AN INTANGIBLE CLAIM: OKLAHOMA TERRITORY AND THE VICTORIAN DIVORCE CRISIS

by

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Preface

This study focuses on the cultural phenomenon that occurred in the United States known as the Victorian Divorce Crisis, and the communities known as "Divorce Mills," which were often blamed for the situation. The divorce mill that developed in Oklahoma Territory's capital city of Guthrie played a role in the spreading panic, as well as encouraging a dialogue about divorce's increased presence and bringing an end to the crisis. The unique situation in Guthrie was able to happen because two months prior to the opening for settlement of the Unassigned Lands, later becoming Oklahoma Territory, with the Land Rush in April of 1889, the release of *A Report on Marriage and Divorce in the United States, 1867 to 1886,* brought divorce statistics to the populace for the first time.

While other divorce mills had thrived prior to Guthrie, the report brought national attention to the havens and the issue of migratory divorce. The debate that fueled the Divorce Crisis was still in its infancy in the 1880s, but with the growth of a mill in Oklahoma Territory and an increase in public knowledge about divorce statistics, its soon escalated into a national movement among factions either for or against the institution of divorce. The escalation eventually led to the meeting of the National Congress on Uniform Divorce Laws in 1906, which signified an end of the Victorian Divorce Crisis because of the movement's inability to become nationally adopted.

My interest in the topic of divorce mills began while I was working as the associate curator of the Oklahoma Territorial Museum in Guthrie, Oklahoma. While

reorganizing the museum's vertical files one afternoon, I stumbled across Linda Wilson's 1997 article for the *Chronicles of Oklahoma*, "Helen Churchill Candee: Author of an Oklahoma Romance." My minor as an undergraduate was in women's studies, so anything related to women's history has always been of interest to me. I read Wilson's piece about a woman from New York who came to Oklahoma Territory in 1895 specifically to file for a divorce from her husband. She had done so because she was unable to petition in her home jurisdiction and therefore had to find another willing to hear her plea. She in turn chose Guthrie because it was a notable divorce mill at the time.

This was the first time I had ever seen the term, "Divorce Mill." It was a difficult concept to grasp, and left me full of inquiries: What was a divorce mill? What constituted one? How widespread was the trend of migratory divorce? The more I researched the topic, the more difficult it became to answer those questions. I began my research with Glenda Riley's 1991 book, *Divorce: An American Tradition.* This is the most inclusive book about the history of divorce available. In her survey of American divorce, I read about early colonial divorce practices through the emergence of western divorce mills, and discovered other havens such as Salt Lake City and Sioux Falls, both of which thrived during their territorial eras.

In regards to Oklahoma Territory, although she dedicated a large portion of her research to the region, Glenda Riley stated that Guthrie was arguably not a mill because it did not have the numbers to support the notion of a large migratory population coming to the area to seek divorce. It is contemporarily known that many of the statistics for estimated migratory couples seeking divorces were inflated. Although Oklahoma

Territory may not be considered one of the largest mills to exist during the Victorian Era, an estimated one-thousand divorces occurred in the city of Guthrie alone, which makes for a significant divorced population. In addition to what I consider to be a significant number of divorce cases in the area, I argue that the dialogue about divorce created by the events in Oklahoma Territory was important to the national history of divorce and its development. There lies the area's significance and its ability to be considered a divorce mill, even if it was not of the largest scale.

The issue of historical representation of the divorce mill trend is that using a number to decide what constitutes a divorce mill is problematic because it is subjective. All of the sources later discussed about Oklahoma Territory differ in opinion about whether or not it was a mill, and they all rely on numbers for proof. But there is not a control for determining what number of migratory divorces filed dictates a mill, making all evidence malleable to one's argument. For the purpose of this thesis, a divorce mill is defined as any jurisdiction that was used by non-residents to obtain a divorce, regardless of the size of the jurisdiction or cases filed therein.

Moving through the limited secondary sources about the history of American divorce practices, and beginning to hone in on the concept of Oklahoma Territory as a significant divorce mill, I examined Carroll Wright's, *A Report on Marriage and Divorce in the United States, 1867 to 1886.* The document is over one-thousand pages long, and is primarily lists of numbers about American marriage and divorce statistics. The *Wright Report,* as it is known, was the most pertinent document aiding to the research conducted for this thesis. In regards to documents influential to research about Oklahoma Territory

and its divorce rates, the second publication of divorce research, *Special Reports: Marriage and Divorce, 1876-1906,* published by the Bureau of the Census in 1909, had the most information to reveal; for Oklahoma Territory was not in existence for the publication of the *Wright Report*. The second federal report picked up where the first had ended, and was a compilation of the two studies. Moving deeper into my research, I studied divorce records at the Logan County Courthouse in Guthrie, taking my exploration to a much more personal level. Reading through the petitions of men and women from the Victorian Era allowed me to see that divorce is not the modern paradox that we have been led to believe. In addition, the growth and resolution of the American Divorce Crisis was so reliant on these records I was examining, which I found fascinating. During my study, I also surveyed both local and eastern newspapers from the time to gain a sense of divorce reception both in areas such as Guthrie, and eastern cities such as New York or Philadelphia, where many divorce-seekers were drawn from.

In the first chapter of this thesis, I will examine the divorce debate in the United States from its infancy, setting a framework for its progression until formal conclusion of the divorce reform movement in 1906. The first chapter also contains a historiographical review of scholarly works on American divorce, the Victorian Divorce Crisis, and the mill that prospered in Guthrie. The second chapter provides an overview of early divorce mills prior to Oklahoma Territory.

Chapter three begins with an analysis of the *Wright Report*, and the findings that it brought to national attention. Moving through the Land Run of 1889 and the creation of Oklahoma Territory, a significant portion of this chapter looks at Guthrie's early years as

a divorce haven, until 1893 and the beginning of divorce reform discussion at both the territorial and federal level. Chapter four starts in 1893 and proceeds through 1897, which was the end of Oklahoma Territory's reign as a divorce mill, and examines the process of legislative reform in the territorial courts that eventually led to the decline. The final chapter of this study looks at the divorce reform movement that occurred as a result of the escalation in the divorce debate in the last half of the nineteenth century. The movement began prior to Oklahoma Territory and continued after its demise, eventually leading to the meeting of the NCUDL in 1906. The meeting marked the end of the crisis.

The records that I was able to locate, in conjunction with the relatively limited information about American divorce history and particularly divorce mills, compelled me to address the topic of Oklahoma Territory as a significant mill and catalyst in bringing an end to the Divorce Crisis of the nineteenth century. The information that I have compiled will hopefully not only prove that Guthrie was an important divorce mill in the Victorian Divorce Crisis narrative, but will also create a conversation about further research on the topic, which remains fairly unearthed.

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I am grateful to the Oklahoma Territorial Museum and its staff. At one time my colleagues, I would like to thank Nathan Turner, Valerie Duncan, Erin Brown and Michael Williams, for their support in discussing and aiding in my initial research. I would also like to thank the staff of the Logan County Courthouse who allowed me access to the territorial records that they house and the Oklahoma Department of Libraries.

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Chapter 1

The Worst of Bondage: American Marriage and the Rise of Divorce

The closing decades of the nineteenth century in the United States saw an overall liberalization in the public reception of divorce, an increase in cases filed, and a subsequent social crisis as a direct result of this trend. As divorce was on the rise, many believed it represented the decline of civility, and particularly the middle class. In conjunction with this trend, during the Reconstruction Period following the Civil War, with the rise of Manifest Destiny and the spread of individualism, migration west by millions began. With each new state or territory that joined the union, their divorce laws seemed to be increasingly lax, and as an explosion in suits filed occurred nationally, so did a public outcry for divorce law reform.

The prospects of the more liberal laws of the New West were alluring to couples in eastern states who had been forced to remain in unhappy marriages due to their home jurisdiction's restrictive laws, and this led to thousands looking west for relief.[1] By the turn of the century, the country was in the midst of a crisis because of an influx of migratory divorce-seekers to the West and to the "Divorce Mills"[2] created there by lenient divorce laws. The community of Guthrie, the capital city Oklahoma Territory, greatly contributed to bringing about public awareness and protest against migratory divorce, and was the last divorce mill in the nation during this epoch. The mill that

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[1] Samuel W. Dike, *Important Features of the Divorce Question* (Royalton, Vt., 1885), 94.

[2] David Littlefield and Lonnie Underhill, "Divorce Seekers' Paradise: Oklahoma Territory, 1890-1897," *Arizona and the West 17, no. 1* (Spring 1975): 22.

developed in Guthrie was of the utmost importance in ending the American Divorce Crisis of the Victorian Era because it was the only haven to develop following the release of the first collection of national divorce statistics to the public.

The newly formed western communities brought with them hope to many individuals who saw themselves condemned to their marital imprisonment. Many of the states and territories not only offered greater chances for receiving a divorce, but they created a way for couples to dissolve their marriage without having to permanently relocate from their homes. The several specific areas that became notable havens were known and promoted for their relaxed divorce laws and short residency requirements; some states had no such provision, but most ranged from three to six months. These havens created thriving divorce industries for periods of time, but eventually led to public objection about their appeal to divorce-seekers and were blamed for a perceived decline in morality.

Marriage and divorce statistics were compiled and released to the public in 1889, with the first federal document detailing such information, *A Report on Marriage and Divorce in the United States*. The report was named after its primary contributor, Carroll D. Wright, and largely contributed to the extension of public knowledge about the true number of marital dissolutions in the country. The document over time became more commonly known as the *Wright Report.* It revealed trends that were shocking to the public, such as between 1870 and 1880 the U.S. population increased 30.1 percent, while

the number of divorces increased 79.4 percent, and that by 1880, 20,000 divorces were granted annually.[3]

In addition to the rising popularity of western states and territories such as Oklahoma Territory for their permissive divorce laws, the release of the information compiled by Wright led to the Victorian Divorce Crisis. Moral groups acted out for decades after this to decrease divorce numbers and to create universal divorce laws in order to prevent migratory incidents. The end of the crisis occurred in 1906, with the meeting of the National Congress on Uniform Divorce Laws in Washington, D.C. However, the meeting did not create the desired comprehensive national divorce laws.[4]

Oklahoma Territory helped bring the congressional action that led to the end of the Divorce Crisis, but the divorce debate was by no means new when the territory entered the conversation. A split between factions seeing divorce as an unbreakable religious bond or as a dissolvable social contract has been documented since the earliest days following nationhood. In 1788, an anonymous author in Philadelphia wrote in regards to political and marital freedom:

> Therefore, it is hoped the same spirit of indulgence will extend still further-to those unhappy individuals, mixed among every class of mankind, who are frequently united together in the worst of bondage to each other, occasioned by circumstances not in their power to foresee, or prevent, at the time of their union; which should entitle them to relief from humane legislators and the rest of mankind.[5]

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[3] Carroll D. Wright, ed., *A Report on Marriage and Divorce in the United States, 1867 to 1886* (Washington, DC: U.S. Government Printing Office, 1891), 144, 148.

[4] William L. O'Neill, *Divorce in the Progressive Era* (New Haven: Yale University Press, 1967), 242

[5] *An Essay on Marriage; or, The Lawfulness of Divorce in Certain Cases Considered…* (Philadelphia: Zachariah Poulson, 1788), 3.

This unnamed writer promoted universal divorce because they viewed it as a basic human right and in such that all deserved an out to a poor union that may not have been initially realized. They went on to explain that liberal divorce laws would lower suicides, prevent cruelty, promote companionate care, decrease fraud, and prevent bachelors from avoiding marriage and practicing vice.[6] This account shows that not only does the divorce debate have deep roots in the national narrative and was not a sudden phenomenon of the late-Victorian Era as it was perceived, but it also traversed classes and was not solely a middle to upper class privilege.

Also in 1788, but from the opposite perspective of the anonymous writer, clergymen in Connecticut voiced concern about their state's lenient laws. Benjamin Trumbull, pastor of the North Haven Congregational Church, published an *Appeal to the Public, Especially to the Learned with Respect to the Unlawfulness of Divorces.* Strict divorce laws, clergymen argued, prevented hasty marriage, an argument that would later be reiterated by the NCUDL.[7] In 1816, conservative Yale President Timothy Dwight stated, "It is incomparably better that individuals should suffer than that an Institution, which is the basis of all human good, should be shaken or endangered."[8] Dwight's perspective illustrated a trend during the nineteenth century of placing social order over the individual; no doubt a backlash to the increased liberalization seen nationwide which was often blamed on the American need for individualism.

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[6] Mary Somerville Jones, *An Historical Geography of the Changing Divorce Law in the United States* (Chapel Hill: University of North Carolina Press, 1978), 26.

[7] Littlefield and Underhill, "Divorce Seekers' Paradise," 23.

[8] Timothy Dwight, *Theology: Explained and Defended in a Series of Sermons* (5th ed., New York: Carvill, 1828), III, 427.

The topic of divorce was heavily contested in a debate between November 1852 and February 1853 in the *New York Tribune,* in a series of editorials between liberals Stephen Pearl Andrews and *Tribune* editor Horace Greeley, and more conservative Henry James. The two extremes of the discussion included conservative thought that alleged that marriage was indestructible, and a radical opposition that held that all had the right to divorce, referring to it as, "manifest public welfare."[9]

Most Americans remained in the middle of these two polarizing opinions, in which they believed that divorce was a necessary institution. Many came to view unhappy marriages as tyrannical and possible to avoid. Along with this, the growth of feminism was giving women knowledge and support in regards to their subservient position in both social and private aspects of life. Feminists asserted that liberal divorce laws protected women from both physically and mentally abusive marriages.[10]

The divorce question was always heavily associated with women's rights. Famous figures such as Amelia Bloomer, Susan B. Anthony and Elizabeth Cady Stanton were involved in the dialogue, with Stanton becoming one of the most staunch supporters of liberal divorce laws. In January of 1852, she delivered a speech at a temperance convention in Albany, condemning women who remained in toxic marriages. She spoke of a woman who remained with her alcoholic husband:

> Such companionship...is nothing more or less than legalized prostitution. Let us encourage, yea, urge those stricken and who are suffering in such degrading

[9] Glenda Riley, *Divorce: An American Tradition* (New York: Oxford University Press, 1991), 72.

[10] Ibid, 73.

> bondage, held there by crude notions of God's laws and the tyranny of a false public sentiment, to sunder all such holy ties...[11]

Rather than proposing legislative reform to help wives leave unhealthy relationships, in this speech she called on women to take it upon themselves and to encourage others to do the same. Women commonly, and understandably so, not only feared the financial strife of leaving their spouses at a time when most did not have an income of their own, but they were also concerned with societal and familial scrutiny. Stanton's perspective is reflected on a large scale in the national growth of cruelty as a ground for divorce which increased in commonality beginning in the 1850s and was evident in numerous territorial cases.

Stanton proposed at a later woman's rights convention in New York City on May 11, 1860, a series of resolutions for American women to adopt. In the resolution regarding marriage, she stated that divorce petitioners should never be criminalized, because "it usurps an authority never delegated to man, nor exercised by God himself."[12] The dialogue over divorce sparked by such individuals as Elizabeth Cady Stanton was significant to women's rights as a whole because it brought the topic of divorce to the forefront of societal concerns, as it was nationally being increasingly used by women on humanitarian grounds to leave harmful marriages. It is considered to be the first sex-related social problem that created a widespread dialogue. Stanton stated in 1870,

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[11] "Mrs. Stanton to Temperance Convention at Albany, Jan. 28, 1852," *Elizabeth Cady Stanton Papers*, Library of Congress, quoted in Nelson Blake, *Road to Reno* (New York: The Macmillan Company, 1962), 88.

[12] Elizabeth Cady Stanton, Susan B. Anthony, and Mathilda J. Gage, *History of Woman Suffrage* (New York: Fowler & Wells, 1881), I, 483.

"Women respond to this divorce speech as they never did to suffrage."[13] Her message had a resonance that truly spoke to the female population and she valued that reception. She wrote in the same year on its increased popularity, "Slavery is nothing to those unclean marriages. The women gladly hear the new gospel so let the press howl."[14]

The divorce debate only grew over time, and by 1889 when the *Wright Report* was released, it was known as a crisis situation. With the circulation of the report came a heightened sense of urgency among anti-divorce groups to rectify the problem, and with the establishment of Oklahoma Territory with the Organic Act, signed on May 2, 1890, the culmination of a unique chapter in American divorce history occurred. The fact that the public now had access to marriage and divorce statistics and a sense of the extent in which divorce had affected the nation, and Oklahoma Territory remained in the spotlight about its provisions for years; At least until 1897, and some argue until 1907 with statehood.[15]

The divorce haven of Guthrie makes for an interesting historical discussion. Overall, on the topic of the history of American divorce, and particularly Oklahoma Territory, little has been written. One of the principal sources in the area of study is Nelson Blake's survey of the institution, *Road to Reno*. The book was published in 1962 and was only the second on the subject matter to be released after George E. Howard's 1904 three-volume series, *History of Matrimonial Institutions.* Blake's interest in divorce

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[13] Harriot Eaton Stanton Blatch, ed., "E.C. Stanton to S.B. Anthony, June 27, 1870," *Elizabeth Cady Stanton: As Revealed in Her Letters, Diary and Reminiscences* (New York: Harper's, 1922), II, 127.

[14] "E.C. Stanton to Mrs. Griffing, Dec. 1, 1870," *Elizabeth Cady Stanton*, II, 127.

[15] Littlefield and Underhill, "Divorce Seekers' Paradise," 33

was sparked by his father who was a lawyer in Massachusetts and dealt with divorce suits.[16]

In his introduction, Blake speculated that divorce was for the most part an unearthed historical topic because it was often left to be written about by lawyers and sociologists interested in legalities and social consequences, rather than historical significance. In addition, the fact that divorce is a state issue rather than a national one has only complicated matters; for examination to be conducted it would need be done fifty times over for each jurisdiction. Blake's research is sociological in the sense that he heavily concentrated on changing popular opinions about divorce, from conservatism in eastern states to the subsequent divorce mill trend and its national reception. The fact that Blake wrote this piece at all shows that he was of the New Left school in historical study, the topic of his writing being of a sociological nature. In addition, he presented a feminist perspective time and again, with a large portion of two chapters dedicated to women's standpoint.[17]

Nelson Blake extended his research back to Athenian and Roman divorce practices, both of which were later considered liberal to the moralists of the Victorian Era. He proceeded through early Christian and Jewish backgrounds in relation to marital separations, moving into American divorce beginning with colonial practice. His research throughout the book primarily focused on New York, with multiple chapters dedicated solely to the state. Transitioning into the western divorce communities and the debacle

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[16] Nelson M. Blake, *The Road to Reno* (New York: MacMillan Co., 1962), vii. George Elliot Howard, *A History of Matrimonial Institutions*, Three vols. (Chicago: University of Chicago Press), 1904.

[17] Ibid, viii.

that arose, Blake emphasized the conservative New York laws that forced its residents to look for relief from their marriages, rather than concentrating on the culture that grew in the new havens. This is not to say that he overlooked the western hubs by any means, he discussed Indiana and Dakota Territory at length.[18]

Blake unfortunately made only a brief mention of Oklahoma Territory in his book. Many facts about the divorce mill there were discussed for the first time in writings by later historians. His only reference to the area came from a *New York Times* article. As the title would suggest, a great emphasis was placed on Reno, Nevada, which pinnacled as a modern haven in the 1930s, and Blake ended his book by examining it and projecting what the future of divorce may look like as a growing trend that society must be willing to accept.[19]

Nelson Blake may have been one of the first historians to address the development of divorce as an institution, but Daniel Littlefield and Lonnie Underhill were the first to truly analyze the divorce phenomenon specifically in Oklahoma Territory. Their article, "Divorce Seeker's Paradise: Oklahoma Territory, 1890-1897," was published in 1975 for the historical journal *Arizona and the West*. In it they suggested that Oklahoma, and primarily Guthrie, was a divorce center in the United States for years.[20]

Littlefield and Underhill blamed early territorial legislation for confusion in the courts, which allowed the area to thrive as a divorce mill and attract divorce-seekers.

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[18] Ibid, 116-129.

[19] Ibid, 128.

[20] Littlefield and Underhill, "Divorce Seekers' Paradise," 21-34.

They also accused local lawyers and hotel proprietors for promoting their businesses and community as a divorce haven in eastern newspapers; this bringing of notoriety to the area that led to the pinnacle of the Divorce Crisis, as opposed to the idea that increasing knowledge about divorce statistics was the cause. The majority of blame in this article went to such lawyers. Littlefield and Underhill examined in depth the court cases and legislative proceedings that had great influence on territorial divorce reform, all of which are further discussed in chapters four and five. In addition to this, eastern newspapers were heavily relied on in the article to convey public sentiment about Oklahoma Territory and its divorce practices. This piece of research is highly significant in divorce history because it was the first work to illustrate in detail that Oklahoma Territory was arguably an epicenter for divorce activity at the end of the nineteenth century.[21]

An important historical writing that addressed changing trends in divorce cases overall in the United States throughout the Victorian Era was Robert Griswold's 1986 article, "Law, Sex, Cruelty, and Divorce in Victorian America, 1840-1900."[22] In it he analyzed the increased use of cruelty as a grounds for divorce during this time and the expansion of the definition of cruelty to include mental abuse. His argument was that this transition affected conceptions of femininity, masculinity, and sexuality in Victorian society, and that this shift was what led to the crisis of the late-Victorian and early-Edwardian eras, not western divorce mills. He explained that from 1867 to 1886, 328,716 divorces were granted nationally. From 1886 to 1906, the number jumped to 945,625

[21] Ibid, 22

[22] Robert L. Griswold, "Law, Sex, Cruelty, and Divorce in Victorian America, 1840-1900." *American Quarterly*, *Vol. 38, No. 5* (Winter, 1986): 721-45.

cases. Of the from 1867 to 1906, which totaled 1,274,341, wives received 218,520 divorces because of cruelty and husbands received 39,300.[23] Women received over 80 percent of all cruelty-based divorces in the United States.

Griswold suggested that this increase in cruelty cases reflected a transformation in marital relations. This was due to changing sexual attitudes by the Victorians, particularly over sexual excess. Sexual excess became viewed as abusive behavior and was often attributed to male tendencies. This transition greatly benefitted women, for it heightened their moral standing with judges and expanded definitions of marital cruelty. As women were perceived to be virtuous and content on maintaining the familial bond, men were believed by many jurists to be sexual deviants. Such a concept allowed women more control in their sexual relationships and redefined manhood, calling for a greater psychological commitment from husbands. In conjunction with this, the idea of birth control that grew in popularity at the tail-end of the nineteenth century also gave women more sexual control in their relationships.[24]

Judges in the last half of the nineteenth century found themselves in an interesting situation because while seeking to maintain traditional marital concepts, new notions about sexuality and sexual roles could not be avoided. Griswold noted that the rise of "Judicial Patriarchy"[25] led to a shift in perceptions of femininity, arguably a positive factor for women, for as men were asked to loosen their patriarchal grip, judges filled that void by expanding judicial power to protect weaker members of society, notably wives.

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[23] Ibid, 722.

[24] Ibid, 724.

[25] Ibid, 738.

As divorce was still quite risky for women, the fact that so many filed under the umbrella of cruelty causation shows how important changing ideals about family, marriage, and divorce were to so many. Sexual cruelty greatly expanded concepts about abuse, and it brought divorce into the sphere of sexual politics, leading to increased conversation about definitions of gender. Griswold's perspective is a unique one for it does not place the blame for the Victorian divorce crisis on western divorce mills, although his argument about increased cruelty was a trend that is quite evident in cases filed by women in Oklahoma Territory.

Glenda Riley is considered to be the leading source for territorial divorce history, and her 1989 article, "Torn Asunder: Divorce in Early Oklahoma Territory," is of great significance to research about the topic of divorce. Published in *The Chronicles of Oklahoma*, the article was used to comprise a portion of the chapter about western divorce communities in her book, *Divorce,* but her chapter dedicated to the territory is less detailed. In the article she claimed that the haven in the territorial capital of Guthrie was not a booming industry by any means, because the size of the practice in the city was exaggerated by eastern newspapers. Her argument that inconsistent and increasingly liberal laws were to blame for the confusion of the Victorian crisis is present here as it is in her book.[26] She wrote that the divorce mill trend was a transitory phenomenon of the New West, and that Oklahoma was not in fact one of the great divorce mills like South Dakota or Utah, but she agreed that the territory had a significant impact on American

[26] Glenda Riley, "Torn Asunder: Divorce in Oklahoma Territory." *Chronicles of Oklahoma 67* (Winter 1989-1990): 392-3.

divorce practices and acted as a unique historical example because mills increased public knowledge and led to the notion of the "divorce trade" as an industry.

In addition to these concepts, Glenda Riley stated that the mills of the West actually contributed to society by expanding public knowledge of the institution of divorce. She also examined the fact that during the time of Oklahoma Territory's pinnacle in the mid-1890s, the use of desertion and cruelty as grounds by plaintiffs increased nationally, and that female plaintiffs were increasingly better received in western courts, attributing to their popularity. She ended by stating that she believed the evidence was not there to support that any mills were flourishing industries as previously thought, and that liberal western laws were not all so different from eastern laws, the West simply became a scapegoat and an example for the anti-divorce movement in their appeals.[27]

In Glenda Riley's 1991 book, *Divorce: An American Tradition,* she expanded her research to cover the national history of the practice of divorce. Starting with colonial conventions, her argument was clear in that she sought to "reveal that the historical conflict between anti-divorce and pro-divorce factions has prevented the development of effective, beneficial divorce laws, procedures, and policies."[28] She explained how her feminist background was what awakened her interest when she was studying nineteenth-century wives and discovered several captivating divorce cases, particularly about western women. Her objective was to give historical perspective to the progression of divorce and to aid individuals who have lived through the experience, as well as assist the

[27] Ibid, 411.

[28] Glenda Riley. *Divorce: An American Tradition* (New York: Oxford University Press, 1991), viii.

public in shaping future of laws and policies. She used historical analysis to defend divorce, which was experiencing a significant spike at the time she was writing.[29]

Beginning with colonial divorce procedures, Riley discussed trends within liberal New England, the moderate middle colonies, and conservative southern colonies. She stated that Revolutionary Era ideas of individualism have always had deep roots in the American consciousness, and that this is evident in the fact that the Declaration of Independence was in itself a divorce petition.[30] Moving from the early Republic and into the mills in the Old Northwest, through the Civil War and and westward expansion, Riley theorized that the development of separate spheres between the sexes may have increased marital pressures during the early nineteenth century. She too analyzed the great divorce debate, *The Wright Report* and the trends it revealed, and focused significantly on Oklahoma Territory and western divorce mills, contending that desertion had a greater affect on the divorce trade than previously argued based on the large number of cases filed with it as the motivator.[31]

As historians speculate what may have contributed most to the crisis, divorce mills serve as one reoccurring explanation. Although western havens may not have produced as large of numbers as was speculated at the time, Oklahoma Territory was a significant source in bringing an end to the increasingly petulant issue of divorce in nineteenth-century America. In agreement with Glenda Riley, Guthrie placed the divorce trade in the public eye. But in addition to this, an examination of earlier divorce havens as

[29] Ibid.

[30] Ibid, 32.

[31] Ibid, 86.

well as the *Wright Report* and the national trends it revealed is needed in order to look at the influence the document had in conjunction with the establishment of Oklahoma Territory, and how it aided in the area's publicity and bringing about the end of the Victorian Divorce Crisis.

Chapter 2

Divorce Mills: From the Colonial Era to The New West

The use of divorce to terminate marriages in North America has always existed and was not a Victorian phenomenon brought on by divorce mills such as Oklahoma Territory. This fact is evident in early narratives among Native Americans, as well as from colonists. Cherokee divorce occurred when a wife simply placed her husband's possessions outside of their front door. In a 1937 interview for the *Indian-Pioneer Papers* conducted by the University of Oklahoma, Chickasaw woman Ida Cunnetubby simply stated, "Indians had no marriage or divorce laws."[32] The first documented case in the Americas of Anglo-Europeans legally separating was a dissolution through the Puritan court system between a Massachusetts couple in 1639. James Luxford was charged by his wife in December of that year for already being married to another woman. She received all of his property for herself and their children. In addition, he was charged £100, sent to the stocks, and was eventually banished to England.[33]

Although Puritans often sought to resolve failing marriages, divorce was seen as an acceptable means to end a marriage in extreme cases. It was also common in colonial divorces for women to retain their dowries upon separation when they were the plaintiff.[34] Desertion, bigamy, and impotence were the most commonly accepted grounds

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[32] Ida Cunnetubby, "Interview with Ida Cunnetubby," interview by John F. Daugherty, *Indian-Pioneer History Project for Oklahoma* (December 1, 1937): 387.

[33] John A. Noble and Joseph F. Cronin, eds., *Records of the Court of Assistants of the Colony of the Massachusetts Bay, 1630-1692*, 3 vols. (Boston: n.p., 1901-28), I, 89, quoted in Nancy F. Cott, "Divorce and the Changing Status of Women in Eighteenth-Century Massachusetts," *William and Mary Quarterly* 33 (October 1976), 586.

[34] George E. Howard, *A History of Matrimonial Institutions,* 3 vols. (Chicago: n.p., 1904), II, 338-339.

for divorce in the colonies. Women were often met with the deterrent that upon divorce it was expected of her to live with a male relative rather than maintaining her own home. But divorce was an attainable alternative to remaining in a challenging marital environment. It was commonly believed that by permitting divorce individuals would be able to seek healthier and more stable marriages and positively contribute to their communities in the future.[35] Family was considered to be the foundation of community and crucial to social order, therefore healthy unions were revered. Many colonists supported the concept of divorce because it was seen as a way to end dysfunctional marriages while managing the conditions of the separation.[36]

William Bradford, the second governor of the Plymouth Colony, stated that marriage was to be "performed by the magistrate, as being a civil thing."[37] The religious connotations of Victorian ideals on divorce proceedings were not yet placed. The separatist Puritans of Plymouth adopted their divorce decrees from Continental laws regarding absolute divorce and English canon law regarding bed and board divorce, essentially legal separation.[38] Because of the obstacle of financial dependence by many wives, most divorces sought by women were those of bed and board in order to retain some sort of stability.

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[35] Cotton Mather, *Magnalia Christi Americana* (Connecticut: n.p., 1853 edition, original 1702), 253-254.

[36] Glenda Riley, *Divorce: An American Tradition* (New York: Oxford University Press, 1991), 11.

[37] William T. David, ed., *Bradford's History of Plymouth Plantation*, *1606-1646* (New York: C. Scribner's Sons, 1908), 12-13.

[38] Daniel Defoe, *Conjugal Lewdness: or, Matrimonial Whoredom* (Gainesville, FL: n.p., 1967, original 1727), quoted in Glenda Riley, *Divorce*, 11.

A division between the public about the morality of divorce inhibited the development of uniform divorce statutes, while the general support of the practice allowed for its continuation. This resulted in an inconsistent growth pattern, laying the foundation for the progression of divorce laws to date. In Plymouth's seventy-two year history, nine divorces were granted, and although the number may sound small in comparison to statistics from the Victorian Era, a lack of census information makes it impossible to tell how many married couples actually existed within the colony.[39] This number also only reflects the amount of absolute divorces, not those of bed and board. In addition, desertion was common and seen as a quicker solution to legal processes, and often remained unaccounted.

Divorce records of the middle colonies are even more fragmentary and it is arduous to gain a sense of the acceptance of divorce in the region, but overall the area appeared to be moderate in belief. The southern colonies typically adhered to English practices prohibiting divorce except in bed and boarding.[40] Following the American Revolution and during early nationhood, the strict divorce laws of the southern colonies became more lenient in states such as Virginia. Divorce laws developed into state issues, and this proved problematic in the attempt to establish consistent laws across the union. Acceptable grounds for divorce often included a combination of: Impotency, adultery, extreme cruelty, refusal to provide, willful desertion or abandonment. In addition to this, some states were quick to eradicate legislative divorce. This is when a

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[39] Evarts B. Greene and Virginia D. Harrington. *American Population before the Federal Census of 1790* (Baltimore: Columbia University Press, 1932, 1993 edition), 22.

[40] Defoe, *Conjugal Lewdness*, 1.

divorce is granted through a legislature as opposed to a court. Legislative divorces were granted in few cases, but overwriting state court decisions created a power struggle between officials.[41]

It is difficult to determine the true commonality of divorce during the early years of the United States because state officials failed to collect statistics regarding both marriage and divorce, but scattered data illustrates that divorce was gaining in popularity. Unfortunately, divorce statistics only reflect the separation of Anglo-European couples, because legal systems often refused to recognize legal marriages between African-Americans. In addition, not all who applied were granted release from their marriage.[42]

The notion of Republican Motherhood, although developed during the Revolutionary War, took multiple generations to become a universal system for child-rearing among American women and had a profound affect on marital dynamics. The concept originated around the idea that women were expected to be good democratic citizens in order to raise decent patriotic sons. This eventually became the model that dictated Victorian womanhood; the development of the male-dominated public sphere and female-dominated private sphere. This led to an increase in maternal and domestic obligations among women. Such a development in gender roles may have created space between couples and therefore decreased stress within unions, but it may have had the adverse effect and increased tension. With defined roles, unrealistic expectations were placed on marriages. Wives were presumed to manage the household, and finding

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[41] Nelson M. Blake, *The Road to Reno* (New York: MacMillan Co., 1962), 54.

[42] Riley, *Divorce*, 28.

themselves forced to seek employment outside of the home could prove incredibly distressing. From a husband's perspective, finding their wives unprepared to deal with such domestic expectations could be disappointing in a relationship.[43]

Various divorce laws during the early to mid-nineteenth century often proved to be detrimental to women, especially in regards to alimony and child custody. Financial support, that many women were dependent on, could easily be stripped away. But because of the notion of Republican Motherhood, many judges started to veer away from the idea that children belonged to their fathers. This boosted social ideas about women's capabilities and many judges felt as though children were better off with their mothers.[44]

Republican Motherhood also helped to shape the perspective of traditional marriage being an outdated patriarchal system. As new ideas of companionate marriage grew in popularity, promoting respect and romance in relationships, wives began to expect a heightened degree of respect within their partnerships, and "traditional" wives were often considered submissive by progressives. This marriage trend led to greater numbers of female divorce-seekers who were not experiencing these ideals in their relationships. Such views were often addressed in women's magazines such as *Godey's Lady's Book* and other publications targeted at female audiences, which rose in popularity in the 1830s and remained highly circulated until the beginning of the Civil War.

During the first half of the nineteenth century the population of the United States virtually exploded, and migration west over the Appalachian Mountains to the

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[43] Ibid, 49.

[44] Michael Grossberg, "Who Gets the Child: Custody, Guardianship, and the Rise of a Judicial Patriarchy in Nineteenth-Century America," *Feminist Studies* 9 (Summer 1983): 235-46.

Mississippi River occurred by the hundreds of thousands. Between 1787 and 1850, these new states and territories exceeded both the Northeast and the South in divorces granted.[45] A certain degree of casualness about divorce took place in the Northwest Territory because of the distance and lack of communication that often took place between couples, sometimes resulting in desertion and the dissolution of marriage. Many women refused to join their migratory husbands, or would go west but return to their homes eventually. The frontier primarily adopted eastern divorce legislation, but was more lenient in policy overall. At the time, all eastern states had at least a one-year residence requirement and the new states could not help but be seen as liberal by comparison. The shift to the divorce haven of the Northwest Territory, particularly Indiana, occurred not only because of frontier liberalism, but because of the acceptance of divorce ideologies by the large Protestant population in the region.[46]

Prior to the situation that western divorce mills such as Oklahoma Territory caused, the mills of the Old Northwest created a stir among the public. Beginning in the 1840s, the states of Ohio, Illinois, and Indiana gained notoriety for their liberal divorce laws and for the increasing numbers of eastern divorce-seekers relocating to the area. About one-sixth of Indiana's cases were organized by New York offices.[47] Indiana thrived during the 1850s, and Illinois, specifically Chicago, in the late 1860s. Indiana had the grounds of drunkenness, cruelty and nonsupport, but incompatibility was also included in

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[45] Martin J. Schultz, "The Evolution of Marital Disruption in America: A Sociological Examination" (Ph.D. diss., Southern Illinois University, Carbondale, 1980), 78-85.

[46] Riley, *Divorce*, 67.

[47] Blake, *The Road to Reno*, 119.

their statutes, as part of an omnibus clause enacted in 1824; it was the first state to have such a provision. Indiana's statutes defined incompatibility as "Any misconduct that permanently destroys the happiness of the petitioner and defeats the purpose of the marriage relation."[48] This marked the beginning of the extension of the definition of cruelty to expand beyond physical abuse to include psychological torment.

Because of its easy accessibility to railroad lines, Indianapolis soon emerged as a divorce mecca.[49] It became a hotbed for divorce because in along with having more liberal statutes than eastern states, it had no residence requirement. The claimant need only be a bona fide resident. In addition, the petitioner's own affidavit acted as proof of residency and divorce papers could be served through publication, and were not required to be delivered in person to defendants. The petition could simply be published in a local newspaper. This was problematic because spouses could file for divorce without the other ever knowing, since the notice was published locally. Unknowing defendants were at an extreme disadvantage because they were then unable to appear in court and negotiate for alimony and custody rights. These unknowing spouses were then divorced in absentia, and divorce decrees were unchangeable.

By October of 1850, Indiana's divorce debate was already heated, and delegates were in the process of drafting a new constitution. Prior to this, the Indiana legislature and county courts both granted divorces, but legislators no longer wished to oversee such proceedings. Therefore county courts were given exclusive jurisdiction in divorce

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[48] Max Rheinstein, *Marriage Stability, Divorce and the Law* (Chicago: University of Chicago Press, 1972), 44.

[49] *The Revised Statutes of the State of Indiana, 1852,* quoted in Glenda Riley's *Divorce,* 63.

proceedings. In 1859, a one year residency requirement was enacted to remedy these discrepancies. Decrees were still irrevocable, but petitions were permitted for courts to reconsider decisions on alimony and child custody.[50] In 1871, Indiana Governor Conrad Baker also sought change in the state's divorce laws because he felt as though the leniency of the state's laws allowed divorce-seekers to evade the strict laws of their home jurisdictions. Laws were strengthened when new legislation was passed on March 10, 1873, extending the minimum residency from one to two years, and demanding proof. In addition, in cases where notice was given via publication, plaintiffs could not remarry for two years, during which time the case could be reopened by the defendant. Lastly, the all-encompassing omnibus clause was entirely removed.[51]

Many residents of Indiana opposed the ease of divorce in their state, believing that the laws attracted divorce-seekers. This belief even came from women's rights groups, who thought that the in-absentia provisions were detrimental to women, especially in regards to alimony and child custody. Early reform movement participants also looked to Indiana as an example for the need for change. In 1852, the *Indiana daily Journal* wrote:

> We are overrun by a flock of ill-used, and ill-using, petulant, libidinous, extravagant, ill-fitting husbands and wives as a sink is overrun with the foul water of the whole house...Nine out of ten have no better cause of divorce than their own depraved appetites.[52]

They also stated that Indiana's lax laws "gave the whole Union a chance to be divorced here, and flooded out courts with the abominations of half the dishonored homes on the

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[50] *Laws of the State of Indiana, 1859* (Indianapolis, 1859), 108-10.

[51] *Laws of Indiana, ch. 43* (March 10, 1873), quoted in Blake's *Road to Reno*, 121.

[52] *Indianapolis Daily Journal,* Dec. 3, 1858.

continent."[53] Divorce statistics of this time are inconclusive; many individuals claimed that they were merely relocating to Indiana and not solely seeking divorces, so it is difficult to determine the actual number of migratory divorces that the state saw. But by the close of 1873, Indiana was no longer considered a divorce mill.[54]

The Northwest Territory was the first to be blamed for the spread of liberal divorce laws throughout the pre-Civil War period. The argument over divorce ebbed during the war, when the deaths of hundreds of thousands of men left a large percentage of the female population in widowhood, making divorce an unnecessary and almost non-existent topic of conversation. However, throughout the post-war 1870s, the notion of marriage being a dissolvable contract grew in popularity. This pattern was aided by such factors as urbanization, industrialization, and women's expanding roles in the workforce.

In regards to women's expanding position in the workplace, Walter Francis Willcox wrote in his 1891 study, *The Divorce Problem,* that as women's roles diversified and they were able to support themselves, the economic bond between them and their husbands relaxed.[55] This fact could also disprove the modern misconception that most divorces were filed by wealthier couples, showing that lower class women were often less financially dependent on their husbands because they were already use to earning an income.[56] While the number of working women increased from two million in 1870 to eight million by 1910, most of them were single. Five percent of married women in

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[53] Ibid, March, 9, 1860.

[54] Riley, *Divorce*, 66.

[55] Walter Francis Willcox, *The Divorce Problem; A Study in Statistics* (New York: Columbia University Press, 1891), 66.

[56] Ibid, 72. Blake, *The Road to Reno*, 136.

Chicago and New York worked in 1893. But of widows under fifty-five, half worked.[57] In addition to this, the birthrate declined between 1850 to 1900, when it dropped from 5.6 to 4.6 members. Half of the divorces granted during this time were to childless couples.[58]

The growth of women in the workforce was also responsible for an increase in their average marrying age, as greater numbers sought education and self-reliance prior to seeking a husband.[59] Unfortunately for women, this also led to a growth in divorces based on desertion. The decline of skilled labor allowed for workers to relocate easily to different areas and still obtain work, and so they did. From 1867 to 1886, cases filed in the U.S. because of desertion increased from thirty-four to forty percent.[60]

Following the conclusion of the Civil War, America transitioned into Reconstruction and began to focus on westward mobility. In addition, because of more merciful divorce rights in the expanding western states and territories, rates quickly exceeded those east of the Mississippi. These numbers were often attributed to migratory divorce, but most western divorces were between couples that married elsewhere regardless. This is evident in the mobile nature of the American public during this era as millions moved west. A designation between which couples simply relocated and how many moved to obtain a divorce is almost impossible to distinguish. It is also assumed

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[57] William L. O'Neill, *Divorce in the Progressive Era* (New Haven: Yale University Press, 1967), 23.

[58] Ibid.

[59] Willcox, *The Divorce Problem,* 67.

[60] Ibid, 69.

that only a few regions attracted divorce-seekers and that these individuals came from areas with the strictest laws.

As early as 1851, California created a liberal tone for divorce laws in the New West. Nevada, Dakota Territory, Idaho, Montana, Texas, Utah, Wyoming, New Mexico, Arizona, and Oklahoma Territory all modeled their laws after those of California. In addition to this, all of the western states had short residency requirements; often from three to six months. The short residence requirements were not created to inspire divorce seekers to relocate, but rather to attract voters and encourage statehood. In areas highly populated by miners and cowhands, six months was often the maximum amount of time these individuals would stay. The amount of residents in territories was a large factor in determining statehood, and it was necessary to adjust the residency requirements for their inhabitants.[61] As Nelson Blake explained in *Road to Reno*, "And easy voting qualifications found their logical corollaries in easy requirements for beginning law suits."[62] A natural progression of finding new uses for residence requirements began to shift from voting rights to divorce suits. This trend was eventually seen in Oklahoma Territory and with divorce reform advocates in their crusade to shut down divorce mills.

The fact that western communities had higher divorce rates than eastern ones caused many Americans to believe that the spike was in fact a frontier issue as opposed to a western development. *The Wright Report* stated that the opposite was true, as well as the fact that desertion was the top cause for divorce petitions. However, at the time of the

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[61] Mary Somerville Jones, *An Historical Geography of the Changing Divorce Law in the United States* (Chapel Hill: University of North Carolina, 1978), 31.

[62] Blake, *Road to Reno,* 122.

release of the report in 1889, cruelty was the ground growing the quickest in popularity, especially among women in the West. This is partially due to the expansion of the scope of cruelty in many jurisdictions to include verbal abuse. Petitioners often used a combination of allegations, perhaps in part due to the uncertainty of using the new terminology regarding cruelty's definition, and to ensure they would receive a divorce. The report also revealed that more women than men petitioned for divorces, with two-thirds of all divorces granted going to women. Western rates never stabilized after settlement proving Wright's claim that the divorce problem was a western rather than a frontier issue.[63]

Utah Territory acted as one of the first divorce mills of the New West. Recognized as a territory in 1850, Salt Lake City was founded by Mormons in 1847, and the state of Deseret in 1849. Mormon church leaders had been granting divorces since the territory's creation, but only with polygamous marriages that were within the jurisdiction of the church of Latter-Day Saints. Although the majority Mormon population did not utilize Utah's liberal divorce laws, following the completion of the Transcontinental Railroad in 1869, eastern lawyers began promoting the area for its lenient statutes.[64]

The territory was immediately scrutinized for its liberality, not only because it had no residency requirement, but because it had an omnibus clause that acted as a catchall for divorce causation. Probate courts were given permission to grant divorces in 1852, and the divorce statute dictated that a plaintiff be a resident of the territory, or simply

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[63] U.S. Department of Commerce and Labor, *Marriage and Divorce*, *1867-1906*, 2 vols (Westport, Conn., 1978, reprint ed.), I, 25.

[64] Riley, *Divorce*, 96.

wished to become one. Couples could receive a divorce the same day they applied for it. Utah experienced its boom between 1875 and 1878, until a one-year residency requirement was enacted and the omnibus clause eliminated.[65] Between 1867 to 1886, 4,078 divorces were granted in Utah Territory. Of those, 1,267 were among couples who had married there. It is unclear as to if the remainder were migratory, but it would account for up to 75% of all divorce cases filed in the territory.

Between 1879 and 1899, Sioux Falls in Dakota Territory became a central figure in the migratory divorce phenomenon. Dakota laws too were modeled after California. The territory recognized seven grounds of causation, including mental suffering, as well as notice by publication. Both states retained the territorial ninety-day residence requirement after statehood divided the territory in 1889. 994 divorces were granted there between 1879 and 1886, averaging 142 per year; seventy percent of those cases were assumed to be migratory.

Sioux Falls as a divorce mill gained the attention of conservative moralists conjuring petitions and sermons demonizing South Dakota and divorce as a whole.[66] Moralists wanted a universal one-year residency requirement in the Dakotas, while divorce supporters wanted a three-month minimum. Conservatives accused lawyers, innkeepers, jewelers, and other businessmen of contributing money to the pro-divorce lobby, and reporters who were thought to be in cahoots to keep the matter quiet until

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[65] Howard, *Matrimonial Institutions,* III, 131-133.

[66] Blake, *Road to Reno,* 123.

legislation could be passed.[67] The residency requirement in South Dakota was extended to six months in 1893 and in cases where notice was served through publication, a one year residency was required.[68] The state then saw a lull in activity, and Fargo, North Dakota, became a brief haven until they extended their minimum residency to one year in 1899; South Dakota followed suit in 1907.[69] The mill in the Dakotas was actually much smaller than previously believed and a lot of its bad press came from Chicago reporters bitter about the rising popularity of Sioux Falls over Chicago as a hub.

Migration in the Trans-Mississippi West marked a turning point in American history, for with more states and territories constantly joining the union, demographics and policies shifted. But while individual states were placed in charge of their divorce laws, territories on the other hand were regulated by the Federal Constitution Congress.[70] The growing crisis occurring in the territories was in fact the result of federal regulation and not territorial liberalism. This point in time marked the beginning of the so-called divorce crisis of the Victorian Era. During booms in Utah and the Dakotas, the best possible data regarding marriage and divorce statistics was being collected for the first time in the United States. This information was then released in the *Wright Report* in a very close time frame to the creation of Oklahoma Territory and its unique divorce

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[67] *Argus-Leader*, Feb. 9, 1895; M.A. De Wolfe Howe, *The Life and Labors of Bishop Hare, Apostle to the Sioux* (New York: Sturgis & Walton Co., 1911), 356.

[68] *Laws of South Dakota*, ch. 75 (March 1, 1893), quoted in Blake's *Road to Reno*, 126.

[69] Jones, *An Historical Geography,* 33.

[70] William L. Snyder, *The Geography of Marriage or Legal Perplexities of Wedlock in the United States* (New York: G.P. Putnam's Sons, 1889), 156.

structure. These two factors were critical in shaping the new territory and the American divorce debate.

Chapter 3

A Certain Nest: The Wright Report and Early Oklahoma Territory

Because of the attention its predecessors such as the divorce mills of Utah and the Dakotas had garnered, Oklahoma Territory met local and national scrutiny about its divorce provisions early on. In 1892, two years after its creation, the *Guthrie Daily Leader* wrote that Oklahoma Territory was turning into a divorce-seeker's paradise, and the Oklahoma City publication the *Daily Times Journal* reported that couples were streaming in by the hundreds and the divorce community continued to grow despite of recent revisions.[71] The *Guthrie Daily Leader* referred to, "a certain nest of attorneys… (for) sullying the name of Oklahoma and casting reflections on her name by advertising this county as a playground for divorce suits."[72] Oklahoma Territory's early legislation regarding divorce was contradictory, and this proved problematic throughout the territory's growth leading to statehood, but it allowed for a hub in Guthrie to form and thrive.

The ridicule that centered around Oklahoma Territory was essentially a microcosm of what was occurring in regards to divorce reception on a national scale. Over the previous several years, while American society was seeing patterns in divorce increase and as anxiety was mounting leading to the Divorce Crisis, The U.S. Census Bureau was gathering information that proved these fears in the *Wright Report*. The first year that national marriage and divorce statistics were retroactively collected was 1867.

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[71] *The Guthrie Daily Leader,* August 12, 1892; *The Daily Times Journal*, December 26, 1894.

[72] *The Guthrie Daily Leader*, March 28, 1894.

The collection of statistics was finally sanctioned because of legislative confusion in many areas and a noticeable lack of divorce related information overall. Legislation was adopted by Congress on March 3, 1887, and was directed by the Commissioner of Labor, Carroll D. Wright, to collect statistics on marriage and divorce within the United States and its territories from the previous twenty years, and covering 2,624 counties. He sent his agents directly to locations to inspect records, and Wright was known as a top statistician who had participated in a Massachusetts study on divorce data. Previous to his work as the commissioner, Wright had served as a colonel of the Volunteer Army in the Civil War; he had been a State Senator, Massachusetts' first Commissioner of Labor Statistics, and became the U.S. Commissioner of Labor in 1885. He was an ideal candidate for the position. Wright's findings were released in February of 1889. The report was reprinted multiple times and was highly used by factions both for and against divorce.[73]

Carroll Wright revealed that divorce had jumped from 9,937 suits nationally in 1867 to 25,535 in 1886; this showed an increase by 157%.[74] While the population had increased 30%, divorce had increased 79%.[75] Such statistics were shocking to the public. However, he acknowledged that the marriage data collected was often insufficient due to many states' inadequacy in managing marriage licenses. The Bureau of the Census reported that of the most common grounds for divorce: 41% of cases were filed because

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[73] United States Bureau of the Census, *Special Reports: Marriage and Divorce, 1876-1906,* Two vols. (Washington, DC: GPO, 1909), I, 3.

[74] Carroll D. Wright, ed., *A Report on Marriage and Divorce in the United States, 1867 to 1886* (Washington, DC: U.S. Government Printing Office, 1891), 10.

[75] Ibid.

of desertion, 33% for adultery, 13% for cruelty, 3% for drunkenness, and 2% for neglect to provide.[76] (See Appendix 1)

In its 1,074 pages, *The Wright Report* illustrated many trends in divorce practices that alarmed the American public, such as that divorce petitions filed by women had steadily increased over time. In addition, of the divorce claims in the western states in the closing decades of the nineteenth century, more were filed by women than the national average. Nationally, women received two-thirds of all divorces granted. Most women were often plaintiffs rather than defendants because it was believed that guilty wives forfeited her claim to a husband's earnings if the end of their marriage was her fault.[77] The data also revealed that only 20% of divorce cases occurred in states other than where the couple married, and Wright speculated that of that percentage, three to ten percent were migratory.[78] These numbers insinuate that the alleged fault of divorce mills was exaggerated and perpetuated by public fears.

Wright's findings revealed that most cases presented against women were charges of infidelity. These were often hard to prove and especially troubling to women who faced social ostracism and economic vulnerability if charged. The Victorian idea of women being passionless had grown from its infancy in the 1860s, and with its development created the image of women having a higher moral standing than men. It gave women a means to control sexual matters in as much as men were allegedly carnal,

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[76] Alfred Cahen, *Statistical Analysis of American Divorce* (New York: AMS Press, 1932), quoted in Riley's *Divorce*, 5.

[77] Glenda Riley, *Divorce: An American Tradition* (New York: Oxford University Press, 1991), 90.

[78] Wright, *A Report on Marriage and* Divorce, 197.

and women spiritual. Consequently, a new standard of manhood was formed requiring a more psychological marital relationship. The new man was to be well aware of his wife's refinement and sensitivity.[79] Husbands no longer had free reign to their wives bodies; a point supported by conservative moralists as well as feminists. Both sides agreed that a husband's sexual control promoted good health and established marriages based on mutuality. Feminists such as Susan B. Anthony and Elizabeth Cady Stanton linked crimes against women such as bigamy, seduction, physical abuse, rape, incest, and pornography to male sexual privilege and aggression. They believed that sexual morality among men would end these crimes.[80] Divorce made for the first sex-problem of the moral revolution of the Victorian Era, and led to an increase in conservative thought about the institution.

In the southern states, adultery was often the primary cause for many divorces. This was due to widespread conservatism in the area and a tendency to take adultery more seriously as a moral offense. In addition, most divorces in the South were granted to men and it was difficult to prove a wife's desertion or non-support. But divorces granted to southern women were usually as a result of desertion.[81]

In 1889, two months following the release of the *Wright Report*, two-million acres in the center of Indian Territory in present-day Oklahoma were opened up for settlement with the first of five land runs in the region. Under President Grover Cleveland's administration, the Indian Appropriation Bill was passed on March 3, 1889, opening the

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[79] Robert L. Griswold, "Law, Sex, Cruelty, and Divorce in Victorian American, 1840-1900." *American Quarterly 38, no. 5* (Winter 1986): 727.

[80] Nelson M. Blake, *The Road to Reno* (New York: MacMillan Co., 1962), 108.

[81] Walter Francis Willcox, *The Divorce Problem; A Study in Statistics* (New York: Columbia University, 1891), 69.

Unassigned Lands. The portion of land consisted of the seven most central counties in Oklahoma: Logan, Oklahoma, Cleveland, Canadian, Kingfisher, Payne, and Beaver in the panhandle. The Land Run began at noon on Monday, April 22, 1889, with an estimated fifty-thousand participants bordering its perimeter. Communities such as Oklahoma City and the territorial capital city of Guthrie exploded into tent cities overnight. From that day until the passing of the Organic Act the following year, the territory functioned under grassroots democracy.

The Land Run brought with it an onslaught of legal issues and the area subsequently became a haven for lawyers. Many physical claims were improperly marked during the chaos of the run, and filings for plots by different individuals were repeatedly submitted in duplicate, and even in triplicate in some instances. But as these issues decreased over the following months and years, many lawyers remained in the new territory to focus on the burgeoning divorce trade.[82]

A haven thrived in Oklahoma Territory because the ease with which divorce was obtained there, primarily due to early legislation. From the beginning, there was a great deal of confusion about whether district or probate courts had jurisdiction in settling divorce cases. The Organic Act, passed by Congress on May 2, 1890, gave jurisdiction to district courts, but a territorial code passed later that year gave jurisdiction to both district and probate court systems in some areas. The Organic Act ceased to be common law at the end of the congressional session, on October 1, 1890, and during the gap between that end and a new code passed by Congress, the territorial legislature drew from different

[82] Glenda Riley, "Torn Asunder: Divorce in Oklahoma Territory." *Chronicles of Oklahoma 67* (Winter 1989-1990): 394.

states to piece together its own legislation. The first legislative assembly met in Guthrie on August 29, 1890.[83]

Territorial legislators pulled primarily from Nebraska's divorce legislation to form Oklahoma Territory's early laws. Borrowed from Nebraska were stipulations such as the ninety-day residency requirement, the ability to serve notice through publication, and the power being given to both district and probate courts to hold divorce hearings, probate courts being permitted to oversee cases after an individual met a two years residency minimum in the territory and six months in the county of the filing. A new code passed by Congress gave jurisdiction to probate courts in all cases, but the Oklahoma legislature amended this in 1893; probate courts continued to hear suits, leading to more confusion among the public.[84] The grounds for divorce that were permitted in the new territory included: Adultery, extreme cruelty, desertion (including the refusal of a spouse to relocate to the territory), neglect, intemperance, and felony conviction. Extreme cruelty included physical and mental abuse, and was defined as, "the infliction of grevious bodily injury or grevious [sic] mental suffering upon the other, by one party to the marriage."[85]

The city of Guthrie became a central hub of divorce crisis focus. In large part due to the centrality of the town to the railroad lines of the Atchison, Topeka & Santa Fe Railway Company. In addition, lodging, lawyers, courts and newspapers were all in abundance, and anonymity was possible because of a mobile population. One attorney

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[83] *Statutes of Oklahoma, 1890* (Guthrie: State Capital Printing Company, 1891), 903-905.

[84] Ibid, 676, 903. *General Statutes of Oklahoma, 1893* (Guthrie: State Capital Printing Company, 1893), 874-878.

[85] *Statutes of Oklahoma, 1890*, 676-679, 903-905.

wrote that the community was free of "crowds of loungers and gossips to listen to whatever testimony may be given."[86] The promise of anonymity was appealing to divorce-seekers who worried about scrutiny from their own communities about their actions.

The expansion of the definition of cruelty to include mental suffering was a development utilized in many divorce cases filed in Oklahoma Territory, for it had been gaining ground over the previous decade, especially among women. Beginning in the 1880s, numerous courts expanded statutes in regards to cruelty, incorporating mental abuse along with physical harm as grounds for divorce. In 1883, the Kansas Supreme Court was the first to reject the claim that physical suffering must occur in order to prove cruelty in a petition for divorce. Cruelty allegations became the fastest growing complaint against men and the second fastest against women, for many jurisdictions accepted the charges with no physical proof of abuse needed.[87] As a Texas judge stated in an 1883 divorce proceeding, "What are wounds to the person as compared with those that affect the mind? The former may be healed; the latter endure for a life-time."[88] The incorporation of sexual and psychological abuse into cruelty charges was of the greatest benefit to wives in seeking separations of the mid-nineteenth century.

Sexual deprivation from either a husband or wife in a settlement did not constitute grounds for divorce; it was considered neither cruelty nor desertion. As Robert Griswold

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[86] *Oklahoma Times Journal*, July 15, 1895.

[87] United States Bureau of the Census, *Special Reports: Marriage and Divorce,* I, 19-20.

[88] *Jones v. Jones*, *60 Texas Reports 460* (Texas, 1883), quoted in Griswold, "Law, Sex, Cruelty, and Divorce," 728.

illustrated, "The cultural meaning given to sexual control within the companionate family, therefore, worked against the interest of husbands and wives dissatisfied with their spouse's unwillingness to have sex."[89] The idea of female passionlessness, although initially supported by women's rights groups, came under attack by feminists in the 1860s who argued that women were equally as sexual as men.

In addition to the expansion of cruelty definitions to include mental abuse, false allegations of infidelity that were filed by husbands were considered to be psychologically abusive and grounds for divorce, for only a spiteful and hateful husband could accuse his wife of such degrading acts. Judges viewed the female psyche as highly vulnerable to such allegations. Many judges and jurists veered from traditional notions about family and its unbreakable bond, and began to focus more on individualism and personal happiness.

The transition to individual distinction in divorce cases occurred simultaneously as physicians were arguing that women were more vulnerable to nervous disorders due to their alleged physical and mental frailty. Shocks to the nervous system were believed to do damage to the reproductive system and abilities. Doctors argued that women's nerves were more delicate and therefore more subject to mental breakdown. This argument ironically increased women's standing in cruelty complaints as it created a general social misconception of women being inherently weak. For example, in one Indiana case a judge stated that for many women who viewed divorce as an inaccessible goal, emotional

[89] Griswold, "Law, Sex, Cruelty, and Divorce," 736.

neglect "has sent broken-hearted to the grave hundreds of wives, where the dagger, poison, and purposed starvation have sent one."[90]

For the courts that sympathized with individuals, there were their counterparts that supported established notions of marriage. Native-born, middle class families were most likely to adhere to a traditional domestic ideology and Anglo-European family values, therefore the most likely to receive sympathy in divorce courts with particular judges. The middle and upper classes were believed to have the most refined nervous systems, and therefore the most susceptible to neurological stress. Nervous disorders became a sign of middle class status, creating room for mental abuse causation in divorce cases.[91]

The ground of cruelty held significant numbers in both the eastern and western sectors of the *Wright Report's* study. Between 1867 and 1886, 15.6% of all divorces nationally were obtained on the ground of cruelty; 5.4% were granted to men, and 21% to women. Of all western cases, 19.8% were related to cruelty, with men filing .09% of those cases, and women filing 23%. Between 1887 and 1906, 21.8% of all divorces nationally were granted because of cruelty; 10.5% to men and 27.5% to women. In the western states, 21.8% were related to cruelty, with men filing 13.1% and women filing 24.2%.[92] Cruelty served as a catchall for many cases, and it often conjured sympathy from judges regardless of which gender was making the claim. From 1867 to 1906,

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[90] *Rice v. Rice,* 6 *Indiana Reports* 85 (1854), quoted in Griswold's "Law, Sex, Cruelty, and Divorce," 726.

[91] Robert L. Griswold, "The Evolution of the Doctrine of Mental Cruelty in Victorian American Divorce, 1790-1900," *Journal of Social History* 20, *no. 1* (Autumn, 1986): 139.

[92] Wright, *A Report on Marriage and Divorce,* 25, 86, 88, 90, 92.

women received 218,520 divorces because of cruelty and men received 39,300. In Oklahoma Territory between 1890 and 1906, 26% of all cases filed were on the ground of cruelty; 14% of all cases awarded to men and 33.1% of those awarded to women.[93]

One such case in Guthrie was that filed by Vera Wilder on the grounds of extreme cruelty. In addition to physical abuse, her husband Horace, was a reported alcoholic and referred to her as both "a chippy," meaning whore, as well as "a dam old hoar."[94] She was successful in her petition against Horace. Similarly, Manie Brown divorced her husband for alcoholism and abuse, claiming that he called her a "God Damned Whore, God Damned Bitch, and God Damned Thief."[95] The increased use of verbal cruelty as a ground for divorce over the last decades of the nineteenth century was a benefit for women such as Wilder and Brown whose relationships were obviously abusive, if not always physically. The more liberal divorce laws of the West were a positive development for women as a whole, for they allowed more women to end toxic unions such as these cases of women in Oklahoma Territory.

But not all abuse cases were filed by women. For example, in 1895, J. Dayton Thorpe filed in Guthrie for a divorce against his wife Abbie, on the grounds that she beat him, threw scissors at him and pulled a revolver on him. Her verbal abuse consisted of calling him a, "damned old fool...damn son-of-a-bitch...(and to) go to hell."[96] The

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[93] Ibid, I, 26, 88, 91.

[94] Case #725, *Wilder v. Wilder,* filed May 10, 1892, Territorial Records, Logan County, Guthrie, Oklahoma.

[95] Case #2290, *Brown v. Brown*, filed January 19, 1897, Territorial Records, Logan County, Guthrie, Oklahoma.

[96] Case #1978, *Thorpe v. Thorpe*, filed July 25, 1895, Territorial Records, Logan County, Guthrie, Oklahoma.

paperwork for this case ended before any resolution was met, but Abbie apparently abandoned her family stating about their daughter, "she did not want the child that it looked too much like its father, she had no use for it."[97] Again, abusive language such as that used by Abbie Thorpe should constitute a justifiable reason for dissolving a marriage for it represented larger issues within the coupling.

On a national scale, the most common ground for divorce during the Victorian Era was desertion. The *Wright Report* stated that between 1867 and 1886, desertion was greater in the eastern states than in the new western states; this was due to westward migration. The nationwide rate of desertion made up 38.5% of all divorces in the East, and the West reported 30.4% of all divorces. Of those in the western sector, 49.4% of all cases were attributed to male desertion, and 33.6% to female desertion. But a second study conducted between 1887 and 1906, reported that the western desertion rate exceeded that of the East. *The Wright Report* showed that desertion made up 38.9% of all divorces in the eastern states, and the western division reported 39.6%. Of those in the West, 66.3% were attributed to male desertion and 29.5% were attributed to female desertion.[98] (See Appendix 2)

During westward expansion, divorces granted to men for desertion were often because of a wives refusal to travel to a new location with her husband. Wives who remained in their former homes were considered deserters by jurisdictions that the husband's residence constituted the couple's domicile. Desertion, or "Poor Man's

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[97] Case #1978, *Thorpe v. Thorpe*, filed July 25, 1895, Territorial Records, Logan County, Guthrie, Oklahoma.

[98] United States Bureau of the Census, *Special Reports: Marriage and Divorce,* I, 25.

Divorce," was a popular cause for legal separation. It often went uncontested, and it did not carry the same stigma as adultery or cruelty; it was considered to be the closest equivalent to a voluntary separation. Defendants could often remarry under these grounds, except in Dakota Territory. The definition of desertion varied by state, but was often one to five years, and in some courts such as New Jersey and Illinois, ceasing of sexual intercourse in marriages was considered desertion after two years.[99]

In Oklahoma Territory, 41.5% of all divorce cases were granted because of desertion, with 56.4% of all suits granted to men, and 29% to women.[100] In a sampling conducted by Glenda Riley, thirteen of forty randomly chosen female plaintiffs used desertion in their petitions, while sixteen of twenty-six men did the same.[101] One such case was that filed by a Mr. Hansen in Guthrie in 1895, when his wife travelled further west for an extended period of time. He claimed she had "gone over-land in a wagon west to some Western state."[102] Or Berne Ball, who in 1895 divorced his wife of twenty-eight years on the ground of desertion because she refused to relocate to their new home in Oklahoma Territory from New York City.[103]

It was known that western courts were more likely to award female plaintiffs alimony, and in some cases initiated by husbands, alimony was still awarded to wives. For example, Lorenzo B. Lyman filed for divorce against his wife Fannie in 1891. While

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[99] Griswold, "Law, Sex, Cruelty and Divorce," 737.

[100] Wright, *A Report on Marriage and Divorce*, 88.

[101] Riley, "Torn Asunder," 406.

[102] Case #1966, *Hansen v. Hansen*, filed July 25, 1895, Territorial Records, Logan County, Guthrie, Oklahoma.

[103] Case #1945, *Ball v. Ball*, filed June 21, 1895, Territorial Records, Logan County, Guthrie, Oklahoma.

he was living in Guthrie and she was in Montana, news of the impending case quickly brought her to Oklahoma Territory. She testified that Lorenzo had refused to support her and their two children, forcing her to take in boarders and run an employment agency. Fannie countersued, charging abandonment and requesting custody of their children. She was awarded a $2,000 lump sum and received $600 per year. She also received a portion of the couple's joint property.[104] Or the case of David and Mary Hughes. David sued Mary on the grounds of adultery in 1897. She denied these charges and in turn asked the court for $50 per month. She provided a detailed account of two amputations of her arm, which resulted from David shooting her with no just cause. She received a lump sum of $1,000 and $50 in attorney's fees.[105]

Western wives who were plaintiffs were three-times more likely to receive child custody than their eastern sisters.[106] In western divorce cases between 1867 and 1906, 19-24% included alimony orders, compared to 14% in northeastern states and 8-11% in the southern.[107] Women in western states were also more likely to work for a living; usually as seamstresses, laundresses, milliners, shop clerks, teachers, or domestic workers. In the sampling conducted by Glenda Riley, ten of the forty Oklahoma women surveyed who filed for divorce worked in one form or another during their marriages and asked for no alimony.[108]

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[104] Case #1406, *Lyman v. Lyman*, filed August 30, 1891, Territorial Records, Logan County, Guthrie, Oklahoma.

[105] Case #2387, *Hughes v. Hughes*, filed August 25, 1897, Territorial Records, Logan County, Guthrie, Oklahoma.

[106] United States Bureau of the Census, *Special Reports: Marriage and Divorce*, II, 608-656.

[107] Wright, *A Report on Marriage and Divorce,* 33, 99.

[108] Riley, "Torn Asunder," 410.

Overall, alimony awarded to women was insufficient, especially those who were awarded custody of their children. Women who worked during their marriages continued to do so. For example, Susie Gleason, who divorced her husband in 1891 using the Logan County court system in Guthrie, stated that she had been "compelled to support herself," due to the fact that her husband drank heavily and was unable to provide for her.[109] Without specifying their jobs, women like Grace Rowland, Belle Beck and Eva Bowers stated during their court cases that they had to work in order to support themselves and their families because their husbands were inept.[110] Martha Condron claimed that she had worked as a dressmaker in order to support both herself and her alcoholic husband during their marriage.[111] Records indicate that divorces were sought by couples from a range of financial backgrounds, crossing classes and occupations.[112]

It is difficult to determine which territorial divorces were actually migratory. In the Riley sampling, of sixty-six divorce cases in Guthrie between 1890 and 1899, only nine petitioners openly claimed the ninety-day residency minimum. Not all petitioners were honest about their relocation time frames and intentions. Two of the surveyed couples claimed six months, one nine months, twenty-four one year, thirteen two years, one three years, three four years, six five to six years and one eight years. Two were

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[109] Case #714, *Gleason v. Gleason*, filed July 2, 1891, Territorial Records, Logan County, Guthrie, Oklahoma.

[110] Case #1944, *Rowland v. Rowland*, filed May 28, 1895; Case #1994, *Beck v. Beck*, August 12, 1895; Case #2681, *Bowers v. Bowers*, filed January 17, 1899, Territorial Records, Logan County, Guthrie, Oklahoma.

[111] Case #2702, *Condron v. Condron*, filed February 15, 1899, Territorial Records, Logan County, Guthrie, Oklahoma.

[112] David Littlefield and Lonnie Underhill, "Divorce Seekers' Paradise: Oklahoma Territory, 1890-1897," *Arizona and the West 17, no. 1* (Spring 1975): 29.

indecipherable.[113] An example of couples relocating to Oklahoma Territory to seek a divorce and perhaps being untruthful about their intentions, is the case of *Keller v. Keller.* The couple had married in 1854 in Pennsylvania, and in 1879 Lucinda had deserted her husband. On September 4, 1890, Frank filed for a divorce in Guthrie and it was granted after Lucinda failed to appear in court. It is unclear whether or not Frank had permanently relocated to Oklahoma Territory or was temporarily awaiting a divorce.[114] This was the first divorce in Logan County under territorial law.

Some territorial divorce suits were more evidently migratory. *Zeller v. Zeller* filed on October 18, 1891, indicated that Jennie married Harry in Illinois in 1881. He abandoned her in 1890 to come to Oklahoma Territory and she in turn moved to Colorado. She came to Guthrie to file her case, but Jennie showed no sign of permanently relocating to Oklahoma during their divorce process, therefore her filing must have been migratory.[115] Another case, *Winston v. Winston* was filed in August of 1895. The couple married in North Carolina, but Edward sued Alma in Oklahoma on the grounds of abandonment; she opposed the suit. She charged him with cruelty and on the grounds of establishing his Oklahoma residency specifically to obtain a divorce. Alma noted that she had sought a divorce in North Carolina, but Edward had given her $50 to not file. The court granted his divorce on October 1.[116] These cases do not confirm a migratory divorce

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[113] Riley, *Divorce*, 105. All cases found in Territorial Records, Logan County, Guthrie, Oklahoma.

[114] Case #3, *Keller v. Keller*, filed June 17, 1890, Territorial Records, Logan County, Guthrie, Oklahoma.

[115] Case #798, *Zeller v. Zeller*, filed October 18, 1891, Territorial Records, Logan County, Guthrie, Oklahoma.

[116] Case #1958, Winston v. Winston, filed August 1895, Territorial Records, Logan County, Guthrie, Oklahoma.

issue, but it is known that over one thousand divorces were granted in Oklahoma Territory between 1890 and 1897, making for a significant divorced community.

A look at territorial hotel registers of the time show that a large number of guests came from large eastern cities, specifically jurisdictions with stricter divorce measures such as Chicago, New York and Philadelphia. It is also evident that many guests paid for their rooms one month at a time. Perhaps they were divorce-seekers, but they could have also been traveling on business, such as salespeople and politicians.[117] In 1894, lawyers in Oklahoma Territory were publicizing in eastern newspapers their services and the ease to which divorce was acquired: "Service upon a non-resident defendant may be made personally or by publication. There is no statute requiring corroborative proof as in South Dakota."[118] Their self-promotion is indicative of a bustling industry in the territory.

Oklahoma Territory's reputation as a divorce mill and a corruptor of Victorian morality concerned its citizens, as well as the nation. In 1893, Governor Abraham J. Seay recommended the ninety-day residency law be extended. Seay feared that easy divorce was bringing shame to the territory. Eastern newspapers such as the *Philadelphia Record* stated that Oklahoma's divorce laws were a "disgraceful blot" on the territory,[119] and in 1896 a *New York Herald* reporter accused the territorial courts of granting mail-order divorces, publishing correspondence from an attorney in Oklahoma guaranteeing that a

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[117] Guest Register, Hotel Springer, October 6, 1892 through November 17, 1893. Oklahoma Territorial Museum, Guthrie, Oklahoma.

[118] *The New York Tribune*, Feb. 20, 1894.

[119] Abraham J. Seay, "Governor's Message to Second Legislative Assembly of the Territory of Oklahoma delivered Jan. 19, 1893," *Oklahoma Territory Governors Messages and Reports, 1893-95, 1901-05* (no place, no date), 8.

plaintiff could obtain a divorce without having to be in the territory.[120] The notoriety that the region was gaining nationally marked the beginning of a reformation over American divorce practices and Oklahoma Territory would play a prime role in the progression.

[120] Ibid.

Chapter 4

The Decline of Oklahoma Territory as a Divorce Mill, 1893-1897

By 1893, Oklahoma Territory was considered to be a prime divorce mill and held an essential position in the national divorce debate. Unfortunately for the area, the issues with territorial divorce policies only became more evident over time, and the proposal that same year by Governor Abraham Seay to extend the region's residency requirement, marked the beginning of the end for Oklahoma Territory as a haven. To resolve the contradictory measures, the territorial legislature began revising opposing divorce statutes regarding residency requirements. Jurisdiction was limited exclusively to district courts except for a measure that permitted probate courts to oversee some cases after two years of residence and six months in the county of filing; the overall territorial residency was set at ninety days, divorces were to take effect six months after they were granted in order to prohibit immediate remarriage,[121] and the revision specified ten grounds for divorce. Probate court judges continued to preside over divorce case hearings prior to two years stipulation. Regardless of the measures taken by the legislature, confusion prevailed.

A case that sent Oklahoma Territory even further into the national spotlight was heard by Chief Justice of the Oklahoma Territorial Supreme Court, Judge Frank Dale, in the case of *Irwin v. Irwin*. Filed in 1894, Dale ruled that probate courts lost their ability to grant divorces as of August 14, 1893. His decision invalidated probate divorces granted

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[121] *General Statutes of Oklahoma, 1893* (Guthrie, 1893), 875, 877.

after that date. Mr. Lorenzo Irwin's attorney appealed a probate court decision granting Mrs. Lorenzo Irwin's request, claiming that the courts had no such power. The Irwin case was invalid and therefore nullified divorces granted between August of 1893 and June of 1894 in probate courts.[122]

The Irwin case was challenged by Associate Justice Henry W. Scott, who stated that the decision would make "innocent people guilty of adultery and bigamy, will make bastards of their children and give rise to endless and expensive litigation both civil and criminal for years and years to come."[123] Following Dale's decision, the *Guthrie Daily Leader* stated that those who had remarried in the territory after receiving a probate divorce after August 14th were now bigamists.[124] In reaction to this, the territorial legislature passed an act designed to legalize divorces granted by probate courts before February 28, 1895.[125] A panic came over the territory, with the estimated number of couples in twenty-two counties affected by Dale's decision being between several hundred to a thousand, with a confirmed amount of ninety couples in Logan County alone.[126]

The Irwin case only created more confusion and anxiety among the public about divorce stipulations, and served as an agitator for congressional intervention. In January of 1895, the Oklahoma legislature began debating a bill to legalize probate court divorces

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[122] Frank Dale, *Reports of Cases Argued and Determined in the Supreme Court of the Territory of Oklahoma,* II (Guthrie, Oklahoma Territory, 1896), 187, 194, 199, 201, 221-22.

[123] Ibid, 180.

[124] *The Guthrie Daily Leader*, September 9, 1894.

[125] *Territory of Oklahoma Session Laws of 1895* (Guthrie: 1895), 107.

[126] *The Guthrie Daily Leader*, September 9, 1894.

that were granted since the amendment of the 1893 code. It was passed by Governor William C. Renfrow the next month. This was a relief to "a great number of people all over the United States who came to Oklahoma to get rid of the galling yoke of matrimony with one consort, only to tie themselves in another matrimonial knot, and find that they are in a worse 'box' than ever."[127] In addition to that provision, several other bills related to divorce were passed, including the right to both parties to remarry within ten days of divorce finalization and the new ground of refusal to "reasonable" sexual relations.[128] A measure restoring jurisdiction to the probate courts was proposed, but vetoed by Governor Renfrow. These actions were intended to alleviate tensions and resolve discourse revolving around territorial divorce in the area, but they only deepened concerns.

Following the refusal by Governor William C. Renfrow to restore jurisdiction to probate courts to grant divorces in 1895, newspapers such as the *Kansas City Times* commended him; Oklahomans were under the "unaccountable hallucination" that their lax laws were good for the community, "because they invite people who desire to sever marriage relations to locate."[129] The laws allegedly attracted the lowest common denominator of transients and left the community with a bad reputation. The *Edmond Sun-Democrat* referred to both divorce-seekers and lawyers as, "Transient residents who flee from the places they disgrace as soon as their licenses to commit frauds expire."[130]

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[127] *Hennessey Clipper*, January 24, 1895.

[128] *Session Laws of 1895*, 107.

[129] *Edmond Sun-Democrat*, March 22, 1895.

[130] Ibid.

Another event that placed Oklahoma Territory in the center of national discussion about western divorce mills occurred in October of 1895, when a law firm in New York City began expediting individuals to the territory for divorces, representing over one hundred couples by the following May. Its primary purpose was to serve notices and take depositions in cases in both Oklahoma and North Dakota. They did not guarantee divorces or represent their clients in court, but simply provided counsel for the means of obtaining the easiest divorce possible. This mostly consisted of advising their clients to not mention their real purpose of traveling to the area until after they have met their residency requirements, and instead stating that they came to the area for recreation, health or business. After the ninety days residency requirement was met, a representative from the firm would swear out an affidavit acting as the basis for the divorce petition and serving as summons, which could be waived. The fees for such service usually varied from $250 to $3500.[131]

Among adamant opponents of the lax divorce laws in Oklahoma Territory was Judge Frank Dale. Presiding over the district court in Guthrie and serving as Chief Justice of the Oklahoma Supreme Court, at the opening session of the district court on March 28, 1894, he launched an offensive against attorneys promoting easy divorces, primarily in eastern newspapers. He stated, “I am loath to believe that any attorney in good standing in this court would undertake to obtain business by such methods as these...I am clearly of the opinion that such methods...ought not to be tolerated by the court.”[132] Dale

[131] *The New York Times*, May 10, 1896.

[132] Ibid, March 28, 1894.

appointed attorneys Harper S. Cunningham, J.R. Keaton and John Shartel to a committee to investigate and prepare disbarment charges against anyone who advertised the territorial court system. The *Guthrie Daily Leader* wrote that this action would force some attorneys to "suffer the penalties of making Oklahoma a dumping ground for played-out married couples."[133] Chief Justice Frank Dale greatly denounced the trend of attorneys and business owners soliciting divorce-seekers. On March 28, in the opening session of the district court, he threatened to disbar any attorneys who advertised in eastern newspapers and appointed an investigatory committee to identify any such lawyers.[134] This investigation only furthered the problems with divorce in Oklahoma Territory.

In late 1894, Congress began drafting provisions to give the federal government more power in regulating territorial marriage and divorce. The first bill failed, but it led to the drafting of later statutes vital in ending the territorial divorce debacle. In January of 1896, a bill introduced by Congressman Frederick H. Gillett of Massachusetts regulated territorial divorces by extending residency requirements from ninety days to one year. Oklahoma was singled out in the bill, being characterized as, "a resort for persons who dare not seek a divorce at home, and who acquire a temporary residence in the Territory for the sole purpose of giving jurisdiction to its courts."[135] Worrying that divorce would soon cease in Oklahoma, there was a surge in filings. Attorneys in the territory

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[133] Ibid, March 29, 1894.

[134] *The Guthrie Daily Leader*, March 28, 1894.

[135] "Territorial Divorces," *House Report 428*, 54 Cong., 1 Sess. (Serial 3458), 1, quoted in David Littlefield and Lonnie Underhill, "Divorce Seekers' Paradise: Oklahoma Territory, 1890-1897," *Arizona and the West 17, no. 1* (Spring 1975): 30.

specializing specifically in divorce also worried about this new bill for it would cut a large portion of their revenue. Lobbyists were even sent to Washington to speak out against the decision.[136]

Cases such as *Winston v. Winston* worried many easterners. Mrs. Walker Winston filed suit in Oklahoma Territory in 1896 on the grounds of desertion, and married Dr. J.M. Ludden of Hoboken, New Jersey. Mr. Walker Winston filed in New York to overturn the court's decision while simultaneously filing his own petition. The New York district court ruled that her petition was invalid because she failed to establish proper residency, but it also refused to approve his petition. Mrs. Winston-Ludden appealed to the United States Supreme Court in order to avoid bigamy charges, but the court upheld the lower court's decision and the couple remained married.[137]

Concerns among the public about wills and property distribution arose during this time, and some territorial suits were powerful in the conversation about changes that needed to occur. In the case of *Rodgers v. Nichols*, William E. Rodgers came to Oklahoma during the 1889 Land Run for a claim, leaving his wife in West Virginia. Without giving her any notice, he petitioned for a divorce in 1895, obtained it, and willed his property to his sister. His ex-wife learned of the divorce after his death in 1898. The Oklahoma Supreme Court ruled that the divorce was illegal and that she was the rightful heir to the property. William's sister appealed to both the Oklahoma and United States

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[136] David Littlefield and Lonnie Underhill, "Divorce Seekers' Paradise: Oklahoma Territory, 1890-1897," *Arizona and the West 17, no. 1* (Spring 1975): 29.30.

[137] *New York Times*, April 14, 1903.

Supreme Courts, but both ruled that Mrs. Rodgers was the legal recipient of the property.[138]

The *New York Times* reported that even couples abroad were being affected by the territorial divorce discrepancies: "The legal department of the British Government, having been asked to pass upon the question of the recognition of a divorce decree granted by the courts of Oklahoma, has informed Peter Neilson, a wealthy Englishman, who went from London to the Territory and secured a divorce, that the divorce laws of Oklahoma would not be recognized in England. Many English people have gone to Oklahoma and obtained divorces."[139]

Eastern newspapers, which notoriously exaggerated western divorce mill activities, and whose conservativeness was often reflective their own jurisdiction's attitudes towards divorce, reported a colony of over five-hundred people in Oklahoma seeking divorce in 1895.[140] Guthrie had the most divorce-seekers in the territory, but Oklahoma City lawyers fought to change that. Many hired agents to board trains bound for the public capital Guthrie to divert potential divorce-seekers. A "dapper little man" would board and give passengers a card reading: "You are granted absolute seclusion in Oklahoma City and freedom from inquisitive reporters or others during residence there, and divorce decrees are never published."[141] These promoters were known for targeting

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[138] Littlefield and Underhill, "Divorce Seekers' Paradise," 32-3.

[139] *New York Times*, December 4, 1895.

[140] *Edmond Sun-Democrat*, June 28, 1895.

[141] *New York Times*, August 2, 1895.

women traveling alone because it was assumed that they were coming to the territory to seek a divorce.

For women who traveled alone to Oklahoma Territory and other cities during westward migration in the Victorian Era, historians are beginning to combat former stereotypes of depictions, either by traditional historians, or by flamboyant literary representations of the time. In addition, the image of women in the narrative of western history was often left out to focus on male adventurers. Historians have typically emphasized frontier periods of areas, and particularly mining communities and boom towns, where women were in fact scarce. The areas that women and families often settled were in agricultural areas. Because of this, it is assumed that the West was severely male-dominated and void of women.[142]

Caucasian women in most of western history have often been limited to three stereotypes: The refined lady, the helpmate, and the bad woman.[143] Hispanic and Asian women have been portrayed as sex objects or menial laborers, and native women as the "princess," who most commonly sided with caucasian men.[144] For the ladies, or good women, they were considered too genteel and were often driven crazy by the uncivilized West, usually a victim by her own actions as well as by others. In reality, these women often educated and enlightened, and became very involved in their communities as well as in community building. The perception of helpmates was that of an acclimated wife

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[142] Susan Armitage, "Through Women's Eyes: A New View of the West," *The Women's West* (Norman: University of Oklahoma Press, 1987), 14.

[143] Beverly Stoeltje, "A Helpmate for Man Indeed: The Image of the Frontier Woman," *Journal of American Folklore* 88 no. 347 (January-March, 1975): 25.

[144] Susan Armitage, "Through Women's Eyes," 14.

and unfeminine worker. The "Pioneer Woman," became an iconic representation of westward going women, usually with a baby in her arms representing the next generation. This imagery was the acceptable depiction of helpmates, for she still exuded femininity with her maternal presence.[145] Women were believed to be reluctant pioneers and civilizers of the new frontier. Bad women, who were always single and usually involved in some sort of criminal activity, were highly sexualized and glamorized.

Overall, Victorian women adhered to dominant culture and social norms about their roles and values, even in the West. Women still adhered to the Cult of Domesticity, which regarded four tenants as such qualities making for a representative Victorian woman: Piety, purity, domesticity and submissiveness. The female civilizers of the western states and territories became the perfect representation of these ideals. But ideas of sex roles were shifting, this being evident with such developments as the growth of cruelty grounds in divorce suits and the popularity of the ground in many western divorces such as several alone in the city of Guthrie. The West had many different people with many differing understandings of gender construction, which also affected men and the notion of the Wild West only accepting a certain breed.[146] Western history has often focused on adventure-seeking and success stories, not failures or ordinary life, like the common pressures and anxieties of men and women. As historians Susan Armitage and Elizabeth Jameson stated, "Ordinary lives are the true story of the West, for men as well

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[145] Corlann Gee Bush, "The Way We Weren't: Images of Women and Men in Cowboy Art." *The Women's West*, 21.

[146] Joan M. Jensen and Darlis A. Miller, "The Gentle Tamers Revisited: New Approaches to the History of Women in the American West." *Women and Gender in the American West* (Albuquerque: University of New Mexico Press, 2004), 9.

as for women."[147] It is important to remember that spheres did cross; men cooked and cared for the ill, and women worked in the fields.

Many histories paint a picture of the male-dominated Wild West, in which a woman, a good woman at least, traveling alone would be unheard of. Guthrie too was believed to be such a masculine environment. Although women traveling alone faced legitimate concern about their physical safety, this depiction is a misrepresentation. Female populations in communities were often equal to male populations, and in cases women exceeded men. These became known as "Female Cities." Denver and St. Louis had equal populations of each gender; Minneapolis, St. Paul, Kansas City, and Des Moines were all known as Female Cities by 1900.[148]

One such woman traveled alone to Guthrie to seek a divorce and in turn became the most famous divorce case in Oklahoma Territory. Helen Churchill Candee, a journalist traveling from New York City, came to the area after a failed attempt to divorce her abusive, alcoholic, and cheating husband, Edward, in June of 1895. While in the territory, she shared her perspective of social and economic life in the region with readers in the East. She had married Edward, a prominent New York businessman a societal figure, on November 17, 1880 at her parents' home in Norwalk, Connecticut. Beginning in the summer of 1895, the *New York Times* began publishing articles about Helen's failed attempts to divorce Edward, causing her to leave the area to seek her separation.[149] She

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[147] Susan Armitage, "Through Women's Eyes," 14.

[148] Joan M. Jensen and Darlis A. Miller, "The Gentle Tamers Revisited," 22.

[149] *New York Times*, June 14, 1895 and July 25, 1895.

had considered going to South Dakota, but the residency requirement had been raised from three to six months in 1893, so instead she chose the city of Guthrie.

When she reached Oklahoma Territory in October of 1895 with her two children, Edith and Harold, and found no lodging, she was taken in by Dr. Forress Ball Lillie. Lillie was a prominent pharmacist, owner of the first drug store in Guthrie and first Secretary of the Territorial Board of Pharmacy. After meeting the ninety-day residency requirement, she filed for divorce on January 11, 1896 in Frank Dale's court in the District Court of Logan County in Guthrie, with Henry Asp serving as her lawyer.[150] Her motive for separation was cruelty, and she spoke of a jealous and temperamental husband, with an addiction to alcohol. Helen was granted the divorce and given custody of the couple's two children. Edward denied that their separation was over his actions, and rather because he had asked Helen to curb her spending.[151]

She remained in Guthrie years after her divorce, became socially involved in the community, and published five articles about the area. The first was published in April of 1896 in *The Illustrated American*, entitled, "In Oklahoma."[152] In her article, "Social Conditions in Our Newest Territory," she spoke of the tribulations of those who made the Run of 1889 and were swept up in court cases about land disputes. Following that, she published a fictional short story, "Oklahoma Claims," in *Lippincott's Monthly Magazine,*

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[150] Case #2110, *Candee v. Candee*, filed January 11, 1896, Territorial Records, Logan County, Guthrie, Oklahoma.

[151] *New York Times*, June 14, 1895.

[152] Helen Churchill Candee, "In Oklahoma," *The Illustrated American 19: 320* (April 4, 1896): 421-422.

in which she described the allure of the region with the opening of the Unassigned Lands and provided a detailed account of the Land Run.

In 1900, trying to depict the territory in a more positive light to easterners unaware of the civility found in the West, Candee wrote, "Oklahoma," for *The Atlantic Monthly.* In it she told of the economical and social growth that had occurred since the territory's creation, such as its thriving agricultural community, and of the politeness that could be found therein. Her last article pertaining to her time in Oklahoma Territory was entitled "A Chance in Oklahoma," and was written for the February 1901 issue of *Harper's Weekly.* After her series of articles, Candee published *An Oklahoma Romance*, a novel about a young doctor who traveled to the new territory, to the fictional town of Lorraine. The story's main character, Dr. Paul Hepburn, came to Oklahoma Territory during the Land Run only to become entangled in a legal battle over his claim. The story is romantic in nature, creating a *Romeo and Juliet* reminiscent storyline between the doctor and his legal adversary. This fictionalized story was a legitimate issue in actuality, one that Candee no doubt witnessed while in Guthrie.

Helen Churchill Candee was the only female journalist to write about Oklahoma Territory in great detail, and her novel was the first to use the area as its background. She wrote of life as a divorce-seeker and also fought to disprove the region as a barbarous environment. She later went on to survive the sinking of the *Titanic* in 1912, was in the same life boat as the "Unsinkable" Molly Brown, and wrote a fictional romance intertwined with her experiences, in a short story entitled "Sealed Orders."[153]

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[153] Linda Wilson, "Helen Churchill Candee: Author of *An Oklahoma Romance*," *The Chronicles of Oklahoma Vol. LXXV, #4* (Winter 1997-1998): 421.

For the amount of detail that can be used to tell Helen Churchill Candee's story, the opposite can be said for divorces among African-American and Native American couples. Little research has been dedicated to the topic of divorces granted to minority couples during this time, and court records did not specify ethnicity, making statistical analysis difficult to determine. When race was noted, it was by newspapers. For example, one notable case of African-American divorce in Oklahoma Territory was the suit between Aaron Jordan and his wife Sarah. She was accused of abandonment because she refused to relocate from their Arkansas home. In 1893, Aaron sued for divorce. The Guthrie newspaper *The Oklahoma State Capital* reported their race.[154] Interracial marriages were also noted by newspapers, but these were incredibly rare.

While divorce had always existed among many Native American communities, over time practices began to model themselves after the Anglo-European court system. This was true at least for the Cherokee in Indian Territory. Similar to the stipulations used in Oklahoma Territory, the grounds for divorce included: Adultery, desertion, cruelty, drunkenness and imprisonment for three years or more.[155] The Cherokee National Council passed several statutes regulating legislative divorce as early as 1881. Following the formation of Oklahoma Territory in 1890, Native American couples traveled to the new territory to obtain divorces. For example, Luke Bearshield went to Guthrie in 1893 to divorce his wife Nellie, making this the first "legal" divorce obtained by any Native Americans.[156]

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[154] *The Oklahoma State Capital*, July 6, 1893.

[155] Glenda Riley, *Divorce: An American Tradition* (New York: Oxford University Press, 1991), 93.

[156] *The Guthrie Daily Leader*, July 14, 1893.

In 1896, after much debate about territorial divorce stipulations, Congress intervened by establishing a one-year residency requirement for all divorce cases in Oklahoma Territory. The bill went into effect on May 25, 1896, stating that no divorce would be granted "in any territory for any cause unless the party applying for the divorce shall have resided continuously in the territory for one year preceding the application."[157] It also stated that the bill was not retroactive. Governor Brad Renfrow completely supported the act, saying that Oklahoma "was spared from hearing the nauseating scandals and passing on the demerits of the domestic infelicities of the States."[158] Oklahoma Territory would never again see the large number of divorces that it had previously experienced, and this congressional intervention marked the beginning of a nationwide reform movement that sought to create a uniform divorce laws.

[157] *United States Statutes at Large,* XXIX, 136.

[158] William Cary Renfrow. *Report of the Governor of Oklahoma to the Secretary of the Interior* (Washington, DC: GPO, 1896), 7.

Chapter 5

The Divorce Reform Movement and the End of a Crisis

Before Oklahoma Territory was even a concept, let alone a catalyst in bringing an end to the Victorian Divorce Crisis and a focal point of the divorce debate, a reform movement to curb divorce was in its infancy in the United States. As early as 1881, groups were forming to combat the practice. The New England Divorce Reform League was the first documented organization, with conservative editorialist Theodore Woolsey and moderate Samuel Dike playing major roles in its development. Woolsey was the group's first President, and Dike acted as the Corresponding Secretary. Dike, a Vermont reverend, had refused to officiate a wedding of a divorced man and was removed from his congregation. He became secretary of the New England Divorce Reform League in 1884, and acted as a driving force for the organization until his death in 1913.

A pro-divorce movement did not ever truly form or need to take action because studies were showing increase in divorce in their favor. Anti-divorce moralists were forced to take great strides in order for their argument to be heard. The New England Reform League had two clear objectives for lowering American divorce rates; through congressional intervention and voluntary participation from state legislations. The league broadened their scope and became the National Divorce Reform League on February 16, 1885, ascertaining, "the need of uniform divorce laws or of uniformity in the laws of marriage, divorce and polygamy."[159] They again changed their name in 1897, this time to

[159] *Report of the National Divorce Reform League, 1886* (Montpelier, Vt., 1887), 6-7.

the National League for the Protection of the Family, which remained until the group disbanded after Samuel Dike's death.

An editorial which ran in the *New York Tribune* in 1879 was an early indicator of the impending crisis: "Truly the land needs a reform in the law of divorce. If it cannot be attained by a uniform, National law, let it be sought by some concurrence of legislation, and some reasonable comity of courts in administration of their local laws."[160] Many Americans felt that if divorce was regulated in a stricter fashion, cases filed would decrease and mills such as Oklahoma Territory would completely disappear.

Samuel Dike was stuck in the middle between conservative moralists and social scientists, clergymen and feminists. He wrote in 1885 that, "The divorce broker sits in his office, and from the compilations prepared for his use, assigns his applications to one State or another as may best suit each case."[161] He recognized the problem and the inability to solve it on a national scale, most notably the lawyers promoting the industry to vulnerable couples.

In support of the collection of statistical data about marriage and divorce by his friend, Carroll Wright, Dike hoped to create a dialogue between the debate's factions. Primarily associated with moralists, his sympathies were with social scientists. His compassion is evident in the fact that he was later largely responsible for the congressional authorizations leading to the two primary government surveys on marriage and divorce. He openly stated that migratory divorce was not the large social problem it

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[160] *New York Tribune*, July 28, 1879.

[161] Samuel W. Dike, *Important Features of the Divorce Question* (Royalton, VT: n.p., 1885), quoted in Riley's *Divorce*, 33.

was believed to be, and he opposed the National Council of Congregational Churches and the Federal Council of Churches for urging ministers to refuse remarriage of divorced individuals.[162]

Carroll D. Wright, on the other hand, was a verbal proponent of divorce. He openly supported the idea beginning in 1891 at the Unitarian Conference at Cambridge. This caused some controversy with marital traditionalists, and his argument created some of the primary themes for the case supporting divorce. He stated that:

> Jesus had not intended to forbid divorce; that the son of God was not a lawmaker but a formulator of general principles; that divorce was a secular institution and therefor the state's responsibility; and that the state had to deal with men as they were rather than as religion would like them to be.[163]

He went on to accuse Christianity of discriminating against women and called for an end to the Pauline moral code which placed couples together as part of God's will. His religious connection to pro-divorce sentiments was an intelligent move on his part, for moralists primarily relied on biblical texts to support their arguments against the institution.

A mass anti-divorce movement was never able to fully develop because of discontent between moralists with varied and contradictory views. But conservatives were unanimously in opposition to the growth of Americans in a progressive direction. Because a national movement never occurred, divorce remained state law. But from 1884 on, every session of Congress introduced a new bill to regulate divorce or interstate traffic. However, no legislation was ever passed. It was thought that uniformity would

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[162] Glenda Riley. *Divorce: An American Tradition* (New York: Oxford University Press, 1991), 110.

[163] William L. O'Neill, *Divorce in the Progressive Era* (New Haven: Yale University Press, 1967), 205.

soon prevail when the National Conference of Commissioners on Uniform State Laws was formed in 1889 and later met in 1892, drafting statutes extending residence requirements to two years and solidifying acceptable grounds for divorce. Not all states joined, but the fact that state-appointed commissions were created at all was viewed as a positive development for the anti-divorce movement.[164]

The official beginning of the crisis was in February of 1889 following the publication of Carroll Wright's *Marriage and Divorce*, which illustrated the rise in popularity of divorce. After its publication, the *North American Review* published an article entitled, "Is Divorce Wrong?" in November of the same year. The article relied heavily on comparisons between the U.S. and countries with lower divorce rates like England and Spain. It neglected to point out that these countries had primarily religious uniformity, in contrast with the U.S. which had sectarian diversity.[165] The three contributors to the publication were considered liberal: Robert G. Ingersoll, New York Episcopal Bishop Henry Potter, and Catholic Prelate James Cardinal Gibbons. Ingersoll was the only contributor to defend divorce. Articles such as this had strong influence over public opinion and only fueled conversations between advocates either for or against divorce.

Warnings about divorce also reached the public through popular publications such as Margaret Lee's 1889 novel, *Divorce,* in which a woman seeks a separation and is confronted by religious opposition from a friend who serves as the moral voice of reason.

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[164] "Secretary's Memorandum," *Proceedings of the 26th Annual Meeting of the NCCUSL* (New York, 1916).

[165] "Is Divorce Wrong?" *North American Review 149* (1889), 513.

The book's preface, written by British Prime Minister W.E. Gladstone, stated that the "marriage controversy (has) reached a stage of development more advanced than elsewhere...America is the arena in which many of the problems connected with the marriage state are in course of being rapidly, painfully and perilously tried out."[166] Statements such as this undoubtedly made those who were already concerned about the divorce increase even more panicked, especially with a comparison to situations abroad to exaggerate domestic statistics. Moralists were not only concerned with the conceptualized decline in civility, but they were now aware of international perceptions of their situation.

The reputation that Oklahoma Territory and other mills gained as divorce havens came more so from the fears of an American public alarmed by the nation's rapidly rising divorce rate, inconsistencies in legislation, increasingly liberal legislation, sensationalized newspaper accounts, and exploitation by profit-seekers, than it did from the number of migratory divorces granted in territorial courts. But divorce mills such as Guthrie did expand the image of the institution to the masses, making it into an industry.

Journalistic megaliths such as the *New York Times* were primarily responsible for shaping public notions about the western divorce mill trend. They ran an article on January 7, 1894, in its editorial section entitled, "A Bid for the Divorce Trade." The article stated, "Sioux Falls [South Dakota] recedes and Perry [Oklahoma] advances proudly to take, in the divorce industry, that high place which the Territorial lawmakers

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[166] Margaret Lee, *Divorce: or, Faithful and Unfaithful* (New York: n.p., 1889), 5.

have sought for their 'largest and most enterprising city.'"[167] It went on to describe a circular sent to the newspaper by an Oklahoma attorney advertising the short residency law of the territory. These types of advertisements were common in eastern publications, promoting scenic environments, warmer winter climates, friendly citizens, reasonable legal fees, and the ability to dodge court appearances. Citizens in Oklahoma Territory were appalled by the representation of their communities in eastern newspapers and it was noted repeatedly in local newspapers and by politicians. The congressional legislation passed on May 25, 1896 lengthening the residency requirement to one year, helped ease some tensions. Although, as late as 1908, the provision was still in dispute.[168]

Territorial newspapers such as the *Oklahoma State Capital,* were in complete support of the lax laws in the territory. In an article, it was stated that laws, "should be convenient to mismatch couples in bringing an end to their misery."[169] In addition, it referred to a bad marriage as an "earthly hell" that divorce brought a solution to, and supported the ninety-day residency requirement as being adequate. The article also claimed that the laws attracted "an immigration which is good for lawyers and hotels and not always unprofitable to real estate men. Oklahoma is suited with its divorce laws, and it don't care whether other states use them or not."[170]

The *El Reno News* reported in 1896 that as people were seeing an end to the easy divorce era, a rush in the district clerk's office in Oklahoma County was so chaotic that it

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[167] *New York Times,* January 7, 1894.

[168] *The Daily Oklahoman*, January 25, 1908.

[169] *Oklahoma State Capital*, February 26, 1894.

[170] Ibid.

paralleled "runs for homestead filings at the land office at the opening of an Indian reservation."[171] In his annual report for 1896, Governor Renfrow wrote that finally Oklahoma "was spared from hearing the nauseating scandals and passing on the demerits of the domestic infelicities of the States."[172] Based on statistics, Oklahoma Territory was then producing fewer divorces than in states such as Washington, Montana, Texas and Indiana, with a lower rate of divorce per one-thousand, showing a decline in the territory's divorce trade.[173]

The American divorce debate existed decades before Oklahoma Territory's creation, beginning during the height of Indiana's role as a mill in the 1850s. At that point, two major factions arose in the dialogue; one of which supported religious tenets and felt as though American society should return to the old model in which divorce was only granted in extreme cases. To them, divorce was considered a social problem and the need to maintain the family model was more important than overcoming marital disharmony. The other faction in the conversation felt that divorce laws should be broadened and increasingly lenient. To this group, marriage was the social issue. They saw divorce as a liberating option for Americans. They felt as though individual happiness came before, but would also lead to, the betterment of society.

A self-help movement arose during this same time as a result of an increasing divorced population. The first divorce self-help book, *How to Get a Divorce*, was

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[171] *El Reno News,* May 29, 1896.

[172] William Cary Renfrow, *Report of the Governor of Oklahoma to the Secretary of the Interior* (Washington, DC: GPO, 1896), 7.

[173] Alexander A. Plateris, *100 Years of Marriage and Divorce Statistics: United States, 1867-1967* (Rockville, MD.: n.p., 1973), 35.

published in 1859 and advised divorce-seekers on divorce laws. The Horace Greeley and Stephen Andrews debate in The *New York Tribune* beginning in December 1852 was a key conversation in the divorce dialogue, and Helen Candee Churchill's fictionalized account of her time in Guthrie undoubtedly served as an instructional and cautionary tale to other divorce-seeking women.[174]

Conservative efforts were somewhat successful in changing divorce legislation; between 1887 and 1906, various legislatures passed 108 marriage and divorce laws, with only seven being relaxations to previous laws.[175] Eighteen states increased residency requirements during these years. Two of those states saw a permanent decrease in their divorce rate. Five others relaxed their residency requirements, and their divorce rate did not change.[176] Whether attempts to change laws came from conservative or liberal parties, they had little affect on divorce statistics.

Republicans welcomed the possibility of a new means for Congress to legislate marriage and divorce, while democrats hoped for the states to create a uniform standard of practices. Two things that interested reformers were whether or not the divorce rate was effected by legislation, and whether most divorces were migratory. Wright confirmed that rates were influenced by changes in divorce laws, but the results about migratory divorce were inconclusive. Almost 20% of divorces were filed in states different from

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[174] *New York Tribune,* Dec. 1, 18, 24, 1852, and Jan. 28, 1853.

[175] Mary Somerville Jones, *An Historical Geography of the Changing Divorce Law in the United States* (Chapel Hill: University of North Carolina, 1978), 28.

[176] James P. Litchenberger, *Divorce: a study in Social Causation* (New York: Columbia University Press, 1909), 108.

where the marriage occurred, but this was normal for a mobile population; 22% of all native-born individuals in 1880 were living in states other than where they were born.[177]

An effort to decrease divorce rates was the incorporation of the "Divorce Proctor" system in many areas. A divorce proctor was an agent of the court who cross-examined witnesses, conducted background investigations and made recommendations based on his own judgment. One of the most notorious proctors was W.W. Wright of Kansas City, who reduced the divorce rate in the city by forty percent. He openly stated that only one in ten divorces was justifiable, and he was notorious for his close-minded methods: "In a typical case we are informed that he tongue-lashed the wife, found the husband a better job, told them to buy a house on time to focus their energies on a common goal, and urged them to have children, as they 'bind married folks together.'"[178] Unfortunately, personal sentiments about divorce often carried over from divorce proctors to reflect on their decisions towards marital separations.

Alimony laws were regularly blamed for an increase in marital separations, and were considered to be a prime motive for women seeking divorce. Western divorces were known for granting alimony to women in greater numbers than in eastern states, leading to criticism and accusations. Magazine writer Anna Steese Richardson reported that alimony was responsible for two-thirds of all divorces and proposed the idea of using a sliding scale to determine awards; this statistic was completely false.[179] The 1909 Bureau

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[177] Carroll D. Wright, *A Report of Marriage and Divorce in the United States, 1867-1886* (Washington, DC: GPO, 1889), 197.

[178] Julia E. Johnsen, ed., *Selected Articles on Marriage and Divorce* (New York, 1925), 79.

[179] "Anna Steese Richardson, "Easy Alimony," *McClure's Magazine 46* (1916): 16-18.

of the Census Report stated that alimony was awarded in only two out of every twenty-two divorces.[180] Moralists often blamed women and changing ideas of womanhood for the increase in divorce. The fact was that twice as many women as men sought dissolutions, and women were traditionally considered responsible for the family. The increased number of women into the workforce was also directly attributed. The *North American Review* published an article entitled, "Are Women to Blame?" in 1889, relating an increase in romantic expectations by women as the cause of the spike in divorce. Surprisingly enough, the five panelists writing the article were all women.[181] Similarly, Anna B. Rogers, an essayist, wrote in her 1909 work, *Why American Marriages Fail*, that women were entirely too individualistic and irresponsible.

The main problem as seen by the Victorians remained; the issue of migratory divorce. As previously discussed, it is difficult to prove the extent of the trend because often couples were less than honest about residency during their divorce petitions and the overall population was relatively mobile during this era. Nonetheless, the areas in which divorce mills thrived such as Guthrie were still blamed for the crisis in the United States. Contemporarily, it is believed that only five percent of all divorces in the Victorian Era were migratory.[182]

It was assumed that divorce led to a breakdown in the family unit between the late-Victorian and early-Edwardian eras, but the traditional family unit was actually

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[180] William O'Neill, *Divorce in the Progressive Era*, 79.

[181] Rebecca Harding Davis, Rose Terry Cooke, Marion Harland, Catherine Owen, Amelia E. Barr, "Are Women to Blame?" *North American Review* 148 (1889): 624.

[182] United States Bureau of the Census, *Special Reports: Marriage and Divorce, 1876-1906,* Two vols. (Washington, DC: GPO, 1909), I, 29.

becoming more secure. While divorce was increasing, life expectancies were extending. In the 1860s, the death of a spouse resulted in the dissolution of 31.5 marriages per one-thousand. It dropped to 26 in the first decade of the 1900s. During this same one-hundred year period, the number of dissolutions as a result of divorce grew from 2 to 9.3 per one-thousand. The combined rate between these statistics shows that divorce dropped from 33 to 27 per one-thousand dissolutions between 1860 and 1960.[183] Therefore, instead of a crisis, it was merely a change in the conjugal family model.

Samuel Dike believed the crisis had ended by 1900. Residency minimums had increased from ninety days to at least six months in almost all of the states that had short requirements, with Oklahoma Territory's being two years by this point. Twelve states had forbidden remarriage from between six months and two years following divorce finalization. Many banned advertising divorce, and in several instances the age of consent was increased. The idea of stiffening marriage laws to prevent divorce grew with Progressives, and it was believed by doing so would prevent marriages that would be most likely to end.[184]

After years of debate and escalating tensions over the topic of divorce, especially as Oklahoma Territory was repeatedly thrown into the national spotlight and used as an example of societal decline, the National Congress on Uniform Divorce Laws met in February of 1906 in Washington, D.C. with over one-hundred delegates in attendance. Every state except for South Carolina, Mississippi, Kansas, Montana, and Nevada were

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[183] Paul H. Jacobson, *American Marriage and Divorce* (New York: Rinehart & Company, Inc., 1959), 141-143.

[184] O'Neill, *Divorce in the Progressive Era*, 54.

represented.[185] With encouragement from prominent religious figures, as well as from President Theodore Roosevelt, the conference came following the Federal Council of Churches' Executive Committee's first annual report in 1905. Roosevelt appealed to Congress by stating:

> The institution of marriage is, of course, at the very foundation of our social organization, and influences that affect that institution are of vital concern to the people of the whole country. There is a wide-spread conviction that the divorce laws are dangerously lax and indifferently administered in some of the states, resulting in a diminishing regard for the sanctity of the marriage relation.[186]

With presidential support for a national meeting regarding divorce and an investigation into a perceived moral decline, the NCUDL was on its way to a successful future.

Pennsylvania Governor Samuel W. Pennypacker, who had initially called for the meeting, was elected as President of the National Congress on Uniform Divorce Laws, with Philadelphia Attorney Walter George Smith as chairman of the resolutions committee. The majority male committee outraged feminists such as Elizabeth Cady Stanton, who viewed divorce as an issue that affected men, women, and children.[187] It is unclear how many delegates were actually sent from each state to attend the conference, but forty-two of the forty-five states were represented, and at least six women were noted in attendance.[188] Many of the delegates were conservative lawyers and clergymen, many with experience from the State Commissions for Uniformity. The second session of the

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[185] *Proceedings of the National Congress on Uniform Divorce Laws, Held at Washington, D.C., February 19, 1906* (Harrisburg: Harrisburg Publishing Co., 1906), 4-8.

[186] U.S. Bureau of the Census, *Special Reports: Marriage and Divorce*, I, 4.

[187] Elizabeth Cady Stanton, Susan B. Anthony, and Mathilda J. Gage, *History of Woman Suffrage* (New York: Fowler & Wells, 1881), I, 722.

[188] O'Neill, *Divorce in the Progressive Era*, 242.

congress met on November 2 of that year in Philadelphia, and only included twenty-one delegations. The first meeting demanded a universal two-year residence requirement, adequate notice, no remarriage for one year, open trials before regular courts, and attorneys to represent individuals in uncontested cases.[189] This was to become uniform state legislation, as it could never be obtained at a federal level.

After much discussion about which grounds for divorce were acceptable by the League, a consensus was reached: "While the following causes...seem to be in accordance with the legislation of a large number of American states, this Congress, desiring to see the number of causes should be recognized in any state; and in those states where causes are restricted, no change is called for."[190] The six grounds of acceptable causation for divorce adopted by the congress were: Adultery, bigamy, conviction of felony, intolerable cruelty, willful desertion for two years, and habitual drunkenness.

In regards to migratory divorce and western mills, the congress agreed on legislation stating that if an individual was seeking divorce in their native state, they could relocate and file, but only on the grounds acceptable in their home jurisdictions. The *New York Tribune* wrote that the congress would have no successes at a national level because, "States which have strict laws will hardly relax them so as to recognize six causes in place of one cause for divorce. Easy Western states will hardly see any reason for making their laws more severe."[191] This was true; only New Jersey, Delaware, and Wisconsin agreed to adopt the uniform measures. The conclusion of the meeting of the

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[189] Riley. *Divorce*, 57-8.

[190] Ibid, 139.

[191] *New York Tribune*, Nov. 16, 1906.

National Congress on Uniform Divorce Laws signified the conclusion of the Victorian Divorce Crisis. The failure of the congress symbolized the failure of the divorce uniformity movement and the impending acceptance of the state of divorce. But as William O'Neill explains, "The failure of the movement for uniformity is all the more interesting when measured against the apparent enthusiasm for it."[192] The Divorce Reform Movement conjured so much support that it is surprising that uniformity was never met.

A resurgence in interest in divorce statistics occurred in 1908 with the compilation and release of a second government study over marriage and divorce statistics, under the suggestion of President Roosevelt, starting from where the first report by Carroll Wright concluded in 1887. (See Appendix 3) This report was far more comprehensive than its predecessor. Questions in the second study included information about alimony and children. Unfortunately, the topic of race still remained ambiguous because local jurisdictions still did not document ethnicity in their records. It also concluded that divorce increased by 30% every five years, with divorce growing at a rate 2.5 times faster than the population growth, and that women were still filing two-thirds of all suits.[193] This revived the uniform divorce law movement briefly, but it did not gain momentum. After the turn of the century, divorce was generally accepted as a necessity. Industrialization, urbanization, changing gender roles, the decline of patriarchal family,

[192] O'Neill, *Divorce in the Progressive Era*, 243.

[193] U.S. Bureau of the Census, *Special Reports*, I, 11-13, 22-24.

rising marital expectations, individualism, and mobility had all contributed to its acceptance.

Between 1870 and 1920, divorce grew from 11,000 to 170,000 cases annually; an increase of more than 15 times. The United States had the highest divorce rate in the world, but during that same time, the population only increased 2.5 times.[194] In 1915, author William E. Carson stated, "the increase of divorce is, in reality, a healthy sign, proving, as it does, that people have become less tolerant of evils which were once endured and for which divorce is the only remedy."[195] The liberalization of divorce regulations was becoming common and increasingly visible across the country.

After 1908, following Oklahoma's statehood and the decline of the American divorce debate, only Texas, Nebraska, Idaho, and Nevada still had six-month residence requirements. The divorce panic of the Victorian Era was at a close. Although uniform divorce regulations failed to come to fruition, somewhat standardized practices developed and took place across the country. These advancements were able to occur because the *Wright Report* brought marriage and divorce statistics to the American public for the first time. Along with this, Oklahoma Territory's growth and centrifugal media presence created awareness and led to a necessary discussion in the United States about marriage and divorce.

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[194] *Statistical Abstract of the United States, 1949*, 80, quoted in Nelson Blake's *Road to Reno*, 150.

[195] William E. Carson, *The Marriage Revolt: A Study of Marriage and Divorce* (New York: Hearst's International Library Co., 1915), 461.

Conclusion

The decline of Oklahoma Territory as a significant divorce mill beginning in 1897, in addition to the meeting of the National Congress on Uniform Divorce Laws in 1906, signified the conclusion of the Victorian Divorce Crisis. The dialogue about the divorce trade that subsisted for years because of the mill in Guthrie led to the actions that formed the congress, and therefore too in ending the crisis. The unique situation that arose in Oklahoma Territory occurred because of a public agitated by the information that the *Wright Report* brought to its attention. Educating the populace about marriage and divorce heightened the discussion enough to solidify a national reform movement.

The report, astonishing to the American people, revealed information about upward trends of desertion and cruelty causation, particularly with the expansion of cruelty grounds to go beyond physical abuse to include mental suffering. The report also signified an influx in cases filed by women, as well as alimony awarded to wives. This is representative of the Revolution in Morals that was occurring during the Victorian Era, shifting notions of gender and familial construction, and both patterns are trends that were represented in Oklahoma Territory during the 1890s. This revolution ushered in the liberality of the Progressive Era as well as a permanent shift in divorce acceptance by moralists.

Guthrie was able to thrive because the territory's early legislation was broad and contradictory, allowing both district and probate courts jurisdiction to settle divorce suits. As a result, Oklahoma Territory became a scapegoat for the hysteria behind the Victorian

Divorce Crisis. The panic caused by the *Wright Report,* in addition to the area's public rise to mill status, was exploited by eastern newspapers and moralists in order to place the blame for a rising liberalization among the American people. As previously noted, it is almost impossible to distinguish divorce mills based primarily on the numbers of individuals openly expressing their reasoning of going to any particular area was to receive a divorce. Many claimants were simply dishonest about their reasoning. Of the estimated 20% of all divorces that were thought to be migratory, we now know that that statistic is closer to 5%. Believing that their community was welcoming such a large divorce-seeking population, caused a stir among Guthrie locals, as well as the rest of the nation, and the passage of legislation extending the residency requirement in the territories to one year came as welcome news to the majority.

Although Oklahoma Territory's decline as a prime divorce mill occurred beginning in 1897, it did not quiet the conversation about divorce. The divorce debate had a significant base between anti-divorce moralists and pro-divorce liberals, and had roots dating back to Indiana's time as a national hub in the 1850s; although it had intensified significantly from the early 1880s on. After a series of name changes, and finally becoming the National League for the Protection of the Family in 1897, the nation's largest divorce reform group was a significant voice in the anti-divorce movement throughout the debate until the NCUDL convened. The anti-divorce faction wished to lower the number of suits filed nationally and to eliminate mills altogether, and they were successful in a sense. No mills developed for the remainder of the Victorian Era after Oklahoma Territory. The meeting of the NCUDL in 1906 was thought to be the

event that would ultimately create uniform divorce laws, but it never drew the desired results and movement essentially ended. Only a brief resurgence occurred with the release of the Bureau of the Census' second study of the familial bond, *Special Reports: Marriage and Divorce, 1876-1906.*

Moving into the twentieth century, in Nevada, Reno and Las Vegas were considered hubs well into the 1950s. This was primarily due to a six weeks' residency requirement enacted in 1931, and the fact that remarriage was permitted immediately. It was in 1909 that divorce-seekers began flocking to the area as more states altered their divorce laws. In 1913, the residence requirement was extended from the Victorian minimum of six months, originally designed to accommodate mobile entrepreneurial or mining communities in the state, to one year, which outraged locals. In that same year, Reno, which had a population of 120,000, had 460 registered automobiles in its city's limits. This is evident of a highly mobile populace. The residency requirement switched back to six months in February of 1915, and in 1922 it was reduced to three months. The revision in 1931 led to a large influx in divorce-seekers to the state. In 1928, 2,595 divorce were granted in Nevada. With the 1931 change, the number of cases jumped to 5,260. To date, Nevada is considered to be the only modern divorce mill.

Following World War I, a national spike in divorce cases occurred because many wartime marriages crumbled due to stresses. The increased divorce rate stabilized itself by the Great Depression, when a lack of supplies required greater attention. But by 1930, one in six marriages ended in divorce.[196] By that same point in time, the West still

[196]Alfred Cahen, *Statistical Analysis of American Divorce* (New York: AMS Press, 1932), 21.

exceeded eastern states in cases filed, and women still received the majority of suits, then at 71%. Cruelty allegations now made up for 47% of all cases filed, more filed by women than men.[197] The events of the Victorian Era set the tone for the progression of divorce throughout the twentieth century; one of general acceptance and steady growth.

The study of the Victorian Divorce Crisis, and specifically the western divorce mill trend therein, is one that requires further research. The lack of significant records in many instances, especially in regards to race, is limiting to the study. But by examining communities such as Guthrie, we can gain a sense of how the divorce trade thrived and was received by individuals both in Oklahoma Territory, as well as the rest of the nation. Divorce mills like Guthrie helped liberalize an institution that ultimately helped women by allowing them a means to escape toxic marriages and better themselves. The *Wright Report* was key in the divorce debate by educating the public, and western mill communities also aided in that conversation. Guthrie helped bring an end to the divorce mill trend, in so doing acted as a prime example in the debate leading up to the NCUDL, ending the Victorian Divorce Crisis, and forever changing the image of American divorce.

[197] Ibid, 22.

Appendices

Appendix 1

Divorces Per 100,000 People

	North Atlantic	South Atlantic	North-Central	South-Central	Western
1870	26	8	43	18	56
1880	29	13	56	37	83
1890	29	21	73	63	106
1900	39	33	95	97	131[198]

[198] U.S. Bureau of the Census, *Special Reports: Marriage and Divorce, 1876-1906*, 2 Vol. (Washington, DC: GPO, 1909), I, 14-15, 70-71.

Appendix 2

Percentage of Divorces Based on Desertion

	Nationwide			Western Division		
	Total	Men's	Women's	Total	Men's	Women's
1867-1886	38.5	45.7	34.7	30.4	47.7	23.1
1887-1906	38.9	49.4	33.6	39.6	66.3	29.5[199]

[199] U.S. Bureau of the Census, *Special Reports: Marriage and Divorce, 1876-1906*, 2 Vol. (Washington, DC: GPO, 1909), I, 25, 86, 88, 90, 92.

Appendix 3

United States Divorce, 1887-1906

	Total Divorces	Women's	Men's
Adultery	153,759 (16.3%)	62,869 (10.0%)	90,890 (28.7%)
Cruelty	206,225 (21.8%)	173,047 (27.5%)	33,178 (10.5%)
Desertion	367,502 (38.9%)	211,219 (33.6%)	156,283 (49.4%)
Drunkenness	36,516 (3.9%)	33,080 (5.3%)	3,436 (1.1%)
Neglect to	34,670 (3.7%)	34,664 (5.5%)	6 (<1%)[200]

[200] U.S. Bureau of the Census, *Special Reports: Marriage and Divorce, 1876-1906*, 2 Vol. (Washington, DC: GPO, 1909), I, 11-13, 22-24.

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