SMU | Dedman School of Law

SMU Law Review

Volume 11 | Issue 3 Article 2

1957

Some Comments on the Law of Domestic Relations in Texas

Charles O. Galvin

SOME COMMENTS ON THE LAW OF DOMESTIC RELATIONS IN TEXAS†

by

*Charles O. Galvin**

THE high rate of divorce in Texas should be of serious concern to the legal profession. The cynic may suggest that more divorces, property settlement agreements, child custody matters, and the like provide greater economic benefits to lawyers in fees. The grave dangers to the social system, however, far outweigh such selfish considerations. The lawyer knows that the sound and efficient administration of justice depends upon stability in the social order, and this order becomes chaos as the family unit, which is the basis of organized society, disintegrates. The destruction of the family affects not only the lives of a husband and wife and their offspring but also the social and economic burdens of the whole community. A higher rate of juvenile delinquency, a greater number of dependent and neglected children, and more complex problems concerning enforcement of child support already strain the procedures and facilities provided by the state and those of private organizations attempting to grapple with these problems. Although an effective solution lies not with the bar alone but with many groups in the community, the legal profession has the opportunity to assume the leadership in this field.[1]

The purpose of this article, therefore, is to point out but a few of the factors which pertain to the problem in Texas. There are hereinafter set out a brief summary of the statutes relating to marriage and divorce, certain statistical data relevant to this discussion, and some suggestions for the bar to consider with respect to the subject.

---

† A study sponsored by the Southwestern Legal Foundation of Dallas, Texas.

* B.S.C., Southern Methodist University; M.B.A., J.D., Northwestern University University; Professor of Law, Southern Methodist University (on leave); Ezra Ripley Thayer Teaching Fellow, Harvard Law School.

[1] "It would not be easy to find a subject . . . more in need of the best that scientific juristic discussion can do for it, than the American law of divorce. Thoroughgoing improvement of the law on this subject must not be the least item in a program of improving our administration of justice. Looking at the law of the country as a whole, it does not admit of doubt that our law of divorce is in many ways one of the most unsatisfactory parts of American law." Pound, A SYMPOSIUM IN THE LAW OF DIVORCE: *Foreword*, 28 IOWA L. REV. 179 (1943). Alexander, *"Not the Least Item": A Section of Family Law*, 42 A.B.A.J. 733 (1956); Pope, *Domestic Relations*, 15 TEX. BAR J. 557 (1952). See generally SPELLMAN, SUCCESSFUL MANAGEMENT OF MATRIMONIAL CASES (1954).

THE TEXAS STATUTES ON MARRIAGE AND DIVORCE

Marriage is not merely the making of a private contract; it is a status in which the state has an interest.[2] Although it may be generally said that a person has a right to select a conjugal partner, nevertheless it is also recognized that the state may impose reasonable regulations with respect to the exercise of this right in the ordering of society. Moreover, the right to marry does not suggest that there is also a right to divorce, for once the status has been established its dissolution is one which the state may refuse altogether or permit only upon compliance with conditions of varying degrees of strictness.

The public policy of Texas with respect to the regulation of marriage is reflected in Article 4602-07, TEXAS REVISED CIVIL STATUTES ANNOTATED (1951). Article 4602 designates those persons authorized to "celebrate the rites of matrimony between persons legally authorized to marry." Article 4603 states that "males under sixteen and females under fourteen shall not marry." Article 4604 provides for the securing of a marriage license. Articles 4604c and 4604d[3] require the taking of a premarital examination for syphilis. Article 4605 requires the consent of the parent or guardian in the case of males under twenty-one and females under eighteen. Article 4606 provides for the recordation of marriage licenses. Article 4607 makes null and void the intermarriage of "any person of Caucasian blood . . . and Africans or the descendants of Africans." These provisions are generally regarded as directory and not mandatory.[4] Indeed, the only provision specifically declaring the nullity of marriage in the event of violation is Article 4607 dealing with miscegenous marriages, and this is now of doubtful constitutional validity.[5] Since Texas with a minority of states still recognizes the validity of the common law marriage, there is no necessity of compliance with any of the statutory formalities. Accordingly, if the parties have a present intention to be husband and wife and cohabit as such, they have effected a so-called common law marriage which is a valid and subsisting marriage for all purposes.[6]

---

[2] Grigsby v. Reib, 105 Tex. 597, 153 S.W. 1124 (1913).

[3] Arts. 4604a and 4604b have been repealed.

[4] See Portwood v. Portwood, 109 S.W.2d 515 (Tex. Civ. App. 1937) *error dism.*; Thompson v. Thompson, 202 S.W.2d 175 (Tex. Civ. App. 1918).

[5] See Perez v. Sharp, 32 Cal.2d 711, 198 P.2d 17 (1948).

[6] "In order to establish such a [common law] marriage there must be proof that the parties between whom the marriage is sought to be established: 1) Entered into an agreement to become man and wife; 2) That such agreement was followed by cohabitation as man and wife; 3) That they held each other out professedly and publicly as their

With respect to the regulation of marriage there are also provisions of the penal statutes which should be considered. Article 404, TEXAS PENAL CODE ANNOTATED (1952), imposes a fine up to $1000 on one who issues a marriage license to a male under twenty-one or a female under eighteen without the consent of the parent or guardian of the person applying, or if there be no parent or guardian, without the consent of the county judge of the county of the residence of the minor. Article 405 provides that the father's consent alone will be sufficient to justify the issuance of a license. Article 406 imposes a fine of $50 to $500 on one who performs the marriage ceremony without a license first having been issued. These articles have no application, of course, to the common law marriage situations since no license is required in such cases. It is only when an attempt is made to perform a ceremonial marriage that such provisions become applicable. So far as research indicates there have been no cases dealing directly with these statutes; prosecution under them is apparently very rare. Articles 490-98, TEXAS PENAL CODE ANNOTATED (1952), apply to both ceremonial and common law marriages.[7] These provisions, which deal generally with bigamous, miscegenous, and incestuous marriages, are concerned with relationships which the legislature has determined as offensive to public morals and decency.

With respect to the dissolution of the marriage, Article 4628, TEXAS REVISED CIVIL STATUTES ANNOTATED (1951), provides for annulment and Articles 4629-41 provide for divorce.[8] Annulments may be granted where there was natural or incurable impotency at the time of entering into the contract or other impediments which would render the contract void. In such case the marriage is regarded as a nullity ab initio; on the other hand, in the case of divorce the marriage is regarded as valid, subject to dissolution on the statutory grounds.[9] Because of the stringency of divorce statutes in some states, the number of annulments is high in relation to divorce;

respective spouses." Smith v. Smith, 257 S.W.2d 335, 337 (Tex. Civ. App. 1953) *error ref. n.r.e.*

[7] Arts. 490: Bigamy . . . ; 490a: Cohabiting in this State; Bigamy; when . . . ; 491: Defensive matter . . . ; 492: Miscegenation . . . ; 493: "Negro" and "white person" . . . ; 494: Proof of Marriage . . . ; 495: Punishment (for incest) . . . ; 496: Who men cannot marry . . . ; 497: Who women cannot marry . . . ; 498: Evidence. . . .

[8] Arts. 4629: Grounds for Divorce . . . ; 4630: Adultery and seduction . . . ; 4631: Residence of plaintiff . . . ; 4632: Procedure . . . ; 4633: Testimony of husband or wife . . . ; 4634: Debts created after suit . . . ; 4637: Alimony . . . ; 4638: Division of property . . . ; 4639: Children . . . ; 4639a: Further provision as to children, petition, judgment . . . ; 4640: Remarriage . . . ; 4641: Costs. . . . .

[9] Garcia v. Garcia, 232 S.W.2d 782 (Tex. Civ. App. 1950); Garcia v. Garcia, 144 S.W.2d 605 (Tex. Civ. App. 1940).

in Texas however, because of the ease in obtaining a divorce annulments are relatively few. The grounds for divorce may be paraphrased as: (1) cruelty, (2) adultery, (3) abandonment, (4) living apart for seven years, (5) conviction of felony, and (6) insanity. The statutory ground of cruel treatment is customarily given a liberal interpretation by the courts so that its well worn phrases are the magic words in the petition which when substantiated by some reasonably credible testimony will be sufficient to sever the marriage bond.[10] There is no counterpart of the common law marriage in the case of divorce. Although the mere living apart for seven years is a sufficient *ground* for divorce there can be no dissolution of the marriage without complying with the statutory formalities.

It is common knowledge with the bench and bar that uncontested divorces are ground through the mill on a mass production basis. Divorces are denied only in those cases where the allegations and proof are so flimsy that the whole action is frivolous. If a district judge is appalled by the stream of cases going through his court, he may adopt a "get tough" policy and require appearances by the non-contesting party.[11] Thereafter, he may seek to counsel with the parties in chambers to ascertain whether or not a reconciliation of differences may be effected. While such judicial mediation is commendable, the judge soon finds that when he applies a stricter policy the bar becomes resentful and representatives of the litigants seek to have their cases transferred, if possible, to other more lenient courts. Moreover, where a judge conscientiously attempts to unravel the tangled skein of domestic discord in each case, he soon realizes that he must spend an inordinate amount of time in protracted conferences in which the chances of ultimate success are disappointingly small. Some judges try to select for special attention those cases in which they have a "hunch" that there might be a successful

[10] The courts have excluded certain types of conduct from the category of cruel treatment: Green v. Green, 268 S.W.2d 237 (Tex. Civ. App. 1954) (general allegations about nagging and criticism were insufficient to make out cruel treatment); Allen v. Allen, 267 S.W.2d 911 (Tex. Civ. App. 1954) (insistence on wife's making a will; continuous bickering and arguments held insufficient grounds); Pickens v. Pickens, 261 S.W.2d 744 (Tex. Civ. App. 1953) (wife's general statements about "running around with other men," "spending money on other men" insufficient grounds); Golden v. Golden, 238 S.W.2d 619 (Tex. Civ. App. 1951) (conduct causing nervousness and embarrassment insufficient grounds).

[11] At the rate of approximately 5000 divorces per year in Dallas County and considering 250 working days, the number of divorces is about 20 per day. The trend in the country as a whole as well as in Texas is that contested divorces constitute only a small percentage of divorces granted. See Johnstone, *Divorce: The Place of the Legal System in Dealing with Marital Discord Cases*, 31 ORE. L. REV. 297 (1952); Nate, *The Administration of Divorce: A Philadelphia Study*, 101 U. PA. L. REV. 1204 (1953).

resumption of a normal marriage; others try to give more attention to those situations in which children of tender years are involved. Despite these efforts here and there to deal with the problem, the incidence of divorce in Texas continues to be considerably higher than the nationwide average as demonstrated by the statistical data below.

SELECTED STATISTICAL DATA

A survey of certain Texas counties reflects the following facts concerning marriage licenses issued and divorces granted for the years indicated.

Dallas County (population, 615,000; county seat: Dallas)

Year	*Marriage Licenses*	*Divorces Granted*	*Per Cent Divorces Granted to Marriage Licenses Issued*
1946	10,728	6,984	65
1947	9,200	4,929	53
1948	8,439	5,086	60
1949	7,144	5,001	70
1950	7,368	4,602	62
1951	7,078	4,763	67
1952	7,056	4,851	68
1953	7,095	4,974	70
1954	7,408	4,770	64
1955	7,705	4,689	60
Total	79,221	50,649	64

Tarrant County (population, 361,000; county seat: Ft. Worth)

1952	4,476	3,053	68
1953	4,345	2,722	62
1954	4,124	2,868	69
1955	3,956	2,764	69
Total	16,901	11,407	67

Harris County (population, 807,000; county seat: Houston)

1947	11,704	6,185	53
1948	11,132	5,745	52
1949	9,121	5,350	58
1950	9,570	5,273	55
1951	9,248	5,461	59
1952	9,184	5,777	62
1953	9,811	5,845	59
1954	9,947	5,683	57
1955	10,482	5,148	49
Total	90,199	50,467	56

Lubbock County (population, 101,000; county seat: Lubbock)

1946-1955	10,338	5,624	54

Potter County (population, 73,000; county seat: Amarillo)

1946-1955	9,557	7,386	77

It should be noted that the number of licenses issued as an indicator of valid marriages performed is subject to certain rather minor qualifications. First, a license may be issued to a couple who thereafter decide not to marry; second, a license may be issued in a situation resulting in a voidable marriage which is later terminated by annulment; and third, common law marriages will not be reflected in these statistics since licenses are not necessary in such a case for a valid marriage. The first two factors will tend to overstate the number of assumed marriages against which the divorces are compared; the third factor will result in an understatement of this number. It is assumed that these adjustments are not significant.

Comparable statistics for the nation as a whole are as follows:[12]

Year	*Marriages*	*Divorces*	*Per Cent Divorces to Marriages*
1946	2,291,000	610,000	27
1947	1,992,000	483,000	24
1948	1,811,000	408,000	23
1949	1,580,000	397,000	25
1950	1,667,000	385,000	23
1951	1,595,000	381,000	24
1952	1,563,000	388,000	25
1953	1,533,000	390,000	25
1954	1,490,000	379,000	25
Total	15,522,000	3,821,000	25

The granting of the divorce is but one of a host of problems with which the machinery of the state must deal. Litigation over custody and support of the children and property rights may ensue and continue for many years. Dependent and neglected children, many of whom are products of broken marriages, may become charges of the state,[13] and the authority of the state may be employed to enforce decrees for child support.[14] This latter activity in Dallas County alone has resulted in the state's collecting child support funds in the amounts and for the years indicated as follows:

1950	$741,111	1953	$1,281,577
1951	805,182	1954	1,772,656
1952	962,953	1955	2,223,631

Another burden to the state is the increase in juvenile crimes, which is attributable in part to the increase in broken homes. This fact is indicated by the following survey of selected counties showing

[12] U. S. DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES (1950 and 1956 eds.).

[13] Arts. 2329-38, TEX. REV. CIV. STAT. ANN. (1950).

[14] Arts. 2328b-1, 2, and 3, TEX. REV. CIV. STAT. ANN. (1950) (Uniform Reciprocal Enforcement of Support Act).

percentages of cases handled by the juvenile authorities in which the juvenile lives with both parents and those in which the juvenile lives with one parent, relative, foster parents, or friends.

County	*County Seat*	*Juvenile in Residence with Both Parents*	*All Other Residence Situations*
Dallas	Dallas	44	56
Tarrant	Ft. Worth	15	85
Lubbock	Lubbock	28	72
Potter	Amarillo	40	60
El Paso	El Paso	22	78
Harrison	Marshall	40	60

It is true, of course, that there are instances in which the child would be in a better environment away from parents who live together where the domestic scene is not tranquil. In general, however, it will be noted that of the juvenile offenders those living with both parents represent consistently a smaller percentage of cases handled.

An Analysis of Divorce Cases in a Particular District Court

In what groups does divorce have its highest frequency? The lower, middle, or upper income brackets? The couples with no children, with few children, with a number of children? Those couples married a few years or many years? Any reform in this area must take into account the answers to these questions. For many years Judge Sarah T. Hughes of the 14th District Court in Dallas County has maintained a diary in which she has noted pertinent information with respect to divorce cases. Her efforts demonstrate that further study in this direction would be instructive. An accumulation by the various district judges of data with reference to divorces granted or denied would within just a few years produce information on the basis of which reform measures could be intelligently undertaken. It is believed that the following statistics which are abstracted from Judge Hughes' records are fairly representative of the Dallas area.

TABLE 1

YEARS MARRIED BEFORE SEPARATION

Year	*Total Cases*	*0-1*	*1-3*	*3-10*	*Over 10*
1937	146	45	32	38	31
1938	601	134	149	190	128
1939	1058	314	229	304	211
1943	1188	363	207	362	256
1944-45	1156	302	308	358	188
1946	592	191	145	159	97
1947-48	815	239	178	247	151
1949	296	99	72	73	52
1950-51	749	203	183	194	169
1952-53	885	247	152	297	189
1954	574	142	144	193	95
Totals	8060	2279	1799	2415	1567
Per Cent	100%	28%	22%	30%	20%

TABLE 2

GROUNDS

Year	*Total Cases*	*Cruel Treatment*	*Felony Conviction*	*Adultery*	*Desertion*	*Continuous Separation*
1937	146	118	1	3	22	2
1938	601	504	2	8	55	32
1939	1058	899	4	4	90	61
1943	1188	982	3	26	92	85
1944-45	1156	984	6	24	86	56
1946	592	493	--	31	44	24
1947-48	815	745	--	17	36	17
1949	296	274	1	4	10	7
1950-51	749	650	--	19	53	27
1952-53	885	807	--	19	37	22
1954	574	538	1	7	18	10
Total	8060	6994	18	162	543	343
Per Cent	100%	87%	1%	2%	6%	4%

TABLE 3

WAGE GROUP (SALARY PER MONTH)

Year	*Less Than* $100	$100-$250	$250-$400	*Over* $400
1937	5	5	1	0
1938	74	43	4	0
1939	55	35	9	0
1943	9	76	55	10
1944-45	18	89	40	21
1946	5	24	17	3
1947-48	1	31	27	9
1949	2	9	8	3
1950-51	7	26	57	53
1952-53	9	32	67	51
1954	3	8	8	21
Total	188	378	243	171

TABLE 4

CHILDREN

Year	2 *or Less*	*More Than* 2
1937	29	13
1938	165	27
1939	224	44
1943	324	80
1944-45	288	92
1946	153	21
1947-48	247	56
1949	62	24
1950-51	149	56
1952-53	236	67
1954	184	44
Total	2061	524

TABLE 5

ALLEGATIONS

Year	*Total Cases*	*Drinking*	*Physical Violence*	*Another Man-Woman*	*Non-Support*	*Out Late*	*Neglect*	*Disputes Re Children*	*False Accusations*	*Refused Medical Care*
1937	146	20	29	12	18	4	3	0	6	0
1938	601	151	131	77	121	53	33	7	13	3
1939	1058	363	378	187	246	231	41	11	19	0
1943	1188	296	319	243	143	178	56	28	73	12
1944-45	1156	342	486	271	174	210	38	27	83	8
1946	592	163	178	137	71	77	21	19	33	6
1947-48	815	270	309	145	114	138	33	18	45	3
1949	296	81	95	44	45	31	15	12	13	2
1950-51	749	261	357	138	161	117	58	7	95	0
1952-53	885	344	353	101	113	123	43	33	67	3
1954	574	204	228	132	106	136	31	27	26	0
Total	8060	2495	2863	1487	1312	1298	372	189	473	37

From the foregoing data it is observed that 80% of the divorces granted affected couples married less than 10 years. 50% of the divorces granted affected couples married less than 3 years.[15] Almost 87% of the cases relied upon the statutory grounds of cruel treatment. The statistics with respect to children involved, although incomplete, do indicate that the number of couples with two children or less is far greater than where there are more than two children. The wage group statistics are probably not complete enough to draw any conclusions about income brackets in which the number of divorces is highest, yet the information suggests a reduction in the frequency of divorce in higher income groups.

In cases where the statutory ground is cruelty physical violence and drinking have a higher incidence than other factors. Of course, the entire course of marital conduct is not spelled out in detail in the plaintiff's petition so that many factors which actually occur and form the basis of discord are not revealed, and this is particularly so in the case of an uncontested divorce.

WHAT CAN BE DONE

The whole community should be concerned with these problems. It requires relatively little effort, of course, to make recommendations with respect to increasing the facilities of social service agencies which deal directly or indirectly with domestic relations problems; to put such recommendations into action is quite another matter. Even now community chest and local government budgets are hard pressed to provide for the ever increasing costs of effective social work. Indeed, it is a tribute to many of the people who work for social agencies or who do social work in various departments of local government that they give of their time and skill for relatively lower income, a constant overload of work, and usually more than their share of criticism.

More must be done by professional groups. The talents of the lawyer, doctor, teacher, clergyman, sociologist, and others must all be brought into play.[16] To make the services of these professional groups operative in an effective way, however, is not easy. If, for example, psychiatric services are made available to lower income groups, the physician performing the services must either contribute

[15] Of 135,187 divorces reported by 23 states in 1953 approximately 34% involved marriages of three years duration or less and 70% involved marriages of 10 years duration or less. U.S. DEPT. OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES (1956).

[16] Symposium, *Interprofessional Approach to Family Problems*, 22 U. KAN. CITY L. REV. 1 (1953); Symposium, *Conference on Divorce*, U. CHI. LAW SCHOOL CONFERENCE SERIES No. 9 (1952).

part or all of his services for this purpose and thereby sacrifice income to do the job or he must look to the state or social service agencies to underwrite the cost. The teacher may think it advisable to introduce at the high school level courses on marriage, its responsibilities, and obligations; yet there are difficult problems with respect to instruction. At what stage in the educational process should such a course be taught? What should be the content of the course? Thus, it would perhaps not be desirable to have moral and religious issues in such a course since this would be regarded as an encroachment by public education in a field where it does not belong. Religious leaders want to offer the services of the churches in preserving wholesome family life;[17] however, couples who may need strengthening of religious values to restore domestic peace are perhaps in a group that has no particular church affiliation and are reluctant to submit to any type of pastoral counseling.

Despite the obstacles which lie in the way of progress each professional group through its members has a fiduciary obligation to the community to do all that is possible to contribute to the solution of a problem in which all have an interest. The members of the legal profession in particular have the opportunity to provide the operating rules within which they and other groups in the community may effectively work. The following suggestions are made in this regard.

(1) The practicing lawyer has the opportunity when he is first consulted about a situation in which there is domestic difficulty to assist and encourage the parties in preventing a dissolution of the marriage. Some members of the bar feel that it is when domestic difficulties are beyond solution that the parties seek legal counsel and therefore that little can be done remedially. It is true that when one or the other party employs an attorney he or she is of the opinion that the marriage is over and only the necessary legal procedure remains to accomplish complete dissolution. These factors suggest, however, not that the attorney is helpless but rather that there is a greater challenge presented to him to salvage the situation. By being a counselor and not an advocate he may use all the skills of negotiation to repair that which seems irreparable. In this connection there have been instances in which an attorney who represents the wife in a divorce action agrees to charge for his services a nominal fee plus a percentage of the wife's interest in such property

[17] Federal Council of Churches of Christ in America, *A Christian View of Marriage*, SELECTED ESSAYS ON FAMILY LAW 118 (1950); Pope Pius XI, *Encyclical Letter on Christian Marriage*, *id.* at 132.

which is set off to her in the property settlement agreement. The bar may well consider whether such arrangements are proper; to say the least they would have a tendency to dampen an attorney's enthusiasm to deter the wife from pursuing the matter to a conclusion. Nothing should diminish the efforts of the lawyer to do all that is possible to prevent a permanent disruption of the marriage.

(2) The bar should consider legislation which would create a family court in which there would be not only a judge but a staff of trained counselors.[18] The present divorce procedure would be abandoned and a non-adversary proceeding substituted in its place in which the judge's authority is implemented by requirements of mandatory or discretionary counseling and divorce investigation. The old concepts of proving fault or guilt on one side subject to the defenses of condonation, recrimination, and connivance would give way to a socio-legal approach which would have as its basis the rehabilitation of viable marriages.

(3) Some consideration should be given to further extensions of the waiting, or "cooling-off," period between the time of filing the petition for divorce and the hearing. This period was increased from 30 days to 60 days in 1955,[19] and it is understood that the district judges have recommended an even longer period based on their experience that many petitions are dropped after filing as the parties effect a reconciliation. Thus, in Dallas County in 1954, 6744 divorce actions were filed but only 4770 divorces granted; in 1955, 7072 actions were filed and 4689 were granted. Undoubtedly, the difference is accounted for in part by the court's refusal to grant divorces in some cases; most of the difference is accounted for, however, by the desire of the parties not to prosecute after the action is filed. It is believed that an extension of the waiting period would result in a greater number of cases dropped for non-prosecution. Some states have the procedure of granting an interlocutory decree of divorce which becomes final after a period of time.[20] The undesirable feature of this arrangement is that it does

[18] Courts of Dometsic Relations were established in Potter County and Lubbock County in 1951, in Harris and Starr Counties in 1953, and in Hutchinson County in 1955. Arts. 2338-3 et seq. TEX. REV. CIV. STAT. ANN. (1950). See generally MUDD, THE PRACTICE OF MARRIAGE COUNSELING (1951). See also PLOSCOWE, THE TRUTH ABOUT DIVORCE 247 (1955); Alexander, *The Follies of Divorce; A Therapeutic Approach to the Problem*, 36 A.B.A.J. 105 (1950); North, *The Family Court*, 19 MARQ. L. REV. 174 (1935); Waite, *Courts of Domestic Relations*, 5 MINN. L. REV. 161 (1921); Perkins, *Family Courts*, 17 MICH. L. REV. 378 (1919); Alexander, *A Therapeutic Approach*, Symposium, *Conference on Divorce*, U. CHI. LAW SCHOOL CONFERENCE SERIES No. 9 at 51 (1952).

[19] Art. 4632, TEX. REV. CIV. STAT. ANN. (1951).

[20] VERNIER, AMERICAN FAMILY LAWS §88 (1932); KEEZER, MARRIAGE AND DIVORCE, §835 (1946).

place the matter in court in an adversary proceeding whereas if the marriage is to be rehabilitated nothing of an adversary nature should occur until it appears that a permanent disruption is inevitable.[21]

(4) Before legislation can be undertaken, it must be based on a rational analysis of sufficient information so that choices of alternatives can be intelligently made. In this connection it would be of inestimable value if all district judges would accumulate data concerning divorce cases as Judge Hughes has done. Such data would indicate the areas in which legislation or lawyers' practices might be changed. It would be of importance if some standard reporting of divorce cases could be devised by the district judges to make possible comparisons of information.

(5) Some attention should be given to the present statutory requirements for marriage. Table 1 indicates a high incidence of divorce where the marriage has existed only a few years. It is conceivable that further inquiry into this matter would show that these were the same marriages that were contracted in haste. As matters stand getting married is easier than undertaking almost any other pursuit; it is easier than obtaining admission to college, acquiring a responsible job, or enlisting in the military service, and yet its importance transcends these occupations.[22] If it is found that hasty marriages are doomed from the start, then it would seem desirable to tighten the requirements with respect to consent of parents or guardians and to provide for a waiting period in which the parties would file a declaration of intention to be married some time prior to the issuance of a license authorizing the marriage. All such formalities, of course, are somewhat frustrated so long as parties

[21] See McCurdy, *Divorce — A Suggested Approach with Particular Reference to Dissolution For Living Separate and Apart*, 9 VAND. L. REV. 685 (1956).

[22] One calls to mind the Indian brave's reflection on this subject.

Nice night,
In June,
Stars shine,
Big moon,
In park,
On bench,
With girl,
In clinch,
Me say,
Me love,
She coo,
Like dove,
Me smart,
Me fast,
Never let,
Chance pass,

Get hitched?
Me say,
She say,
O.K.
Wedding bells
Ring, Ring,
Honeymoon,
Everything,
Happy man,
Happy wife.

Another night,
In June,
Stars shine,
Big moon,

Ain't happy,
No more,
Carry baby,
Walk floor,
Wife sad,
Me mad,
She fuss.
Me cuss,
Life one,
Big spat,
Nagging wife,
Bawling brat.
Me realize,
At last,
Me too,
Damn fast!

may validly enter into a common law marriage. This archaic holdover from by-gone days seems out of place today.

With respect to remarriage after divorce, Article 4640, TEXAS REVISED CIVIL STATUTES (1951), provides that where a divorce has been granted because of cruel treatment the guilty party may not remarry within a year, except to his former spouse. There are no sanctions to enforce this provision, and it is apparently disregarded. In any event the practitioner has the responsibility of advising his client of this statutory provision even though there is no enforcement of it. Either the provision should be eliminated or, if it expresses a desirable legislative policy, it ought to be made enforceable.

ARE INSTITUTIONAL SOLUTIONS ADEQUATE?

Shifting the burden of the domestic relations problem to the institutions discussed herein—family court, paid counselors, psychiatric services, legislative reform—is a suggested solution in a crisis. When one considers the situation and the various attempts of different communities to solve the problem, it is realized that the ultimate solution is not institutional but one simply of individual morality. It is regrettable that the legislator and judge encounter social pressures which may cause them to yield to prevailing attitudes. If society wants marriage and divorce by consent of the parties, the tendency seems to be that in the legislation itself or in its administration in practice society is given what it wants. In the long run such law in accordance with current fashions will get us nowhere. Let us try with the reflective thinking of various professional groups to formulate a public policy which will assure the stability of the family unit and then implement this policy with the legislative and administrative means to achieve it. It is urged that members of the Texas Bar and representatives of the judiciary give their attention to the necessity of reform measures in this most critical area.