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Answering the "Divorce Question":

The Influence of the Sioux Falls Divorce Colony, 1891-1908

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Abstract

In the late nineteenth century, the United States was facing a divorce crisis. Data released in 1889 highlighted the country's rapidly rising divorce rates, and headlines showed the public's growing fear of this breakdown of the traditional family. At the center of the "divorce question" was the small, frontier city of Sioux Falls, South Dakota. South Dakota had some of the country's most permissive divorce laws, and Sioux Falls was the state's most comfortable destination for unhappily married women and men who came seeking a remedy that law or society would deny them at home—the "divorce colony," as they would come to be known in 1891.

In retrospect, the number of divorces granted to the "colony" was relatively small—a fact that has caused many historians to dismiss it as a mere curiosity—but Sioux Falls played an outsized role in perpetuating the American divorce debate between 1891 and 1908.

An analysis of contemporaneous observations of the divorce colony—in local and national newspapers, legislative records, diaries, and letters, among other sources—reveals Sioux Falls as a microcosm through which historians can better understand the evolution of divorce in the United States. In Sioux Falls, we see the complex interplay of the legal, political, religious, and societal concerns at issue as the nation grappled with divorce; the era's shifting social attitudes toward divorce; and the emergence of the pro-

divorce voices, especially the women divorce seekers whose actions drove discussion at all levels of society, despite their absence from formal decision-making structures.

When South Dakota's laws were changed in 1908 and the Sioux Falls divorce colony "closed," the nation's attention shifted to Reno, Nevada, where a new colony was forming. Many of the same debates would play out in that city but the shift in social attitudes and the emergence of the pro-divorce voices during the days of the Sioux Falls divorce colony made the outcome clear: divorce would become a legally and socially accepted part of American life.

Acknowledgements

This work owes a debt to, first, the women and men of the divorce colony, all those who supported them, all those who opposed them, and all those who recorded, as it unfolded, this saga that shaped modern American divorce.

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Introduction

In the late nineteenth century, the United States found itself the facing the "divorce question." Divorce, in varying forms, had been a legal option in the majority of the country since the American Revolution, but now the release of statistics showing the rapidly rising divorce rate—along with the growing fear of the ills of divorce—forced a reexamination of long-accepted understandings of both marriage and its dissolution.[1] Two opposing groups emerged in the 1880s and 1890s to address the issue. On one side stood the organized and well-studied anti-divorce reformers—a coalition of clergymen, conservative politicians and judges, and other defenders of traditional marriage, including many mainstream women's rights activists—who agitated for new, stricter divorce laws. On the other side were the unorganized, less-studied pro-divorce voices—a largely unaffiliated collection of radical women's rights activists, progressive social scientists, lawyers, businessmen and the divorce seekers themselves—who sought to use existing laws and to change social attitudes.

At the center of this national divorce debate between 1891 and 1908 was the small, frontier city of Sioux Falls, South Dakota—home to the Sioux Falls "divorce colony." Between 1889 and 1893 and again from 1899 to 1908, South Dakota had some of the most permissive divorce laws in the country. Sioux Falls, at the eastern edge of the state and the nexus of six railroad lines, was the most convenient South Dakota destination for

[1] Based on two Census Bureau reports that bookended the Sioux Falls divorce colony: Carroll Davidson Wright, *Report on Marriage and Divorce in the United States 1867 to 1886* (Washington, DC: Government Printing Office, 1889); and Bureau of the Census, *Marriage and Divorce 1867-1906* (Washington, DC: Government Printing Office, 1909).

wealthy and well-known women and men who came seeking a divorce that law or society would deny them at home. For nearly two decades, "going to Sioux Falls" was popular shorthand for ending a marriage, but the divorce colony is often overlooked as a simple curiosity in modern scholarship on American divorce history, which separates the phenomenon of "migratory" divorces from larger questions about the end of a marriage.[2]

Sioux Falls should instead be viewed as a microcosm through which historians can better understand the complex interplay of the legal, political, religious and societal concerns at issue as the nation grappled with divorce; the era's shifting social attitudes toward divorce; and the emergence of the pro-divorce voices, especially the women divorce seekers whose actions drove discussion at all levels of society, despite their absence from formal decision-making structures.[3] Although the number of migratory divorces granted in Sioux Falls was relatively small, the colony played an outsized role in perpetuating the American divorce debate between 1891 and 1908.

For those on either side, the stakes were no less than the future of the American family and of the country itself. For President Theodore Roosevelt, an anti-divorce reformer, divorce was a crisis of "our own national soul."[4] Today, the Sioux Falls divorce colony serves as a valuable window into this late nineteenth- and early twentieth-century

[2] For example: "Going to Sioux Falls: Mrs. James G. Blaine Said to Be About to Take Up Residence Where They Make Divorces Quick," *Boston Daily Globe*, May 8, 1906.

[3] This thesis draws from and expands on a paper written for the seminar Graduate Research Methods and Scholarly Writing. April White, "Answering the 'Divorce Question'" (Harvard Extension School, 2014).

[4] Theodore Roosevelt, "Speech to the Committee of the Inter-Church Conference on Marriage and Divorce, January 26, 1905" in *A Compilation of the Messages and Speeches of Theodore Roosevelt, 1901-1905,* ed. Alfred Henry Lewis (New York: Bureau of National Literature and Art, 1906), 548.

panic, illuminating an important moment in the evolution of the country's still changing perceptions of marriage and divorce.

Chapter 1

A Century of Divorce

Modern historians trace the origins of both American marriage and American divorce to the philosophical underpinnings of the American Revolution.[5] The young country's conception of marriage was rooted deeply in its political reverence for consent and contract; the post-Revolutionary understanding of the marriage contract was similar to the understanding of the contract between the citizen and the new government: a woman gave herself freely to her husband, consenting to be governed by him.[6] Of course, this then-common comparison presented the first of many challenges to the very lifelong, monogamous relationships it championed. The nation was born in a fight for the right to separate from a king who had broken his social contract with the colonies. As Norma Basch asks in her *Framing American Divorce,* what then was the recourse when the marriage contract was broken?[7]

As there is no divorce without marriage, these two topics are also inextricably linked for modern scholars, though marriage and divorce are often approached from two different scholarly perspectives. The history of American marriage is most often examined primarily from a social perspective, while the history of American divorce is

[5] Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, MA: Harvard University Press, 2000), 14-23; Norma Basch, *Framing American Divorce: From the Revolutionary Generation to the Victorians* (Berkeley: University of California Press, 1999 Kindle edition), 177.

[6] Cott, *Public Vows*, 17.

[7] Basch, *Framing American Divorce*, 21-23.

most often examined primarily from a legal perspective, an important but limited lens for understanding the topic. It is this law-focused narrative that has led historians to overlook the importance of the Sioux Falls divorce colony and to neglect the emergence of pro-divorce voices which, generally, did not seek legal change. Instead, divorce seekers used existing laws, which had been tolerated until larger numbers of women began taking advantage of them.

Social and Legal Perspectives on Divorce History in the United States

The law-focused perspective on the American divorce narrative has been widely adopted by both legal and social historians. This perspective emphasizes legislative and judicial outcomes as both drivers and reflections of the history of divorce. As legal historian Lawrence Friedman notes in his essay arguing for a broader historical understanding of divorce, legal historians long relied on an economic framework for understanding the interaction of people and their laws. Divorce does have "economic meaning and economic consequences," he writes. "Indeed, one can argue that its primary meaning consists of the rearrangement of claims to property and other valued goods. But it also has moral and symbolic meaning."[8] Social historians have investigated these other aspects of divorce though still through a legal framework, exploring how the laws shaped moral and symbolic conceptions of marriage and divorce and how changing conceptions of marriage and divorce changed the laws.

This law-focused approach does not help us in understanding shifting social attitudes among groups unable to quickly affect laws and is often quiet on the changing

[8] Lawrence M. Friedman, "Rights of Passage: Divorce Law in Historical Perspective," *Oregon Law Review* 63, no. 4 (Fall 1984), 651 and 669.

application of unchanged laws, but it does offer valuable insight into how and why divorce law developed as it did. In its earliest form in the United States, divorce was typically a legislative process, as it was in the British Parliament; a divorce seeker was forced to lobby the governing body for a private bill ending the marriage. General divorce laws moving jurisdiction to the courts were passed in many states in the late 1700s, but the practice of legislative divorce remained common until the mid-1800s.[9] These general divorce laws were typically a codification of the causes for divorce that had frequently come before the legislatures. They were, however, often seen as liberalization: they had the unintended effect of making divorce more accessible to women and the lower classes.[10]

Under these general laws, marriage, like any contract, could be ended only on the assignment of fault and either party could seek its end. By requiring fault, state legislatures established divorce as an adversarial process, assigning guilt and its attendant punishment to one partner and innocence and its attendant rewards to the other. In allowing either party to seek the end of the marital contract, they awarded to the wife equal legal—if not social or economic—standing with her husband. As Roderick Phillips argues, this parity was unintentional and not designed to promote divorce as a tool of emancipation: "Divorce was less a way of freeing women than of protecting them. To this extent the divorce laws were part of a complex of paternalistic legislation that sought to protect women from the most harmful implications of their inferior status without attempting to change their status significantly." It is also important to note, as Phillips

[9] Roderick Phillips, *Untying the Knot* (Cambridge: Cambridge University Press, 1991), 139-142.

[10] Ibid., 172.

does, that these divorce laws did not signify acceptance or promotion of divorce. They were instead an attempt to control the chaos of informal marital separation. In the absence of divorce laws, marital desertion, self-divorce and "bigamous" remarriages were common societal solutions that threatened the stability of the American family.[11]

Divorce laws evolved slowly, state by state, creating a hodgepodge of laws reflecting local concerns and constituencies. In examining the development of these disparate state divorce laws, law-focused historians typically find broad similarities that reflect the widespread legal understanding of divorce, but it was the differences that fueled the divorce crisis. For instance, by the last decade of the 1800s, a couple in Massachusetts had seven causes for divorce (desertion, cruelty, sexual immorality, intemperance, neglect, crime, unfitness) while one in New Jersey had four (desertion, sexual immorality, incapacity, unfitness). A couple in New York could divorce for only one cause, adultery, while a couple in South Carolina had no access to divorce at all.[12] Such differences in state divorce laws led to the phenomenon of migratory divorce—in which one partner moved to a new state to seek a divorce under more advantageous laws—and to divorce colonies like Sioux Falls, where migratory divorce seekers gathered and a divorce industry developed.[13] Historians examining divorce through a primarily law-focused lens often dismiss migratory divorce in the late 1800s and early 1900s

[11] Phillips, *Untying the Knot*, 170-172.

[12] Bureau of the Census, *Marriage and Divorce 1867-1906*, vol. 1: 268-328.

[13] Connie DeVelder Schaffer, in "Money versus Morality: The Divorce Industry of Sioux Falls," is one of the only historians to consider the businessmen and lawyers who comprised the "divorce industry" and their role in the divorce debate. The article raises interesting questions on the topic, though it is less valuable as a portrait of Sioux Falls. DeVelder Shaffer relies heavily on the observations recorded in *The Divorce Mill: Realistic Sketches of the South Dakota Divorce Colony*, a fictionalized account of the colony discussed further below. Connie DeVelder Schaffer, "Money Versus Morality: The Divorce Industry of Sioux Falls," *South Dakota History* 20, no. 3 (1990): 207-227; Harry Hazel, *The Divorce Mill: Realistic Sketches of the South Dakota Divorce Colony* (New York: Mascot Publishing, 1895).

because statistics later showed that the number of migratory divorces was small. But it is this very contradiction between the small number of migratory divorces in Sioux Falls and its outsized social importance that requires more study.

In recent decades, some modern historians—often those who also study marriage—have begun to observe divorce as a primarily social issue. Although American marriage also has contractual, legal origins, the development of early American marriage laws was, comparatively, straightforward, which may have led to a traditional narrative of American marriage which emphasizes social change over legal change. Nancy Cott in *Public Vows* lays out a useful rational for this social narrative, which is applicable to divorce and divorce scholarship:

> At least three levels of public authority shape the institution of marriage. The immediate community of kin, friends, and neighbors exercises the approval or disapproval a couple feels most intensely; state legislators and judges set the terms of marriage and divorce; and federal laws, policies, and values attach influential incentives and disincentives to marriage forms and practices.[14]

Both the "couple" and its "immediate community" are often overlooked in the law-focused narrative of divorce. This can help explain why the anti-divorce reformers who emerged in the 1880s and sought to change the legal construction of divorce are a more frequent topic of scholarship than the pro-divorce voices of the same era—divorce seekers and community supporters—who simply used the existing laws. Marriage historian Stephanie Coontz finds a new social divorce narrative in parallel to the social narrative of marriage:

> The origins of our modern divorce patterns lie in the invention of the same values that eventually elevated the marital relationship above all other personal and familial commitments: the concentration of emotion, passion, personal identity,

[14] Cott, *Public Vows,* 5.

> and self validation in the couple relationship and the attenuation of emotional attachments and obligations beyond the conjugal unit.[15]

And Basch explicitly reframes the American divorce narrative "to traverse the elusive connections between the implementation of divorce as a precise legal form in a specific institutional context and the emergence of divorce as a viable social option and a vibrant cultural symbol," though she continues to see the law as a "critical referent."[16] A closer examination of the Sioux Falls divorce colony from this social perspective can illuminate the cultural shift Basch identifies.

The First Divorce Colonies

The Sioux Falls divorce colony was not the first destination in a country of disparate divorce laws to attract migratory divorces seekers. Among the earliest were Connecticut, Rhode Island and Pennsylvania, all of which allowed divorce for a greater number of causes than nearby New York. Nelson Manfred Blake, whose *The Road to Reno* gives the influence of migratory divorce its closest examination, quotes a report from the 1840 New York legislature that hints at the debates to come: "Yet how many unfortunate 'yoke fellows' annually seek a refuge from our inexorable law, and take up a residence in moral Pennsylvania, for the sole purpose of dissolving a connection which has been productive of nothing but bitter unhappiness."[17]

In the later half of the 19th century, divorce seekers turned westward where looser residency requirements were standard. Attention was focused first on Ohio, which was

[15] Stephanie Coontz, "The Origins of Modern Divorce," *Family Process* 46 (2007): 8-9.

[16] Basch, *Framing American Divorce*, 73 and 122.

[17] Nelson M. Blake, *Road to Reno* (New York: MacMillan, 1962), 117.

convenient to those from New York and Pennsylvania, and then to Indiana, which had an "omnibus clause" allowing the courts to grant a divorce for "any other cause" the judge felt to be "proper."[18] Indiana responded to the influx of divorce seekers by codifying its previously ambiguous residency requirement at one year in 1859 and then extending it to two years in 1873 when it also eliminated the omnibus clause and forbid divorced plaintiffs from remarrying for two years after receiving their decrees. The efforts were successful in curbing migratory divorce, Blake concludes, citing statistics showing a decrease in such cases in Indiana relative to other states; divorce seekers simply looked further west, to Illinois, Utah and beyond.[19] The use of the phrase "divorce colony" to describe a group of migratory divorce seekers appears to have come into vogue in this era, in reference to those who travelled to Chicago in the mid-1880s.[20]

As noted, most divorce historians have considered these divorce colonies a legal curiosity, because the number of migratory divorces granted was small. Even William O'Neill, in one of the few studies to touch on the community-level pro-divorce voices in the Progressive Era, dismisses the colonies' importance as a predictable part of the law-focused narrative. He identifies a pattern in the legal backlash divorce seekers experienced in each of these states and applies the same to South Dakota:

> The South Dakota campaign conformed to what was already an established pattern. It was led by conservative clergymen, supported by women's groups, and met little apparent opposition. Although these local campaigns did not succeed anywhere in abolishing divorce, they were part of a widespread tendency toward stricter divorce legislation.[21]

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[18] Blake, *Road to Reno*, 119.

[19] Ibid., 121.

[20] "A Cloud of Stygian Gloom," *Bismarck Tribune*, January 25, 1884.

[21] William O'Neill, "Divorce in the Progressive Era," *American Quarterly* 17 (1965): 204.

This dismissal overlooks primary source evidence—collected largely from South Dakota newspapers and legislative records as well as the letters and memoirs of residents and divorce colonists—of the opposition presented by emerging pro-divorce voices at the "immediate community" level in Sioux Falls. (Blake focuses his attention on a similar phenomenon in Reno, Nevada, which gained prominence as a divorce colony following 1908—after the development of the pro-divorce voices.) Anti-divorce reformers of the era, however, recognized that the Sioux Falls divorce colony represented something new. As the *Salt Lake Herald* wrote in 1891:

> Utah, Connecticut and Illinois have in the past shared the distinction of being the banner divorce communities, but South Dakota bids fair to out rival them all. In other states and territories where the divorce industry has been worked so industriously, those interested have thought proper to preserve some degree of secrecy. Here it is altogether different.[22]

Emergence of the Sioux Falls Divorce Colony

On April 10, 1862, Minnie Omeg, a 46-year-old German immigrant, was granted a divorce from her husband, Christopher, the first such decree issued in the year-old Dakota Territory. As was common in the early years of the country, the Omeg divorce was governed not by the courts, but by the legislature, which debated and passed a private bill awarding Minnie the right to own property and custody of the couple's four children. Unlike other state and territorial legislatures before it, the Dakota House of Representatives and Council were not overwhelmed with divorce petitions—only three more private divorce bills came before the legislature in the next two years—but the

[22] "The Divorce Colony," *Salt Lake Herald*, September 16, 1891.

young government quickly followed the lead of its Eastern neighbors, moving divorce to the jurisdiction of the judicial system in January 1864.[23]

That first law enumerated generous grounds for divorce in the Dakota Territory, including adultery, impotence, imprisonment, cruelty, habitual intemperance and an omnibus clause similar to the one abolished in Indiana, which provided that "a divorce from the bonds of matrimony may be adjudged and decreed by the several district courts…when it shall be made fully to appear that from any other reason or cause existing, the parties cannot live in peace and happiness together, and that their welfare requires a separation."[24] But the law also set a residency requirement as strict as any in the country: if the couple had not been married in the territory, the complainant had to live there for one year before filing for a divorce, except in cases of adultery.

However, the debate over marital separation in Dakota Territory was just beginning. In 1866 the legislature enshrined in the Civil Code a more detailed understanding of divorce on the grounds of adultery—forbidding the remarriage of the guilty party to anyone other than the innocent party until the death of the innocent party—as well as legal definitions for annulment and separation of bed and board (legal separation which did not dissolve a marriage but allowed the parties to live separate lives). And in 1867, the legislature crafted a replacement for the initial 1864 law among continued disagreement over both the grounds for divorce and the residency requirement; one legislator complained that the controversial bill could not be evaluated because it was

[23] *Report of the Fifth Annual Meeting of the South Dakota Bar Association* (Pierre, SD: Sessions Press, 1905), 31; and *General and Private Laws, Memorials and Resolutions of the Territory of Dakota* (Yankton, Dakota: G. W. Kingsbury, 1864), 19-26.

[24] *General and Private Laws, Memorials and Resolutions of the Territory of Dakota*, 20-21.

"so obliterated" by amendments, erasures and edits.[25] This new law added bigamy and abandonment to the list of acceptable grounds and removed the omnibus clause; with this deletion, the legislature brought the law more in line with other states. At the same time, however, the new law reduced the residency requirement from one year in the territory to 90 days in the county where the divorce was filed, the shortest in the country.

Over the next two decades, the legislature continued to tweak the available grounds for divorce, as well as those for annulment and separation of bed and board with little drama. By 1887, the law provided six grounds for divorce, adultery, cruelty, desertion, neglect, intemperance and conviction of a felony. The territory's clergy did encourage the 1887 legislature to return the residency requirement—which had been loosened further in 1877 when the county residency restriction was removed—to one year, but the acting governor vetoed the bill without much fanfare, finding it both unnecessary and improperly drafted. The 90-day residency requirement remained: "A divorce must not be granted unless the plaintiff has, in good faith, been a resident of the territory for ninety days next preceding the commencement of the action."[26] When it was instituted in 1867, this had been a reflection of the realities of life on the western frontier, not an inducement to divorce—the legislature also set a ninety-day residency requirement for voting and other legal rights—but it would become a significant factor in the development of the Sioux Falls divorce colony.

When Reverend George B. Vosburgh arrived in Dakota in the fall of 1878, the territory's divorce laws were not widely known. Vosburgh was a notorious figure, a

[25] *Council Journal of the Sixth Session of the Legislative Assembly of the Territory of Dakota* (Yankton, Dakota: G.W. Kingsbury, 1867), 138.

[26] *Compiled Laws of the Territory of Dakota 1887* (Bismarck, Dakota: E.W. Caldwell and Charles H. Price, 1887), 551.

Jersey City Baptist pastor who was accused of poisoning his wife, Hattie. At the end of a weeks-long trial that captivated the country in the spring of 1878, Vosburgh was acquitted of the crime, but suspicion remained and he was forced to resign from his pastorate. He disappeared from public view for several months before resurfacing in Dakota, the plaintiff in a divorce case. Vosburgh charged his wife of eight years with neglect and cruelty, the latter for accusing him of poisoning her and circulating "other scandalous stories calculated to injure him in his profession and to bring his name into disrepute through the whole country."[27] The effect of the case was to bring a tinge of disrepute to the "Dakota divorce," at a time when concern about migratory divorce was on the rise.

The territory gained a minor reputation as one of several divorce destinations over the next decade, which culminated in the release of the Bureau of Labor's 1889 study, "A Report on Marriage and Divorce in the United States, 1867-1886." The report seemed to justify the moral panic over rising divorce rates, finding that there were 119 percent more divorces in the five years between 1882 and 1886 than there had been between 1867 and 1871. It also noted that "[t]he state or territory showing the largest increase is Dakota"—a 6,691 percent increase over the same time period.[28] The report immediately explained that "the growth of population in Dakota has been phenomenal…and her divorce laws have not been practically operative until the later years of the period of this investigation." It cautioned, "in new states and territories the percentages of increase,

[27] "Vosburgh Victimized," *Boston Weekly Globe*, March 25, 1879.

[28] Wright, *Report on Marriage and Divorce in the United States 1867 to 1886*, 142.

while accurate, are hardly fair bases on which to judge the movement of divorce,"[29] but even the Sioux Falls *Argus-Leader* heard only the accusation. The newspaper leapt to defend the territory's reputation, though it did not condemn divorce itself, comparing the Dakota law to a cure, not a poison:

> [S]cores of divorces have been granted to people who came here from the states to secure the balm of Gilead for the healing of their domestic bonds. It is as unreasonable to charge Dakota with responsibility for these divorces as it would be to conclude that a hospital was the most unhealthful place in the world because more people die in them than in any other houses. The territory has received by importation scores of divorce patrons, but she is not responsible for that.[30]

Despite these burgeoning concerns about the region's image, when North and South Dakota achieved statehood in November 1889, they kept the territorial divorce law on the books. An apocryphal story has Sioux Falls lawyer Frank Boyce racing to the courthouse on the day statehood was declared to file the first lawsuit in South Dakota—a divorce, of course.

Pierre, in the center of the new state, was named its official capital, but Sioux Falls, South Dakota's largest metropolis at barely 10,000 people, would quickly become the capital of its divorce industry. It was the most convenient and comfortable option for travelers from the East. When Clinton J. Edgerly arrived in Sioux Falls from New York City in late March 1890 he was the first of the many divorce seekers who would come to comprise the Sioux Falls divorce colony. The 32-year-old introduced himself to residents as an agent for Massachusetts Mutual Life Insurance, a company his father owned, and took an office on Main Avenue. After 90 days had passed, making him a resident of

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[29] Ibid., 143.

[30] "The Broken Ties," *Argus-Leader*, February 23, 1889.

South Dakota, Edgerly filed for divorce from his wife, Rose. The case probably would not have attracted much attention but for the fact that Rose Edgerly was better known as Rose Coghlan, a noted stage actress. The pair's separation in June 1889, four years after their surprise marriage, had been well documented by newspapers in New York, but as neither spouse had alleged adultery—the only grounds for divorce in New York—there had been no talk of a legal end to the marriage. Setting a pattern that numerous other divorce colonists would follow, Edgerly kept his true mission in Sioux Falls secret for as long as possible and left the city the day after he received his decree. In what would also become the norm in the divorce colony, his story made headlines from New York to Chicago to Topeka.

Chapter 2:

The Sioux Falls Divorce Colony, 1891-1893

In the earliest days of migratory divorce in Sioux Falls, the city seemed to welcome the newcomers. The young state was advertising for residents, and the mostly well-to-do divorce seekers who spent freely at Sioux Falls establishments were an attractive addition. "I have sometimes thought that the divorce law was not a bad thing, inasmuch as by reason of it some very desirable citizens have been added to Sioux Falls and other cities and towns in the State," Richard Pettigrew, the state's well-respected Republican senator, told the *New York Times* in June 1891. "Some Dakota people believe that the law was framed to boom the State."[31] But attitudes shifted quickly in Sioux Falls as the city emerged as a scapegoat in the national divorce crisis just a few months later. "The 'electrocution' of marriage is now in full operation in South Dakota," the *New York Herald* announced in August 1891.[32]

In the face of what must have seemed like nationwide disapproval, public opinion about divorce and the divorce colonists began to cleave in Sioux Falls. There were those who opposed the law as too lenient and those who believed that the law was proper, but only for South Dakotans, not migratory divorce seekers. A third group, those like Sioux Falls divorce lawyer Alfred B. Kittredge, who had previously welcomed the divorce colonists, found it necessary to temporarily distance themselves from the fray: "Most of

[31] "A Great State for Divorces," *New York Times*, June 26, 1891.

[32] "Ninety Days in South Dakota for Divorces," *New York Herald*, August 9, 1891.

the trouble at present arising out of the divorce law is not due to the law itself, but to the bad intent of the people who come out here to make use of it,"[33] Kittredge said in August 1891; he would remain active in divorce court. Pettigrew, by 1893, would change his views permanently, espousing exactly the opposite of what he had expressed two years earlier. In support of efforts to change the divorce laws he wrote, "the good name and credit of our state is at stake."[34]

Within Sioux Falls, this polarization manifested itself most obviously in a developing social divide. Divorce seekers who arrived in Sioux Falls in this period were largely ostracized from Sioux Falls society. "There does not seem to be an affinity between those who have happy homes and those who are getting rid of unhappy ones," observed the *New York Herald* in 1892.[35] Paradoxically, reports about the divorce colony at that time frequently noted the "sympathy" that the whole of Sioux Falls felt for the colonists—particularly the women, be they the divorce seeker or the defendant. That sympathy, however, appears to have been an abstract emotion, stemming from the "paternalistic" attitudes about women and divorce that Phillips identifies.[36] True sympathy toward the divorce seekers seems as though it was rarely expressed. The *Herald* unintentionally captured this tension, writing of one divorce colonist: "The city is in sympathy with her divorce suit and there is not a kind word to be heard for the defendant, but the stories circulate just the same."[37]

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[33] "Ninety Days in South Dakota for Divorces."

[34] Richard Pettigrew, "A Letter from Senator Pettigrew," *Church News*, 1893.

[35] "Ninety Days in South Dakota for Divorces."

[36] Phillips, *Untying the Knot*, 172.

[37] "Ninety Days in South Dakota for Divorces."

Those stories clearly defined divorce and the divorce seekers as an anomaly in Sioux Falls society. The divorce seekers were "other," or in the shorthand of Sioux Falls, "another"—another visitor seeking a migratory divorce.[38] The colonists were, in the eyes of the inhabitants of Sioux Falls, frivolous, standoffish, promiscuous, drunken in this prohibition state and free spending, now considered a flaw. For their part, most of the divorce colonists of the era seemed content to remain separated from society. They, too, viewed themselves as "another," associating only with other divorce colonists, living without regard to the societal norms. The act of seeking a divorce set them apart from society both in Sioux Falls and at home.

Mann v. Mann: Limiting Divorce through Judicial Means

For those in Sioux Falls who opposed divorce—and those who found it politically expedient in the summer of 1891 to claim to—the laws of South Dakota were not the problem. It was their application, the anti-divorce reformers believed, that was to blame for the development of the divorce colony. In Minnehaha County, in which Sioux Falls was located, Judge Frank Aikens was the final arbiter of each divorce suit. It was reported, with great exaggeration, that he had signed some 200 divorce decrees in 1890, but a year later it was rumored that he was reconsidering his understanding of the law as it applied to migratory divorce seekers. In late July 1891, Aikens appeared to put the colony on notice: they would need to abide by both the letter and the spirit of the state's law, the *Argus-Leader* reported.[39] "Friends of Judge Aikin [sic] say he holds that the

[38] "The Land of Divorcees," *New York World*, November 8, 1891.

[39] "Applicants for Divorces," *Argus-Leader*, July 30, 1891.

expression 'in good faith' will have to be substantiated with something stronger than the affidavit of the applicant,"[40] the *Detroit Free Press* wrote. The law did not offer further criteria for judging good faith, and in practice, divorce colonists were asked a simple yes or no question, as Englishwoman Eva Lynch-Blosse had been two months earlier: "Were you a resident in good faith of the state of South Dakota for the period of ninety days prior to the 25th day of March of this year" when the divorce suit was filed? "Yes," Lynch-Blosse responded.[41] Had the court asked, Lynch-Blosse might have admitted that she did not plan to stay. She departed for England even before her decree was granted in early July.

A day after the *Argus-Leader* report, Judge Aikens refused a divorce to Benjamin Mann of Philadelphia, who had arrived in Sioux Falls more than 150 days earlier. Newspapers widely reported that the judge had taken a stand against migratory divorces. "The influx of people seeking divorces was so great in June and July that it became a matter of newspaper comment and involved in the gossip bandied about reflections upon the bench and upon the law which permitted such travesty," the *Saint Paul Globe* explained. "So Judge Aiken [sic] concluded to call a halt."[42] By strictly construing the phrase "good faith," he could single-handedly shutter the divorce colony. The anti-divorce movement was gleeful. Judge Aikens was hailed as a "righteous" judge, and he was mentioned as a worthy congressional candidate.[43] Newspaper columnists advised the unhappily married to give up on the idea of a Dakota divorce.

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[40] "Sioux Falls Not Now a Good Place to Obtain a Divorce," *Detroit Free Press*, August 1, 1891.

[41] *Blosse v. Blosse*, 1891, Court Records, Minnehaha County Courthouse, Sioux Falls, SD.

[42] "Checked by Aikens," *St. Paul Daily Globe*, August 2, 1891.

[43] "The Divorce Colony," *Morning Olympian*, August 6, 1891.

Among those waiting out their 90 days, there was great concern. Few had taken the residency requirement seriously. At the time of the Mann decision, migratory divorce seeker Margaret De Stuers was vacationing in Spirit Lake, Iowa, Edward Pollock was about to depart for Chicago and Mary Nevins Blaine had returned just a few days earlier from at least three weeks in New York. Blaine's attorney C.S. Palmer expressed continued confidence in the outcome of her planned suit—"Mrs. Blaine's divorce will be granted. If Mr. Blaine Sr. should interfere it might change the result, but I do not expect that to happen"—but he now delayed filing the paperwork.[44] In an interview with the *New York Herald,* Blaine herself appealed to the court of public opinion for privacy and the sympathy for the wronged woman Sioux Falls seemed eager to express. "It is too bad that you are out here to stir up all these people who are trying to get out of trouble," she said. "Are they not unhappy enough? You should be more merciful."[45]

But residency was not at issue in the Mann case. Judge Aikens had instead found that the depositions in the case were incomplete and that proper efforts had not been made to locate the absent defendant. (The issue of personal service would become a point of contention in later South Dakota debates.) Divorce seekers would need only to swear to their South Dakota residency; the judge would not ask for more evidence. "This will protect the spirit as well as the letter of the law," he explained.[46] With that statement, it became clear that the anti-divorce reformers would have to find another way to banish the divorce colony.

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[44] "On the Anxious Seat," *Boston Globe*, August 2, 1891.

[45] "Divorce Made Easy in South Dakota," *New York Herald*, August 2, 1891.

[46] "Hasn't Closed the Divorce Mill," *New York Herald*, August 4, 1891.

The confusion had not slowed the influx of divorce colonists, including Charles Andrews, who arrived from Boston just two weeks later and boarded at the Cataract House where most of the colonists waited out their 90 days. In Aikens's courtroom, questioning of each divorce seeker became more thorough, but no more truthful. Mina Hubbard of New Jersey was questioned by Aikens in November 1891: "When did you come to Sioux Falls?…When was this action commenced?…You are a resident of this state in good faith, are you? … Came here for the purpose of making this your home?…Did not come here for the purposes of getting a divorce?" Hubbard's answers were all satisfactory and largely false.[47] Through the fall of 1891, the ministers and others who had cheered Aikens when they believe he would abolish the divorce colony turned against him for encouraging this perjury in his courtroom. In an attempt to remove him from the bench, they now accused him of drunkenness and licentious behavior with the divorce seekers.

Pollock v. Pollock: Divorce as Social Danger

The first public migratory divorce trial to be held in Sioux Falls was a victory for those who opposed divorce. Judge Aikens would go on to grant a divorce in *Pollock v. Pollock*, which he determined to be within his jurisdiction after the usual blithe assurances of South Dakota residency from the plaintiff, Edward Pollock of Nyack, New York. But the trial itself underlined the anti-divorce reformers' argument that divorce was an evil perpetrated against wives, who must be protected from the husbands who would so easily cast them off. The characters in the courtroom were perfectly cast for their roles:

[47] *Hubbard v. Hubbard*, 1891-1892, Court Records, Minnehaha County Courthouse, Sioux Falls, SD.

Edward was the eldest son of the wealthy Pollock family. He had travelled from the east by first-class sleeper car and spent his time in the Sioux Falls at the Cataract House, engaging in such pleasant diversions as sledding down snow-covered 6th Street with his fellow colonists. Irish-born Ellen had been the Pollock's household maid before her 1887 marriage to Edward. While Edward waited out his residency at one of the west's top hotels, Ellen had struggled to pay the rent on the New York tenement where she was raising their two children, Annie Amelia, just three years old, and Mary Ellen, barely one. Ellen had borrowed $75 from her attorney—who had taken her on as a charity case at the suggestion of a wealthy client for whom Ellen had done some sewing—for the cheapest train tickets to Sioux Falls. When she arrived, Ellen became the first defendant in a migratory divorce ever to travel to the city to dispute her husband's claims. "You charge me with adultery," Ellen explained. "For my children's sake I wish to clear my name."[48]

The courtroom was packed with both divorce colonists and Sioux Falls society for the three-day trial in late January 1892, and the lawyers played to the audience. Both sides agreed that there had been a secret marriage unknown to the Pollock family until 1889. Everything else was in dispute, and the accusations were scandalous: Ellen accused Edward of arranging the kidnapping of their older daughter; Edward accused Ellen of threatening to poison him and pointing a revolver at him. But the only real issues the court was meant to consider were ones of desertion and adultery: Did Edward abandon Ellen when his father learned of the marriage and vowed to disinherit his son? Or had Ellen abandoned Edward when she realized he would no longer be wealthy? And had the couple last lived as husband and wife in November 1889, as Edward claimed, or in the

[48] "Edward Beats Ellen," *St. Paul Daily Globe*, April 7, 1892.

fall of 1890, as Ellen claimed? (The answer to that question would determine the legitimacy of the younger child, who was born in January 1891.)

The general dislike for Edward was clear in the *Argus-Leader*'s reporting of the trial. After painting a picture of the plain Ellen with her "expression more of sadness than of revenge" and the "bright-eyed" children who sat with her at the defendant's table, the reporter described Edward's entrance. "He did not look at his wife nor his child"—the singular perhaps a nod to Edward's charge of illegitimacy—"but sat with his back to both, contemplating the diamond ring on his finger with much interest."[49] The perceived limits of the legal proceedings to address the ills of divorce were also clear: "The court is not in this matter a board of arbitration to make things happy in the Pollock family," the *Argus-Leader* wrote. Instead it must "consider solely whether or not the defendant voluntarily deserted the plaintiff without his consent, and whether or not she has been guilty of infidelity."[50]

In his closing statements, Edward's attorney spoke to this narrow legal question. Ellen's attorney characterized it, the *Argus-Leader* paraphrased, as talk of "dollars and cents in a case where the dearest and most sacred rights of society are at stake."[51] He appealed to the larger societal debate underway, making a case for the evils of divorce as much as the virtue of his client. The *Argus-Leader* now quoted the attorney verbatim:

> It would take the pencil of a master to depict the villainy of this man and the suffering of this woman. I do not overdraw it when I say that nowhere in romance or history is a story which excels or equals the sad and awful story of this poor Irish girl who has been true to her religion, true to the education and instruction of the land of her birth, where, if your honor pleases, divorce is not known, the land

[49] "The Pollock Case," *Argus-Leader*, January 19, 1892.

[50] "The Case Is Closed," *Argus-Leader*, January 21, 1892.

[51] Ibid.

> of faith and purity, where woman's honor is ever heard and woman's priceless fame is ever sung.[52]

Two months later, Judge Aikens awarded a divorce decree to Edward.

De Stuers v. De Stuers: Religious Influence on the Divorce Issue

Even the superficial sympathy expressed by Sioux Fall's residents for a woman wronged by her husband had its limits. The anti-divorce reformers of the early 1890s could embrace women who were the victims of divorce and, in their view, in need of protection, but they could not accept women stepping out of their traditional roles as wives and mothers to become plaintiffs in divorce suits. It was these cases that spurred the reformers to action. Nationally, women made up the majority of divorce seekers at the turn of the century; they were granted almost twice as many divorces as men were between 1887 and 1906.[53] Scholars have suggested that this imbalance was the result of the disparity in societal power between men and women. Women had a greater need for a legal end to their marriages; men could more easily avail themselves of extra-legal options.[54] In Sioux Falls, the court docket tells a slightly different story. Men and women sought divorces in roughly equal numbers in the early 1890s—between April 9, 1890, and July 22, 1892, at least 112 divorce cases were filed in Minnehaha County, 56 by men and 56 by women. Still it was the women—especially those who were members of the divorce colony—who caused the greatest disgust with the state's divorce laws.[55]

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[52] Ibid.

[53] Bureau of the Census, *Marriage and Divorce 1867-1906,* 1: 81.

[54] Phillips, *Untying the Knot*, 111.

[55] These statistics were culled from the Minnehaha County court records. An additional 11 cases appear to be divorces. However, the full court files have been lost, making it impossible to determine

The most contentious of these women was Baroness Margaret Laura De Stuers, whose presence caused the ire of influential Episcopal Bishop William Hobart Hare and introduced religion into the divorce debate in Sioux Falls. De Stuers had arrived in Sioux Falls on June 1, 1891, bringing with her the full glare of the national spotlight. "Now that a niece of William Astor has joined the divorce colony in Sioux Falls," the *Philadelphia Record* wrote, "the South Dakota style of severing matrimonial bonds may become more popular than heretofore. The amazing elasticity of the complaisant South Dakota divorce laws has up to this time escaped the attention of all but a few wandering actors and actresses."[56] De Stuers was seeking a divorce from her husband of 17 years, Baron Alphonse Lambert Eugene Ridder De Stuers, a Dutch diplomat. She had chosen Sioux Falls because she could not charge her husband with the cruelty she accused him of in her home state of New York. Her uncle John Jacob Astor had also told her of the city. "He said it was a thriving and interesting place, and showed me photographs," De Stuers would recall during her divorce trial. "This gave me the first idea of coming here."[57]

Before his death in 1890, John Jacob Astor had been a benefactor of Bishop Hare, donating more than $25,000 to build a cathedral in Sioux Falls in honor of his late wife, Charlotte Augusta Astor. The Bishop, who had come to the Dakota Territory in the 1870s, was best known for his work ministering to the Sioux Indians, but he had always been outspoken about the evils of divorce. As early as 1885, he had warned his congregation about the Dakota Territory laws: "It is by no means safe therefore to say,

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definitively if they were divorce suits and who filed the suit. Court Records, Minnehaha County Courthouse, Sioux Falls, SD.

[56] Quoted in "A Niece of William Astor," *Argus-Leader*, July 22, 1891.

[57] "Baroness De Stuers' Story," *Boston Herald*, February 14, 1892.

'What the law allows must be right.' In the matter of marriage and divorce the law allows much that is not right."[58] As the divorce colony developed in the city in 1891, the Bishop was on a mission trip in Japan. He later wrote to his daughter-in-law of his dismay upon his return: "The scandalous divorce mill which is running at Sioux Falls, with revelations of the silliness and wickedness of men and women … made my return home a very gloomy one. I despise people who trifle with marriage relations so intensely that the *moral* nausea produces nausea of the *stomach.* I have a continual bad taste in my mouth."[59] The Bishop's disgust reflected the strict doctrine of the Episcopal Church, which allowed divorce only for adultery, and his own paternalistic concern for women who were the victims of divorce. But it was De Stuers's presence in the pews of St. Augusta—alongside a man she introduced as her chaperone—which enraged him. She had tried to find a place among in the congregation, generously donating three elaborate stained-glass windows to be hung above the altar, but the social and religious sin of seeking a divorce could not be forgiven. "I won't have them," the Bishop declared when the windows arrived. "I'd as lief paste up the flaming placards of a low circus."[60]

Bishop Hare was not the only religious authority in Sioux Falls during the rise of the divorce colony. The city was home to 20 congregations: four Baptist, four Lutheran, four Methodist, two Catholic, two Presbyterian, two Seventh Day Adventist, and one

[58] M. A. DeWolfe Howe, *The Life and Labors of Bishop Hare: Apostle to the Sioux* (New York: Sturgis & Walton, 1912), 355.

[59] Ibid., 355-356.

[60] Howe, *The Life and Labors of Bishop Hare*, 355-356.

each Christian, Congregational, Episcopal, Reformed and Unitarian.[61] Among the denominations, Catholic doctrine had traditionally been most strictly opposed to divorce; the Unitarian doctrine, the most liberal. Though none of the Protestant denominations were welcoming of divorce, many would soon be forced by the growing divorce debate to consider controversial proposals to further limit the rights of the divorced to remarry.[62] In Sioux Falls, Episcopal Bishop Hare was by far the most outspoken against divorce, though church leaders from other traditions also engaged on the issue. Reverend L.A. Ricklin of St. Michael's Pro-Cathedral was among the first. In early June 1891, just a week after De Stuers's arrival, he gave a sermon that simply stated the Roman Catholic doctrine: "In the Catholic church, Christian marriage is a sacrament, a union of man and wife which is indissoluble except by death … Divorce in the ordinary acceptation of the term, a legal separation which gives one or both parties the right to remarry in the life time of the other, is unknown in the Catholic Church."[63] Later that month, Reverend John A. Cruzan spoke out against the growing colony from the pulpit of the First Congregationalist Church. Reverend W. J. Skillman of the First Reformed Church made his displeasure known in other ways, leading the efforts to unseat Judge Aikens in late 1891.

Only All Souls Church, Sioux Falls's Unitarian congregation, did not condemn the divorce seekers. Although the text of Reverend Arthur H. Grant's advertised February 7, 1892, lecture on "Divorce and Divorcees" has been lost, the liberal position of the church

[61] *Sioux Falls City Directory 1892-1893* (Sioux Falls: Chas. Pettibone, 1892), 30-33; additional church history in this paragraph comes from Dana Bailey, *History of Minnehaha County, South Dakota* (Sioux Falls: Brown & Saenger, 1899).

[62] William O'Neill, *Divorce in the Progressive Era* (New York: Franklin Watts, 1973), 43.

[63] "On Divorce," *Argus-Leader*, June 8, 1891.

and its young preacher was well known. All Souls had been founded by prominent suffragist and minister Eliza T. Wilkes, who still occasionally preached there; her husband William Wilkes was a long-time member of the board of trustees and a local lawyer who occasionally took divorce cases. Their actions spoke to support for the practical view of divorce put forth at 1891's National Conference of the Unitarian Church. After listening to a presentation by Carroll D. Wright, the social scientist who had compiled the government's *Report on Marriage and Divorce 1867 to 1886*, the conference concluded "it is clear that no remedy for present difficulties is to be sought by an effort to ignore the necessity of divorce, but rather that we are to improve our present conditions by making marriage more sacred."[64] The Wilkes clearly reached the same conclusion in the fall of 1892 when their 20-year-old son, Paul, announced his intention to marry colonist Rita Mackay of New York soon after her divorce on the grounds of cruelty. First, the parents objected, saying Paul was too young to understand the importance of marriage. They advised the couple to wait a year to marry, but the Wilkes soon relented, and the couple was married at All Souls Church with the Wilkes in attendance.

There would be no such acceptance for De Stuers. The day after Reverend Grant's February 1892 lecture, her trial began. Although De Stuers had lived a relatively quiet life in Sioux Falls, the national attention to the divorce had not lessen in the months she boarded at the Cataract House awaiting her court date. Unlike in the Pollock case, the defendant had not come to Sioux Falls to dispute the charges, but the Baron's lawyers mounted a vigorous defense. Again, the courtroom was packed for the proceedings.

[64] Edward Everett Hale and William H. Lyon, "The Council of the National Conference," *The Unitarian* 6 (1891): 515.

Margaret De Stuers's story was as pathetic as Ellen Pollock's had been. On the stand, she told of her husband's everyday cruelty and his attempts to have her institutionalized in Paris's infamous Hospice de la Salpêtrière for hysteria. Sioux Falls believed her, but could not condone her actions. Seeking a divorce had made De Stuers a pariah, both in South Dakota and within her own community. Her aunt, Caroline Schermerhorn Astor, had made this fate clear to her in 1890 when De Stuers had first considered divorce; after the woman's intervention, De Stuers reconciled briefly with her husband. He own brother testified against her, and when she finally received her divorce decree on March 5, 1892—and married her "chaperone," Elliot Zborowski, two days later—her family and many of her former friends shunned her.

De Stuers had wanted to be remarried at St. Augusta, but Episcopal canons forbid the marriage of the divorced unless they were deemed the innocent party in a case of adultery.[65] (She was married instead, to much surprise, by Reverend Cruzan of the First Congregational Church, who offered no public explanation for his decision.) Even if they had not, it is unlikely Bishop Hare would have consented. The De Stuers divorce had convinced him that he could no longer be content with preaching against divorce while South Dakota law allowed it. On New Year's Day 1893, Bishop Hare addressed his congregation. De Stuers had left Sioux Falls in the weeks after her divorce, but she was still present in Hare's thoughts, and at least 14 new divorce colonists sat in the pews. Hare's sermon that day was an indictment of the divorce colony, those who supported it and De Stuers. He did not mention her by name, but he did not need to. "Some say that it is a good thing for South Dakota to have divorces and divorce suits. I say that it is

[65] Phillips, *Untying the Knot*, 156.

alarming, and our lax divorce laws have become a national scandal," he began.[66] He continued:

> It is not so much the securing of a divorce which is so shocking, it is the consecutive polygamy which is practiced in marrying again so soon to a man or woman who has been courted while the suit for divorce to the former husband or wife was pending. It is the perjury committed by the applicants, who swear that they intend to make their home here, and no sooner get their decree than they leave town, often times married to another who has been waiting. The only thing left is a few dollars and a huge scandal.[67]

Hare saw a problem much larger than migratory divorce. Divorce itself, for any cause other than adultery, was "an affront to the whole system of society," he believed.[68] But Hare was a pragmatist. He recognized the limits of religious and societal disapproval to curb the growing divorce crisis. He concluded his sermon not with a clergyman's appeal to a higher being, but with a politician's laundry list of promises: a longer residency requirement, stricter rules for notifying the defendant, and provisions for temporary separation, which would leave "room for repentance." "What better object can the Church of Christ have in view the beginning of the new year than to work for a new law?"[69]

Blaine v. Blaine: Divorce and Politics

As Margaret De Stuers's divorce suit pushed the debate over South Dakota's lax laws toward the floor of the state legislature, which would meet again in early 1893,

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[66] "National Scandal," *Argus-Leader*, January 2, 1893.

[67] Ibid.

[68] Ibid.

[69] Ibid.

Mary Nevins Blaine's suit propelled the issue of divorce further onto the national political stage. The defendant in the suit was her husband, James G. Blaine Jr., but the newspapers were more focused on her father-in-law: the popular Republican Secretary of State James G. Blaine Sr. When Mary arrived in Sioux Falls in April of 1891, the family had already been front-page news. Many believed Secretary Blaine was considering a run for the presidency. Blaine had been his party's presidential nominee once before, in 1894, losing to Grover Cleveland in a campaign rife with slander and scandals. Now his supporters were preparing for a nomination battle against incumbent President Benjamin Harrison, on whose cabinet Blaine sat. But the impending divorce was seen as an obstacle. "It would not be surprising if the suit had an influence on national politics by determining the availability of Secretary Blaine as a candidate," South Dakota's *Aberdeen Daily News* wrote when the suit was finally filed in Deadwood in September 1892. "Should a public scandal in regard to the treatment of young Mrs. Blaine be developed by the Blaine family, involving to some degree the parents, the expediency of trying to put them into the white house [sic] may be presented for consideration."[70]

Rumors of a split between Mary and Jamie Blaine, as he was widely known, had been swirling since shortly after the couple's elopement in New York in 1886. The marriage had been shock to both their families; the teenaged Mary and Jamie had been acquainted for only a few weeks. On hearing the news at his Augusta, Maine, home, Blaine Sr. had sent his eldest son, Walker, to New York to confirm that the marriage was legal. Informed that it was, Blaine Sr. had arranged an allowance for Jamie but did not invite the newlyweds to live in the family home. Blaine family letters hint that Blaine Sr.

[70] Quoted in "Reports from Sioux Falls," *Argus-Leader*, September 2, 1891.

came to like Mary, but that his wife, Harriet Stanwood Blaine, and some of the other family members did not. The Nevinses, a noted family of Ohio, were not considered the social equal of the Blaines, and Mary was a Catholic marrying into a Protestant family. Shortly after his brother's elopement, Emmons Blaine wrote to his mother: "Father saw Jamie's wife. I could not prevent that though I tried. She made such as impression on him that I think that if I had not been there he would had them in Augusta this fall. That, I hope, I stopped."[71] The contentious relationship between Mary and her mother-in-law would play out for the whole country in the divorce filings, with Mary charging that Harriet had forced her son to abandon his wife.

Mary had filed her suit in Deadwood, in the southwest corner of the state, when the divorce colony feared Judge Aikens would impose strict rules for residency. She also hoped to avoid unwanted media attention, but reporters followed her and her three-year-old son, James G. Blaine III, across South Dakota to the frontier town. Many expected a spectacular trial. Throughout the fall, the Blaine family had refused comment on the divorce even as attorneys hired by Blaine Sr. on behalf of his son investigated Mary's life; at one point she believed she was being followed by spies for the Blaine family. But as the court date approached, Blaine Sr. changed strategies: no defense would be made unless Mary charged Jamie with cruelty in addition to desertion and non-support. On the stand, she did not allege cruelty in a legal sense, and the Blaine attorneys had not even made an appearance in court, but the story Mary told was damaging. She recounted two years of happy marriage when the couple lived in New York on the allowance supplied by the Blaine family. During this time, her son had been born. And then she related an ill-

[71] Emmons Blaine to Harriet Stanwood Blaine, October 25, 1886, roll 4, James Gillespie Blaine Papers, 1777-1945, Library of Congress, Washington, DC.

fated trip to Augusta. Jamie had been on the campaign trail with the Blaine Sr. while a pregnant Mary had stayed with her mother-in-law and sick child. Mary alleged her mother-in-law had refused to allow her to communicate with Jamie and that the elder woman has threatened to separate the couple. Mary related the conversation in court: "In one-half hour if I chose I can take that young man from you," Harriet told Mary of Jamie.[72] Mary had returned to New York without her husband that evening and had suffered a miscarriage shortly after. She had not seen him since. She had tried, returning to Augusta several weeks later with her mother. Harriet had, Mary told the court, locked Jamie in a bedroom in the family house to prevent her from seeing him and then smuggled him to the train station, where he departed immediately for Europe.

The day after Mary's testimony, Judge Charles Thomas granted her a divorce decree, awarding her alimony and custody of her son. Judge Thomas also issued a lengthy statement condemning the actions of not primarily Jamie Blaine but of his mother. "It seems that Mrs. Blaine the elder did all in her power to make the life of the plaintiff unhappy. She was evidently opposed to the marriage and had concluded that the best thing for her son was to have them separated."[73] For Blaine Sr., the scandal had become too great. Three days after the verdict, the secretary of state released a lengthy statement attacking Mary, which was published in newspaper across the country: "Since the separation of my son and his wife, three and a half years ago, my family have silently borne every misrepresentation, every slanderous attack, every newspaper interview which it has pleased the now divorced wife to inspire." Blaine Sr. published a letter he had

[72] "The Famous Blaine Case Opens," *Daily Deadwood Pioneer*, February 20, 1892.

[73] "An Absolute Decree," *Daily Deadwood Pioneer,* February 21, 1892.

written shortly after the marriage maligning the Catholic priest who had wed the couple, and he provided excerpts of Mary's love letters to Jamie, which showed, he claimed, that Mary "was blameworthy for this alone."[74] Mary's own response, published the following day, asserted her right to a divorce and rebuked to her former father-in-law:

> I shall expect from you that considerate and honorable treatment which I am sure your keen sense of equity and fairness will dictate. The powerful man of a great nation will surely accord to a weak and defenseless woman her full meed of justice. You surely can ill afford to withhold it. I wish it distinctly understood by you that I am not asking for sympathy. I respectfully demand justice.[75]

Mary also demanded that the full love letters from which Blaine Sr. had quoted be published within 10 days. If he did not do so, she would publish Jamie's letters to her.

An open letter from Blaine Sr. to the nation was not unusual. Just weeks before the trial, Blaine Sr. had announced in the same manner that he would not be seeking the presidential nomination, though many continued to campaign on his behalf. But now the political class marveled at the "grave mistake" Blaine Sr. had committed in inserting himself into his son's divorce with his statement. Even worse from an electoral standpoint, one newspaper noted, "the further mistake is made by Mr. Blaine of provoking the Catholic element in assailing the Catholic clergyman who performed the marriage ceremony."[76] To the disappointment of the public, neither Mary's nor Jamie's letters were ever published. Both Mary and Blaine Sr. were stricken with serious illnesses that dampened their feud. Blaine Sr. died less than a year later; Mary recovered and remarried Dr. William Bull, who had treated her prior to her trip to Sioux Falls.

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[74] "Marie Was to Blame," *St. Paul Daily Globe*, February 29, 1892. (Some newspaper mistakenly called Mary Nevins Blaine "Marie" throughout her stay in Sioux Falls.)

[75] "Blaine Has 10 Days," *Pittsburg Dispatch*, March 2, 1892.

[76] "The Blaine Letter," *Rocky Mountain News*, March 1, 1892.

The End of the Divorce Colony

By the time the South Dakota legislature convened in January 1893, it seemed certain to those observing from outside the state that the divorce laws would be changed and the divorce colony eradicated. "Sioux Falls is doomed as the Mecca of the grass widows from the East," wrote the *New York Sun.* "The legislature meets the first week in January and it is more than likely that one of its first acts will be the lengthening of the time for gaining a legal residence from 90 days to one year."[77] (The term "grass widow," first coined in the 16th century to describe a woman abandoned by a man.)[78] Within the state, however, many were ambivalent—and some even supportive—toward the law. On the third day of the Senate's session, Senator Robert Dollard of rural Bon Homme county proposed a one-year residency requirement for all seeking divorces and a two-year residency requirement for any divorce seeker whose stated cause had arisen out of state. The *Argus-Leader* called the bill "radical." "Overdoing the matter," the paper opined, "is likely to prevent any action at all. General apathy prevails on this subject among the members."[79]

The two sides of the debate over the state's divorce laws broke down along predictable lines. Those in closest proximity to the divorce colonists—the lawyers, hoteliers and other business people who also benefited economically from the migratory divorce seekers—were most likely to lobby against any change to the law. Those at a further remove—Sioux Falls residents who refused to associate with the divorce colonists and those residing in the vast rural parts of the state—were more likely to lobby for a

[77] "South Dakota Divorces," *New York Sun*, January 1, 1893.

[78] OED Online, Oxford University Press, accessed January 28, 2018, http://www.oed.com.

[79] "The Divorce Law," *Argus-Leader*, January 7, 1893.

change. Bishop Hare, with the support of many of the state's other clergy, led the change effort. The group he represented was not a unified one, Hare admitted in a petition for a stricter law signed by 900 people and submitted to the legislature. "How far these amendments should go the undersigned are not, perhaps, agreed. They do not think it is essential to their case that they should be all in all respects of one mind."[80] But his lobbying forced legislators to take a position on the issue.

In the South Dakota House, three bills sought to strengthen the residency requirement. The first two, House Bill 11 and House Bill 23, proposed at least a one-year wait, but both were voted down in the Judiciary Committee. In doing so, the committee members made it known to their fellow legislators that six months was the longest residency requirement that would be considered; that was enshrined in the 1889 state constitution as the time required for men to gain residency for voting purposes and there was a reluctance even among those who opposed migratory divorce to pass any law that would take away the rights of voters. A compromise bill, House Bill 90, offered by moderate pro-divorce voices proposed the more politically palatable 180-day wait. It was promptly voted out of committee and passed the House by a unanimous vote. In the Senate, the six-month residency bill was a rival to a far-stricter one-year bill introduced there, and there also remained a strong push for maintaining the three-month status quo. The *Argus-Leader* paraphrased the pro-divorce voices of the Senate: "we should not try to fit our actions to suit the criticism of outsiders but the condition of things at home…the law had stood for a dozen years and had not been condemned until now and that as a

[80] *Journal of the House of Representatives of the South Dakota Legislature, Third Session* (Pierre, SD: Carter Publishing, 1893), 221.

matter of fact it did not injure in any way the state or its people, but did bring relief to hundreds of the worthy and despondent."[81]

Faced with these conflicting views, the Senate chose to consider the House's compromise bill over the one-year alternative, but the more extreme advocates on both sides of the issue introduced dueling amendments. The anti-divorce reformers proposed extending the residency requirement to one year in any divorce case where the defendant could not be personally served. Pro-divorce advocate Charles L. Brockway, a well-known Sioux Falls attorney, proposed a much weaker version of the bill: maintaining the three-month residency requirement in cases of personal service and extending the requirement to six months in cases without personal service. Ultimately, the Senate adopted House Bill 90 with the anti-divorce reformers' amendment. The pro-divorce voices in the House attempted to kill the Senate's amendment before sending the bill to the governor for his signature, but failed. On March 3, 1893, Governor Charles Sheldon signed the bill extending the residency requirement to at least six months, still shorter than many states and territories but longer than North Dakota.

[81] "The Divorce Bill," *Argus-Leader*, February 15, 1893.

Chapter 3:

Sioux Falls without the Divorce Colony, 1894-1899

The South Dakota legislature's March 1893 decision to extend the residency requirement for filing a divorce from three months to six months did not end the debate over the divorce colony or divorce itself in Sioux Falls or elsewhere in the country. Within the city, anti-divorce reformers celebrated, but did not rest in their mission to scrub the sins of the colony. Bishop Hare articulated this idea when it became known that he was under consideration to be Bishop of the Episcopal Dioceses of Massachusetts. "If the legislature had not wiped out the divorce scandal, I should have accepted a call elsewhere," he told the *Argus-Leader* in April 1893. "But now that we have eradicated this evil. I feel that I can hardly leave this state…I now expect that I will pass the remainder of my life in South Dakota, following up on the work now underway."[82] (He was not ultimately chosen for the Massachusetts post.)

Meanwhile, the pro-divorce voices that had lobbied against the new law began to battle each other. Two of Sioux Falls most prominent divorce attorneys—J.L. Glover, who had represented Baron De Stuers in his opposition to Margaret De Stuers's divorce suit, and his law partner J. M. Donovan—were charged by their peers with fraud in an effort to cast the new law as a rebuke not of divorces, but of illegally obtained divorces. They were also maligned for advertising their divorce services in Eastern newspapers. Donovan and Glover were eventually cleared of fraud, denying the bar the scapegoats

[82] "Bishop W. H. Hare," *Argus-Leader,* April 27, 1893.

they had hoped for. But the firm was guilty of advertising. In August 1894, long after the legislature had changed the law to end the divorce colony, Donovan & Glover classified ads appeared in the *Atlanta Constitution*: "Specialties: Divorce and corporation law."[83]

Sioux Falls's Reputation

Reading the country's newspapers, it would have been easy to conclude that nothing had changed in Sioux Falls. In 1894 and 1895, the city found itself the subject of several derisive articles, widely published, and a popular book that placed it at the center of the nation's divorce crisis. "Sioux Falls and her divorce mill are a blot on the escutcheon of the United States," one article declared on June 10, 1894, signed with the pseudonym Tecumseh. That day and throughout the coming weeks, the story—which the *Argus-Leader* claimed to have been written by "some bilious colonist who has evidently been snubbed by Sioux Falls society"—would be printed in papers from California to Florida.[84] The article was intensely critical of the city, excoriating Sioux Falls residents for scorning the divorce colonists while they "put forth their sanctimonious hands, and with prayers on their lips and pharisaical comparisons in their hearts, receive that filthy lucre, which never seems to carry contamination."[85] The colonists themselves received surprisingly light treatment: Both the "poor, down-trodden women" and the "bread-winners who cannot spare time" are characterized as merely misled by promises of privacy and speed. It was a third class of divorce seekers, the paper wrote, "who have

[83] "Donovan & Glover," *Atlanta Constitution*, August 5, 1894.

[84] "Probably Snubbed," *Argus-Leader*, June 12, 1894; "The Now Famous Divorce Article," *Argus-Leader*, June 14, 1894.

[85] "The Colony," *St. Paul Daily Globe*, June 10, 1894.

cast odium upon the place and caused untold misery to the poor unfortunates who are honest"; these were the still-married women who had come to Sioux Falls with their future husbands, such as Margaret De Stuers.[86] The *Argus-Leader* called the article libel, but contradicted only two specific claims, that Judge Aikens had been bribed in the Pollock case and that "the utmost license is permitted" in the Cataract House.[87] The *Saint Paul Globe*, which had printed the article, corrected those claims, but noted, "we believe the other matters narrated by our correspondent were correct."[88] Sioux Falls remained a blot on the nation's morality.

The publication of *The Divorce Mill* in the spring of 1895 reinforced this scandalous view of Sioux Falls. Written under the pseudonyms Harry Hazel and S. L. Lewis, who claimed to be a Chicago newspaper man and a Sioux Falls attorney, respectively, the novel was subtitled "realistic sketches of the South Dakota Divorce Colony," which led one newspaper to comment "if realistic means coarse and vulgar and wretchedly told, the description is correct."[89] Most newspapers agreed with this low assessment of the book's literary value, but its thinly veiled accounts of well-known divorces were, the *New York World* was not alone in opining, "interesting reading."[90] The *Argus-Leader* claimed its stories were purely imaginary, and, indeed, some were as exaggerated as the book's assertion that Sioux Falls granted "thousands of decrees every

[86] Ibid.

[87] "Certain Newspapers Are Printing Sensational Stuff," *Argus-Leader*, June 13, 1894.

[88] "Untrue Statements Corrected," *St. Paul Daily Globe*, June 16, 1894.

[89] "The Divorce Mill," *Times-Picayune*, April 7, 1895.

[90] "Harry Hazel and S. L. Lewis," *New York World*, April 13, 1895.

year."[91] But many of the most sensational incidents in the book—such as the story of a divorcee firing a revolver in the Cataract House or the one about a Sioux Falls dry goods clerk who leapt from a moving train to escape the attentions of a divorcee—are corroborated by articles in the *Argus-Leader* itself.[92]

Later that year another newspaper story, this one first printed in the *Boston Herald*, made the rounds. With it came a call for further action against the divorce colony perceived to still exist in Sioux Falls. Purporting to be a letter from an unnamed divorcee (but borrowing some language from the 1894 story), the article accused South Dakota of continued laxity in its divorce laws, despite the success in lengthening the residency requirement in 1893. Again, the divorce colony is divided into classes: the "good, honest women," seeking quiet divorces that would be unavailable to them in their home states, and the "women who have violated their marriage vows and formed a mad infatuation for some man."[93] The article does mention the men seeking divorces in Sioux Falls in 1895—"a new feature, and a strange one, too," it noted, incorrectly but revealingly—to comment that the men were not ostracized in Sioux Falls or on their return home the same way the women were. "They are both out there for the same purpose, yet a cold shoulder is turned to one, a warm welcome to the other."[94] The *Argus-Leader* dismissed these charges as overblown: "Sioux Falls people regard the divorce business as a small

[91] Hazel, *The Divorce Mill*, 49-65.

[92] Divorce seeker Rita Mackay, who would later marry Paul Wilkes, inspired the tale of the woman with the gun, while divorcee Mina Hubbard and dry goods clerk Clark Brown were the real-life players in the story of the train. Hazel, *The Divorce Mill*, 49-50 and 72-73; "The Other Side," *Argus-Leader*, August 18, 1892; "He Shook Mrs. Hubbard," *Argus-Leader*, January 15, 1892.

[93] "Women Ostracized," *Boston Herald*, July 28, 1895.

[94] Ibid.

matter, as one of the side instances of little importance in the busy whirl of the active business life that characterizes this city … The citizens of Sioux Falls pay little attention to the divorce business."[95] Other parts of the country, however, continued to pay rapt attention.[96] When the article was republished in the *Chicago Daily Tribune*, it was accompanied by an editorial reiterating South Dakota's complicity in creating a divorce colony. "The divorce laws of South Dakota are a disgrace to the American Nation," the newspaper wrote. "There is room to fear that this nefarious business will increase instead of diminish," it worried. "[The divorce business] really is a menace to the purity of the American home."[97]

The New Divorce Colonies

After the 1893 change to the residency requirement, Sioux Falls's anti-divorce reformers expected migratory divorce to decrease overall with only the most desperate divorce seekers traveling to other states with more amenable divorce laws. The most obvious choice was North Dakota, which still had the three-month residency requirement held over from the laws of the Dakota Territory. Of North Dakota's cities, Fargo seemed the most likely choice for divorce colonists. Although its population was half the size of Sioux Falls, 240 miles due south, it had the most amenities in the state. The city was also in the midst of rebuilding after a devastating fire that tore through the town on June 1893.

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[95] "A Slander with a Reason," *Argus-Leader*, August 2, 1895.

[96] The article was republished in Chicago; Louisville, Kentucky; Minneapolis, Minnesota; and Omaha, Nebraska, among others places: "Thro' A Divorce Colony," *Chicago Tribune*, August 4, 1895; "Divorce a Specialty," *Courier-Journal*, August 4, 1895; "The Divorce Colony," *Star Tribune*, August 4, 1895; "Divorces While You Wait," *Omaha Bee*, August 4, 1895.

[97] "South Dakota's Divorce Mill," *Chicago Tribune*, August 4, 1895.

The residents of Fargo appear to have been as conflicted over migratory divorce as those of Sioux Falls, but the money that came with the divorce colonists could help the town recover.

Fargo had been called a divorce colony before. In June 1891, the *Argus-Leader* had claimed, with some consternation and little accuracy, that Fargo had a larger population of divorce seekers than Sioux Falls.[98] Throughout the years prior to and during and after the heyday of the divorce colony, the tone with which the *Argus-Leader* discussed other divorce destinations changed. Before the first wave of prominent divorce seekers arrived in the city in 1891, the paper had written about divorce colonies in Chicago; Newport, Rhode Island; and Nebraska City, Nebraska, in largely neutral terms. As Sioux Falls became better known, the *Argus-Leader* was disdainful of those places—including other South Dakota towns, North Dakota towns such as Fargo, and destinations as far flung as London—that would try to compete with its city. "We notice that some jealous contemporaries are throwing rocks at Sioux Falls['s] flourishing divorce industry," the newspaper wrote in early 1891. "Our neighbors are green with envy. They covet Sioux Falls'[s] success."[99] But by 1893, the *Argus-Leader* offered contempt for those places that courted divorce seekers. It accused several other South Dakota towns of trying to develop a divorce business and wrote of Fargo in 1898, "[T]he divorce colony there brings into that city each year not less than $100,000 in cold cash … So far as we are concerned, Fargo is quite welcome to money earned in this way."[100]

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[98] "Charles Pettibone," A*rgus-Leader*, June 6, 1891.

[99] "Jealousy Rampant," *Argus-Leader*, April 20, 1891.

[100] "A Well-Known Citizen of Fargo," *Argus-Leader,* September 8, 1898.

If Sioux Falls did not want the divorce colonists' money, however, many places did. The Territory of Oklahoma, on the verge of statehood, made the boldest bid for divorce colonists. An attorney from the young town of Perry circulated a flier in New York: "Since the Legislature of the State of South Dakota changed the law last Winter of that State, lengthening the residence required before bringing suit for divorce from three to six months Oklahoma Territory has been attracting attention as a divorce center." The flier lists the attractions of the Oklahoma laws, concluding the pitch with a note that "Oklahoma has a beautiful climate, and Perry is the largest and most enterprising town in the Territory."[101]

The rise and fall of other towns' and states' reputations as divorce havens was, as Sioux Falls experienced, quite separate from the states' laws—and from the number of migratory divorces granted there. For instance, in Cass County, North Dakota, home to Fargo, there were a total of 21 divorces granted in 1892, according to court records, 10 of which appear to be migratory divorces.[102] (The previous year, the *Argus-Leader* had widely overestimated, reporting that there were 140 migratory divorce seekers in Fargo.)[103] The year after the law change in South Dakota, there was an increase in migratory divorces in Cass County, according to court records, but the total number remained small: In 1894, 52 divorces were granted, of which 39 appear to have been migratory divorces. Meanwhile, the *Argus-Leader* documents 57 divorces granted in southeastern South Dakota in 1894; at least 27 and perhaps as many as 38 were migratory

[101] "A Bid for the Divorce Trade," *New York Times*, January 7, 1894.

[102] Cass County, ND, Divorce and Civil Cases Index, North Dakota State University Archives, Fargo, ND.

[103] "Charles Pettibone," *Argus-Leader*, June 6, 1891.

divorces. (Complete court records are not available for Minnehaha County, where Sioux Falls is located, for 1894.) In other words, Fargo and Sioux Falls granted a roughly equal number of migratory divorces in 1894.[104]

The Future of Divorce in South Dakota

The 1893 South Dakota legislature had reached a compromise that few were happy with when it was put into in practice. The divorce colony had not been abolished in Sioux Falls; migratory divorce seekers still came to the city, although in smaller numbers, and it maintained its place in the national consciousness as, to use the words of "Tecumseh," "a town which lives, thrives and grows, and whose chief industry is divorcing the married."[105] When the legislature reconvened in 1895, pro-divorce voices took the floor to reduce the six-month residency requirement in South Dakota, even as North Dakota considered extending its requirement to one year. As the bar association of Codington County in northern South Dakota reasoned in voting to support one such bill: "the change in the law two years ago as the result of Bishop Hare's personal efforts has been of no benefit to the morals of the state and has sent elsewhere hundreds of thousands of dollars which might well have come to South Dakota."[106]

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[104] These statistics were culled from the Cass County, ND Divorce and Civil Court Cases Index and the *Argus-Leader*. The North Dakota index specifies which divorces were migratory. South Dakota divorces were only categorized as migratory if the newspaper noted one of the following: the divorce seeker was a member of the divorce colony or had come to South Dakota specifically for a divorce; divorce seeker was living in temporary housing primarily used by divorce colonists; the divorce seeker had been in South Dakota for a year or less at the time of the decree or had plans to leave immediately following the decree; or the divorce seeker was "of" another place and the defendant was also "of" that place. Cass County, ND, Divorce and Civil Cases Index, North Dakota State University Archives, Fargo, ND; and *Argus-Leader*, Sioux Falls, SD, 1894.

[105] "The Colony," *St. Paul Daily Globe*, June 10, 1894.

[106] "The Bar Association of Codington," *Argus-Leader*, January 9, 1895.

One bill draft called for the residency requirement to be returned to just three months, but the pro-divorce voices quickly rallied around a more moderate-sounding bill, written by Senator L.W. Aldrich of Miner County, north of Sioux Falls. Senate Bill 144 would require that a divorce seeker be a resident of South Dakota for 6 months before being *granted* a divorce decree. As it did not put a residency requirement on filing a divorce decree, one could do so immediately upon arriving in the state. Under this bill, a divorce could be completed in six months, less than one filed under the law enacted in 1893, which typically took nine to 12 months, and potentially less than one under the Dakota Territory law, which typically took six to nine months.[107] The bill was supported by representatives from the Black Hills, which had until 1889 been Sioux territory and was now the province of homesteaders, and by representatives from the bigger eastern and southwestern cities. Those from the rural districts largely opposed it, leading one city newspaper to suggest a deal: divorce for irrigation. "If the farmers want to grow more grass, they must allow the cities to grow more grass widows."[108]

The pro-divorce voices—Sioux Falls lawyers and hoteliers among them—were better organized this time, hiring a lobbyist to represent their interests in Pierre. The anti-divorce reformers were unprepared. When the legislature convened, Bishop Hare had been traveling on the East Coast. On his return in early February he penned an open letter, accusing the pro-divorce voices of colluding with the newspapers to pass this law quietly, and a petition for signatures that redefined the discussion in terms more favorable to the anti-divorce reformers:

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[107] "A New Divorce Law," *Argus-Leader*, January 25, 1895.

[108] "The Yankton Press Insists," *Argus-Leader*, January 31, 1895.

> The proposed law is manifestly not meant to relieve our own citizens who may be unhappily mated. It adds nothing to their rights and privileges. It is distinctly a bid for divorce business from outside….passage of the proposed bill would injure the good name of our Commonwealth; bring gain, and that sadly gotten, to only a few; strike a blow at the sanctity of our home life; lessen the dignity of marriage in the public mind, and particularly that it would tend to impair the reverence with which the young should be accustomed to regard the marriage bond, the bond which binds their fathers and mothers together and consecrates the union from which children spring.[109]

The debate that took place in the South Dakota Senate on February 11, 1895, brought voice to rarely heard pro-divorce arguments. Anti-divorce reformers who were opposed to the bill hewed to the familiar talking points about the financial and moral costs of migratory divorce. "The divorce business crowds our courts and benefits only lawyers and hotels, and the farmers have to share the expense," argued J.C. Allison of Brookings County. "The details of divorce proceedings are brought into our families and contaminate our young people who are thus impressed with the idea that the marriage relation is one to be lightly respected." Supporters of the bill, however, wanted to debate not migratory divorce, but divorce itself and the legislature's proper role in limiting it. "Outsiders are allowed to come into the state and institute other actions, and why not allow an action of this kind[?]" asked Edward H. Aplin of Beadle County, home to the city of Huron. "The truth is, [if] the question of morals is the only thing involved in the divorce business, the opponents should consistently seek to sweep all divorce laws from the statute books." Aplin also suggested that this new bill was an improvement over the current law because it would not encourage divorce seekers to lie about their residency. H.R. Pease of Marshall and Roberts counties in the northeastern corner of the state went

[109] *Journal of the House of Representatives of the South Dakota Legislature, Fourth Session* (Huron, SD: Shannon & Longstaff, 1895), 784.

even further: "This has been truly called a moral question. You can't cure evils by legislative enactments … It affects the morals of a community more to have it known that families are living together unhappily than to get the divorce."[110]

During the debate, the anti-divorce reformers successfully attached an amendment extending the residency requirement for a divorce decree to one year if the defendant was not personally served with notice of the proceedings. With that, the bill passed by a wide margin: ayes 26, nays 13, absent 4.[111] "It's easy passage through the senate portends its success before the house," the *Argus-Leader* wrote.[112] But that was not to be the case. Bishop Hare's lobbying had mobilized the anti-divorce reformers. Though he sidestepped those who asked why he was not lobbying for a complete prohibition, he had a ready answer for why divorce should be treated differently than other legal actions. The week before the bill came to a vote in the House, Hare took to the pulpit at St. Augusta to once again discuss the "unsavory subject."[113] He likened a divorce to a revolver, too dangerous to hand to someone in a passion. "We consider the offering a non-resident the right the moment he steps into South Dakota to take advantage of our divorce law the putting into his hand a deadly weapon," Hare told the gathered parishioners.[114] (His casting of the divorce seeker as a male was in keeping with his view that divorce was an ill from which women should be protected.) Across town later that evening, Reverend J.L. Andrews of

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[110] "The Divorce Debate," *Argus-Leader*, February 12, 1895; and *Journal of the Senate of South Dakota Legislature, Fourth Session* (Huron, SD: Shannon & Longstaff, 1895), 228, 452, 515-518, 529 and 557.

[111] *Journal of the Senate of South Dakota Legislature, Fourth Session*, 583-584.

[112] "List of New Laws," *Argus-Leader*, February 12, 1895.

[113] "Against Divorce," *Argus-Leader*, February 25, 1895.

[114] "Against Divorce," *Argus-Leader*, February 25, 1895.

the All Souls Church delivered an encore of his own sermon on marriage and divorce in the opera house, one in keeping with the Unitarian church's practical approach to divorce. As paraphrased in the *Argus-Leader*, Andrews told the crowd, "he regarded divorce as a tragedy of human existence but he said the tragedy should be of short duration instead of prolonging it. The reason why people came to South Dakota is not because our laws are bad but because their own states have not become civilized enough to enact proper divorce laws."[115] Restating his case in his own words in a letter to the *Argus-Leader* a day later, Andrews added a dimension to the debate which had been limited to residency: "For any man in this age and country to claim that divorce is morally wrong for any but one reason—that neither cruelty, desertion, crime, indignity, or any other grievous cause is sufficient to justify it—has abandoned his conscience to the tyranny of a moral superstition."[116]

In the South Dakota House, these impassioned arguments were less effective than a series of complicated political maneuvers executed by those opposed to the bill. The anti-divorce legislators—most of them populists—had successfully driven a wedge between pro-divorce voices in the eastern part of the state and those in the western part by entangling three separate issues on the agenda: the divorce residency requirement; women's suffrage, which had greater support in the west; and prohibition repeal, which had greater support in the east and was an anathema to many who supported women's suffrage. When the pro-divorce, pro-repeal eastern legislators voted against suffrage, the pro-suffrage, anti-repeal western legislators retaliated by voting against the divorce

[115] "Favors Divorce," *Argus-Leader*, February 25, 1895.

[116] "Says He Didn't Say It," *Argus-Leader*, February 27, 1895.

bill.[117] On its first vote, the bill was defeated handily: ayes 27, nays 50, absent and not voting 6. When a pro-divorce legislator called for reconsideration, his anti-divorce colleagues saw an opening to introduce amendment after amendment to reverse the original intent of the bill. One called for two year's residency before filing a divorce suit; another stipulated that those divorce seekers who were not residents of the state for one year before a divorce was granted would forbidden from remarrying. The bill failed on every vote.[118] The 1895 legislature ultimately made only one small change to the laws affecting divorce—an uncontentious change to codify summons service reduced the time some divorce seekers had to wait to proceed with their cases by several weeks—but it set the stage for an ongoing dispute that would reach beyond questions of residency.[119]

Meanwhile, North Dakota faced its own debate over its small divorce colony. The bill to extend its three-month residency requirement to one year had failed in 1895, but a similar bill was introduced when the legislature reconvened in 1897. Catholic Bishop John Shanley of Fargo followed Episcopal Bishop Hare's example in lobbying against divorce in the legislature, though he credited the pro-divorce voices with more influence than Hare would. "I have never been foolish enough to imagine that I would overcome the powerful influence of those interested financially in easy divorce," he said. "I intend to stay right here, and to fight this infamous divorce business until it is driven from our state."[120] That year, the bill passed in the North Dakota Senate but died in the House. In

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[117] "Are Against It," *Argus-Leader*, March 2, 1895; "Divorce Bill Died," *Argus-Leader*, March 3, 1895.

[118] *Journal of the House of Representatives of the South Dakota Legislature, Third Sessions* (Pierre, SD: Carter Publishing, 1893), 1178-1192.

[119] "The Argus-Leader's Digest," *Argus-Leader*, March 30, 1895.

[120] "Bishop Shanley of North Dakota," *Argus-Leader*, February 12, 1897.

South Dakota, where an 1897 bill to extend the residency requirement to one year languished in the Judiciary Committee, anti-divorce reformers crowed over North Dakota's failure: "Fargo is apparently content to sacrifice her reputation and the morality of her people for shekels."[121]

By late 1898, anti-divorce reformers in both states were prepared to bring the divorce issue before the legislatures again. In North Dakota, anti-divorce legislators would propose an extended residency requirement for a third consecutive session.[122] But in South Dakota, Bishop Hare saw an opportunity to build on earlier anti-divorce successes. He floated the idea for a new law that would reduce the causes of divorce in South Dakota to just two, "biblical causes and great personal abuse."[123] The proposal, which went far beyond previous efforts to limit outsiders' access to divorce in the state, was greeted with dismay in Pierre, and Hare quickly backpedaled from his legislative ambitions. Instead, he would focus on maintaining the current six-month requirement, which he believed would come under attack during the 1899 session—but the challenges did not come mainly from pro-divorce legislators.[124]

For the first time a woman was heard directly in the political debate over divorce in South Dakota. Marietta Bones of Webster, South Dakota, had long been an outspoken supporter of women's suffrage and prohibition.[125] Pushed out of the suffrage movement

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[121] "The North Dakota Legislature," *Argus-Leader*, March 10, 1897.

[122] "At the Coming Session of the Legislature," *Argus-Leader*, December 13, 1898.

[123] "Hare on Divorce," *Argus-Leader*, December 21, 1898.

[124] "A Pierre Dispatch," *Argus-Leader*, January 11, 1899.

[125] Background on Marietta Bones comes from Yvonne J. Johnson, ed., *Feminist Frontiers: Women who Shaped the Midwest* (Kirksville, MO: Truman State University Press, 2010).

over differences with Susan B. Anthony, who believed the cause was best served by a sole focus on franchise, Bones remained an influential voice in her community, speaking now against the cause of suffrage, which she had come to believe was harmful to women and the country, and in favor of a woman's right to divorce. "Gentlemen, I pray you to make divorces easier to obtain than ever before," Bones wrote in an open letter to the legislature. "In so doing, you will be revered for your generosity in performing a great benefaction to the human family." Embracing a common insult used to describe the state and referencing Bishop Hare, she continued, "Let the beautiful state of South Dakota be in fact, the Mecca for unhappy alliances to be broken—the noted celibates lobbying with you to the contrary."[126] Bones stressed the importance of divorce to women, who lacked the extralegal means of escaping a marriage that men enjoyed. With great difficulty, Bones herself had divorced her first husband, Kendall Parker, and she questioned Bishop Hare's understanding of marriage and divorce. "He is wholly unfit to judge of the needs between unhappy married people; and while he may believe he is right in his advocacy—the truth is, he knows nothing about the wrong he is trying to perpetrate," she said of his efforts to make it harder to acquire a divorce.[127] Hare was loath to engage with Bones, responding to her challenge only when pressed by the *Argus-Leader*. His understanding of marriage, he told the paper, was an understanding of family, which came from his role as a father and a grandfather and as overseer of a boarding school. (Although he did not mention it, the Bishop had been married for five years. His wife, Mary, died in 1866.) In conversation with a reporter, Hare argued disingenuously that he had not attacked divorce

[126] "To Make Divorces Easy," *Argus-Leader*, January 16, 1899.

[127] Ibid.

as a whole, and he acknowledged, with some derision, that the laws of the state and the teachings of the church would not always overlap:

> The state must have regard to all its citizens—of all faiths and of no faith, of high breeding and of low breeding—and make such laws as, though they fall short of ideals, seem suited to the present conditions; in other words, the state must, for the time at least, adjust high principles to lamentable but stubborn facts. Now it may be that our South Dakota law is up to as high a level of morals as the state of our people will permit. For one, however, I do not think so.[128]

Their debate ended in a draw in the legislature. There was no effort to make divorces easier to obtain, but a bill introduced in the House to extend the residency requirement to one year with strict requirements for evidence did not get a vote.[129]

Instead, it would be a vote of the North Dakota state legislature that would reinvigorate the Sioux Falls divorce colony. After a debate that was pitched as one of money versus morality, the legislature there easily extend that state's residency requirement to one year, the only real topic of contention being the fate of those divorce seekers currently waiting in North Dakota to file their suits.[130] Fargo no longer held any greater draw than the larger, more accessible, more comfortable, and now quicker-to-divorce Sioux Falls. "Sioux Falls has secured another industry. Reference is made to the divorce business, which has been a dead letter in this state during the past four years, but which has made Fargo, ND, one of the leading cities of the West," wrote a Watertown,

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[128] "Marriage Is Sacred," *Argus-Leader*, January 19, 1899.

[129] *Journal of the House of Representatives of the South Dakota Legislature, Sixth Session* (Pierre, SD: State Publishing, 1899), c-ci.

[130] "North Dakota's Fight for Morals," *Argus-Leader*, February 3, 1899; "Divorces Come Harder," *Argus-Leader*, July 3, 1899.

South Dakota, newspaper. "Many of the lawyers of Sioux Falls now have clients on hand and they are receiving daily inquiries."[131]

The Legal Jeopardy of Sioux Falls Divorcees

While South Dakota politicians debated the particulars of that state's divorce laws, the courts in several others states questioned whether decrees granted to the migratory divorce seekers were legal at all. As early as 1891, when the first of those who would become known as the divorce colonists were arriving in Sioux Falls, there were questions about the validity of the decrees issued there. This was first evident in rumors about Clinton Edgerly's plan to return to Sioux Falls in 1891. He wished to remarry following his 1890 divorce from Rose Coghlan and doubted the usefulness of the piece of paper he had received in the city. He was right to question: charges of bigamy, adultery and alienation of affection were common when the plaintiff in a South Dakota divorce returned to the state where he or she had once shared a home with the now ex-spouse. Some of these claims were particular to the couple involved in the case. Edgerly's specific concern was that Coghlan had not filed an appearance before the court in South Dakota. He worried she could claim that she had not be advised of the proceedings. (Although some newspapers reported that a second divorce hearing occurred, the Sioux Falls papers do not record a second visit from Edgerly, who remarried in September 1891. Coghlan remarried in June 1893.) Other claims took aim at the state's laws, threatening to delegitimize hundreds of divorces. In 1896, New York's gossipy *Town Topics* captured the fear that accompanied each court challenge to a Dakota divorce in its

[131] Quoted in "Sioux Falls, S.D., Secures Another Industry," *Argus-Leader*, May 3, 1899.

anonymous recounting of a prominent New Yorker who had gone to Sioux Falls for a divorce "upon the ground that happiness is incompatible with gin and soda." In this telling, the divorcee followed the letter of the law in South Dakota and then returned home to marry again. The ex-husband was advised to challenge the divorce in New York. "The nullification of a South Dakota divorce by our courts would certainly have shaken New York society to its foundations," *Town Topics* wrote. "I am told that the counsel for both parties were visited by persons interested in western divorces, and that very affecting appeals were made."[132]

The case of Laura and William Leavitt is a useful example of the legal maneuvers available to the unwillingly divorced when an extralegal settlement could not be negotiated. Laura Leavitt, the daughter of a prominent New York attorney who had left her considerable wealth upon his death, arrived in Sioux Falls with the first wave of divorce colonists in the spring and summer of 1891 seeking a divorce from William, her husband of 21 years and a wealthy wine merchant. Laura secured a room at a boarding house on Minnesota Avenue occupied by other divorce colonists, including Florence Cuthbertson, to wait out her 90 days. Once her residency was established, Laura filed her suit for divorce on the grounds of desertion and nonsupport in Brookings, a town about 60 miles north, to avoid the publicity attendant to trials held in Sioux Falls; her husband was served with papers in New York. In court, Laura claimed that her husband had barred her from their Flushing, New York, home a year earlier. Her divorce was granted.

A few days after she received her decree, Laura married E. A. DeMauriac, a suitor who had first asked for her hand in marriage when she was 17. The *Argus-Leader*

[132] "I Am Glad to Hear…," *Town Topics*, March 29, 1896.

detailed the romantic story of Laura's reconnection with the now-wealthy banker via letter after her arrival in Sioux Falls, but William did not accept the timeline. When the newly married couple arrived in New York after a honeymoon in California, William first threatened to have Laura arrested for bigamy; the South Dakota divorce was obtained by fraud, he claimed. He then filed for a divorce of his own, charging his former wife with adultery and naming her new husband as co-respondent. William further argued that the South Dakota decree was void because he had not been under the jurisdiction of that court. Attorney Nock was unperturbed despite the danger to the legal underpinnings of the state's migratory divorce decrees: "The decree was granted in the regular way after due personal service on the defendant. If Leavitt had a good case and opposed the divorce, he had a chance to be heard." The New York case, Nock said, was "simply to vent his spleen and not in the hope of overthrowing the decree."[133]

When the New York divorce case came to trial in July 1893, Laura admitted to intimacy with DeMauriac and entered her South Dakota divorce decree as defense against the charges of adultery, all of which were dated after her second marriage. William pointed to Laura's testimony in her Brookings trial as evidence of fraud: following the accepted script for a divorce colonist, she had told that court that she had come to South Dakota for her health, without a thought of ending her marriage. Two weeks later, a New York judge signed a decree granting William a divorce. Implicit in his decision was a voiding of the South Dakota decree. Laura did not contest the decision; she and DeMauriac remained married without further questions from the state. William, however, did continue to pursue the couple in court. He sued DeMauriac for $50,000 for the

[133] "Will He Arrest Her?," *Argus-Leader*, May 16, 1892.

alienation of his wife's affections. In 1894, a New York court awarded him $7,000 in damages.

Such legal battles over divorce were rarely about prolonging a marriage and almost never about setting a legal precedent. Instead they were personal struggles over money and reputation, as is evident in the continuation of the Pollock case. When Judge Aikens had issued his decision in *Pollock v. Pollock* in 1892 he had done more than end a marriage. As the adversarial court proceeding required, he issued a finding of fact, assigning blame to one spouse, both legally and in the eyes of society. Ellen was guilty of deserting her husband; for that offense, Edward had been issued the divorce decree he sought. Aikens, however, dismissed Edward's second charge, that Ellen had committed adultery. In doing so, the court declared Ellen's younger child to be Edward's legitimate daughter. Ellen was granted custody of both children, and Edward was ordered to pay support of $50 a month. But Aikens immediately stayed his own ruling for 60 days to allow Ellen to appeal it. The Aikens decision would be only the first in a four-year legal saga that would play out in both South Dakota and New York.

Ellen was not disputing the validity of South Dakota divorces. She was disputing the validity of her own divorce. She did not challenge Edward's residency—though out of an abundance of concern, Edward, who had left Sioux Falls for New York just four days after the trial had concluded, returned to the city in November that year to vote in the local election—and she did not challenge the Minnehaha County court's jurisdiction. She planned to appeal the decision in South Dakota on the claim that it was obtained by perjury. She requested a new trial and alimony and attorney's fees during the appeals. (Edward has already paid $250 in preliminary alimony and $250 in attorney's fees during

the original trial.) Her appeal was complicated when her legal team failed to file paperwork in a timely manner, as well as by a report in the *Sioux Falls Press* that Judge Aikens had been bribed by Edward's attorneys. By the time Ellen's case finally came before the South Dakota Supreme Court in January of 1896, Edward had remarried, to the twice-divorced Florence Cuthbertson, whom he had met in the divorce colony. The appeal, the *Argus-Leader* wrote, put Pollock in "an embarrassing position, for there was a chance for the divorce being dissolved, which would have annulled his second marriage."[134]

During the four years Ellen waited for her case to reach the Supreme Court in South Dakota, she filed suit in New York against her former father-in-law, millionaire merchant Alexander Pollock, seeking $50,000 in damages for alienation of affection. The trial in June of 1893 garnered even more attention than the original divorce suit. The *New York Evening World* recounted the courtroom scene in colorful detail each day; the more staid *New York Times* was only slightly less dramatic in its retelling. On the first day of the trial, Ellen—"the picture of poverty," wrote the *Times*, "a poor young woman, without education and even without good looks"—tearfully testified that, on learning of her marriage to Edward, Alexander had offered her money to commit adultery, which would have given his son cause for divorce in New York. When she refused, Ellen claimed, Alexander encouraged his son to seek a divorce elsewhere. On cross-examination, a defense lawyer charged that Ellen, three years older than Edward, was running a long con, "a plan," he said, "that began when this boy, her husband, was a schoolboy coming

[134] "Out of Misery," *Argus-Leader*, January 6, 1893.

home during vacation." The judge himself objected to the questioning, the *Times* recounted:

> [A] most extraordinary scene was witnessed…The jury empaneled to try the case of Pollock against Pollock, completely carried away by the chivalrous sentiments expressed from the bench by Judge Pryor, burst into applause. The spectators quickly took the cue from the jury box and in a second the big room was ringing with shouts of approval, handclapping, and other demonstrations of satisfaction…It was several minutes before the business of the court could proceed.[135]

"Chivalry" was not a new sentiment in the various *Pollock v. Pollock* proceedings. Ellen had been a sympathetic character during her Sioux Falls trial; anti-divorce reformers, mostly men, had held the case up as an example of the dangers of divorce. But in the New York trial, Ellen had the opportunity to prove before society that she was without blame in the divorce. Here, Edward was on trial. Stumbling through his testimony, Edward admitted to lying to the Minnehaha County court about sharing a residence with his wife. Ellen's attorney conducted a rapid-fire cross-examination, covering all manner of ills. Finally, he asked the key question: "You abandoned her then, didn't you?" "I did," Edward acknowledged.[136]

After a week of testimony, the lawyers indulged in lengthy closing statements. Ellen's attorney turned to words that anti-divorce reformers would have nodded in agreement with: "What God hath joined together let not man put asunder," he told the jury. He was not advocating for marriage, however, but an equitable divorce. "By her marriage to Edward Pollock, this plaintiff acquired a right to his support and his affections and against anyone who violates this right she has case for action and a just

[135] "Jurymen Led the Applause," *New York Times*, June 11, 1893.

[136] "Pollock's Ordeal," *New York World*, June 23, 1893.

claim for damages."[137] Many thought the jury would deliberate all night, but 90 minutes later, they returned to the crowded courtroom to announce their verdict: $37,500 for Ellen Pollock. The next morning, society rendered its own verdict in the first sentence of newspaper article published coast to coast: "Mrs. Ellen Pollock's good name was vindicated yesterday."[138]

Financial restitution, however, was not to be had. Minutes before the judgment was put on record in the county clerk's office Alexander Pollock mortgaged two of his houses in an apparent effort to delay payment as he began the appeals process. A year later the jury's judgment was overturned by a three-judge panel, which found that there was not sufficient evidence for the award. In South Dakota, the Supreme Court upheld the original divorce decree and denied the $1,500 in requested attorney's fees. In the process, at the request of Edward's counsel, the court revisited the question of support, revising his bill downward from a permanent $50 a month to $25 a month for each child until they reached the age of 21—or about half the $20,000 Alexander Pollock was rumored to have offered his daughter-in-law to drop her objection to the original Sioux Falls divorce suit in 1892.

The decisions in *Leavitt v. Leavitt* and *Pollock v. Pollock* were never invoked as legal precedent, but they had some weight as social ones. "Ease is on trial," the *Philadelphia Inquirer* opined during the Pollock trial in New York. "The importance of this case is not so much due to the utter fearlessness of the abandonment at the instigation of the father, if that is proved, as to the necessity of providing some safeguards against

[137] "For Mrs. Pollock, $37,500," *New York Sun*, June 28, 1893.

[138] For example, "Family Quarrel Ends," *Racine Journal Times*, June 28, 1893.

the decrees of the Dakota divorce mills." The *Inquirer* had a suggestion, too: "Fortunately, the courts of the older states have it in their power to undo the wild and wicked legislation of the younger Commonwealths where moral restraints are feebly felt."[139]

Courts in those older states—New York and Massachusetts, most frequently— did overrule individual South Dakota divorces, but true legal jeopardy would not come until the early 1900s when the Supreme Court of the United States would issue a series of decisions on divorce. One of these would stem from the case of a noted Sioux Falls divorce colonist: Charles S. Andrews. Andrews travelled to Sioux Falls in 1891 for a divorce from his wife Kate, whom he had married in Boston in 1887. On May 6, 1892, Andrews received a decree on the grounds of desertion, and soon thereafter, he left Sioux Falls to return to Boston. Andrews considered himself divorced, but the Massachusetts legislature did not. A 1835 law declared, "if an inhabitant of this commonwealth goes into another state or country to obtain a divorce for a cause which occurred here while the parties resided here, or for a cause which would not authorize a divorce by the laws of this commonwealth, a divorce so obtained shall be of no force or effect in this commonwealth."[140] Regardless, Andrews courted Annie Paul, and they married in Boston on January 11, 1893. The couple had two children—Charles H. and Paulette—before Charles died of consumption in the fall of 1897. A month after his death, Kate Andrews, Charles's first wife, who had never remarried, appeared in Suffolk County probate court to contest Annie's appointment as administratrix of his estate, one which had grown

[139] "The South Dakota Divorces," *Philadelphia Inquirer*, June 25, 1893.

[140] *The Revised Statutes of the Commonwealth of Massachusetts* (Boston: Dutton & Wentworth, 1836), 479-484.

appreciably with the death of Charles's father a few months before his son. Kate claimed that Charles's South Dakota divorce was void; Annie's marriage, bigamous; her children, illegitimate; and the estate, Kate's property as Charles's legal widow.

The case encapsulated the biggest fears of those who had sought South Dakota divorces. As the *Andrews* case worked its way through the courts, the *Argus-Leader* envisioned this worst-case scenario on the occasion of an 1899 New York case challenging a North Dakota divorce:

> Men and women who thought themselves divorced have remarried only to find themselves…guilty of bigamy, and their children by second marriage illegitimate. Tremendous property interests, in the aggregate, are involved in the mix-up and the general good of society requires a final and authoritative determination of the status of persons who are divorced in one state and who remove to another, having remarried.[141]

Efforts toward a Uniform Divorce Law

In the winter of 1892, Populist senator James Kyle of South Dakota, incensed over the divorce colony at Sioux Falls, had proposed a constitutional amendment to give the federal government control over marriage and divorce. On the Senate floor, he had warned that the nation's disparate divorce laws placed "in jeopardy our whole social fabric." The only solution, Kyle asserted, was "a national law" that "would secure to us the stability of the marriage relation, preserve the family and the home, and thus lay a broad foundation for the perpetuity of the nation."[142] Kyle's bill—one in a long line of such proposed amendments dating back 1884—did not progress through the Senate.[143]

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[141] "Are Divorces Good Every Where?," *Argus-Leader*, March 29, 1899.

[142] "The Newspaper Reports of Senator Kyle's Speech," *Argus-Leader*, February 4, 1892.

[143] Edward Stein, "Past and Present Proposed Amendments to the United States Constitution Regarding Marriage," *Washington University Law Review* 82, no. 3 (January 2004): 666-670.

Another, similar bill introduced in the House that same month by a New York Republican failed in the House Judiciary Committee, sunk by Southern Democrats' concern over state rights. (Specifically, an Alabama senator wrote in the majority report, some were concerned that if the federal government had oversight of marriage and divorce, it would legalize interracial marriage.)[144] Though this political calculus would not change significantly in the coming decade, anti-divorce reformers continued to see a strict uniform divorce law as a remedy for the social crisis—and an end to the divorce colony. (In abstract, pro-divorce voices saw value in a liberal uniform law that would end the legal jeopardy that migratory divorce seekers faced, but they did not pursue this.) Kyle reintroduced his amendment in 1894 and House colleagues proposed bills using the same simple language—"The Congress shall have exclusive power to regulate marriage and divorce in the several State, Territories and the District of Columbia "—in 1896, 1897 and 1899, but none of those bills nor any of the similar bills proposed in the 1890s received a vote.[145]

Those who opposed divorce saw another avenue to impose strict and standard laws in the efforts of the Uniform Law Commission, which formed as Kyle was developing his constitutional amendment in the summer of 1892. Formally known as the National Conference of Commissioners on Uniform State Laws, the group, affiliated with the American Bar Association and composed of lawyers representing their state's interests,

[144] Blake, *Road to Reno*, 145-146.

[145] Stein, "Past and Present Proposed Amendments to the United States Constitution Regarding Marriage," 670-673.

was designed to address the legal confusion that arose from disparate state laws.[146] This was not, as the committee claimed in its report of the inaugural meeting, the first time "that accredited representatives of the several states have met together to discuss any legal question from a national point of view," but it would be the most lasting effort.[147] The group would write bills addressing problematic legal inconsistencies and recommend their adoption by the legislature of each state, thus circumventing the state's rights objections that had stalled Kyle's proposed amendment. In 1892, the commission recommended the passage of three bills, one that would standardize practices of notaries and two addressing wills.

Questions of marriage and divorce were raised at that first meeting. The commission voted to recommend to the states that a divorce action must be brought in the state where the defendant, not the plaintiff, lived at the time of the filing or when the cause for divorce arose, but it did not propose language for a bill. Similarly, it recommended, but did not codify, written records of marriages. These debates over marriage and divorce were more controversial than many of the other issues the commission debated. Commenting on the commission's work on common-law marriage in 1895, Secretary Frederic Stimson noted "a strong general prejudice in the South and West in favor of making marriage as easy as possible" and "an equally strong determination in the North and East that people who were about to marry should understand and realize the fact at the time that so important an event in a man's life should at best leave behind it some trace which could be a test to his collateral heirs, his

[146] The history of the Uniform Law Commission throughout this section is drawn largely from the work of Robert A. Stein. Robert A. Stein, *Forming a More Perfect Union: A History of the Uniform Law Commission* (Charlottesville, VA: Matthew Bender, 2013).

[147] Quoted in Stein, *Forming a More Perfect Union, 16.*

descendants, his widow, and most particularly to his later alleged wife."[148] The commission found it nearly impossible to untangle the local customs that governed marriage and divorce from state laws. "It may well be imagined that the conference wisely abstained from recommending anything radical on the subject," Stimson noted on the topic of common-law marriage, a stance that the commission also took on divorce for the first several years of its existence.[149]

By 1898, however, the divorce question could no longer be ignored. Six years after the organization's founding, representatives from 30 states and the territory of Oklahoma gathered to debate a proposed bill on marriage and divorce, which had been drafted by a subcommittee in 1897. The 1899 meeting would also be almost entirely devoted to the subject. Among those shaping a uniform divorce law was Alfred B. Kittredge, leading Sioux Falls divorce attorney. The so-called "Silent Man" of South Dakota rarely spoke out on the subject of divorce law, except in the courtroom in service of his clients, but he was on record in support of South Dakota's laws, if not the perjury that accompanied migratory divorces.

Acknowledging that many representatives, like Kittredge, supported their own state's laws on divorce, the commission focused not on grounds for divorce, but on jurisdiction, procedure and such topics as alimony and custody in its 1897 bill. These changes, the committee that penned the bill believed, would end migratory divorce—the stated goal of the anti-divorce reformers—and minimize legal conflicts between the states. This, however, was seen as too broad by those who valued their states'

[148] Quoted in Stein, *Forming a More Perfect Union*, 17.

[149] Ibid.

approaches, and in 1898, the subcommittee produced a narrower bill addressing primarily jurisdictional issues. This time, the anti-divorce reformers pushed back, lobbying for wider reform that would limit both migratory divorce and the grounds for divorce. At the 1899 conference, two bills were proposed, one on jurisdiction and the other on grounds; action was delayed until 1900 to allow further examination of the issue, but it quickly became clear that the anti-divorce reformers were not unified in their desires for stricter divorce laws. Because South Carolina did not have provisions for divorce and New York recognized only one cause, any uniform law that provided multiple grounds for divorce would be a liberalizing of their laws.

The commission finally recommended two acts regulating divorce at its 1900 and 1901 conferences. Both acts were limited to the issues of jurisdiction and procedure. The first required that the plaintiff be a resident of a state for one year "with a bona fide intent of making this State his or her permanent home" before bringing a divorce claim for a cause which occurred in that state and for two years if the cause arose in another state.[150] It further stipulated that "no divorce shall be granted for any cause arising prior to the residence of the petitioner or defendant in this state, which was not a ground for divorce in the state where the cause arose"; that is, New York residents would have no grounds for divorce but adultery, no matter what state they filed the case in. The first act also required personal service of the defendant, which the second act expanded on, adding that "after divorce either party may marry again, but in cases where notice has been given by publication only, and the defendant has not appeared, no decree or judgment for divorce

[150] Quoted in Frederic Jesup Stimson, *Popular Law-Making: A Study of the Origin, History and Present Tendency of Law-Making by Statute* (London: Chapman & Hall, 1911), 324.

shall become final or operative until six months after the hearing and decision."[151] Such a law would not prevent divorce, but it would prevent the "consecutive polygamy" that so angered Bishop Hare as he watched divorce colonists obtain a divorce decree and a marriage license in the same day.

The 1900 act had not found any success in the state legislatures by the time of the 1901 conference, and it was unclear if the updated act would receive a more enthusiastic reception. Pro-divorce voices, even those who bemoaned migratory divorce, saw little need to change the laws and anti-divorce reformers were left unsatisfied by a proposed law that did not limit the grounds for divorce. But as various proposed constitutional amendments floundered in Congress and the Uniform Law Commission inched toward a recommended act on divorce, one federal effort to limit migratory divorce was successfully enacted. States might rebuff federal control over marriage and divorce, but the congress could impose its will on the territories. It did so in May 1896, with an act requiring one year's residency in a territory before applying for a divorce there. (It did not require one to swear to ongoing residency.) Oklahoma's burgeoning divorce industry was most directly affected by the change, according to scholars Daniel P. Littlefield Jr. and Lonnie E. Underhill.[152] Since its incorporation in 1890, the territory had, like South Dakota before it, welcomed divorce seekers until the glare of national attention grew too bright, at which point public sentiment began to split. The act ended the territory's divorce mill but did exempt those cases that were already underway; anticipating this Oklahoma's lawyers had hurriedly filed their petitions, a scene that an Oklahoma County

[151] Quoted in Stimson, *Popular Law-Making*, 324.

[152] Daniel P. Littlefield Jr. and Lonnie E. Underhill, "Divorce Seeker's Paradise: Oklahoma Territory, 1890-1897," *Arizona and the West* 17, no. 1 (Spring 1975): 21-34.

newspaper likened to "the runs for homestead filings at the land office at the opening of an Indian reservation."[153] Though Oklahoma's governor declared that the law spared Oklahoma "from hearing the nauseating scandals and passing on the demerits of the domestic infelicities of the States," there were some who wondered if it had been "a scheme of Dakota lawyers" seeking to reclaim—in reality, not just in reputation—the mantle of the divorce colony.[154]

[153] Quoted in Littlefield and Underhill, "Divorce Seeker's Paradise," 30.

[154] Ibid.

Chapter 4:

The Second Sioux Falls Divorce Colony, 1900 to 1908

In many ways, the early 1900s played out in Sioux Falls much as the early 1890s had. Divorce and migratory divorce seekers had continued to be a part of daily life in the city during the period in which North Dakota had boasted a shorter residency requirement, as they had been prior to the city's growth in popularity as a divorce destination in 1891. When the North Dakota laws were changed, the Sioux Falls divorce colony again grew through the first few years of the decade. This time, however, the city saw a longer period of relative quiet on the national stage. The condemnation that had quickly followed the arrival of Margaret De Stuers, Mary Nevins Blaine and their fellow colonists in 1892 did not occur with such speed or volume when similarly prominent socialites traveled to Sioux Falls in 1900, and the newspapers did not report on this colony with the same breathlessness it had a decade earlier—until late 1902 when Blanch Molineux arrived in the city, seeking a divorce from her husband Roland.

Molineux had been front-page news in Sioux Falls and across the country for weeks before her arrival. Her husband had been arrested shortly after their November 1898 wedding, suspected in the poisoning deaths of Katherine Adams and Henry Barnet. Barnet had been Roland's romantic rival before his untimely demise. Convicted of Adams's death, Roland had been sitting on death row for almost four years until he was acquitted on appeal in the fall of 1902. Three days after Roland's release from New

York's Sing Sing prison, Blanche left the family home in New York and headed for Sioux Falls.

Molineux posed a dilemma for the divorce colony and the city that was slowly coming to accept it. At its core, Molineux's story was the same as any other migratory divorce seeker's in Sioux Falls, but in its particulars her tale of a murdered suitor and an accused husband was the most sensational cause for divorce the city had ever heard. Members of the divorce colony and much of Sioux Falls society were united in their dismay and fear for the future of the now-established divorce industry; both groups refused to be seen with the woman.

The responses of anti-divorce reformers, both locally and nationally, to renewed attention to the divorce colony were familiar. They relied on judicial, social, religious and legislative pressures in their effort to eradicate the colony, though now they often reached further, with the goal of limiting divorce itself. This time, however, pro-divorce voices had risen in prominence in Sioux Falls. Divorce lawyer Kittredge was now the state's senator, replacing the late anti-divorce reformer Kyle, and Judge Aikens had stepped down from the bench to take his place among the bar as a leading divorce attorney. Among the colonists themselves there was a desire to integrate into the community that had not been seen among the first wave of divorce seekers and new confidence in their quests. Though an outlier in many ways, Molineux embodied the new boldness that would characterize the colonists in the 1900s. She had first tried to undertake her matrimonial errand quietly, but when her presence in Sioux Falls was discovered, she readily admitted to her purpose, despite the potential legal and social ramifications: "I

desire my freedom above all else in the world," she told a newspaper reporter, "and I am justified in seeking it."[155]

Andrews v. Andrews: Another Failure of Judicial Intervention

Shortly after Molineux's declaration, the Supreme Court of the United States dealt what seemed like a deathblow to the Sioux Falls divorce colony with the *Andrews v. Andrews* decision.

When the case of *Andrews v. Andrews*—Charles Andrew's first wife, Kate versus his second, Annie—was argued before the Supreme Court of the United States in 1902, it was well accepted by the courts that marriage did not come under the purview of the federal government.[156] All efforts to adopt a constitutional amendment to the contrary had failed. But there was no question that the states had a right to govern the marriage contract. Marriage was "an institution, the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of society, without which there would be neither civilization nor progress," Justice Edward Douglass White Jr. would write in the *Andrews* opinion, quoting 1888's *Maynard v. Hill*, which had confirmed the state governments' power over marriage and its dissolution.[157] The question before the court in *Andrews*, then, was not primarily one of marriage and divorce; it was a challenge to the "full faith and credit" provision of article 4, section 1 of the US Constitution, which provides that "full faith and credit shall be given in each state

[155] "Strange Story of Mrs. Blanche Molineux," *Omaha World Herald*, November 23, 1902.

[156] This section draws from and expands on a paper written for the class American Constitutional History II. April White, "The Case of the Divorce Colonists: *Andrews v. Andrews*" (Harvard Extension School, 2015).

[157] *Andrews v. Andrews*, 188 U.S. 14 (1903); *Maynard v. Hill*, 125 U.S. 190 (1888).

to the public acts, records, and judicial proceedings of every other state."[158] Was Massachusetts constitutionally bound to recognize a South Dakota divorce?

The Supreme Judicial Court of Massachusetts had said no. In an 1899 trial, the court had heard extensive testimony about Andrews's first marriage in Boston, his nine months in the Sioux Falls divorce colony, and his subsequent remarriage in Boston. Each question was designed to determine if Charles Andrews had been legally under the jurisdiction of South Dakota, not Massachusetts, courts at the time of his divorce. In the witnesses' answers, the court found evidence that Charles Andrews was, in fact, a "bona fide resident" of South Dakota, in so far as that state's laws defined residency in 1892. He had lived in South Dakota for more than ninety days. But South Dakota's definition was not sufficient to transfer Andrew's domicile from Massachusetts, the court found. Therefore, he was governed by the Massachusetts law that declined to recognize migratory divorce. With apologies to Annie Andrews—who, the court said, "acted in the utmost good faith. She knew of the divorce, but believed it to be legal, and had good reason so to believe"—the court ruled the South Dakota decree void.[159]

The Supreme Court of the United States agreed in January 1903. The court had in previous cases strongly tied the governance of marriage to domicile, and now a divided court—five justices in the majority; three in silent dissent; and Oliver Wendell Holmes, who had been involved in the case in Massachusetts and not a member of the Court when it was argued there, taking no part—affirmed Massachusetts's right to dictate the terms of

[158] US Constitution, art. 4, sec. 1.

[159] Supreme Court of the United States, *Transcript of Record: Annie Andrews, Plaintiff in Error vs. Kate H. Andrews* (Washington, DC: Judd & Detweiler, 1901), 33.

marriage and divorce among its residents.[160] The statute in question did not violate the full faith and credit clause because it did not suppose to exercise control over non-residents of Massachusetts. A divorce awarded in South Dakota to a true resident of South Dakota would be recognized in Massachusetts.

To strike down the Massachusetts statute would have dangerous consequences, the court wrote. If Charles Andrews, as a resident of Massachusetts, could freely go to South Dakota, obtain a divorce without transferring his domicile and require Massachusetts to recognize it, the state—and, therefore, every state—would lose all power to legislate divorce. Justice White wrote:

> Now, as it is certain that the Constitution of the United States confers no power whatever upon the government of the Unites States to regulate marriage in the states, or its dissolution, the result would be that the Constitution of the United States has not only deprived the states of power on the subject, but while doing so had delegated no authority in the premises to the government of the United States.[161]

In other words, to strike down the statute would mean that there could be no regulation of divorce.

"The 'divorce colony' here is panic-stricken," Chicago's *Inter Ocean* newspaper reported with a Sioux Falls dateline following the Supreme Court decision.[162] Those currently in Sioux Falls waiting out their six-month residency despaired at the likelihood of getting a divorce and while those migratory divorce seekers who held South Dakota decrees wondered anew if they were truly divorced. The city's lawyers were quick to

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[160] For example: *Cheever v. Wilson*, 76 U.S. 108 (1869); *Barber v. Barber*, 21 How. 582 (1858); and *Atherton v. Atherton*, 181 U.S. 151 (1901).

[161] *Andrews v. Andrews*, 188 U.S. 14 (1903).

[162] "A Panic in the Sioux Falls Divorce Colony and Its Cause," *Inter Ocean*, January 25, 1903.

reassure their clients, walking a fine line between expressing optimism for their prospects and condemning easy divorce. The *Andrews* case was correctly decided, many lawyers declared, but it was not applicable to the current divorce colonists. South Dakota had remedied the flaw in its residency standards when it extended its requirement to six months, they argued. "The supreme court's decision cannot possibly apply to divorce applicants who have established a bona-fide residence by remaining with the boundaries of the state for the six months required by state law," one Sioux Falls attorney was quoted as saying.[163] Though the Supreme Court had offered no such assurances about the state's current law, it appears that the colonists were reassured. There is no evidence that any of them departed Sioux Falls following the ruling nor is there evidence that any had their decrees denied. For those who had acquired their decrees under the same conditions that Andrews had, the immediate effect of the opinion was also far less dramatic than its language. In addition to Massachusetts only two other states—Maine and Delaware—had statutes limiting recognition of migratory divorces. Even lawyers in Massachusetts doubted there would be a large number of people in a legal situation similar to the Andrews family—and there is no evidence that a single one did.

The Supreme Court of the United States had set a legal precedent in declaring a South Dakota divorce void but the ruling had had almost no effect on the divorce colonists beyond a few days' concern. The same would be true in April 1906, when the Supreme Court handed down its decision in *Haddock v. Haddock*, another full faith and credit question. In that case, which began with an 1868 marriage in New York and an 1881 divorce in Connecticut, the court ruled the Connecticut divorce void because the

[163] "A Panic in the Sioux Falls Divorce Colony and Its Cause."

husband had moved to Connecticut without his wife and did not execute personal service of notice of the divorce proceedings and the wife did not appear. Without personal service, appearance or domicile, Connecticut did not have jurisdiction over the wife, Judge White wrote for the five-judge majority, and the divorce was void. This time it was the *New York Times* writing from Sioux Falls of the "panic among the divorce colony of this place."[164] But the town's lawyers quickly opined that the ruling, as in *Andrews*, was limited in scope, and at odds with the 1901 decision in *Atherton v. Atherton*, which found that a Kentucky divorce decree, obtained without personal service or appearance, as allowed by state law, was due full faith and credit. In expressing his dissent in to the *Haddock* opinion, Justice Holmes had taken a similar view. He bemoaned the seeming reversal of well-considered law and worried that the letter of the law "could cause considerable disaster to innocent persons, and … bastardize children hitherto supposed to be the offspring of lawful marriage," but he did not feel that the effect would be great: "I do not suppose that civilization will come to an end whichever way this case is decided."[165] For the divorce colony, this statement was true. As had been the case throughout its existence, judicial intervention would not bring about the end of the colony.

Dodge v. Dodge: The Divorce Colonists and Sioux Falls Society

"Dear Papa," Flora Bigelow Dodge wrote to her father, John Bigelow, on Cataract House stationary in the middle of the cold Sioux Falls winter of 1903. "I do not regret

[164] "Panic in Sioux Falls," *New York Times*, April 18, 1906.

[165] *Haddock v. Haddock*, 201 U.S. 562 (1906).

having come, but it is very dreary sometimes and it seems as if I was doomed to being a tramp and an exile."[166] Thirty-four-year-old Flora Dodge had travelled to Sioux Falls from New York about seven weeks earlier. Like so many before her, she had come for a divorce. During her stay in the city, she wrote countless letters to friends and family, including dozens now archived at the New York Public Library. (A handful of others are collected at Union College.) In her missives, Dodge, a published short story writer, detailed the social, legal and economic hardships she faced in her efforts to end her 16-year marriage to 34-year-old businessman Charles Stuart Dodge, providing the most intimate portrait available of life in the divorce colony and the shifting social attitudes toward divorce in the early twentieth century. Portions of Flora Dodge's story speak to the typical experiences of divorce seekers in the city, but Dodge was far from typical. Celebrated as the "most daring, most original, cleverest woman in New York society," Dodge was determined to charm the residents of Sioux Falls as well and to obtain "a legal and dignified Dakota divorce."[167]

Dodge had arrived at the Cataract House with her children, 12-year-old Lucy and eight-year-old John, and her longtime maid, Delia (her last name is not recorded), at the moment when local and national attention was refocusing on the divorce colony. The United States Supreme Court handed down a decision in the *Andrews v. Andrews* case a week later, raising more questions about the legal validity of a South Dakota divorce. And a few months earlier, Blanche Molineux had made the same trip, drawing attention

[166] Flora Dodge to John Bigelow, March 16, 1903, box 98, Bigelow Family Papers, New York Public Library, New York.

[167] "The Most Daring, Most Original, Cleverest Woman," *Chicago American,* [February] 1903, box 98, Bigelow Family Papers; and Flora Dodge to John Bigelow, April 12, 1904, box 98, Bigelow Family Papers.

back to the town's derided divorce industry. Blanche Molineux was still at the Cataract, along with Baroness Louise Wolfbauer, who wanted a divorce from her Austrian husband and his Cuban sugar fortune; Millie DeWint, who had tried and failed to obtain one in her home state of New York; and Bessie Frankel, who accused her pastor husband of breaking their marriage vows, among others.

Dodge initially felt little kinship with the sorority she had joined—"Two 'ladies' from the hotel got very drunk today downstairs," she noted with disgust in a letter written shortly after her arrival—and besides, her lawyer, Charles Bailey, had warned her "not to have any friends among the 'deserted colony.'"[168] Dodge was mortified when she was approached by Margaret Pennington, a Baltimore socialite with whom she shared mutual acquaintances; when Pennington received her decree of divorce from her husband, Clapham, a few weeks later, she would immediately marry actor J.R. Mordecai. But Dodge did not feel a part of Sioux Falls society, either. Only her lawyer and his wife, Mary, took an interest in her and her children: "They both have admitted us into their home, which I also appreciate very much, as the people here have very low opinion of the divorcees here and most will not even rent their horses to them, let alone be civil to them."[169]

That antipathy should not be mistaken for disinterest, Dodge explained. "It is very evident that 'Sioux Society' turns up their nose at New York," she wrote to her father, "but they know everything that is going on there + everyone by name."[170] As previous

[168] Flora Dodge to John Bigelow, February 7, 1903, and [February?] 1903, box 98, Bigelow Family Papers.

[169] Flora Dodge to John Bigelow, February 26, 1903, box 98, Bigelow Family Papers.

[170] Flora Dodge to John Bigelow, February 7, 1903, box 98, Bigelow Family Papers.

divorce seekers had, Dodge found herself the subject of gossip, both among the townspeople and across the country. She chafed at the attention, but the newspaper coverage was decidedly kind to both her and husband. New York reporters had fawned over the couple since the announcement of "The Baby Wedding," so-called because the bride and groom were both barely 18 in December 1886 when they walked down the aisle.[171] Now papers in Seattle, St. Paul and Chicago had an opinion. William Randolph Hearst's sensational *Chicago American* dedicated a full page to the "newest member of the fashionable South Dakota divorce colony." The design played up Dodge's "eccentricities" with numerous illustrations of her playing the harp, riding astride a horse, and wearing a décolleté dress in a public restaurant, but the story found nothing scandalous in the separation it implies was inevitable: "First, let it be said that universally it is acknowledged that Flora Dodge's husband is a good chap. At this the smart set shrugs its shoulders. He is good, but she is brilliant."[172]

The divorce had been a long time coming. As early as 1897, Flora was living in London, apart from her husband who remained in New York. The cause of the rift is unclear, but the depth of it is evident in Flora's letters. She is reluctant to see him and pessimistic about their future together. "Your temperament is so very hopeful dear Charlie that your promises about our marriage in the future do not mean much to me," she wrote. "I trust my experiences of our past + present + ask more when judging what

[171] "Society in New York," *Philadelphia Times*, November 28, 1886; "Weddings in St. George's," *New York Tribune*, December 19, 1886.

[172] "The Most Daring, Most Original, Cleverest Woman," *Chicago American*, [February] 1903, box 98, Bigelow Family Papers.

we can + cannot do."[173] In the same letter, she shares her husband's concern about "people being nasty if I stopped away any longer" but by 1900, Dodge and her children were living without Charles in her father's house in Orange, New York. In an undated letter to her father, likely written in the later half of 1902, Dodge tried to explain her difficult decision to seek a divorce after the long separation. "[The children] should be shielded from any unnecessary unhappiness just now and I fear that my unhappiness of late years has overshadowed them often," she wrote. "The worst is all over for me now anyway—the break is made and I want to be somewhere I am no trouble to anyone…If I go West—which I almost hope will be arranged—it will be 8 months before I see any of you again."[174]

Dodge underestimated the time it would take her to get a divorce by almost 100 percent. The *Andrews* decision had further confused the South Dakota bar, which had already been uncertain as to how to ensure its clients challenge-proof divorce decrees. What constituted a six-month residency in South Dakota? Even if residency was obtained, would a divorce be recognized elsewhere? The advice that her South Dakota lawyer, Bailey, in conjunction with her New York attorney, Lewis Ledyard, offered Dodge was a mix of legal guidance and image management. Dodge came to rely on them to help her decide if she should rent a house in Sioux Falls, send her children away to school, entertain guests or travel to New York for the holidays. About six months into Dodge's residency in the summer of 1903, Ledyard informed her that he would not begin her case before December 1903, a wait of several more months. (In the meantime, Flora's

[173] Flora Dodge to Charles Dodge, January 28, 1897, Correspondence of John Bigelow. Union College Schaffer Library, Schenectady, NY.

[174] Flora Dodge to John Bigelow, [1902?], box 98, Bigelow Family Papers.

sister-in-law Edith had easily obtained a divorce in New York by charging Flora's brother Poultney with adultery, a decree which forbid him from remarrying in that state while his former spouse was still living; in unquestioned defiance of that law, he wed again in 1911, decades before Edith's death.)

The delay took a toll on Dodge, both emotionally and financially. Her letters to her father alternate between reassurance ("I am not unhappy or depressed at all and enjoy everything I see so much and the routine of my life," she wrote shortly after her arrival), desperation ("Mr. Bailey told me soon after I came out that I must give up New York absolutely as my home. It depressed me very much," she wrote a month later) and a dispassionate accounting of her expenditures.[175] The family first took four rooms at the Cataract House, at a cost of $3 per room per day, but Dodge quickly realized she could save at least $30 a week if she rented a house for $65 a month.[176] The houses outside of town were cheaper still "but I am so terrified of burglars."[177] Dodge, raised among the wealthiest families of New York was not without resources, but she was cautious with money, anxious for at least the illusion of supporting herself and her children. When her husband Charlie sent $25 and another "fooling letter," Flora promptly returned the gift.[178]

[175] Flora Dodge to John Bigelow, February 17, 1903, and March 16, 1903, box 98, Bigelow Family Papers.

[176] Flora Dodge to John Bigelow, February 17, 1903, and March 2, 1903, box 98, Bigelow Family Papers.

[177] Dodge had once been attacked in an attempted burglary at her father's house. She was heralded for her bravery in scaring off the criminal, but the memory plagued her. Flora Dodge to John Bigelow, March 2, 1903, box 98, Bigelow Family Papers; "Burglar Foiled by a Woman," *New York Times*, January 29, 1896.

[178] Flora Dodge to John Bigelow, February 17, 1903, box 98, Bigelow Family Papers.

For several months Dodge rented a home that she described as "a dear little cottage just out of town."[179] (Her son John called it a "bum house without a bathroom, nearly in the country.")[180] It had previously been occupied by another member of the divorce colony, who had stayed in Sioux Falls with her "father"—and married the man soon after her divorce was granted. Dodge's new circumstances allowed her to save some money for legal expenses, but the arrangement still proved too costly, and her son and maid briefly boarded with an acquaintance to save money. Finally, in the fall of 1903, on advice from her lawyers and with a loan—to be paid back with 5 percent annual interest, she noted—from her father, Dodge purchased a house with five bedrooms, heat and plumbing, and space for two carriages in for $3,656.[181] "Not in a fashionable neighborhood but respectable and quiet," she wrote.[182] But even as she decorated the home she christened Wookayi Tipi ("the house of peace") with "the cheapest cotton instead of linen and an $8.00 china table set," she planned for her hoped-for departure, striking a deal with the furniture salesman to buy it all back six months later.[183] "I am getting to be quite the business woman!"[184]

Dodge's first impression of Sioux Falls had been as dismal as the townspeople's impression of the divorce colonists. "It is so wild," she wrote, "and these people are

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[179] Flora Dodge to Mildred [Unknown], March 7, 1903, box 98, Bigelow Family Papers.

[180] John Dodge to John Bigelow, [March?] 1903, box 98, Bigelow Family Papers.

[181] Flora Dodge to John Bigelow, September 20, 1904, box 98, Bigelow Family Papers.

[182] Flora Dodge to John Bigelow, October 6, 1903, box 98, Bigelow Family Papers.

[183] Flora Dodge to John Bigelow, October 9, 1903, and October 25, 1903, box 98, Bigelow Family Papers.

[184] Flora Dodge to John Bigelow, October 31, 1903, box 98, Bigelow Family Papers.

without interests except money and gambling and women, too."[185] But as time passed without scandal, both parties softened. Dodge discovered the newly opened library, built with money donated by railroad and steel magnate and family friend Andrew Carnegie, and St. Augusta Cathedral, built in honor of the Astor family with which the Bigelows were also friendly. Bishop Hare continued to preach there each Sunday.

Dodge was doubtlessly aware of the Bishop's crusade against divorce. The Bigelows had once been acquainted with Margaret De Stuers, the Astor niece whose stay in Sioux Falls had incited Hare to lobby for changes to the divorce law, through their mutual friend Sallie Roosevelt, mother of Franklin Delano Roosevelt. And the Bishop was likely aware of Dodge's reason for being in Sioux Falls; rumors of an impending remarriage were rampant. She had been linked to Chicago grain trader Joseph Leiter, Vanderbilt heir William Kissam Vanderbilt and Lionel Guest, of the wealthy British industrial family, who had visited her in Sioux Falls, accompanied by his sister. Still, the Bishop and the divorce seeker developed a cordial relationship as she waited to file her suit, and, after one incident at a card party at the Bailey house—"[I] never heard so many personal remarks and such gossip. They all attacked me on what they heard of me"—Dodge found "Sioux Society" to be similarly open to her.[186] "I have heaps of callers," Dodge reported in December, some 11 months after her arrival, "and a 'lady' told me yesterday that I was the only divorcee that has ever been considered a resident here, or had any social position."[187]

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[185] Flora Dodge to John Bigelow, April 7, 1903, box 98, Bigelow Family Papers.

[186] Flora Dodge to John Bigelow, April 7, 1903, box 98, Bigelow Family Papers.

[187] Flora Dodge to John Bigelow, December 17, 1903, box 98, Bigelow Family Papers.

Even as she began to feel like a bona fide resident of South Dakota, sending her daughter to Bishop Hare's All Saints School for Girls, raising chickens in her backyard (a small source of income) and volunteering at the town prison, Dodge fretted that the passage of time would make her divorce more difficult, not less. Her husband wrote to her frequently, sending unwanted gifts and visiting their son, now in school near Boston. "I very much fear that Charlie is making trouble," she wrote almost a year to the day after arriving in Sioux Falls. "The long delay may have made him think I was giving up divorce. He has that sunny hopeful disposition that often goes with useless people."[188] She needed her husband to sign papers contracting a lawyer to appear at the divorce hearing, or else the case would take longer still. There were other matters to sort out as well, distribution of property and the custody of the children, but South Dakota law prohibited coordination between the divorcing parties and her lawyers warned against drafting legal agreements before the divorce was official. The wait was increasingly difficult, and her lawyers offered her no hope that she would be legally safe leaving South Dakota after the divorce was granted. "I feel as if I were being buried alive under the endless prairies with the world throwing stones across my grave," Dodge wrote to her father in February 1904, "and Charlie saying with a smile 'dear little Wiffles, I advised her not to go to Dakota and have always tried to make her happy.'"[189]

Finally, on the morning on April 11, 1904, Dodge and her maid Delia set off by carriage for Salem where Judge Joseph Jones was holding court. She recounted the final day of her marriage in a letter to her father:

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[188] Flora Dodge to John Bigelow, January 19, 1904, box 98, Bigelow Family Papers.

[189] Flora Dodge to John Bigelow, February 2, 1904, box 98, Bigelow Family Papers.

> It took us nearly 3 hours to go 50 miles, but I was so excited + happy I didn't care. Then we had to wait nearly 3 hours in the most awful hotel parlor I ever saw before my case came up. Mr. Bailey took us to the courtroom where about 40 men sat and finally he and Judge Jones questioned Delia and me in every [illegible] of "me." I was so frightened I nearly fainted but I got through some how + then the judge gave his signature. I wanted to hug him, but he yawned + it clothed me in my right mind. I am not yet used to it all. I watched the sunset across the endless bleak prairies as we crawled back—and there seemed in the distance light in the sky which has not been very near before now.[190]

The divorce, which had cost Dodge so much time, money and emotion was granted on grounds of desertion. The issue of alimony was not addressed, but the court ruled that Flora would have custody of the children, with Charlie granted visitation rights. Flora elected to keep her married name; she would continue to be known as Mrs. Dodge.

"I hear there has never been such a legal and dignified Dakota divorce, and mean to keep it so," Dodge told her father that same day.[191] The newspapers were inclined to agree. From Sioux Falls to Baltimore, they praised Dodge for eschewing the secrecy of a stereotypical Dakota divorce. Her case was recorded in the docket and the hearing was held in open court, and she did not appear to have plans to make a mockery of her residency claim by leaving Sioux Falls immediately and permanently.

"I have been congratulated on the street and over the telephone and much touched by the real kindnesses people seem to feel or profess," Dodge noted in the days after her decree.[192] A month later, she delighted in recounting her first interaction with Bishop Hare as a divorced woman: "Saturday I went to a reception given for the Bishop and Miss Hare of Phila."—Hare's granddaughter—"He is Bishop of South Dakota and very much

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[190] Flora Dodge to John Bigelow, April 12, 1904, box 98, Bigelow Family Papers.

[191] Flora Dodge to John Bigelow, April 12, 1904, box 98, Bigelow Family Papers.

[192] Flora Dodge to John Bigelow, April 20, 1904, box 98, Bigelow Family Papers.

beloved, but very bitter about the divorce question, so I was pleased at his crossing the room to talk to me for a long time when I came in. I rewarded him with a dozen fresh eggs the next day."[193] Later that year, Dodge would host a concert, in which she, Lucy and their neighbors performed, to raise almost $300 to install a furnace in Hare's rectory. He accepted the gift without the any of the disgust he had shown for the De Stuers divorcee's donation a decade earlier.

Dodge was quick to acknowledge that not all Sioux Falls divorce colonists were treated with this level of respect. Nor did she believe they all deserved it: "Certainly I am very much more fortunate than most divorcees here, but it is their own fault where they are badly treated."[194] But though she was a reluctant initiate into the Sioux Falls sisterhood, Dodge's experiences gave her sympathy for other women in unwanted marriages. In coming years, she would rent her Wookayi Tipi to a parade of divorce colonists—including Ethel Coles, who married Charles Dodge's cousin Walter Phelps Dodge in the parlor shortly after receiving her divorce—before selling it to a well-to-do divorce seeker, Annie Rhinelander Stewart, who would then pass it on to yet another, Emma Dresser. To the dismay of Sioux Society, Dodge even accepted an invitation to lunch with the former Mrs. Molineux. After her well-publicized arrival in Sioux Falls, Molineux had lived quietly in the city, awaiting her divorce. Shortly after it was granted, she had married her Sioux Falls lawyer and unlike so many before her, this divorcee settled in the city, as she had sworn to in court. But Blanche Molineux-Scott remained at the other end of the spectrum of local attitudes. "Not a woman speaks to her, altho she

[193] Flora Dodge to John Bigelow, May 16, 1904, box 98, Bigelow Family Papers.

[194] Flora Dodge to John Bigelow, February 21, 1904, box 98, Bigelow Family Papers.

has behaved herself perfectly here and married a dreadful little man just to be virtuous for the first time," Dodge wrote. "To be so cruel to a woman who has proved her regrets of the past—it seems ignorant."[195]

Dodge herself would encounter some of that "ignorance" in the coming years, but to a significantly lesser degree than the divorce seekers of the 1890s. When Dodge made her "divorce debut" in London in June 1904 she was warmly welcomed by English society, and her return to Sioux Falls three months later was also celebrated; few had expected the divorcee to return.[196] But when Lionel Guest, 12 years her junior, proposed marriage to Dodge, the divorcee faced resistance from his family. The extant letters between Guest, Dodge and her father do not explicitly state that Dodge's divorce was the difficulty, but British King Edward VII recognized it as the problem. A year after Guest and Dodge married in Sioux Falls in May 1905, the couple traveled from their new home in Canada to England only to find themselves snubbed by Lionel's parents, Lord and Lady Wimborne. Hearing of the social difficulty, the king invited the couple to Buckingham Palace, underlining the change in acceptance of divorce. "This is a hint," the London Associated Press wrote, "which Lord and Lady Wimborne cannot fail to take, and it is certain that when Mr. and Mrs. Lionel Guest again visit England, no matter what the divorce laws may be, they will be received in a different manner."[197]

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[195] Flora Dodge to John Bigelow, May 9, 1904, box 98, Bigelow Family Papers.

[196] Flora Dodge to John Bigelow, June 30, 1904, box 98, Bigelow Family Papers.

[197] "King Edward is Gracious," *Argus-Leader*, May 15, 1906.

Blaine v. Blaine: Expanded Religious and Legislative Attempts to Curb Divorce

When South Dakota's divorce laws again became some of the laxest in the country after North Dakota extended its residency requirement, the state's anti-divorce reformers saw little hope of salvation in the legislature. Their previous efforts to curb divorce through legislation had been ineffective and the composition of the Senate in the early 1900s did not portend an easy path. Proposals to extend the residency requirement in 1901, 1903 and 1905 received some attention from the media, but only a few such ideas were introduced as bills and each of those died in the Judiciary Committee.[198] Divorce had lost the moral urgency that Bishop Hare had imbued it with in the early 1890s; now it was treated like any other political issue. In 1903, it was used as a bargaining chip in the question of "capital removal," a push to relocate the seat of government from central Pierre to the more populous eastern part of the state. Representatives from Sioux Falls, who saw a closer capital as a potential rival for residents and business, opposed the bill until the capital removalists threatened to strengthen divorce laws in retaliation.[199]

During this time, only one bill revealed the undercurrent of paternal concern about divorce still present in the state. In 1901, a representative of McPherson County introduced a bill to add three year's confinement to a mental institution to the list of grounds for divorce in the state. The impetus for this proposal is unclear, but the negative public response was swift and gendered. Condemning the bill, the *Argus-Leader* wrote,

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[198] *Journal of the House of Representatives of the South Dakota Legislature, Seventh Session* (Pierre, SD: State Publishing, 1901), 167, 171, 289, 376 and 400; *Journal of the Senate of the South Dakota Legislature, Seventh Session* (Pierre, SD: State Publishing , 1901), lxxii and lviii; *Journal of the House, Eighth Session* (Pierre, SD: South Dakota Legislature, 1903); *Journal of the Senate, Eighth Session* (Pierre, SD: South Dakota Legislature, 1903); *Journal of the House, Ninth Session* (Pierre, SD: South Dakota Legislature, 1905); *Journal of the Senate, Ninth Session* (Pierre, SD: South Dakota Legislature, 1905), 50-51.

[199] "Divorce Laws May Be Modified," *Lead Daily Call*, January 5, 1903.

"a law which makes it possible for a husband to divorce himself from the wife because sickness has taken her reason is about as heartless as a law that would permit divorce for any other chronic sickness."[200] (The bill would have also allowed the reverse.) This bill, too, was defeated in committee.

It wasn't until 1907 that the anti-divorce reformers returned to the legislature in force, spurred on by Bishop Hare. It was not primarily this paternal instinct—nor good politics—which motivated his new campaign, but another personal affront by the actions of a woman divorce seeker: the second Mrs. Jamie Blaine. In 1901, nine years after his first divorce, the wayward son of the late James G. Blaine had married young Martha Hichborn, a Washington, D.C. socialite. Although they expressed reservations about the match, both Martha's parents and Jamie's mother were in attendance at the wedding. Less than three years later, however, Martha left her husband and returned to her parents' home. Jamie's public drunkenness and other bad behavior were presumed to be the cause of the split. At the time she would not say if she would seek a divorce, but in mid May 1906 Martha arrived at the Cataract House in Sioux Falls, no longer content with mere separation. She was upfront about her intentions, telling the *Washington Post* before her departure, "I am going to South Dakota within ten days to apply for a divorce…I will remain till I obtain my divorce."[201]

Blaine's presence in Sioux Falls did not cause the scandal that her predecessor's had. Her East Coast friends referred to her impending divorce lightly as "Martha's bad luck" and the *Argus-Leader* expressed no surprise that Mary Nevins Blaine's successor

[200] "A Bill Had Been Introduced in Pierre," *Argus-Leader*, January 17, 1901.

[201] "The Heliotrope Bride," *Argus-Leader*, May 15, 1906.

had "left the young man with a name much bigger and better than he."[202] Her forthrightness precipitated none of the legal concerns that had plagued Blanche Molineux just five years earlier, and she made no pantomime about the permanency of her South Dakota residency as earlier divorce seekers had felt the need to do: "I am very anxious to spend as short a while in the West as possible," Blaine told a newspaper reporter.[203] Indeed most of Sioux Falls society took notice of Blaine only when her presence seemed a threat to the divorce industry. The *Washington Times* reported that Blaine was not seeking a South Dakota divorce, which was still considered legally tenuous, but instead intended to challenge the divorce granted to the first Mrs. Blaine. If Mary Nevins Blaine—now Mrs. Bull—was found to be in possession of an invalid decree, Martha Blaine's marriage would also be void. Her attorney denied the claim, and Blaine's name faded from the headlines while she waited out her six months.

Two days before Christmas, six months plus two weeks after Blaine had arrived in South Dakota, her case came before a judge in Yankton. The trial had been delayed due to a snowstorm and it was now seven o'clock on a Saturday night in the judge's private chambers. Blaine was the only witness. She spoke for just a few minutes, charging her husband with desertion—though she had left him—non-support and cruelty before her lawyer asked if the judge had heard enough. He had, and granted the decree immediately. "Dakota law, which has always had a reputation for speed in divorce cases, set a new mark for itself this evening," a Yankton paper reported.[204] Blaine was divorced in time to

[202] "The Heliotrope Bride," Argus-Leader, May 15, 1906; "One of the Wives of James G. Blaine Jr.," *Argus-Leader*, March 14, 1904.

[203] "Mrs. James G. the II," *Argus-Leader*, May 11, 1906.

[204] Quoted in "Beat the Record," *Argus-Leader*, December 27, 1906.

make the eight o'clock train that night and was in Washington by Christmas. Her engagement to a wealthy New Yorker, who had been a lieutenant in the Rough Riders, was announced that day and they were married two weeks later.

Martha Blaine's story confirmed Bishop Hare's harshest criticisms of divorce seekers: She had treated her marriage lightly. She charged her husband with what Hare considered to be offenses that did not rise to the level of divorce. She had taken advantage of South Dakota's laws, coming to the state for sole purpose of a divorce and seeking a speedy and secret trial. And she had done so, without shame or consequence, all for the purpose of committing "consecutive polygamy." The judicial, social, religious, and legislative avenues which anti-divorce reformers such as Hare had pursued for more than 15 years has failed to curb divorce in the state. Now Hare pledged to return to South Dakota legislature to lobby for a sweeping overhaul of the state laws: a two-year residency requirement before seeking a divorce and further one-year residency after the decree is granted but before it goes into effect. Other ideas floated by the anti-divorce reformers included limiting grounds for divorce, as Hare had proposed in 1899; requiring public court proceedings; and, once the Sioux Falls colony was finally shuttered, preventing South Dakota residents from seeking migratory divorces elsewhere.

The End of the Divorce Colony?

Hare would not personally lobby the legislature in 1907. A persistent illness, which caused him partial facial paralysis, required him to travel East for treatment for much of the winter. (The affliction also caused Hare to miss a nationwide conference on the uniform divorce laws.) Hare had rallied anti-divorce sentiments among the same factions that had successfully extended the residency requirement in 1893, but any shyness the

pro-divorce voices had experienced 15 years earlier had evaporated. Now it would be a hard-fought political battle during a legislative term when several issue of public morality—alcohol and cigarette sales, gambling and Sunday entertainment—were on the agenda.

The anti-divorce reformers in South Dakota were more unified than they had been previously—and they were not alone. On the national stage, President Theodore Roosevelt had taken on the issue of divorce. It was an issue he had some family experience with. In 1891 he had counseled his sister-in-law Anna to get a divorce from his brother Elliot, who had suffered from alcoholism. "I have no patience with allowing mere dread of scandal or Mrs. Grundy to make a person continue to live a life of degradation," he wrote in a letter to sister Anna, with the request that it be shared with his sister-in-law. "I wish to do as much as I can toward helping her to free herself if she wishes to."[205] The couple did not ultimately divorce, arranging instead for an extralegal separation. (Elliot died in 1894.) A few years later, Roosevelt, then New York City police commissioner, spent months advising his sister Anna on how to navigate the complicated legal concerns of marrying William Sheffield Cowles, a divorcé. Coles had married his first wife, Mary, in Washington, DC, in 1873, and she had sought a migratory divorce on the charge of neglect in California in 1889. Roosevelt worried that the divorce would not be recognized in New York (a highly unlikely outcome as Cowles had been the defendant in the suit), where the couple hoped to live. They did marry that year but settled in Connecticut.

[205] Theodore Roosevelt to Anna Roosevelt Cowles, July 2, 1891, Anna Roosevelt Cowles Papers, Houghton Library, Harvard University, Cambridge, MA.

In discussing divorce with Anna in 1895 Roosevelt's feelings about New York's strict laws was clear—"stupid and unjust," he wrote, at one point suggesting passing a private bill of divorce for Cowles in New York—but faced with the country's panic over divorce and the Sioux Falls divorce colony, the president had come to think differently about the implications of divorce.[206] The issue had become a more pressing one within Roosevelt's administration when scandal erupted in 1904 over the New York divorce of James A. Jewell, a relative of President Grover Cleveland, who sat on the United States Board of General Appraisers. Jewell had charged his wife, Caroline, with adultery, and she had countersued on the same count. Long before the case came to trial, Roosevelt himself passed judgment, finding that Jewell was likely the guilty party.[207] At the president's order, Jewell was forced to resign.[208]

In 1905, at meeting of the Interfaith Committee on Marriage and Divorce, the president had placed the issue of divorce at the top of the country's priorities. "If we have solved every other problem in the wisest possible way, it shall profit us nothing if we have lost our own national soul," he said.[209] After the meeting, Roosevelt requested that the Bureau of the Census compile a report on marriage and divorce in the country, a follow up to the 1889 report that had sparked panic over rising divorce rates. About two

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[206] Theodore Roosevelt to Anna Roosevelt Cowles, August 1, 1895, Anna Roosevelt Cowles Papers.

[207] Theodore Roosevelt to Wilson Shannon Bissell, June 26, 1903, roll 31, MS 293, Theodore Roosevelt Papers, 1759-1993, Library of Congress, Washington, DC.

[208] Theodore Roosevelt to Leslie M. Shaw, July 18, 1903, roll 31, MS 21, Theodore Roosevelt Papers, 1759-1993.

[209] Roosevelt, "Speech to the Committee of the Inter-Church Conference on Marriage and Divorce, January 26, 1905" in *A Compilation of the Messages and Speeches of Theodore Roosevelt, 1901-1905*, 548.

years later, Roosevelt used his Sixth Annual Message to Congress to call for a constitutional amendment on the topic:

> I am well aware of how difficult it is to pass a constitutional amendment. Nevertheless in my judgment the whole question of marriage and divorce should be relegated to the authority of the National Congress. At present the wide differences in the laws of the different States on this subject result in scandals and abuses; and surely there is nothing so vitally essential to the welfare of the nation, nothing around which the nation should so bend itself to throw every safeguard, as the home life of the average citizen.[210]

That was also the stated purpose of South Dakota Senate Bill 95, which was introduced in mid-January 1907.[211] The bill proposed a one-year residency requirement and included several provisions nominally designed to prevent "secret" divorces among both local and migratory plaintiffs: three-month residency in the county in which the divorce suit was to be filed with all hearings to be held in open court. The State Bar Association, headed by Judge Jones, had already voted to oppose any bill that extended the residency requirement. The outgoing governor had expressed his support for strengthening the law, but the views of the incoming governor, a lawyer who sometimes handled divorce cases, were not known. The most immediate obstacle for the anti-divorce reformers, however, was the Judiciary Committee, which had successfully defeated every effort to strengthen the divorce law for a decade. Senate Bill 95 remained in committee for nearly a month, until pressure from anti-divorce reformers forced the committee to issue dueling reports, one in support of the bill and the other opposed on the grounds that the bill would take away the legal rights of residents. It took another four days of debate

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[210] Theodore Roosevelt, "Sixth Annual Message," December 3, 1906, in Gerhard Peters and John T. Woolley, *The American Presidency Project*, accessed January 28, 2018, http://www.presidency.ucsb.edu.

[211] "The New Divorce Law," *Argus-Leader*, January 29, 1907.

before the Senate adopted the favorable report. But when the Senate considered the bill the next day, pro-divorce voices successfully attached an amendment before passage: a suit for divorce could be commenced after six-months' residency if the cause occurred in South Dakota.[212] Those who opposed divorce feared that this would present a loophole for couples who mutually desired to end their marriage. If couple travelled to the state together even for one day, the plaintiff could have cause for a divorce in just six months; no other state encouraged collusion in this way.[213] In the House, pro-divorce voices tried several parliamentary maneuvers to scuttle the bill, but anti-divorce reformers had the votes to pass it, without the unwelcome amendment attached, and the governor had indicated he would sign the bill.[214] Before those who opposed divorce could celebrate, however, the pro-divorce voices revealed their final surprise: they were already collecting signatures to demand a public referendum on the issue, which would delay the law's enactment for almost two years.[215]

This would be the first time that the voters—all men—would be asked to weigh in directly on the divorce debate. Anti-divorce reformers saw an opportunity; to even qualify the issue for a referendum, pro-divorce voices needed thousands of people to put their names on a petition. Bishop Hare, who had returned from the East, his health temporarily improved, announced his intention to publicly print the names of all who

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[212] *Journal of the Senate, Tenth Session* (Pierre, SD: South Dakota Legislature, 1907), 61, 231-232, 239, 407, 413, 525, 982, 1054, 1224, 1241, 1291, 1325, 1720, 1788 and 1799.

[213] "Divorce Bill Is Amended," *Dakota Farmers' Leader*, March 8, 1907.

[214] *Journal of the House, Tenth Session* (Pierre, SD: South Dakota Legislature, 1907), 1413, 1438, 1576, 1717 and 1841-1846.

[215] "Will Referend," *Argus-Leader*, March 8, 1907.

signed it, "a roll of dishonor."[216] Despite some reports of signers expressing regret, his threat did not seem to slow the petition significantly; canvassers estimated that 80 to 90 percent of the people agreed to sign. "Some said that they would vote against the question when submitted to the referendum," the *Argus-Leader* reported, "but they thought it was no more than right to give the voters an opportunity to express themselves on the law."[217] By the time the petition was submitted in May, 6,135 people had signed, some 65 percent more than the law required. A vote on the divorce law was scheduled alongside votes on the Sunday entertainment ban and an anti-quail shooting law for November 1908.

Despite their success in delaying the implementation of the stricter law and forcing a vote, the pro-divorce voices had little hope of winning at the ballot box. In the months before the referendum, anti-divorce reformers allied with those who supported the Sunday entertainment ban and an effort to allow a county-by-county votes on prohibition, purchasing advertisements in South Dakota newspapers and hosting community meetings. Shortly before the vote, Bishop Hare penned a strident open letter that hinted at the increasing desperation of the anti-divorce reformers to shutter the colony:

> There are two signs which persons stick up on their town lots. One is, "Dirt Wanted." The other, "Dump No Rubbish Here." The question now is, which of these signs shall South Dakota present to persons who purpose bringing hither from other states their hateful conjugal follies and sins. Is it, "Dirt Wanted! Come!" or is it, "Dump No Rubbish Here! Keep Off!"[218]

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[216] "Roll of Dishonor May Not Be Large," *Forest City Press*, April 4, 1907.

[217] "The Petitions," *Argus-Leader*, March 25, 1907.

[218] William Hobart Hare, *The Foreign Divorce Traffic in South Dakota* (Sioux Falls: Will A. Beach Printing, 1908), 7.

In November 1908, the state's residents voted 60,211 to 38,794 to close the divorce colony.[219] In Minnehaha County, home to Sioux Falls, the referendum passed by a narrower margin.[220] With the certification of the vote, the year-long residency became law and the Sioux Falls divorce colony was closed, another apparent win for the anti-divorce reformers.

[219] DeVelder Schaffer, "Money Versus Morality: The Divorce Industry of Sioux Falls," 227.

[220] Blake, *The Road to Reno*, 128.

Conclusion

Just a few weeks after the South Dakota referendum in which the anti-divorce reformers claimed victory, the Bureau of the Census released the report on marriage and divorce that Roosevelt had commissioned in 1905. It showed that 5,826 divorces were granted in South Dakota between 1892 and 1906, a period roughly coinciding with the existence of the divorce colony.[221] Calculating state divorce rates based on 1900 population figures, the report found that South Dakota had an average of 95 divorces per 100,000 residents between 1867 and 1906—only the twenty-second highest divorce rate among the 50 states and territories. It was now clear that the divorce colony that had sparked so much panic had been quite small.[222] Still, the report showed that the country's divorce rate was increasing rapidly: between 1868 and 1872, there had been an average of 81 divorces per 50,000 married couples. By the years 1888 to 1902, that average had risen to 200 divorces per 50,000 married couples. Approximately two-and-half times as many divorces were granted in 1900 than had been in 1870, adjusting for population growth and marriage trends.[223]

These numbers were bad news for the anti-divorce reformers. Decades of judicial, social, religious and legislative pressure had not decreased the divorce rate; in fact, it was climbing faster than ever. Most striking to the report's authors was the persistency of the trend. Between 1867 and 1906, the number of divorces per 100,000 people nationally

[221] Bureau of the Census, *Marriage and Divorce 1867-1906,* 1: 62-65.

[222] Ibid., 72-74.

[223] Ibid., 13.

(married and unmarried, in this calculation) increased for 36 of the 40 years in the study. Anti-divorce reformers could not even take solace from the outliers. Only 1870, 1884, 1894 and 1902 had failed to outpace the previous years' divorce rate.[224] The one thing each of those years had in common: not national anti-divorce reforms, but economic crisis.

The numbers showed what had already become clear to many in Sioux Falls: the efforts of the anti-divorce reformers were failing. The obstacles they had erected to divorce did not thwart those who wished to end their marriages. And in overcoming those many difficulties, the divorce colonists and the increasing numbers of those in their community who supported them had found a voice. Understanding the influence of these new pro-divorce voices is essential to parsing the evolution of the laws and attitudes that have governed marriage and divorce in the United States in the years since the divorce colony. For many woman divorce seekers in Sioux Falls—who were central as both victim and villain to the moral panic—the private decision to end a marriage had become an unintentionally public, even political, act. Women such as Margaret Zborowski, Mary Nevins Bull, Blanche Molineux-Scott and Flora Bigelow Guest shaped the divorce debate in the city, the state and, ultimately, the nation. They helped to establish a dynamic still present today: they themselves—not the church, the courts, or state or federal governments—would define their most intimate relationships.

Cornell professor Walter Willcox further analyzed the Census Bureau's data recognized this change. He calculated that one in every twelve American marriages ended in divorce in 1909 and he believed the divorce rate would be one in every two

[224] Bureau of the Census, *Marriage and Divorce 1867-1906*, 1: 13.

marriages before the end of the century.[225] He wasn't concerned, because he also recognized in the country the same shift in social attitudes that had taken place in Sioux Falls. About 60 percent of South Dakota residents had voted to make it harder to obtain a divorce, but almost 40 percent had cast a ballot against stricter regulation, a far larger coalition than ever could have been anticipated when the divorce colony first developed. "We are slowly awakening to a new ideal of the family based not upon the subordination of the wife in all phases of family life," Willcox said after two decades of studying American marriage and divorce. "The increase of divorce in this country may be due rather to a rising of ideals than to a decay in family life."[226]

Faced with the shifting social attitude toward divorce and with evidence that anti-divorce reforms had not significantly altered the upward trend in the divorce rate, the reformers slowly admitted defeat. By the time of the South Dakota referendum, national efforts to restrict divorce, such as work toward a strict uniform divorce law or a constitutional amendment governing divorce, were already fading away. When the Sioux Falls divorce colony ended in 1908, attention shifted to Reno, Nevada. Many of the same debates would play out in that city, but the emergence of the pro-divorce voices that had occurred in Sioux Falls during the days of the divorce colony made the outcome clear: divorce would become an increasingly accepted part of American life.

[225] "Divorce Statistics," *New York Times*, January 13, 1909.

[226] "Marriage and Divorce," *Cornell Sun*, November 24, 1909.

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