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## CUBAN DIVORCE LAW

ROLAND MILLÁS \*

Divorce laws are important because they are a product of social conditions, and are supposed to reflect public attitudes concerning the social problems which these laws govern. But the truth is that they fail to keep pace with the general attitude towards divorce, which no doubt changes more rapidly, and, therefore, there is absent the necessary relation between the law and public opinion; divorce is on the rise in almost every country, while the laws in many of these countries remain unchanged.

The word divorce means today, as it did centuries ago, according to Latin etymology, the dissolution of the marital relationship.

There are many who believe and insist that, as an institution, divorce is a product of modern times. But it is interesting to remember what Voltaire said: "Divorce is probably as old as marriage, or perhaps marriage is a few weeks older; a man disagrees with his wife fifteen days after the wedding, he ill treats her after a month has passed, and he is separated from her after six weeks of life together."<sup>1</sup>

As far back as the year 3000 B.C., divorce was a social problem; and there are books<sup>2</sup> of law that remind us of the efforts to diminish the many cases of divorce. These same conditions can be found in Egypt,<sup>3</sup> where the wife could obtain a divorce even if the husband had not given any reason for complaint.

To further illustrate that divorce is not a modern institution, one could recall how in fact it existed in ancient times in such places as China, Persia, Greece and many other countries.<sup>4</sup> And it should not be forgotten that Seneca, the noted Roman writer and philosopher, insisted that the principal attraction of marriage was divorce.<sup>5</sup>

In Cuba, before the enactment of the law that now governs divorce, there was only what was then considered as a divorce,<sup>6</sup> the ending of the life together of the couple. If there were any children they were placed in the custody of the party who was declared innocent; as to the property, it was divided between them according to circumstances. All this has been changed in Cuba, and the law<sup>7</sup> which regulates divorce at the present time is based on all the modern tendencies in this problem.

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1. COMENTARIOS A LA LEY DE DIVORCIO VINCULAR. DR. ANDRES MARIA LAZCANO.
2. CODIGO DE AMMURABI.
3. See note 1 *supra*.
4. EL DIVORCIO. DR. EMILIO MENENDEZ.
5. OBRAS DE SENECA.
6. CIVIL CODE OF CUBA.
7. Decreto-Ley Num. 206 de 10 de mayo de 1936.

The first article <sup>8</sup> of this law is important ; it provides that the divorce can be granted to Cubans and to foreigners, whether the marriage has taken place in Cuba or in a foreign country, and it causes the dissolution of the legal marital relationship. This divorce, the only one which is now considered as a real divorce, exists in many countries, such as the United States, England, France, Spain, Holland, Austria, Belgium, Portugal, Sweden, Germany, Russia, Mexico, and Uruguay.<sup>9</sup>

A brief historic review of divorce in other countries shows that in Canada there was a time when it was considered a problem of interest only for the individual ; no public authority was supposed to take any part in the proceedings. In China divorce was not found in the higher social classes, but only in the lower ones. In Colombia the name divorce was given to the separation of husband and wife, such as it existed in Cuba according to the Civil Code. Panama has adopted two forms of divorce. In Mexico divorce establishes the dissolution of the legal marital relationship.

There is one point on which the several codes do not agree and that is on the grounds or causes for divorce, although it is true that there is one ground, adultery, that can be said to exist in all codes examined by the writer.

In regard to the grounds for divorce that are established by the Cuban law, the first one is adultery ; this is not surprising, because adultery has existed from the beginning of human society. Those who have devoted their time to the study of human relations tell us that adultery has always been punished severely through the ages and in all countries of the world. The Cuban divorce law on this subject provides that if it is conclusively shown that the husband consented or made adultery possible, then this ground for divorce will not be accepted.

The second ground for divorce in the Cuban law <sup>10</sup> is based on an attempt to protect the family and, therefore, society in general, that is, that divorce will be granted in any case where either the husband or the wife does something to corrupt the other or to corrupt the children. This cause is not found in the codes of every nation, but it is a part of the civil codes of Mexico, Ecuador, Panama, Venezuela and Honduras.<sup>11</sup> Of course, it is very difficult to determine in general for all places and all times the acts that are to be considered as corruptive, and, therefore, it is necessary to leave it to the judgment of those who are to decide in each case. This is true also when the acts to be considered do not refer to the husband or to the wife, but particularly to the children. This ground for divorce should become more important every day,

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8. *Ibid.*

9. Diversos estudios sobre el divorcio.

10. Decreto-Ley Num. 206 de 10 de mayo de 1936.

11. CIVIL CODE OF MEXICO ; CIVIL CODE OF ECUADOR ; CIVIL CODE OF PANAMA ; CIVIL CODE OF VENEZUELA ; CIVIL CODE OF HONDURAS.

now that so much is done for the welfare of the children and special protection is given to them by means of new laws in all civilized countries.

The third ground for divorce in the Cuban law is maltreatment, generally accepted as not of words but of deeds. Divorce is to be granted according to this law if a husband strikes his wife, even if this should occur only once.<sup>12</sup> But in Czechoslovakia, for example,<sup>13</sup> the law determines that once is not enough, that such acts must be frequent; and, what is more, that they must produce serious effects and even be offensive to the honor of the person concerned. It is interesting to note a tendency to give greater importance each day to the moral aspect of the problem; it is what is expressed in the United States as mental or moral cruelty, which can most certainly include a very long and varied list of complaints. But it is not only in the United States that this new concept is found for what before meant only physical damage; for instance, Llacá Argudín says now that maltreatment is not only physical but includes all that produces shame or disgrace, even though there is no physical harm.<sup>14</sup> It is admitted that cruelty is not always due to deeds, but may be caused by words that injure the other party; it exists whether the words are spoken or written to the person concerned. In fact, verbal insults, especially when repeated or frequent, are a cause for divorce established by the Cuban law.

If either the husband or the wife is found guilty and sentenced to imprisonment for any length of time, this is considered in Cuba as another cause for divorce.<sup>15</sup> Concerning this point Milton has said that marriage is a human society, and where this does not exist, there really is no such marriage. In fact, there is no doubt that it is an institution formed by two persons, who must live together, and when this does not occur, marriage does not exist. What is more, there is an article in the Cuban Civil Code which provides that husband and wife are obliged to live together.<sup>16</sup> Therefore, would it be possible for marriage to exist legally if either one or the other was sentenced for a life term? Would this be logical in a country, as in Cuba, where there is a special article that obliges the life together of both, that is, of the husband and wife? In Spain this ground for divorce has been discussed exhaustively by many distinguished lawyers and legislators, such as Osorio, Gallardo, Sánchez Román and Salazar Alonso.<sup>17</sup> In Holland it is interesting to note that the loss of liberty for four or more years is accepted as a cause of divorce.<sup>18</sup>

If the offense resulting in imprisonment was committed by the husband against the wife, or by the wife against the husband or by either one against the

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12. Decreto-Ley Num. 206 de 10 de mayo de 1936.

13. *COMENTARIOS A LA LEY DE DIVORCIO VINCULAR*. ANDRÉS MARÍA LAZCANO.

14. *LEGISLACION SOBRE EL DIVORCIO*. LLACA ARGUDÍN.

15. Decreto-Ley Num. 206 de 10 de mayo de 1936.

16. *CIVIL CODE OF CUBA*.

17. *Studies of Osorio, Gallardo, Sánchez Román and Salazar Alonso*.

18. *CIVIL CODE OF HOLLAND*.

children, then this is accepted in Cuba as another ground for divorce; but the act must be one of importance, and is never accepted if it concerns only the property of either party; it must be an act against the person of either husband or wife.<sup>19</sup>

Drunkenness is a cause for divorce under the Cuban law.<sup>20</sup> There is no doubt that habitual drunkenness brings serious problems to the life of the couple. The husband or the wife who drinks inflicts sorrow and unhappiness on the other companion, and life in such conditions may well become unbearable.

Another cause for divorce in Cuba is gambling,<sup>21</sup> when it is not occasional but a constant habit for either husband or wife; and the reason is that although there is no direct damage done to the person of the other party, yet the family budget is seriously affected, and this brings suffering on the members of the family who need that money for their support. It is not only in Cuba where this vice is accepted as a ground for divorce but also in Portugal, Colombia, Peru and Chile.<sup>22</sup>

Cuban law protects the home; if either husband or wife voluntarily abandons the home for more than six months without interruption, that is, without even going there for a short visit, then there is a ground for divorce.<sup>23</sup> Without any doubt this ground is based particularly on the moral aspect of the problem that means duties unfulfilled and, therefore, neglected. Similar grounds for divorce exist in some of the United States and in Brazil, Peru, Argentina, Mexico, Chile, Spain and Holland.<sup>24</sup>

Whenever either the husband or the wife does not fulfill his or her obligations in all that concerns the defense of the home, the Cuban law provides a ground for divorce. Both are obliged by oath to aid each other, and the husband is obliged to protect the wife and the wife as well has her duties to fulfill. When any of these conditions are not fulfilled voluntarily and repeatedly, there exists a reason for divorce.<sup>25</sup>

Disease, when it is of a special kind, is a ground for divorce in Cuba.<sup>26</sup> The establishment of this ground, however, presents difficulties, for it is not easy to determine accurately which of the two parties was taken ill first; doctors must be extremely careful in their examinations so that when they are called to testify they will be able to offer the necessary information regarding the kind of disease, how it was acquired, and when it was transmitted. One disease which affords a ground for divorce in Cuba is mental illness. This disease, however, will be accepted as a ground only when shown to be chronic

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19. Decreto-Ley Num. 206 de 10 de mayo de 1936.

20. *Ibid.*

21. *Ibid.*

22. CIVIL CODE OF PORTUGAL; CIVIL CODE OF COLOMBIA; CIVIL CODE OF PERU; CIVIL CODE OF CHILE.

23. Decreto-Ley Num. 206 de 10 de mayo de 1936.

24. Laws of Spain, Mexico, Chile, Peru, Argentine and Brazil.

25. Decreto-Ley Num. 206 de 10 de mayo de 1936.

26. *Ibid.*

and incurable; and only after two years from the date of the medical certificate of the mental condition of the patient will the divorce be granted. Although mental illness of one of the parties is an accepted ground for divorce in many countries, there are those writers who consider it unfair to the party who is mentally ill, reasoning that he or she ought not to be subjected to a divorce precisely when he or she most needs the care and protection of the other party. On the other hand, an equal number of writers defend the party who is not mentally ill, reasoning that it is unjust to force him to go through life with a burden that he can never alter or diminish in any way, and that social laws should protect him and allow him to form another family and another home. This reasoning prevails in Portugal, Greece, Denmark, Mexico, China and many other countries, where mental illness is an accepted ground for divorce.<sup>27</sup>

A very significant cause for divorce because it is so frequent, as is natural to suppose when two persons are obliged to live together, is incompatibility of character,<sup>28</sup> due to the different way of thinking and acting of the parties, that leads to a situation which may often become unbearable. It is interesting to note at this point that in Peru hatred is a cause for divorce.<sup>29</sup>

The Cuban divorce law protects the honor or moral well-being of individuals. This is shown by the provision<sup>30</sup> that any vice or lack of morality that militates against or harms the good name of husband or wife will be considered a ground for divorce, but it will be necessary to prove that the vice of lack of morality really exists, and that there is no doubt that it offends the good name or honor of the other spouse.

Similarly, the vice which consists in the continual use of drugs and militates against the physical and moral well-being of either party is an accepted ground for divorce.<sup>31</sup>

It is not surprising to find as another ground the act of bigamy committed when either husband or wife marries without having been divorced.<sup>32</sup>

In Cuba, the law regulating divorce is the same for every province, while in the United States, the laws vary widely from state to state, and it is interesting to observe in a comparative study of this kind that while South Carolina disallows divorce altogether, Nevada, for example, goes to the other extreme, and grants divorces for many causes, the most inclusive being extreme cruelty, which of course admits of many interpretations, as for example, the well-known cases of keeping a window closed, or of playing the radio when the plaintiff wanted to go to sleep. New York, strange as it may seem, due to its cosmopolitan population, permits only one ground for divorce, and that is

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27. Laws of Portugal, Greece, Denmark, Mexico and China.

28. Decreto-Ley Num. 206 de 10 de mayo de 1936.

29. Laws of Peru.

30. Art. 3, Causal 16 del Decreto-Ley Num. 206 de 10 de mayo de 1936.

31. Art. 3, Causal 17 del Decreto-Ley Num. 206 de 10 de mayo de 1936.

32. Art. 3, Causal 18 del Decreto-Ley Num. 206 de 10 de mayo de 1936.

adultery; this ground is allowed in every state, while only one state permits divorce for incompatibility.

The Russian Code of 1924 goes to the extreme in this matter of causes for divorce, granting a divorce on the simple desire of either husband or wife to obtain the divorce, even in the case when there is no reason other than that desire.<sup>33</sup> In Uruguay, it is interesting to note that divorce can be granted if that is the will of the wife, but she must express it three times every six months.<sup>34</sup>

In Cuba it is only the husband or the wife who can present a claim for divorce unless one is under guardianship, in which case it may be presented by the guardian appointed in a will or by a judge.<sup>35</sup>

As to the effects of divorce, the persons who obtain it may remarry again at any time; the man can marry whenever he desires,<sup>36</sup> but the law provides that the woman must wait 301 days from the moment that the divorce was granted before she can marry again.<sup>37</sup> Notwithstanding this, if the cause is just, the President of the Republic can grant her a special permit.<sup>38</sup>

In regard to alimony, the Cuban law establishes that the wife has the right to receive a pension given by the husband in monthly payments, made in advance and according to the quantity decided by the judge in every case; but this lasts only until the divorce action is terminated.<sup>39</sup> The children have the same right but their pension continues.<sup>40</sup> Then if the ex-wife wants a pension she must institute another special action to obtain it.<sup>41</sup>

If there are children, both boys and girls under five years of age go to the mother, unless she is declared to be at fault. If the children are more than five years old, the judge will decide according to the case, which of the two parties will have custody of them.<sup>42</sup> Generally the father keeps the boys and the mother the girls, although many times, and due to varying circumstances, these conditions are altered.<sup>43</sup>

The Cuban law provides that the domicile of the parties is in each instance the jurisdiction where the case is heard.<sup>44</sup> In case one of the parties lives in Cuba and the other in some other country or if both live in a foreign country, then the judge shall be, according to the desire of the plaintiff, a

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33. CODE OF FAMILY LAW OF RUSSIA.

34. Laws of Uruguay of 28th of October, 1907, and 23d of September, 1913.

35. Decreto-Ley Num. 206 de 10 de mayo de 1936.

36. *Ibid.*

37. *Ibid.*

38. *Ibid.*

39. *Ibid.*

40. *Ibid.*

41. *Ibid.*

42. *Ibid.*

43. *Ibid.*

44. *Ibid.*

judge whose jurisdiction is that of the last dwelling place of the couple, or of the residence of the plaintiff, or of the residence of the defendant.<sup>45</sup>

If the parties in a divorce action in Cuba are foreigners who were not married in Cuba, the law establishes the following conditions: first, that the cause for divorce should be mutual agreement; or, second, based on things that have taken place after the establishment of the residence of either party in Cuba; third, that the foreigner, the plaintiff at the moment that he commences the action, must prove that he has fixed his residence in Cuba, and that he has lived there at least 30 days before initiating his petition for divorce.<sup>46</sup> This fact he must prove by means of a certificate given by a notary public in which plaintiff states his intention of living in Cuba; and 30 days later under oath, in another certificate before a notary public, he must declare that he has not been away from Cuba since the date of the first certificate.<sup>47</sup> The Cuban law provides that foreigners divorced in another country can marry again in Cuba.<sup>48</sup>

Divorce decrees obtained in other countries by Cubans or foreigners, are accepted in Cuba if the cause for divorce is the same or similar to any one of the grounds permitted by the Cuban law.<sup>49</sup> Therefore, a person who is interested in having a foreign decree admitted legally, must present it to the judge, declaring that the cause is such as has been stated before, and this fact must be proven afterwards.<sup>50</sup> If the divorce decree does not state the cause, it must be proven by means of an affidavit given by a lawyer of the country where the divorce was granted.<sup>51</sup>

In Cuba, the laws regulating divorce have changed greatly. First, the Civil Code of 1889 (the Spanish Civil Code) did not permit divorce such as it is today. At that time only the separation of husband and wife was accepted, while the legal relationship remained unchanged. This was modified by subsequent laws, products of the evolution of social conditions.<sup>52</sup> At the present moment there is a law presented at the House of Representatives by Dr. Manuel Dorta Duque, in which the tendency is to restrict divorce in order to protect and preserve the family as a social institution. This law is a direct result of the alarming increase of divorces in Cuba, as seen by the following figures for Havana alone:

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45. *Ibid.*

46. *Ibid.*

47. *Ibid.*

48. *Ibid.*

49. *Ibid.*

50. *Ibid.*

51. *Ibid.*

52. Law of the 29th of July, 1918; Law of the 4th of July, 1927; Law of the 7th of May, 1928; Law of the 4th of June, 1928; Law of the 31st of July, 1928; Law of the 6th of February, 1930; Law of the 7th of May, 1931; Law of the 10th of May, 1934.



1943	1,475
1944	1,681
1945	1,765
1946	2,001

In all Cuba, the census shows that in 1926 there were 241 divorces; in 1927, 333; in 1928, 369; in 1929, 462; in 1931, 6,168; and in 1943, 22,910.

In the United States, it is well known that 50 years ago there were 10,000 divorces; in 1946, 613,000; now one marriage out of every three ends in divorce and within the next ten years, experts tell us that there will be a divorce in every other marriage.

This general increase is due principally in Cuba to the great facility that exists there for obtaining a divorce, the change that has taken place in the public opinion in regard to divorce, and the economic liberation of women together with the revolutionary change in sexual morality in all the nations. All these are causative factors that have made marriage lose its stability. The previously mentioned law presented at the Cuban House of Representatives by Dr. Duque is based on a trend of thinking by those who are deeply concerned about the family and the welfare of society. Opposition to such a law is headed by those individuals and groups who want only to protect individual impulses, momentary desires, and even whims.

Although such legislation as that presented by Dr. Duque is certainly desirable, it does not furnish a final solution to the problem. Divorce such as it is, after many modifications of the laws that govern it, is nothing more or less than the product of social conditions and relations, beliefs and desires; it becomes a formidable means by which the life of a community may be known, understood and judged. It is not sufficient for legislators to want to modify a law; the actual modification will occur only with changes in the beliefs, desires and ideals of the individuals whose relationships it governs and whose lives in the community it expresses.

In times past divorce was something to be thought about apprehensively and even feared because social control was even stronger than legal control, due to the fact that social ostracism was sure to follow any divorce even when truly needed and entirely legal. Now there is no undesirable effect to be expected; parties who ask for their legal divorce know that they have nothing to fear as far as social sanction is concerned.

A general survey of the number of divorces in all countries reveals plainly that the divorce rate is rising alarmingly. This breaking up of such a fundamental social institution as marriage is beyond doubt a great evil for human society and a peril for all nations.

Divorce laws must be framed in more modern form; they must be revised to express present trends of thought and modern views of life; and then it is up to the individual, and to society in general, to learn and exercise the best means of preventing divorces, difficult as this problem may be, and to make people understand that divorce does not offer the perfect solution for all unhappy situations.