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Date of publication: June 23rd, 2014
Edition period: Edition period: June 2014 - October 2014

**To cite this article:** Löhnig, M. (2014). Re-education by Jurisdiction: On Enforcing a Christian-Occidental Understand-ing of Marriage in Western Germany After 1945. *Social and Education History 3*(2), 133-148. doi:10.4471/hse.2014.09

**To link this article:** http://dx.doi.org/10.4471/hse.2014.09

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*HSE – Social and Education History Vol. 3 No. 2 June 2014 pp. 133-148*

# Re-education by Jurisdiction: On Enforcing a Christian-Occidental Understand-ing of Marriage in Western Germany After 1945

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**Abstract**

After 1945 the re-opened Family Courts of the German West Zones took a christian-occidental idea of marriage as a basis, by reinterpretating the Nazi-influenced, still valid Marriage Act 1938. This way they contributed to re-education after 12 years of Nazism. Which were the ideological Fundaments of re-education? The struggle for an ideological realignment begun in post-war Germany immediately after the war and was inseparably entwined with the struggle for the sovereignty of authoritative definition over the terms “marriage” and “family”. Until 1945 "morality" in the sense the German Marriage Act simply meant “fertility”. After 1945 “morality” simply meant that in principle marriages were indissoluble. If a woman had married, she could be sure after a very short time to have acquired a right to lifelong care through lifelong marriage. This article shows the way from “morality” to “morality”.

**Keywords:** laws, post war, christian marriage, divorce

2014 Hipatia Press
ISSN: 2014-3567
DOI: 10.4471/hse.2014.09

Hipatia Press
www.hipatiapress.com

*HSE – Social and Education History Vol. 3 No. 2 June 2014 pp. 133-148*

# Reeducación por Jurisdicción: Aplicación de una Comprensión Cristiano-Occidental del matrimonio en Alemania Occidental después de 1945

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**Absatract**

Después de 1945, se reabrieron los tribunales de familia en las zonas de Alemania Occidental, basados en una idea cristiana-occidental del matrimonio, reinterpretada por los nazis, siguiendo válida la ley del matrimonio de 1938. De esta manera se contribuía a la reeducación tras 12 años de nazismo. ¿Cuáles fueron los fundamentos ideológicos de la reeducación? El combate por el reajuste ideológico, que comenzó inmediatamente después de la guerra, estuvo entrelazado a la disputa sobre la definición oficial de los términos "matrimonio" y "familia". Hasta 1945 la "moral", en el sentido de la Ley de matrimonio alemán significaba simplemente "fertilidad". Después de 1945 la "moral" simplemente significa que, en principio, los matrimonios eran indisolubles. Si una mujer se había casado, podía estar segura que había adquirido un derecho a la atención de toda la vida, a través de un matrimonio para toda la vida. En este artículo se muestra el camino de la "moral" a la "moralidad"

**Palabras clave:** leyes, postguerra, matrimonio cristiano, divorcio

2014 Hipatia Press
ISSN: 2014-3567
DOI: 10.4471/hse.2014.09

Hipatia Press
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After May 8, 1945 the Allied Control Council abolished numerous laws enacted be-tween 1933 and 1945 because of their evident national-socialistic content (Etzel, 1992). However, not all laws whose legislative reasoning draw in one way or other upon the racial ("völkisch") nazi-ideology were abrogated. In fact, the vast majority of the laws of this time remained in effect unchanged in post-war Germany. Thus, when the German courts resumed work in 1945/1946, the judges had to face the legally as well as politically demanding task to apply paragraphs written between 1933 and 1945 based upon nationalistic ideology in totally changed political circumstances. In this they were rather on their own. Until 1949 when the Federal Republic of Germany was founded, Germany had no democratically legitimated legislator who could implement and enforce new values or new legal parameters. Left alone with this task the judges only knew: "As you were!" was no option. But what should they do instead? How the courts handled this situation of the first years after 1945 and how they took the chance to re-educate the parties involved in their cases very explicitly on the new values, is subject matter of the following article. As example of this fascinating reaction of the legal system on the change of the political regime serves the jurisdiction on the so called "Zerrüttungsscheidung" (divorce based upon "irretrievable breakdown").

## Marriage law as instrument of population policy

### Introduction of "irretrievable breakdown" as grounds for divorce in Germany

According to the German civil law code of 1900 ("Bürgerliches Gesetzbuch – BGB") a divorce could only be filed based upon certain grounds, namely adultery ("Ehebruch", § 1564 BGB 1900), "bösliche Verlassung" (literally translated "abandonment in bad faith" § 1567 BGB 1900), or other "severe violations or neglect of marital duties" (§ 1568 BGB 1900).

With the "Marriage law" of 1938 ("Ehegesetz 1938"- EheG) the laws on marital status were removed from the BGB and cast into a new separate statute; the law also introduced some changes with regards to the content of

marriage law: Divorce could now not only be filed based upon the above mentioned grounds of fault but also when,

> The common household of the spouses has not been shared for three years and a recovery of the spousal relationship in a way according to the nature of marriage is not to be expected due to a fundamental irretrievable break down of the marital relationship (§ 55 para. 1 EheG 1938).

This meant a three tiered test: (1.) a three year separation, (2.) the irretrievable break down, (3.) the prognosis that it is unlikely that the marital relationship could be re-established.

However, the defendant could object to the divorce if the break down was totally or partially fault of the plaintiff (§ 55 para. 2 sen. 1 EheG 1938). The divorce based upon break down – today normally considered as a "no-fault divorce" - had still an aspect of fault divorce, the still prevalent divorce principle of those times. This objection was denied, "If in the light of a true appreciation of the nature of marriage and the entirety of the conduct of both spouses the perpetuation of the marriage was not morally justified" (§ 55 para. 2 sen. 2 EheG 1938). The requirements to deny the objection against the divorce were thus – excect for the factual conduct of the spouses – mainly a moral evaluation according to superior points of view as the obviously normatively enriched *terms* "true appreciation of the nature of marriage" and "morally justified" demonstrate.

**Morality means fertility: The "Reichsgericht" on § 55 EheG 1938**

Fundament of the jurisdiction of the Supreme Court of the German Reich, the "Reichsgericht", pertaining to § 55 EheG (1938), was the national-socialistic understanding of marriage. The individual contractual commitment of both spouses took a back seat as well as religious aspects. With its jurisdiction, which basically always denied objections to the divorce according to § 55 para. 2 EheG (1938), the "Reichsgericht" pursued actively a population policy of its own (Niksch, 1990). In this regard it is not really important whether the court was more or less willing to grant a divorce than courts today, for § 55 EheG (1938) established stricter requirements for

divorce than §§ 1565 ff. BGB (1900) do today. Equally unimportant is the fact that the no-fault divorce based upon irretrievable break down was actually no mind child of the national-socialistic legislation (Selbert, 1930) as government drafts from the Weimar Republic show. The real question is with which reasoning the "Reichsgericht" justified its decisions against or for granting a divorce. The decisions demonstrate clearly that the court oriented itself strictly towards ideological, national-socialistic principles (Niksch, 1990, p. 107). Ex officio it collected evidence as to all circumstances which could be used to facilitate an evaluation of the marriage as "valuable" or "worthless" according to the objectives of the national socialistic population policy. The question whether the spouses had actually drifted apart irreversibly, however, did not matter.

On its own accord the "Reichsgericht" went beyond the compromise found by the National Socialist lawmakers themselves with the "irretrievable break down" as a regulation between fault and no-fault-marriage principle and basically ignored the three tiered structure of "rule, exception and counter-exception" by holding the second tier, the objection to the marriage under § 55 paragraph 2 EheG (1938) basically as irrelevant. The court also succeeded in enforcing this line consistently against the lower courts. The legislature itself had wavered whether the principle of "irretrievable break down" should be introduced and to what extent population policy could be pursued without devaluating the principle of marriage totally (Niksch, 1990, 255). The Supreme Court did not share these scruples and turned § 55 para. 2 EheG (1938) into an instrument of population policy. Sole criterion for a "true appreciation of the nature of marriage" was generating genetically healthy offspring for the national community as a function of marriage. Could a marriage not or no longer fulfil this function, it had to be dissolved, even more so, if the spouses or one of them could fulfil this function in another, may already existing new relationship or already had it fulfilled in a former one.

Thus, "morality" in the sense § 55 paragraph 2 EheG (1938) simply meant "fertility". Thinking along these lines the irrelevance of the objection was almost self-evident: If one spouse filed for divorce, the chance of offspring out of this marriage was slim, hence any objection against the divorce was immaterial. The court sustained an objection to the divorce only

in exceptional cases, when the husband, who mostly filed for di-vorce, was so advanced in years that he could not enter into any relationship desira-ble from a point of view of population policy or the marriage had so far fulfilled its desired function by producing a great number of children and the wife had sacrificed her best years in “service to husband and children." Since the divorce left women usually worse off financially, the wives being defendant often objected to the divorce.

**The situation after 1945**

In 1946 the Allied Control Council adopted a marriage law for all four occupation zones, which resembled the Marriage Law of 1938 in many parts. § 55 EheG (1938) became § 48 EheG (1946), the text remained unchanged and only a § 48 para 3 EheG 1946 was supplemented, adding that special consideration should be paid to the needs of common, minor children.

The judges who had to apply the "new" marriage law were aware that national-socialistic standards could no longer apply and that the application of legal terms requiring a moral judgement needed now a different approach than before the "col-lapse." But the courts did not have any clue on the values which were now applica-ble. Dölle (1946, p. 18) for example stresses that the concept of a divorce due to irretrievable break down introduced in 1938 actually conveyed a far older intent of reform of mar-riage law which was now discredited by the courts jurisdiction during the Third Reich, since the Supreme Court had applied § 55 EheG (1938) in a manner that the wife was mostly left defenceless against the demand of the husband for a divorce who had grown wary of the marriage. The task at hand was to apprehend the “true” nature of marriage. But what was "true"? Surprisingly the judges reached a consensus on that question rather quickly. The jurisdiction of the regional court Nuremberg (“Landgericht (LG)” Nuremberg) is an example of that consensus. Though Nuremberg, an industrial metropolis in the north-eastern part of Bavaria, was a heavily damaged by the war, about 2800 almost all complete records of the LG Nuremberg on court proceedings in marriage matters of the year 1946 can be found in the public record office of Nuremberg. Almost 3% of the files are divorces according to § 48 EheG.

## Opposition to the disruption divorce in the marriage records of the LG Nuremberg from 1946

In many cases the LG Nuremberg sustained the objection to divorce, though the Su-preme Court would surely have denied it. What was the legal reasoning? What val-ues propagated the judges - often in a manner surprising to the parties involved?

### The leitmotifs: Provision for the wife and morally imperative perpetuation of the marriage

Already in the first divorce proceedings after 1945 the leitmotifs of the future divorce practice are audible. In case file no. 3 R 4/46 the couple had married in 1921 and separated in 1925. The marriage had produced two children who were already of age at the time of the proceedings. The judge, director of the court ("Landgerichtsdirektor") Söllner, however, dismissed the case for divorce despite 20 years of separation. The plaintiff had left the family when his wife was pregnant with the second child, "only to be able to indulge in his penchant for other women". Only under duress he had paid alimony and the financial situation of the divorcee would get even worse if the plaintiff could remarry. The main elements of the legal reasoning against a divorce were thus the economic situation of the wife after the divorce and the moral condemnation of the conduct of the plaintiff and thus completely different criteria than before 1945. Before 1945 especially the age of the parties and the number of children produced by the marriage would have played a role.

The plaintiff appealed against the ruling, but the court of appeal, the "Oberlandesgericht" (OLG) Nuremberg, dismissed the appeal (case file no. U 29/46) as inadmissible because no legal question of fundamental importance had been raised. This decision is rather surprising from the point of view of a historian because the change of how the district court applied § 48 Section 2 EheG in this case might well have given ground to raise the question of how § 48 Section 2 EheG had to be handled now in general and which criteria were to be taken into account instead of the old ones.

Further cases focus on the question of alimony, others more on the indissolubility of marriage. In case no. 1 R 1030/46 considerations of alimony played a role. The spouses were 32 or 36 years old at the time of the complaint and had two children. The husband already lived with his new girlfriend, with whom he had a child together. The wife objected to the divorce because of her claim to financial maintenance. On December 17, 1946 the court dismissed the action. The court reasoned as follows: In favour of granting the divorce the possibility of legitimacy for the third child of the husband, so far born out of wedlock, had to be taken into account, political considerations like population policy objectives, however, had now to be disregarded. In favour of the perpetuation of the marriage the court considered that the wife had fallen ill and was therefore no longer able to provide for herself and the two common children. What is interesting about this reasoning is that the possibility to legitimize the illegitimate child of the husband by means of a then possible later marriage of its natural parents was not held in favour of the child but was condemned to be discrimination by society. Due to the young age of the parties it is also astonishing that the court sustained the objection. Apparently the husband was now held liable for the illness of the wife which was neither child- nor marriage-related.

In case file no. 2, R 1242/46, the parties had married in 1941 and had already separated in 1943, a classic "war marriage" probably, in which the parties are likely to have spent little time together. The plaintiff had begun a relationship with another woman, the defendant objected to the divorce. In its ruling of April 29th, 1948 the court sustained this objection, not only because a new marriage had to be prevented, but also because the defendant's maintenance was endangered. It was not acceptable that the plaintiff could throw his previous wife out on the street just because he liked another, younger woman better. Maintaining this marriage was morally justified and imperative. The reasoning of the court surprises because for many reasons the objection could have been dismissed as unsubstantial: the short period of time of the marriage under conditions of war, no children, and the young age of both parties – by the way, the girlfriend was not that much younger than the wife. The defendant was not ill nor in need of assistance for other reasons, but could provide for herself. Sustaining the objection to the divorce under these circumstances actually boils down to an

abolition of the no-fault-model of a divorce due to irretrievable break down and turned a very brief marriage of two young, healthy and childless partners into an "Versorgungsanstalt" (institution serving the sole purpose of maintenance) for the wife. The plaintiff appealed, but the Higher Regional Court of Nuremberg ("Oberlandesgericht" OLG) rejected the appeal under case no. U 103/48. The objection could only be overruled if special reasons had been brought forward - which was not the case.

Among those files are other cases, in which the maintenance of the wife is cited as a key argument in addition to supporting arguments such as age of the spouse or children. The focal point of the arguments thus shifts towards an argument, which is hard to push aside. It seems to serve the purpose to hide ideological positions which would not allow for a no-fault-divorce. Interestingly, in a comparative perspective, the aspect of maintenance of the wife was the centre of the reorientation of the case law in the soviet occupation zone/GDR as well as in the American zone/FDR, albeit with totally opposite outcomes: Whereas the idea of marriage as "Versorgungsanstalt" was heartily rejected in the GDR and the divorced wife was forced to live the equality of the sexes, the courts in the American zone equally heartily embraced that idea and perpetuated the classical role models for some time. In the American zone a wife acquired a lifelong right to supply out of her marriage, regardless of whether the married woman was able to cover her own expenses or not by remaining wife her whole life, even if both spouses had parted ways for long time. A barter arrangement between husband and wife to agree to alimony payment in exchange for a withdrawal of the objection to the divorce was apparently not considered.

The following case highlights how Christian values now replaced the National-socialistic ones: In case file no. 1 R 1069/46, the parties were married since 1928, separated in 1944 and had three children. The defendant stated that she wanted to remain in this marriage for personal as well as religious reasons and objected to the divorce. The court dismissed the case for divorce on July 21$^{st}$, 1949. In this case only special circumstances could provide the moral justification to end the marriage in question. The woman had suffered severe health damages during the birth of a child, and thus had sacrificed her health to an extent that exceeded the normal level of sacrifice inherent in any marriage. Additionally the woman was not able to provide

for herself and would possibly receive no longer any alimony if the plaintiff remarried. Invoking religious reasons was another substantial ground against the divorce. Interesting in this case is also that the court made the general statement that in principle the marriage was to perpetuate if objection was raised. This principle converted the divorce on grounds of irretrievable break down from a regular right to terminate a marriage into an extraordinary one. The perpetuation of the marriage is declared to be a moral imperative, from which only under exceptional circumstances a deviation may be justified. Age of the wife, disease, and three children would have been sufficient to dismiss the action for divorce, especially in this context. Nevertheless, the court declared explicitly the endorsement of the religious motives of the defendant, which was not necessarily to be expected in the area of civil marriage (and civil divorce). This shows that the moral imperative of maintaining an even broken marriage likely draw from a recourse to Christian values; marriage appears not to be a private affair of the married couple in the liberal sense, but as an institution, dominated by heteronomous criteria, always worth preserving.

Similar arguments can be found in case file no. 1 R 98 /46. Here the spouses had married in 1934 and separated in 1943. Both had married young, when the parties filed the action the plaintiff was 35 years old, the defendant 33 years. The plaintiff had fathered an illegitimate child with another woman he wanted to marry. The court however sustained the objection to the divorce of the marriage, which also had produced a child because the husband had committed adultery. Again, the fact that the illegitimate child could then be legitimized by marriage was not a sufficient reason to hold the divorce morally justified. It was outweighed by the interest of the defendant not to become a divorcée and the child's interest in the continued existence of the marriage.

**The leading case of the BayObLG on the general relevance of the objection to the divorce**

Case file no. 3 R 1129/46 of LG Nuremberg (1946) is a good example to point out the general development of the post-war jurisprudence and expand the view on the whole of Bavaria. In this case the Bavarian Supreme

Regional Court ("Bayerisches Oberlandesgericht" – BayObLG) as the appellate court first stated its position on § 48 EheG (1946), a position the court would uphold in many cases to follow.

The parties had married in 1922. The marriage had produced two children, one which was still underage at the time of the proceedings. The parties had lived separately since 1941. The defendant objected to the divorce because the breakdown of the marriage was no fault of hers. The motive behind the action for divorce was that the plaintiff had a girlfriend since 1939 that he wanted to marry and with whom he already had a child. After the divorce neither the supply of the defendant nor of her minor child was secured. During the marriage her health had suffered permanent damage. The LG Nuremberg held the objection to be irrelevant because an expert opinion ordered by the court had found that the defendant's illness did not have its cause in the birth of her younger son or was otherwise caused by the marriage. Thus, in its judgment of April 26th, 1948 the district court denied the correlation between disease and marriage and therefore held the objection to be irrelevant, as it would have happened before 1945. The plaintiff had also always fulfilled its obligations to pay maintenance and the court presumed he would continue to do so. Of the four pages of the whole judgement the court did not need even one page to justify the irrelevance of the objection.

The defendant appealed on September 13th, 1948 to the Bayerisches Oberlandesgericht (Bavarian Supreme Regional Court). The appeal was based in part on a legal violation of § 48 of the Marriage Act. It stated that it was now recognized jurisdiction that the objection to the divorce was in general relevant and only in individual cases under exceptional circumstances a maintenance of the marriage would not seem to be morally justified. The Bayerisches Oberlandesgericht vacated the judgement of the district court of Nuremberg because of the oral proceedings March 23rd, 1949 (filed under case file no. I 35/48) and remanded the case back to the trial court for reconsideration. The court used the appeal based upon an alleged infringement of § 48 para. 2 Marriage Act to state its interpretation of the regulation more axiomatically and develop its position on the relevance of the opposition, which the Nuremberg Higher Regional Court as

a court of appeal in the years of 1946 / 47 had never considered necessary (see above).

The Bayerisches Oberlandesgericht (BayObLG) reasoned that the Reichsgericht had taken the position that a marriage, in which the spouses did not share a common household anymore and no development in correspondence with the purpose of marriage was to be expected, was to be divorced. Objectives of racial population policy had been the cornerstone of that position, not the interest of the parties involved. Key was whether the marriage still had meaning from a racial or demographic point of view. Such criteria could no longer play a role today. It was not longer a question of whether the applicant could enter into a new marriage blessed with children after divorce. It was the opinion of the BayObLG that the decision to maintain or end a marriage by granting the divorce had to be reached under appreciation of the true nature of marriage and in consideration of the overall behaviour of both spouses. The court admitted that it had not been proven that the suffering of the defendants was due to the marriage as well as the plaintiff had always fulfilled his maintenance obligation. However, the refutation of these two points was not enough to dismiss the objection. The findings were by no means sufficient to render the objection of the defendant irrelevant. In this specific case, until the divorce the marriage had lasted 21 years. The marital relationship had only been clouded by the extramarital relations of the plaintiff. If the spouses had lived many happy years together, that was a clear argument in favour of maintaining the marriage as well as the attempt by the defendant to win the plaintiff back. In addition, the court needed to consider whether and to what extent a divorce would question the previous livelihood of the defendant. It was therefore necessary to consider to what the alimony might amount to in the future. These economic aspects were not solely decisive; however, their thorough discussion was deemed essential, especially if the marriage had lasted many years, the defendant was of advanced age and also sickly.

In the new proceedings before the district court the defendant applied for a reassessment of evidence in consideration to the statements of the BayObLG (Bavarian Supreme Regional Court) and stated to the circumstances that the BayObLG had held to be relevant. Now, on March 29th, 1951 the LG Nürnberg-Fürth dismissed the action for divorce.

According to the court the reasons for maintaining the marriage were the following: the long duration of marriage, two children, one of whom was a minor, and finally the uncertain alimony. It would have been incumbent upon the applicant to present the court with other special circumstances than the regular requirements of "irretrievable break down" to justify his action for divorce. In this he had failed. Thus the action for divorce had to be dismissed. The plaintiff filed an appeal with the Higher Regional Court of Nuremberg (OLG Nürnberg) and stated a variety of reasons why the court had to dismiss the objection to the divorce as irrelevant. Above all, he claimed the breakdown of the marriage was the fault of the defendant, a statement the Nuremberg Higher Regional Court did not give credence to. In its judgment of 9 January 1953 the court described in detail the "dirty laundry" from previous years of the marriage, which the plaintiff was forced to "wash" now. According to the court an impartial and unprejudiced outsider would see the following picture: The plaintiff had lived for many years with his wife. During this time, significant disturbances had not emerged; the plaintiff was content with his wife. Then in 1940 - very suddenly - everything changed when the plaintiff met his new girlfriend. This plot kind of forces the idea upon the observer that this woman was the reason for the growing dislike of the husband against his wife. Only now the plaintiff detected deficits in his wife that were previously not present or negligible. A change in perception that almost always happens when a man meets another woman that he likes better than his wife and to whom he wants to commit. Starting this new amorous relationship was thus the main reason of the marriage breakdown.

Hence the objection was relevant because the maintenance of marriage was morally justified. In question of moral justification the degree of fault of the spouses was not the only factor. But if someone turned away from his marriage without reason, he could not claim it was morally justified to get a divorce. The marriage was the defendant´s main purpose in life, who seriously wanted to continue the marriage. The defendant was also not simply interested in her financial support. On the other hand she did not need to accept to be pushed aside just because the plaintiff had met a younger woman. The defendant was 53 years old and it is unlikely she would successfully pick up a new occupation. The plaintiff had no sufficient

income to entertain two women. It was possible that the girlfriend once married could decide that she did not need to work as a wife. If that happened the maintenance of the defendant was in jeopardy. Also the defendant was sickly. In addition to the breakdown of the marriage, which was already a prerequisite of § 48 para 1 EheG, special circumstances had to be presented convincingly in order to justified the moral unsustainability of the marriage. That was not the case. Therefore the action was dismissed and the case was now done for good.

**The judge as educator**

If a legislator creates a regulation which asks the judge to determine whether the maintenance of the marriage is "morally justified", he actually does not solve the problem of an objection against the divorce due to marital breakdown, because just about the question whether the maintenance of a broken marriage is morally justified or not, the views can differ widely, depending on the belief system of the judge. It is known that the “marital breakdown” - divorce as put down in § 48 EheG (1946) was used in the Soviet occupation zone / GDR to re-educate the GDR population. In the GDR, however, the courts held a quite different, much more modern view than those in the FDR, namely that it was a violation of human dignity of women to maintain marriages for the sole reason that the woman had a life-long financial support. Shattered marriages were therefore to be divorced and the divorced wife had to provide for herself. The speedy divorce was thus an instrument to modify the social order in the GDR towards an economic independence and equal employment of both sexes. It helped constituting a new social order characterized by e.g. equal rights – as well as duties - to both sexes, it however, also served the end to incorporate women regularly into the work force in order to accomplish the economic re-construction of the GDR. It also weakened the bonds of family in favour of a more community-oriented, socialistic idea of society. The pace at which this social remodelling had to take place, however, probably simply overwhelmed the population.

In comparison it must not be overlooked that in the western occupation zones divorce law also began to be a vessel for ideological ends: The

jurisdiction had already taken the path to an indissoluble "Versorgungsehe" (“marriage for the sole purpose of provision”) which the wife was guaranteed if she kept to certain rules of good conduct. Although the courts actually did take into consideration all the circumstances for and against the maintenance of the marriage, all these aspects were seen in a light of religious or ideological ideas, in the western part of Germany those were rather of Christian origin. In principle marriages were indissoluble. If a woman had married, she could be sure after a very short time to have acquired a right to lifelong care through lifelong marriage - once “the doctor's wife”, always “the doctor's wife” - provided her own good conduct during the marriage. If the earnings of the husband were sufficient, there was also no reason for her to take up any occupation because she did not need to harbour any fear of economic decline due to a divorce. Of course, she would be or become economically dependent on her husband, who - unlike her – needed not to be faithful. The wife could focus on being a homemaker and raising the children. In the Western part of Germany the divorce due to break down or rather its abolishment by the jurisdiction became a means of social reconstruction, creating a social order with clearly defined roles for men and women.

The reorientation of the case law on § 48 EheG (1946) was accompanied by a veritable flood of publications. This flood cannot - at least not in the case of § 48 EheG - be explained by the high practical significance of the norm: divorces on grounds of “irretrievable breakdown” made up 3% of all divorce cases at most and the question of the relevance of an objection by the defendant spouse turned up only in a miniscule subset of divorces. The struggle for an ideological realignment begun in post-war Germany immediately after the war and was inseparably entwined with the struggle for the “Deutungshoheit” (“sovereignty of authoritative definition”) over the terms “marriage” or “family”, who would decide what meant terms like “marriage” or “family” authoritatively and how the relationship of marriage and family to the state was defined. Also part of the struggle was to instruct the population as quickly as possible in the new meaning of this realignment. Thus § 55 EheG (1938), respectively § 48 EheG (1946) with their terms of "nature of marriage" and "moral justification of the maintenance of the marriage” posed the ideal opportunity to raise discussions on "today's"

understanding of marriage and family. Karl Haff (1950, p. 485) began his contribution to this post-war discourse with the very clairvoyant remark: "A little paragraph stirs up fundamental questions of any modern democratic constitution".

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