STATISTICS OF MARRIAGE AND DIVORCE.[1]

THE appearance of this thick volume marks a great stride in the knowledge both of the laws and their operation regarding these most fundamental of social problems. In statistics especially the gain is immense. Twenty years ago President Woolsey's *Divorce and Divorce Legislation* contained in a dozen scanty pages about all the existing statistics regarding both this country and Europe. Since then, the collection of their own statistics by four or five more states (in a meagre way, excepting the excellent work in Massachusetts begun by Mr. Wright, the commissioner of labor in 1879 and continued since under provision of statute); the few additions by the National Divorce Reform league; the little pamphlet of Sig. Bodio of Italy in 1882; the *Étude demographique du divorce* of Mr. Bertillon in 1883 (which, however, added comparatively little except in details to the work of Bodio), and some continental official publications in very recent years have pretty much covered all that could be got at even in libraries. No good collection of these in a single volume could be had. And for a compendium of our own laws of marriage and divorce, we have had to resort to various handbooks, generally unsatisfying to the student and mostly so untrustworthy or meagre as to disappoint him. The laws of Europe, beyond the account of divorce law given in Woolsey, were not easily accessible. But a knowledge of these for historical and comparative study and the purposes of practical legislation and social reform is invaluable. The work of Vraye and Gode (Paris, 1887) has, very recently, given a sketch of European laws of divorce.

This report has changed all this. We now have a good handbook for the legislator and student. That it has many and

[1] A Report on Marriage and Divorce in the United States, 1867 to 1886: including an appendix relating to Marriage and Divorce in certain countries in Europe. By Carroll D. Wright, Commissioner of Labor, February, 1889, Washington: Government Printing Office.

serious limitations probably none understand better than those who have had most to do with it. But there can be little doubt that every one who will read the introduction, which recounts the official history of the tedious work that has led to this report and briefly tells us the difficulties that beset the path of the commissioner and the reasons for his selections, will applaud the skill and industry displayed while heartily commending the plan and execution. Certainly one who has had the best of opportunities to know something of the greatness of the task and the scientific and practical difficulties that have been surmounted does not hesitate to express here his strongest commendation of the way in which the commissioner and his trained force have done their work. Few classes of scholars and practical men encounter more difficulties than statisticians, even when they are officials, having at their command so admirable resources as the department of labor now possesses. And yet it may be expected that the present report, merely as a piece of good workmanship, will take very high rank among the thirty or so volumes which this distinguished statistician has given to the public during his official life in Boston and Washington; while the importance of its subjects, the range of its figures, covering two continents, their instructive surprises for the general public and even for most well-informed people, the condition of law and practice which it discovers, and the subtleness, general steadiness and sweep of the great social movement it reveals, must put it in the very front rank of official publications. Its 1074 pages bring together from original sources in an exact order, with clear statement, a vast amount of hitherto unpublished material and put along with this in condensed form nearly all kindred matter that could be found in previous publications. It must immediately become the leading authority in its field, while its references to the published sources of information will guide the student to the best authorities elsewhere.

The writer of this article has consented to give some account of its material, especially that relating to the social aspects of the problem of marriage and divorce, with the understanding

that the legal problems presented in the report shall be treated in another paper and by another hand. It is the conviction of the present writer that there is a rich field here for the trained student of the science of law, especially under the historical and comparative methods, and one which may yield practical results of the greatest value. It is proposed in this article to let the report speak largely for itself and in the order of its arrangement.

At the outset, let me call attention to the introduction, in which the commissioner, after recounting the official history of the investigation, discusses the reasons which determined its scope and method; points out the important sociological questions that have been necessarily passed over, because they lie beyond the reach of his means and instrumentalities; and urges most forcibly the duty of a better system of records both of marriage and divorce throughout the country. Every thoughtful citizen, as well as every student, will most heartily thank Mr. Wright for saying that libels for divorce throughout the country should, in addition to the points now given, be required by law to furnish full facts as to the place of birth, age and occupation of the parties; whether the marriage sought to be dissolved is the first or a subsequent marriage; and whether the parties, or either of them, have before been parties to a divorce suit. More urgent still is his call for "the strictest legislation relative to the condition of records." He says: "The civil status of parties, their property, the legitimacy of children, are jeoparded in many instances by the reckless manner in which records are kept." This is none too strongly put; for I learn that in some counties attorneys and others have practically free access to the files of courts, and libels and other papers are too frequently actually stolen or used for disreputable purposes.

The records of marriages are still more neglected. Only twenty-one states require any return to be made to a state officer. "Only a very few states make marriage registration compulsory." And, in some of these, returns are imperfectly made; the facts given are few and, "as a rule, are compiled so care-

lessly as to be nearly worthless." The report makes suggestions here similar to those regarding divorce, and adds, "if such laws could compel registration, a great point in statistical science would be gained, and not only a point in this science gained, but a matter of the very greatest value to the welfare of all parties concerned." Let any one turn to the appendix, relating to Europe, and especially let him study in the original sources the provisions in many European countries by which a marriage may be traced from the beginning to the end of it (whether by death or divorce), and he will be still further impressed with the importance of these remarks of the commissioner. The evidences of a marriage or divorce are most wretchedly guarded in the records of most of our states. Indeed, it was the expectation of those who have urged the incorporation of marriage with divorce as the subject of this report that the value of the part relating to marriage would be more in its exhibition of the public negligence regarding statistics of marriage than in its positive information.

Of course, some knowledge of the statutes regulating marriage and divorce are indispensable to the understanding of the statistics. Besides this, there has been very great need of a correct and, if possible, official compilation of the points of the various laws on these subjects. By skilful devices of arrangement, the report brings into the space of one hundred pages a complete digest of the various statutes. This may be trusted for its accuracy and will be heartily praised for its ease of use. It was prepared under the immediate care of Messrs. Olmstead and Keller, two lawyers (and officers of the department) of great experience in the work of statistical compilation, and every possible precaution was taken to secure accuracy.

It is noteworthy that neither the national nor any state constitution has any provision touching the subjects of the report. The family has not yet come into the direct control of the organic laws of our country.

Several states and territories[1] define marriage in their stat-

[1] For convenience the word *state* will be used in this article to designate any of the forty-seven political divisions of the country, including the district of Columbia.

utes. Eighteen of these define marriage as a civil contract. Others state that "marriage is a *status* acquired by the parties thereto by virtue of the contract, which is executed by consummation." Three of them, California, Dakota and Idaho, say that "marriage is a personal relation, arising out of a civil contract, to which the consent of parties capable of making it" is necessary. Georgia and Pennsylvania formally announce the encouragement of marriage. Other states forbid its discouragement. Thirteen states make illegitimate children legitimate by marriage of parents, and twenty-four others add to this a requirement for the acknowledgment of the father. Thirteen declare expressly that marriages contracted beyond their territory are valid in the state if valid where contracted. Only two or three make any attempt to restrict the marriage in another state of their own citizens contrary to their own laws. A table, with many explanatory notes added, puts before the eye the provisions of the states regarding ages at which minors are capable of marrying; ages below which parental consent is required, and the character of the consent, whether written, verbal or unspecified, and whether for license or solemnization. No less than sixteen make no provision at all as to the age at which minors may marry. Five probably leave this matter to the common law as interpreted by the courts. Four fail to make provision for parental consent below some specified age; and a large number either say this consent may be written or verbal, or fail to specify the manner of it.

It would take too much space to set forth the prohibited degrees of consanguinity or relationship within which marriages are forbidden. But the statement of them, their variety, conflicting character, and frequent extreme meagreness, are painfully interesting, especially when we recall the point just made as to the validity given in most states to the acts performed in another. The record of these restrictions in some states is astonishingly brief. For Indiana, Ohio and Nevada, for example, the report simply says: "Persons not nearer of kin than second cousins, and otherwise competent," may marry. Great difficulty was found by the compilers in making a correct

classification of the statutes relating to void, voidable and prohibited marriages; but it is clear that much confusion prevails as between the several states. The states are, however, taken up *seriatim*, and their laws stated.

Another table, with several pages of notes, sets forth the laws regarding licenses, their official sources, and fees. These official sources comprise town clerks, registrars of births, marriages, *etc.*, clerks of probate, county courts, circuit or other courts, judges of probate, registrars of deeds, county auditors, and so on, according to the state. No license or certificate is required in the seven divisions not named in the table. Of these the great state of New York is one. The fee for this license runs all the way from fifty cents to three dollars. There is sometimes variety in the fees of the same state. For example: the state fee in Minnesota is two dollars; but in Ramsay county it is one dollar and a half and in the adjoining county of Hennepin it is only a dollar. People can marry in St. Paul for one of these sums and in Minneapolis for the other. In Oregon the state fee is two dollars; but it is specially provided that in eight counties the fee shall be two dollars and a half, while in four others "the county clerks shall receive for their services an additional compensation of 33⅓ per cent, making the fees in those counties $2.67." It is evidently for the interest of parties in Delaware, where the fees also vary and may be as high as $2.83, to visit Maryland and save $1.83 towards the trip or go to Pennsylvania and get a license for fifty cents, or into New Jersey where no license at all is required. How extensively these privileges are used the report apparently does not show. But it has been said that some thousands of Philadelphians are annually married in Camden to escape the simple and inexpensive rules lately made by their own state. A similar state of things existed forty years ago or more in Connecticut, but passed away when this state enacted a law similar to that of Massachusetts. In Maryland the publication of banns may take the place of a license. In seven states, the license must issue from the county in which the woman to be married resides; and in ten others, in the county where the marriage is to take

place. Connecticut restricts the issue of the license to the town in which the marriage is to be celebrated, and the license authorizes marriage in that town only. A few other states approach this rule. In Kansas it must be issued by the probate judge of the "proper county." The officer in some states is required or has authority to ascertain certain facts as to age, *etc.*, sometimes under oath. Oregon only requires this to be the oath of a third person. Massachusetts alone seems to require any notice of marriage intentions prior to the issue of the license, which is there called the certificate. But in most states the marriage of persons who are strangers to all officials seems to be freely allowed on their unverified statement of the required facts, or without any statements whatever. Nothing of this sort seems to be tolerated anywhere in Europe.

All the states except Pennsylvania and South Carolina expressly define the classes of persons who may celebrate marriage. These mostly come under four classes: ministers, *etc.*; in the large majority of states, judges of one or more classes of courts; justices of the peace in all but six, including the district of Columbia; and, in most, according to customs of Quakers or other religious societies having peculiar forms of their own. Of justices of the peace, there are 7658 in Massachusetts alone who have been commissioned in the last six years, and 3225 in Maine commissioned since 1880, and so on downward. Of the possibility of abuse of the privilege and the consequent effect upon the religious tone of society and public morals, the reader must judge for himself. There are no statistics bearing on the subject in the report. In early times I believe the celebration of marriage in Massachusetts was forbidden the clergy, it being made purely a civil affair through dread of ecclesiasticism. A few years ago it was found that over ninety per cent of the marriages of one year were celebrated by clergymen. The form of celebration in all the states is practically free to the celebrant, except that consent of parties is required.

The presence of one witness is required in Dakota and New York. Two are necessary in eleven states, and in Louisiana three are required. The reader will bear in mind that the courts

in eighteen states and in the district clearly hold marriage by simple consent, without license or celebration (and, in some of these states, without witnesses even) to be valid.[1] It is often provided by statute that marriage is not invalidated by informalities. Fees are generally prescribed (but usually only for marriage before civil officers) from one to five dollars in amount, or a voluntary sum. Sixteen states make provision for giving certificates of the marriage to the parties, usually upon request. The person solemnizing the marriage "is, in nearly all the states and territories, required to make a written return or certificate thereof (upon the license or separate therefrom) to some official authorized to receive, and, except in New Jersey, required to record, the same." Sixteen states require the officiating person to keep a record of his own. In addition to the requirements of the territorial statutes, Congress[2] requires that in all the territories a certificate of every marriage must be filed in the probate court or its equivalent. Only a few states require or provide that citizens married in other states shall file a certificate on return.

The general facts about divorce laws are so much better known than those regarding marriage laws that the former need not detain us long. Legislative divorces are now prohibited in the territories and in most of the states. Two juries in Georgia must pronounce concurrent verdicts in favor of a divorce at different terms of court before it can be granted. This at least is the constitutional provision. Jurisdiction is distributed variously, according to the statutes and the structure of courts, to county, district, circuit, superior, supreme or chancery and "chancery side" of circuit courts. Several states seem to make no provision as to which county or court it must be, though some provision is the general rule. *Bona-fide* residence in the state is now the statutory rule in all the country. But the mere declaration of an intention of residence once allowed parties to seek divorce in Utah, and the statistics for the years

[1] Mr. F. G. Cook in the third of his four valuable articles on the marriage celebration in Europe and this country in the *Atlantic Monthly* for February–May, 1888. The statement cited is in the April article.

[2] Act of March 3, 1887.

1876 and 1877 show how shamefully it was abused. The required residence is only ninety days in Dakota, six months in Arizona, California, Idaho, Nebraska, Nevada, New Mexico, Texas, Wyoming. No limit is fixed in Louisiana, but the residence must practically be *bona-fide*. Some of these states require residence for the statutory period in the county where suit is brought. In several the limit is one year. The report makes the statement that "the statutes of eight states and territories below named specifically provide, in effect, that if a married woman dwells within the state at the time of bringing an action for divorce, she is deemed a resident thereof for the purpose of such action, regardless of her husband's residence."

In some states reasonable care is taken that notice be served upon the defendant. In others the provisions on this point evidently admit of great abuse, it being left to the unsupported affidavit of some interested person or to the mere statement of the applicant to determine the fact of absence beyond reach of the court. Notice by publication or mail or both is frequently recognized as sufficient. In 45 counties specially investigated, out of 29,665 cases personal service was made in 17,040 and notice by publication was served in 9944, leaving 2681 "unknown" cases. A few larger counties will show interesting figures. In New Haven, Connecticut, 26.5 per cent of the cases where a definite "yes" or "no" was the answer reported, were notified by newspaper publication; 43.5 per cent in Cook county, Illinois, 32.2 per cent in Marion county (Indianapolis), Indiana, and 25.8 per cent in Suffolk county (Boston), Massachusetts.

The causes established by statute are too well known to need anything beyond mere mention. Except in South Carolina, where divorce has never been granted except for a short period soon after the civil war, absolute divorce is granted for anywhere from one cause (in New York) to fourteen (in New Hampshire). New Jersey, strictly speaking, allows absolute divorce for only two causes. The causes throughout the country count up to forty-two in number. One of them, allowing divorce at the discretion of the courts, which formerly existed in Maine, Connecticut, and Arizona, is now found only in Washington terri-

tory. Some of these causes are trivial or singular; such as living apart (voluntary separation), in Kentucky and Wisconsin; refusal on the part of the wife "to remove with her husband to this state" (Tennessee); and in Florida "habitual indulgence in violent and ungovernable temper."

Limited divorce (the old separation "from bed and board") exists on the statute book in twenty of the forty-seven states and territories. Unfortunately the report seems to have been unable to supply the figures showing just how many separations there are of this class. But in most states very few divorces would come under this head.

A half-dozen states only provide for the resistance of petitions for divorce by attorneys appointed for the purpose by the court or by the prosecuting attorney of the jurisdiction. Singularly enough, Indiana is one of these. No light is shed on the fidelity with which this safeguard is used. Provision for alimony is made in all the states; and in seven alimony, or an allowance similar in nature, may be decreed to the husband as well as to the wife. In the majority of statutes, collusion, connivance, condonation and recrimination are made fatal to an application for divorce. Sixteen states provide that suits for divorce, especially in cases of adultery (but some for a few other causes also), must be brought within a limited time. In all states but three (Delaware, Maine and Massachusetts, where a divorce secured elsewhere against their own laws is invalid in the state) a divorce decreed in any other state is valid in the state whence the parties went to obtain it. Indiana takes pains to put this concession upon its statute book without qualification. Eighteen states provide for change of name of any woman to whom the divorce is granted. The report bears testimony to the fidelity of the Roman Catholic church and the good results of its influence. It gives some curious information as to Mormon practices, but these do not concern our present object.

I have less space than I could wish for an account of European laws of marriage and divorce. Otherwise I should be tempted to reproduce in full the digest of the first that comes

under the eye, that of Austria, or the marriage law of Germany, which has been in force throughout the empire since 1876. Generally it may be said that marriage in Europe is now strictly a civil act, though place is made for a religious service where desired. The improved laws of European countries are generally parts of a carefully prepared scientific whole, some of the later systems, as in Germany and Switzerland, being the work of eminent law professors. The legal age of marriage; degrees of consanguineous or other relationship; consent of parents (a much more real thing in Europe than here); rules for notice of intention; provision for verifying the facts alleged, often including certification both of the fact and means of the dissolution of a previous marriage, whether by death or divorce; strict requirements for publication; restrictions as to locality within which the marriage must occur; generally, provisions that ten months or a year, e cept by special dispensation, must intervene between the dissolution of one marriage and the contraction of another; express provisions that a person divorced for adultery cannot marry a paramour; the most careful registration (and report to the statistical bureaus) of marriages as well as divorces, — these are almost invariable features of European marriage laws. In some countries the restrictions upon the marriage of soldiers in the ranks are accompanied with illicit relations and illegitimate births; but often these are such more in technical form than in reality, as many of these parties are faithful and a legal marriage follows the expiration of the term of service. In some countries, an entry of the dissolution of a marriage by divorce as well as death must be made on the margin of the original entry of the marriage, whence the fact must be certified in case of a remarriage by one or both of the parties. Bigamy or similar violation of the marriage laws is thus rendered extremely difficult. It may be unwise to attempt to reproduce these safeguards in the United States. But certainly these regulations are highly suggestive. A few years ago persons who specially investigated the matter were forced to the conclusion that the bigamies in one of the best states in the country, which has one of the best of our American mar-

riage laws and a fairly well administered divorce law of the liberal type, were nearly as numerous as the divorces. It is, as is well known, entirely easy for persons with easy consciences to obtain a license and secure a formal marriage before a clergyman or other officer and have it duly recorded, with many chances in their favor as against detection and conviction of crime. The report will undoubtedly direct attention to this important matter and give us a clew to some remedies.

Divorce in Europe is very unlike divorce in the United States. There is but a single divorce court for England and Wales, and in few (if any) European countries do the courts having jurisdiction of divorce correspond to the ordinary county courts of this country. The causes for which divorce may be granted in some countries in Europe are scarcely fewer than those in the United States, even extending to divorce by mutual consent. But the administration is far more carefully controlled than here. Belgium and some other parts of Europe are still governed by the Code Napoléon. But divorce by mutual consent is admissible only where the husband is at least twenty-five years old and the wife twenty-one, and is not allowed after twenty years of married life, or when the wife has reached her forty-fifth year. Attempts at reconciliation before divorce is decreed must be made in Holland and some other countries, though of late Prussia seems to have dropped the practice. A special feature of some legislations is judicial separation for a period of years (in Holland for five years), capable of conversion into absolute divorce at the end of the period. There were from six to fourteen of these separations annually in Holland among a number of divorces ranging from 200 to 400. An active public opponent in the interests of the state is a common thing in Europe.

Nearly one hundred pages of the report are devoted to an analysis of the tables. The investigation covers a period of twenty years, 1867–1886; and the European figures include the same period, with some exceptions running back to include all known statistics of Europe that are drawn from trustworthy sources. So bad are the conditions for the returns of marriage from the divisions smaller than counties, that returns are ob-

tained from only 1728 out of the 2627 counties in the United States, or sixty-six per cent of the whole. Only six of the forty-seven territorial divisions give practically complete returns, but nine other states are thought to have fairly good statistics of marriage. Twenty-one states, however, have some form of state registration.

Returns for divorce were secured from 2496 counties, or ninety-five per cent, covering ninety-eight per cent of the population. The loss of many court houses by fire, including those in the important cities of Chicago and Cleveland, leaves a blank in the statistics for a few years in each case. But the success of the work is phenomenal. The methods of original investigation, generally by trained experts under careful instruction and almost daily direct supervision, insured this. The points covered by the inquiry were selected from a full outline (by the present writer) of the desirable points, enumerated to cover all the conceivable features of an ideal plan, increased where possible from the suggestions of many further conversations and the researches of the commissioner and his chief clerks. The task of collecting trustworthy data upon even a few of these facts was a very great one. Certain selections had to be made, depending upon a variety of reasons whose full force only the experienced master of practical statistics could adequately feel. Having had unusual opportunities to know much of the work from its inception to its practical conclusion, I have no hesitation in saying that it is in a high degree satisfactory. The great ability of Mr. Wright, his mastery of statistical methods, his insight and fertility in meeting difficulties and his tact in securing the most efficient and enthusiastic co-operation of an admirable statistical force, though matters of general recognition in this country and Europe, are sure to grow upon those who are privileged to come into the closer relations of actual work. The government can hardly have a more valuable institution at its service than this great statistical department, and its similar bureaus in some of the other departments. This is probably the best organized of any of the statistical offices in the country.

The movement of marriages is not analyzed, probably in part because so few states afford sufficient data for the work. Industrial and other causes affect marriage so much that it is very difficult to do this, and really the chief value of collecting marriage statistics in the present condition of returns must be for use in a few comparisons with divorces and to show the need of better registration and returns.

But on the movement of divorce, the material of the report is rich. A few only of the more important figures will be given in this article. The total divorces reported for the United States during the twenty years — including limited divorces, or the separation *a mensa et thoro* of the old English law, which is now more generally termed in Europe judicial separation—is 328,716. There were 9937 in 1867 and 25,535 in 1886, an increase of 156.9 per cent. The increase of population during the same period could have been little more than 60 per cent. By quinquennial periods, the movement shows a remarkable uniformity. There were 53,574 in the first five years and 68,547 in the second, an increase of 27.9 per cent; in the third 89,284, an increase of 30.3 per cent over the second; and 117,311 in the fourth, or 31.4 per cent more than in the third. Connecticut, Maine and Vermont are the only states out of the forty-seven political divisions in which a real decrease appears at the close of the period. This is undoubtedly due to reforms in the law. The amendment of the laws of Indiana in 1873 bore good fruit in the decrease of divorces. Michigan, it should be said, changed her divorce laws for the better in 1887 and will probably show a corresponding improvement in her statistics for the following years. The report gives many examples, fairly taken from sections North, East, West and South, to show the relative movement. It is careful to avoid states of exceptional conditions. I think that by far the most rapid increase, compared with the increase of population, has occurred in the South, though the rates there are still generally lower than in the North. At first many of the Southern states increased their divorces astonishingly beyond experience elsewhere. The increase was apparently due to changed social conditions, and occurred probably

largely among the blacks. Later the increase was usually, but not always, less rapid. Indeed, the general and natural rule seems to be that divorces increase rapidly up to a high point and then the movement is less rapid. (My own examination of statistics of earlier periods than that of the report tends to show this.) A table exhibits the movement in each state, both of divorces and population, between the census years 1870 and 1880. This shows an increase in population of 30.1 per cent and in divorces of 79.4, which is about the same rate as in the estimates for longer periods. The statistics of European countries show a striking parallel movement. In fact, the percentages of increase on the two continents are very nearly alike, even after allowing for differences in the increase of population. As Mr. Wright justly remarks, these tables alone would indicate that a great social movement, not only in this country but in Europe, has taken place contemporaneously in the direction of increased divorces.

An original contribution is made by Mr. Wright in a calculation, from a study of the material of a few states, of the probable number of married couples in the country in the two census years of the period. This had to be done because of the failure of the census of 1880 to compile its collected data, a lack that we shall feel still more seriously when we come to study the probable migration of persons expressly to obtain divorce. Tests showed the variation of the results of this method from the exact facts to be everywhere less than one-half of one per cent. By this method the ratio of divorces to existing married couples in 1870 was found to be one to 664, and in 1880 one to 481. This shows the ratio of estimated married couples in 1870 to the ratio of estimated married couples in 1880 to be 1 to 1.30, unity being the condition in 1870. But the ratio of divorces in 1870 to the ratio of divorces in 1880 was 1 to 1.79.

The general fact seems to be established by the report that cities have, as a rule to which there are some exceptions, a higher divorce rate and a more rapid increase in divorce than the country counties. But the exceptions in 1870 (Brooklyn,

Detroit, Omaha, Pittsburgh, Allegheny City, and Portland) were no longer such in 1880. I should say that the figures show as a rule that in the cities the divorce rate is on the average fifty per cent higher than in the rest of their respective states. The case of Baltimore, where it is six times the rate of the state outside, is exceptional. But in most states, without doubt, some rural counties can be found which invariably show a higher rate than those containing the large city of the state.

As regards the ratio of divorces to marriages, six states report marriages fully enough for a trustworthy comparison. Of these, Connecticut has for the entire period a divorce to 11.32 marriages and for the worst year, 1875, one to 8.81; Rhode Island gives one to 11.11 for the period and one to 9.36 in 1884, closely approaching that for the three preceding years; Vermont one to 16.96 for the period and at its worst, in 1871, one to 13; Massachusetts gives one to 31.28 for the period, its worst being one to 22.54 in 1878; Ohio averages one to 20.65, with an almost unvarying progress downward to one to 15.16 in 1886. In some other states, where marriages are less fully reported, the ratios are as follows: Illinois one to 14.76 for the period, while Cook county gives one to 13.6; Michigan one to 12.92; Minnesota one to 30.05; New Hampshire one to 9.74 (its lowest, one to 7.6 in 1880, being evidently due to very imperfect returns of marriages); New Jersey shows one to 49.39; Kansas gives one to 17.42; Wisconsin one to 21.07, and Delaware one to 36.99. These last, it should be noted, are some of them for shorter periods than twenty years. On the basis of ratio of divorces to (estimated) married couples in 1880, I find the worst states (in their order) are Colorado, Nevada, Wyoming, Oregon, Montana, New Hampshire, Rhode Island, Washington, Maine, California, *etc.;* Connecticut appearing as the twentieth on the list; Massachusetts the thirtieth from the worst; New York the thirty-fifth, and Delaware as the best. In later years these positions are somewhat changed.

In seventy counties in twelve states it was found that 67.8 per cent of the applications for divorce were granted. The commissioner thinks this fact shows reasonable care in the trial

of suits. Some, however, will be inclined to differ with him on this point.

No part of the report will be read with more interest than that relating to the place of marriage of divorced parties; for it gives the best single clew we have to the extent of the migration of parties from the state of their proper residence to some other for the sake of divorce. It is on the supposed greatness of this migration, together with the need of protecting the people from the other mischiefs of conflicting laws, that there has been a general popular demand for uniform divorce laws. Many otherwise highly intelligent persons and some able newspapers have held that uniform laws would at once cut off one-half or even more of the divorces. The investigation has brought out the first really full material for any conclusion based on knowledge of facts. It was, I may say, my own dissent from the current opinion and the incredulity with which my own conclusion was received, that the amount of this migration could not be over ten or fifteen per cent at the utmost, that immediately led me to propose this investigation to Congress. For I thought it both unsafe and impracticable to entertain seriously the proposition for so radical a change in our constitution as the movement for a national law involved, even if the facts were generally as claimed, without careful statistical investigation. Other reasons, of course, had great force.[1]

This point was made the subject of much thought in planning the work. The most important single clue that could be practically followed was that afforded by the statement in the libels of the date and place of marriage. This would at once eliminate from the total of divorced persons those who were married and

[1] Judge Poland in reporting for the judiciary committee of the House went somewhat farther than the facts justified when he said: "Nor do we understand that the petitioners have in mind any purpose to ask an amendment of the constitution whereby Congress shall be empowered to legislate on these subjects." For undoubtedly a few of them, like the majority of the people, assumed such an amendment to be the only way out of present difficulties. But the great object most of us had was to obtain, by means of the general information which Judge Poland and the petitions set forth as our object, a substantial basis for an opinion on the point. As I wrote an eminent jurist at the time, who with many others assumed that we aimed at constitutional amendment, we then "did not seek *legislation* but *revelation*."

divorced in the same state; for, with inconsiderable exceptions, those who had been married in the state where they afterwards obtained a divorce may be assumed to have resided in that state during the intervening years. After this elimination, the remaining total would include both those who had migrated from the state in which they were married to the place of divorce for permanent residence, and also that class, popularly supposed to be immensely great, who had gone from one state to another for the express purpose of obtaining a divorce more conveniently than at home. This would also, in the absence of any better source of information, throw some light upon the extent of divorces among immigrants from Europe.

It is found that of the 328,716 divorces in the United States in the twenty years, excepting forty-two cases in the Indian territory and Alaska, the place of marriage was not given in 31,389 cases. More than one-fourth of these were in Connecticut, where it would seem that no account of this point is made in libels for divorce. Only 7739 were married in foreign countries. But of the 289,546 whose place of marriage was known to be in the United States, 231,867 or 80.1 per cent were married in the same state in which the divorce was granted, and only 57,679 or 19.9 per cent were married in some other state than the one in which the divorce was obtained. Now the duration of a marriage before divorce in this country is shown by the investigation to average 9.17 years, which may properly be taken to be nearly, if not quite two-fifths the duration of the average marriage before death or divorce dissolves the union. A large subtraction must therefore be made from this 57,679 or 19.9 per cent, to bring it down to the figure that will approximately represent the extent of migration for the direct purpose of divorce. Some further clew is given to the extent of the reduction to be made when we learn that in 1870 there were 23.2 per cent of the "native-born" population living in territories other than the place of birth, and in 1880 22.1 per cent.[1] But this, of course, includes all ages, while marriages and

[1] Since the above was written, I have worked out the percentages for four years in the period; 1867, 1870, 1880, 1886. The per cent of divorces from the mar-

divorces come from the adult half. Had the last census given us, as it might have done, the conjugal condition of the people, or even the place of birth of adults, we should have been able to fix the amount of migration for divorce with reasonable certainty. Or if the next census will do this, the fact may be approximately ascertained.

But the report affords further light. A table is made showing for each state the number of those divorced who were married in the state named, in an adjoining state, or in some other state not adjoining. New York affords a good test, because its own limitation of absolute divorce to one cause and the favorable conditions as to causes, residence, *etc.*, of certain adjoining states, are generally thought to send large numbers elsewhere for divorce, especially to Rhode Island and Pennsylvania. But the working table — which the commissioner could not incorporate in the report without making it too large, but which is carefully preserved and which ought to be printed hereafter — shows that while 16,020 divorces were granted in Pennsylvania only 765 of the marriages thus dissolved had taken place in New York. That is to say, 4.8 per cent of the divorces of Pennsylvania came from marriages in New York. If the contribution of population by New York to Pennsylvania in 1880 be a criterion, there should have been at least 2.3 per cent. Take Rhode Island. Out of 4462 divorces in twenty years, only 97 were of parties married in New York. It must be remembered that a residence of one year in each of these two states is sufficient, and that each state has invitingly loosely defined causes of divorce.

Popular opinion [it is said in the report] has strongly intimated that Michigan people take advantage of the divorce courts of Illinois; but on consulting the table it is found that of 36,072 divorces granted in Illinois the parties in only 447 cases were married in Michigan. It is sometimes alleged that Canadians seek relief in Illinois; but in only 199 cases out of the 36,072 were the parties married in Canada. These illustrations might be multiplied many times over.

riages of a different state from that of the divorce are, for those respective years, 19.4; 19.4; 19; and 19.08. The uniformity and close correspondence with the movement of population are striking.

Only 21.4 per cent of the divorces in Illinois were from marriages in other states, and only 17.5 per cent of those in Indiana belong to this class. A comparison of the figures shows that those states which have the largest number of divorces from marriages in other states are generally those having a large immigration of population from other states. To this there are eight or nine exceptions, some of which are suggestive.

The commissioner has ingeniously brought out the reverse side of this table, showing the numbers of those married in a given state who obtained a divorce somewhere else in the United States. Take New York, from whose jurisdiction people have nearly every inducement to go to other states for divorce. The percentage of her divorces from marriages in other states is 9.8 against a population from births in other states of about eight per cent. On the other hand, there were 22,354 divorces in all the United States from marriages celebrated within the state of New York, and of these 9205 were granted outside that state. That is, New York contributes 15.9 per cent of all the 57,679 divorces granted in states different from the place of marriage. But I find that New York contributed in 1880 to the population of the country living outside the state of their birth 12.5 per cent of the total. Here the per cent of divorces granted in other states from marriages in New York is 3.4 per cent more than the contribution of population. Take now Illinois, a state into which people are supposed to go for divorce. The report shows that in Illinois, in twenty years, there were 6924 divorces of parties who had been married somewhere within the United States but outside of Illinois. This is 12 per cent of the total of this class, while Illinois has within her borders but 8.2 per cent of the native population of the country who live in states outside their birthplace. This would go to show that Illinois is, as is generally thought, a state to which people have gone for divorce, while New York is a state from which people have gone. Take Maine, a state that formerly had the reputation of doing a considerable divorce business for non-residents. Only 4.7 per cent of the population of Maine in 1870, and 4.6 per cent in 1880, had been

born in other states. But 12.9 per cent of her divorced couples had been married in other states. This would indicate pretty clearly that Maine has been a state to which parties have gone to get divorces. On turning to the digest of laws, we find that Maine had an "omnibus clause" prior to 1883, and that a suit could be brought in the state if the parties had cohabited there after marriage.

Another source from which some light was sought regarding migration for divorce was a study of the libels in selected counties to ascertain the number of cases in which notice to the defendant was served by publication. Among 29,665 divorces it seems that 36.9 per cent were cases of notice by publication. The report unfortunately fails to tell us how many of these 29,665 cases were of marriages in or out of the divorcing states. Of course notice is served by publication on many defendants who are residents within the state. The comparison of the place of the divorce with that of the marriage and the movement of population must then remain our best clew to the extent of migration for the immediate purpose of obtaining divorce. And the conclusion must be accepted that while by count of instances the actual numbers who thus avail themselves of our divergent laws are large, yet they really constitute a small percentage of the whole number divorced. While I do not deem it impossible to make a fair approximation to the actual figure from the data of the report itself, with some aid from other sources, I do not care to venture a guess at present. But it can hardly be ten per cent of the divorces of the United States. Migration for divorce, it is clear, is but in small part responsible for the prevalence and increase of divorces. If these are the serious evils, uniformity of law will do little to remedy them. The establishment of uniform laws is not the central point of the problem.

A word on the presence of children among the divorced. In 43.1 per cent of the whole number of decrees "the children formed no part of the question arising under the petition: but to this number should be added the number specifically declaring that they had no children, or 57,524." That is to say, in

60.6 per cent there were either no children at all or they did not affect the cases in a way to require mention in the libels. The report estimates that alimony is secured in about nine per cent of all the cases. The average number of children, where there were any reported, is 2.07 to each couple. In the last year reported, children appear in 11,365 out of the 25,535 divorces of the year, or in 44.5 per cent. This indicates that the presence of children is coming to stand less and less in the way of divorce.

Space remains for only the briefest remarks. The report shows that the movement of divorce is an international one; that it is of great magnitude, and that its advance is constant and rapid. Though powerfully affected by law, religion and custom, its causes lie deep in our Western civilization,[1] and it must be treated accordingly. Legal and other social reforms must go together. It is evident that American marriage and divorce laws and provisions for accurate knowledge of their working are incomplete, remarkably various and often conflicting, and lacking greatly in system and simplicity. The comparative study of recent European and American law will make this still more evident. It is also made clear by the report that however much a uniform system is needed for the whole country, the lack of it is really the cause of only a very small per cent of our divorces taken together. As a means of lessening the number of divorces in the whole country, apparently a uniform law, such as either Congress or the states acting by themselves would give us, would hardly do much good. It would secure a uniform status for the married and divorced and take away some present incentives to migration for divorce. But

[1] From the official Digest of Statistics of the Japanese Empire, May, 1888, a Japanese friend gives me the data for the following table:

Year.	Marriages.	Divorces.	Ratio of divorces to marriages.
1884	287,842	109,905	1 to 2.62
1885	259,497	113,565	1 to 2.28
1886	315,311	117,964	1 to 2.67

The population of Japan in 1887 was 38,505,832. Marriage and divorce in Japan are generally effected by a simple writing, transferring the woman from the family of her father to that of her husband or the reverse.

the disturbance to the balance of powers now existing between Congress and the states; the risks of general legislation to meet a specific evil (as, for example, a uniform marriage law to meet the polygamy of Utah); the difficulties in the way of uniformity by agreement of the separate state legislatures; the need of profound study of the social problems involved in any permanent plan of marriage and divorce law; the growing desirability of some degree of international uniformity; and last, though by no means least, the necessity in a democracy of first working out in popular thought some true theory of the solution, — these make the whole problem one of great perplexity and one that demands profound study. I do not see how an intelligent person can now give the special problem of uniformity anything more than a subordinate place in the subject as a whole.

SAMUEL W. DIKE.