ONLY OUR OWN OPINION

A NATIONAL DIVORCE LAW

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There is now pending before both Houses of Congress the following joint resolution: "Congress shall have power to establish and enforce, by appropriate legislation, uniform laws as to marriage and divorce,

Provided, that every state may by law exclude, as to its citizens duly domiciled therein, any or all causes for absolute divorce in such laws mentioned." This resolution is the outcome of agitation for a National Divorce Law and if passed by the requisite two-thirds in both Houses will be immediately submitted to the states for ratification. That will at once raise the question: Is a National Divorce Law legally necessary? Let us refer briefly to the leading case on the subject. In Haddock vs. Haddock, 201 U. S. 562; 26 S. Ct. R. 525; 50 A. Ed. 547, the facts were that the parties were married in N. Y. State and they there established the matrimonial domicile. Later the husband deserted his wife, and after living in several different states finally acquired a residence in Connecticut. He thereupon brought action against his wife for divorce, alleging that she had deserted him, and obtained a decree, she having been served constructively by the Connecticut court. On his return to New York State she sued him for separation alleging that he had deserted her, and obtained a decree, the New York court refusing to recognize the judgment of the Connecticut court. The case was taken to the United States Supreme Court and the decision of the New York court was affirmed. The court held that under the full faith and credit clause of the constitution a decree of divorce is not entitled to compulsory recognition in another state unless the divorcing state had jurisdiction of the parties, and since in this case the Connecticut court had not by its constructive service of process upon a non-resident, acquired the requisite jurisdiction, its decree was inoperative within the State of New York. The substance of the opinion is that the granting of a divorce is strictly a State and not a Federal power; that each state has exclusive jurisdiction to grant a divorce as to a resident, but no jurisdiction to do so as to a non-resident, and, that the decision of a state that a party is a resident is not conclusive upon another state. Hence under the generalization in this decision, the regulation of divorce is wholly vested in the separate states, since it is not a power expressly or impliedly conferred on the National Government by the Constitution. And not only is it a state power, but each state can regulate the subject of divorce according to its own view of social policy. And lastly, in granting a divorce a state is within its power even though another state has already acted in the case. In the light of these principles it is clear therefore that the purpose of the proposed amendment to the constitution is to confer upon the United States absolute power to legislate on this subject and, incidentally, by destroying that power as it now exists in the states, to nullify all state legislation and establish a National Uniform Divorce Law.

The writer is not especially qualified to express authoritative opinions on the social necessity for this amendment. He is convinced however in view of the decision in the leading case, that it is legally necessary. There are forty-eight different divorce laws throughout the states of the Union. And it is not merely a variation in the language of the law, but a radical difference in policy, that is evident in this legislation. South Carolina, for example, absolutely prohibits divorce. Washington allows it for ten enumerated causes, and then by way of inclusion and exhaustion superadds an *omnibus* clause: "and for any other causes deemed sufficient by the court." The other states have varying statutes such as New York which authorizes divorce for adultery only, and Nevada which grants it for cruelty, on six months' residence being shown.

A National Divorce Act will perform the very desirable service of unifying these laws so that migratory divorces based on transitory residence or domestic divorce based on trivial grounds, will be abolished. A divorce will under proposed federal regulatino be granted for only specified limited causes and when once granted will be vadid in every state of the Union, since the judgments of the federal courts will be binding on the states, and they will possess no power to impeach them, such as they exercise under the full faith and credit clause as construed in the leading case.

It is believed the ratification of the Amendment is a certainty. The general direction of constitutional development is certainly toward federalization. It is a progressive age, and where the states have failed to remedy this great evil federal regulation is the only solution. There is still a large residency police power in the states, but it is gradually being absorbed by decisions of the United States Supreme Court or being surrendered by constitutional amendment. So will it be with the regulation of divorce. Once the resolution passes both Houses and is submitted to the states, it will be ratified in a short time. In fact the legislatures of California, Illinois and New York have anticipated the submission and by resolution expressed their approval informally. It requires but thirty-six states for ratification and while the Southern States are, it is true, conservative in surrendering any of their police power, the amendment is capable of ratification even as against them. And certainly the womanhood of the nation is bound to influence the question in favor of federal regulation, now that they possess the ballot and can wield an immense power at the polls and in our halls of legislation.

In reference to the amendment, however, the writer has a suggestion. He believes in its wisdom but questions the propriety of its phraseology to accomplish the desried ends. The second part of the amendment qualifies the first in that it reserves to the states a certain concurrent power of regulation and to that extent impairs the federal power which to be effective should not merely be partial but absolutely complete. This objectionable clause, in other words, gives to the states the power to abolish as a cause for divorce any cause enumerated by the Federal Statutes. Naturally the states will legislate as they now do, some liberally, others strictly, according to their own views of social expediency

and in some, all the causes for divorce will be retained, while in others all will be abolished and such action will immediately reduce our federal legislation to a heteroqueous system, the one chief argument now being used in its support. And apart from this difficulty it is desirable for the sake of certainty that federal power be exclusive in the United States, and not concurrent with the states. A power is either national or local; it should not be, and cannot be, both combined, and be expected to be beneficially exercised. Hence it is submitted that the proviso is destructive and subverts the whole purpose of the amendment. It should be expunged before its submission to the states.