfare, in some respect, whenever it occurs. I believe that there is nothing more wholesome to the individual and to society as a whole than a life-long monogamous marriage. This I would suggest is the normal way of human life, and, consequently, any tendency which breaks away from the monogamous life-long marriage I would regard with caution. Furthermore, any new system of marriage must be viewed in the light of the following questions:

1. What effect will it have upon the individual, and upon society as a whole?

2. Will it make marriage more or less attractive?

3. How does it affect the children.

Finally, any suggestion or solution for the solving of the Divorce problem must, for society's sake, either conserve or improve the present family relationship. It is impossible for me to see how society can thrive apart from adequate home life of some sort. The home should and normally does provide the natural atmosphere for the growing child.
Groves stated that "affection" was the binding force of married life. I believe he is right. The one essential thing is for scientists, educationalists, Churchmen and all who may throw light on social movements, and bring power and blessing, to study and understand human nature that when its needs are manifested they shall be understood and met and not side-tracked or disregarded.
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