

# MARITAL DISSOLUTIONS IN NEW YORK STATE IN RELATION TO THEIR TREND IN THE UNITED STATES

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THERE has been no nationwide survey of divorce in the United States since 1940. In the last few years, however, the Federal government has stimulated interest in building a registration area for divorce, from which comprehensive statistics could eventually be made available for an expanding area of the country. This method of collecting data which proved so successful in the development of national birth and death statistics, depends for its success on the registration of vital events at the state level. It is encouraging that an increasing number of states have enacted divorce legislation in this regard, and that about three-fifths now have central registration of some kind.

New York is not one of these states. As a matter of fact, ever since 1923, bills for the central registration of divorce with the State Department of Health have been proposed to the State Legislature, but without success. In this connection, it is important to note that the Judicial Council of New York State has the authority to collect and publish divorce statistics, but it has not done so to date. It is considering the matter, however, so perhaps some facts on marital dissolutions in New York State will be routinely available in the near future.

In the absence of such data from a state agency, it is necessary to contact New York's county clerks in whose offices decrees are filed. In New York, as in other states without central registration, procedures vary from one county to another. Some counties file all court records alphabetically; in others all records are filed alphabetically for each year separately; some

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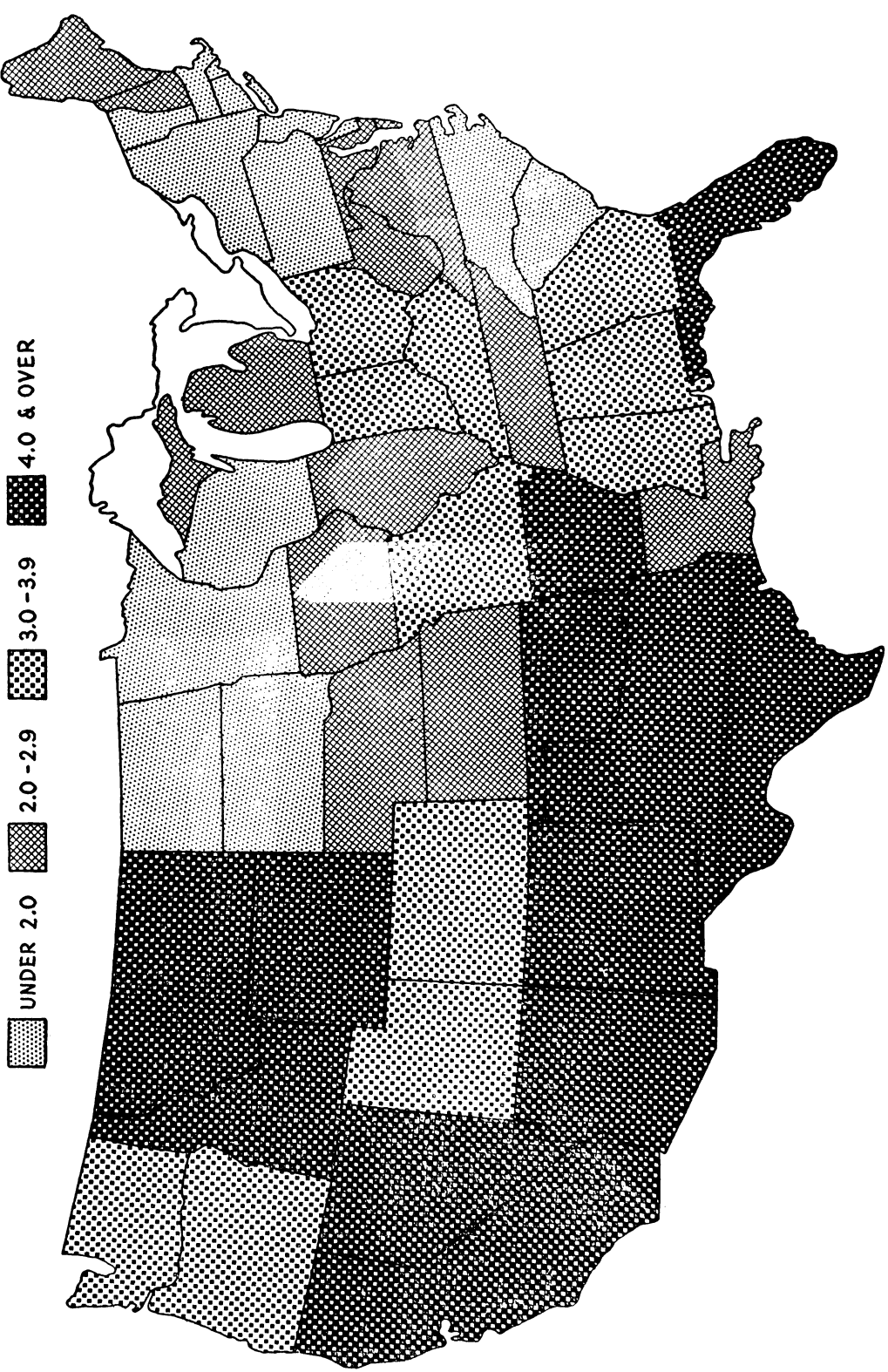


Figure 1. Marital dissolutions by divorce or annulment per 1,000 estimated civilian population, 1948. Note: Final data for Illinois, available after this map was prepared, raised the rate from 2.8 to 3.0.

tabulate detailed statistics; others make no statistical tabulations at all. The situation is even more chaotic in other states where divorce actions may be tried in as many as four different courts in a single county, each court retaining its own records. The data for this paper were computed from information gathered by questionnaire from fifty-two of the sixty-two counties in New York State, and from a majority of the courts and counties in other states for which information has not been available since 1940. Thus, the figures from 1940 forward do not necessarily agree with those published by the National Office of Vital Statistics. Their data have been supplemented with information obtained from state, county and court offices in the forty-eight states and the District of Columbia.<sup>2</sup>

#### LEGAL DISSOLUTIONS OF MARRIAGE IN 1948

In the United States, in 1948, about 421,000 marriages were legally dissolved by divorce or annulment. This is one seventh below the figure for 1947, and one-third less than the all-time high of 628,000 in 1946. Despite this marked drop from the previous two years, the rate of marital dissolutions in 1948 was still the fifth highest in our history, exceeding the rate for every year prior to 1944. The rate in 1948 was 2.9 per 1,000 total population, compared with 4.4 in 1946 and 3.0 in 1944.

The frequency of marital dissolutions is not uniform throughout the country, but varies considerably from region to region. This is clearly evident from Figure 1 which shows the marital dissolutions in 1948 per 1,000 civilian population in each state.<sup>3</sup>

<sup>2</sup> Acknowledgments are made to those who cooperated in providing the basic data for this paper. They include 524 court clerks, 119 county clerks, 33 State directors of vital statistics, The State Judicial Councils for Kansas and Texas, the Secretaries of State for Massachusetts and Ohio, the Division of Procedural Studies and Statistics of the United States Courts, the Family Service Association of America, the Marriage and Divorce Law Committee of the Missouri Bar, the Superior Court of New Jersey, the Department of Justice of the State of North Carolina, the *Nevada State Journal*, the *Record* Newspapers of Troy, New York, and Judge Edwin A. Robson of the Superior Court of Cook County, Illinois.

<sup>3</sup> It is recognized that dissolution rates should be computed on the basis of the married population in each state, but the latter figures are not available for other than Census years. Undoubtedly, the rank of the states according to such refined rates would be changed somewhat, but the basic pattern would not be affected. Detailed statistics on divorce and annulment for the country as a whole will be published in a future paper.

Nevada, in 1948 as in previous years, was far ahead of all other states, with 71 divorces for each 1,000 population. This figure, of course, does not reflect the divorce rate among long-term residents of Nevada since the great majority of that State's decrees are granted to couples who migrate from other states temporarily to take advantage of the liberal divorce requirements of Nevada.

At the other extreme, South Carolina stands unchallenged with only 0.1 dissolutions per 1,000 population. Before 1949, that State did not grant divorce, so the rate refers to annulments only. It is of interest to note, however, that since April 1949 South Carolina has had legislation permitting divorce on grounds of adultery, desertion, physical cruelty, or habitual drunkenness.

Between Nevada, on the one hand, and South Carolina on the other, the country in 1948 divided into three fairly well-defined groups of states according to their divorce and annulment record. Most of the Mountain States, and California, Texas, Oklahoma, Arkansas, and Florida had the highest rates; the Eastern States extending from Vermont to Delaware, as well as the Dakotas, Minnesota, Wisconsin, and North Carolina had the lowest rates. The remaining states fell between the other two groups. In general, the frequency of marital dissolutions tended to increase as one moved from East to West, and from North to South.

Focusing attention on the Northeastern States, however, we find that Maine and New Hampshire had relatively high rates with the result that the dissolution rate for the region varied from as low as 1.0 per 1,000 in New York State to as much as 2.5 in Maine. In all of these States the rate was well below the national average. Indeed, in 1948, the rate in New York was only a third of the rate for the United States as a whole.

#### TREND OF MARITAL DISSOLUTIONS

Figure 2, plotted on a semi-logarithmic scale, compares the trends in marital dissolutions in New York State and in the

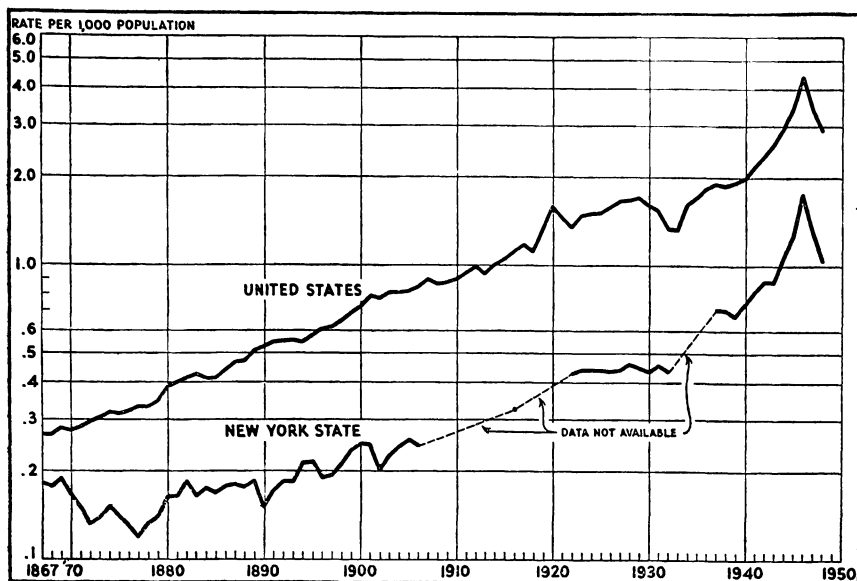


Figure 2. Marital dissolutions by divorce or annulment per 1,000 estimated population, United States and New York State, 1867-1948.

country as a whole from 1867 to 1948.<sup>4</sup> There is evident a steady rise over the years in the dissolution rate both for the United States and for New York State. For the country as a whole, the rate immediately after the Civil War was less than 0.3 per 1,000 population. In the years that followed, the rate

<sup>4</sup> There are certain limitations in these data. The curve for the United States from 1867 to 1939 is based on data which include limited divorces. So far as possible these limited decrees are not included in the data from 1940 on. (For example, the District of Columbia grants limited divorces which are not "temporary" in the usual sense since they may be enlarged on motion after two years. An "extension" of a limited decree does not constitute a new divorce nor become a "duplicate" frequency in the statistics for the District. While it is unlikely that all limited decrees are eventually "extended"—data are not available on the number of limited decrees made absolute—these limited divorces have been included in the statistics for the years in which they were granted in order to conform with the procedure used by the National Office of Vital Statistics. Although these limited decrees have increased from 92 in 1940 to 245 in 1948, in no year have they constituted as much as 13 per cent of the total decrees granted in the District.) In addition, annulments were not tabulated prior to 1926, so they are not included in the rates for the earlier years. However, since annulments play an important role in New York State, as will be shown in a later section, the rates for New York include estimates of annulments from 1922 to 1925, to be comparable with the data for later years. The New York data, published by the Bureau of the Census, were also adjusted to exclude limited divorces for the period 1922 to 1939. Thus, the curve for New York is based on absolute and limited divorces from 1867 to 1906, and on absolute divorces (including Enoch Arden decrees) and annulments from 1922 to 1948; data are not available for 1907 to 1915, 1917 to 1921, and 1933 to 1936.

rose steadily with few interruptions, reaching 1 per 1,000 at the beginning of World War I, and thereafter doubling by the time of our entrance into World War II. At its peak in 1946, the rate was 4.4 per 1,000; since then it has declined to 2.9. Thus, from 1867 to 1948, a period of approximately eighty years, the rate in the United States has increased ten-fold.

So far as can be judged, the pattern has been quite similar in New York State. The rate throughout the eighty-year period has always been at a level far below that of the United States, but the trend has been more or less parallel, especially since the turn of the century. Up to 1893 the rate in New York fluctuated without any definite upward or downward trend—the lowest point being reached in 1877. Thereafter, the general trend was upward; the rate was 0.4 in 1922, 0.7 in 1940, and 1.8, the all-time high, in 1946. Further paralleling the relative changes in the rate for the United States, the rate in New York declined in 1947 and in 1948, dropping to 1.0 per 1,000 population in 1948.

#### DEVIATIONS FROM TREND

Although the divorce rate has moved upward fairly uniformly, there have been several marked deviations from the long-term trend. This is well illustrated by the data for the United States. Prominent peaks appeared after the two World Wars.<sup>5</sup> Apparently, hasty courtship, long separation, and the general difficulty of readjustment to postwar life lead to instability in many war marriages. This is amply documented by the recent upswing in the dissolution rate and the fact that the rise was sharpest among those married less than five years—essentially those married during the war. From 1941 to 1946 the probability of divorce or annulment within the first five years of marriage more than doubled. The rate increased also among couples whose marriage had lasted beyond the early, critical years, but the relative rise was progressively smaller

<sup>5</sup> A similar divergence from the trend is also evident during the Civil War period in Ohio, Massachusetts, and Connecticut.

for each successive five years of marriage.<sup>6</sup> In fact, with a continuance of the peak rates recorded in 1946, two out of every five marriages would end in divorce or annulment. But the 1946 rate has not persisted; the rate declined sharply in 1947 and in 1948, and undoubtedly will decline further in the near future. As one County Clerk in New York State put it: "Apparently the G.I.'s are getting down to earth again." The current drop, therefore, does not mean that the long-term upswing has been reversed; more likely the decline is a temporary phenomenon similar to the decreases which followed previous post-war booms. In fact, it would not be surprising if the divorce rate resumed its historic upward trend in the 1950's, though perhaps at a lesser rate of increase.

Divorce and annulment decline in frequency also during periods of financial crisis. The depression of the 1930's is the best illustration of this phenomenon. Undoubtedly, the inability to pay the costs of court litigation and alimony is a factor in the decline of marital dissolutions during periods of deflation. But that is not the only factor. Estimates for the United States indicate that the probability of marital dissolution dropped sharply during the 1930's among couples married only a relatively short time. The rate also declined among families of longer standing, but the relative decline was smaller, especially for those married 5 to 19 years. Moreover, the decline appears to have persisted for one year longer for those married less than five years, and in both 1933 and 1934 the newlywed group had a lower dissolution rate than the couples married 5 to 9 years. It seems likely, therefore, that part of the decline in divorce during depressions is due to the curtailment of hasty marriages—an effect opposite to that in war periods. In other words, couples who marry in hard times are more sure of themselves, because of longer courtship, more intelligent selection, and sim-

<sup>6</sup> Jacobson, Paul H.: "Total Marital Dissolutions in the United States: Relative Importance of Mortality and Divorce," a paper read before the Population Association of America at the Annual Meeting in Princeton, N. J., May 28, 1949. See Mair, George F. (Editor): *STUDIES IN POPULATION*. Princeton, Princeton University Press, 1949, pp. 3-15.

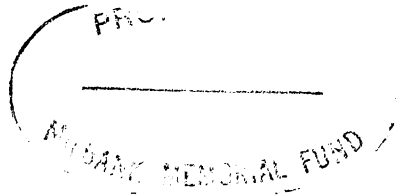


Table 1. Marital dissolutions by divorce or annulment per 1,000 population, United States, 1940-1948.

GEOGRAPHIC REGION AND STATE	RATE PER 1,000 ESTIMATED CIVILIAN POPULATION										PER CENT CHANGE		
	1940	1941	1942	1943	1944	1945	1946	1947	1948	1948 Since 1946	1948 Since 1940	1946 Since 1940	
UNITED STATES <sup>1</sup>	2.0	2.2	2.4	2.8	3.3	3.8	4.5	3.4	2.9	-36	45	125	
New England	1.2	1.3	1.4	1.4	1.7	1.9	2.6	2.2	1.7	-35	42	117	
Maine	1.8	2.1	2.2	2.3	2.8	3.2	4.6	3.3	2.5	-46	39	156	
New Hampshire	1.4	2.1	2.0	2.0	2.1	3.1	4.1	2.7	2.4	-41	71	193	
Vermont	1.2	1.2	1.4	1.6	1.7	2.0	2.9	2.1	1.4	-52	17	142	
Massachusetts	1.1	1.1	1.3	1.3	1.6	1.7	2.3	2.2	1.7	-26	55	109	
Rhode Island	1.1	1.1	1.1	1.1	1.4	1.7	2.1	2.1	1.1	-48	22	133	
Connecticut	1.0	1.2	1.4	1.2	1.3	1.5	2.0	1.7	1.4	-30	40	100	
Middle Atlantic	0.9	0.9	1.0	1.1	1.2	1.5	2.1	1.6	1.4	-33	56	133	
New York <sup>2</sup>	0.7	0.8	0.9	0.9	1.1	1.3	1.8	1.3	1.0	-44	43	157	
New Jersey	0.9	1.0	1.1	1.1	1.3	1.4	1.8	2.0	1.5	-17	67	100	
Pennsylvania	1.0	1.1	1.2	1.3	1.5	1.7	2.6	2.0	1.7	-35	70	160	
East North Central	2.2	2.5	2.6	2.9	3.4	3.9	4.7	3.5	2.9	-38	32	114	
Ohio	2.4	2.6	2.7	3.1	3.5	4.2	5.0	3.7	3.3	-34	38	108	
Indiana	2.4	3.3	3.5	3.7	4.5	5.2	5.9	4.3	3.6	-39	50	146	
Illinois	2.2	2.4	2.6	2.9	3.8	3.8	4.5	3.5	3.0	-33	36	105	
Michigan	2.3	2.5	2.7	2.9	3.4	3.9	5.0	3.5	2.6	-48	13	117	
Wisconsin	1.1	1.3	1.3	1.5	1.8	2.2	2.6	1.8	1.5	-42	36	136	
West North Central	1.9	2.2	2.3	2.6	3.0	3.6	4.6	3.1	2.5	-46	32	142	
Minnesota	1.1	1.2	1.2	1.2	1.5	2.0	2.8	2.0	1.6	-43	32	155	
Missouri	1.9	2.0	1.9	2.2	2.6	3.2	3.9	2.6	2.1	-46	45	105	
Iowa	1.1	1.2	1.2	1.2	1.5	2.1	3.9	2.6	2.1	-46	11	117	
North Dakota	3.0	3.5	3.9	4.4	4.9	5.8	7.1	4.6	3.8	-46	27	137	
South Dakota	0.8	0.9	0.8	1.0	1.1	1.5	1.9	1.5	1.2	-37	50	138	
Nebraska	1.2	1.2	1.2	1.6	1.8	2.3	2.8	2.2	1.7	-39	42	133	
Kansas	1.6	1.7	1.5	1.9	2.2	2.8	3.6	2.6	2.2	-39	38	125	
South Atlantic	2.1	2.4	2.4	2.8	3.1	4.1	4.9	3.5	2.9	-41	38	133	
Delaware	1.8	2.0	2.2	2.7	3.1	3.6	4.4	3.3	2.9	-34	61	144	
Maryland	0.8	1.1	1.5	1.6	1.4	1.9	4.1	2.6	1.4	-17	75	50	
District of Columbia	1.8	2.2	2.8	3.0	3.3	3.6	4.1	3.2	2.8	-32	56	128	
Virginia	2.0	2.0	2.2	2.1	1.5	2.2	2.9	2.5	2.3	-21	15	45	
West Virginia	1.7	1.7	1.9	2.2	2.5	2.7	3.2	2.4	2.4	-25	60	113	
North Carolina	1.5	1.8	1.7	2.0	2.5	3.3	4.4	2.8	2.4	-43	67	193	
	1.1	1.2	1.3	1.6	1.7	2.0	2.5	1.9	1.7	-32	55	127	



South Carolina	* 1.5	.1 2.0	.1 2.6	.1 3.3	.1 4.0	.1 5.8	.1 4.1	.1 3.4	** -41	** 127	** 287
Georgia	5.9	6.4	8.5	10.0	11.1	12.1	9.2	7.5	-38	27	105
Florida	1.8	2.4	3.0	3.6	4.2	5.1	3.6	3.1	-39	72	183
East South Central	2.1	2.5	3.1	3.7	4.2	5.4	4.2	3.4	-37	62	157
Kentucky	2.4	2.3	3.0	3.5	4.2	4.7	3.1	2.6	-45	37	147
Tennessee	1.9	2.0	2.6	4.0	4.9	5.4	3.8	3.4	-37	113	238
Alabama	1.6	2.0	3.3	3.3	3.3	4.7	3.4	3.2	-32	113	213
Mississippi	1.5	2.0	2.8	3.3	3.3	4.7	3.4	3.2	-32	113	213
West South Central	4.1	4.6	5.3	5.9	7.0	7.3	5.5	4.8	-34	37	109
Arkansas	3.5	4.1	4.0	5.6	7.0	7.6	5.4	4.9	-36	75	171
Louisiana	2.8	5.1	4.0	5.4	7.0	7.6	5.4	4.9	-36	75	171
Oklahoma	1.4	2.3	2.9	2.8	2.9	2.7	2.5	2.0	-26	43	93
Texas	4.2	5.2	6.6	7.8	8.9	8.3	6.3	5.8	-30	38	98
Mountain	4.5	5.0	6.1	6.6	7.9	8.6	6.3	5.5	-36	28	100
Montana	4.1	4.2	5.0	7.5	9.3	11.4	8.1	6.6	-42	61	178
Idaho	3.1	3.0	4.0	3.9	5.4	6.7	5.0	4.1	-39	37	123
Wyoming	3.6	4.2	5.0	5.5	6.8	8.6	6.9	5.4	-37	74	177
Colorado	3.1	4.2	5.0	5.5	6.8	8.6	6.9	5.4	-37	74	177
New Mexico	4.0	2.9	3.8	4.5	5.6	6.5	5.6	4.5	-31	13	63
Arizona	2.5	2.5	2.7	3.4	3.9	5.5	4.1	3.5	-36	40	120
Utah	2.2	2.7	4.0	4.9	6.7	7.5	5.9	4.7	-37	114	241
Nevada	2.1	2.7	4.0	4.9	6.7	7.5	5.9	4.7	-37	114	241
Pacific	3.8	4.2	5.3	5.9	7.6	7.8	6.0	5.2	-33	53	129
Washington	3.4	4.2	5.3	5.9	7.6	7.8	6.0	5.2	-33	53	129
Oregon	2.7	2.5	3.4	3.5	4.6	5.5	4.0	3.3	-40	22	104
California	49.4	68.8	88.2	105.5	129.5	157.5	98.6	70.5	-55	43	219
Pacific	3.5	3.6	4.0	4.5	5.2	5.5	5.0	4.0	-27	21	67
Washington	3.7	4.0	4.4	4.8	5.2	5.9	4.3	3.5	-41	-5	59
Oregon	3.2	4.1	4.8	5.2	6.1	7.2	4.3	3.9	-46	22	125
California	3.3	3.5	3.8	4.4	5.0	5.2	5.3	4.2	-19	27	58

<sup>1</sup> The rates for the United States based on the total population including armed forces overseas were 2.6 in 1943, 3.0 in 1944, 3.5 in 1945, and 4.4 in 1946.

<sup>2</sup> Includes dissolutions of marriage (Enoch Arden decrees).

\* Less than 0.05 per 1,000.

\*\* Not computed.

SOURCE: Basic data obtained through inquiries to state, county, and court offices by the Statistical Bureau, Metropolitan Life Insurance Company. For a number of states, the basic data include estimates for counties which failed to provide information.

ilar reasons. Of course, the number of marital dissolutions and the rate per 1,000 total population decline in part during a depression from the very fact that fewer marriages occur.

As would be expected, periods of prosperity exert an opposite influence on the dissolution rate. Thus, we find that the rate rose in the United States with improvement of economic conditions in the years preceding Pearl Harbor.

Now the question arises whether these phenomena have had a comparable effect on the dissolution rate in New York State. Investigation of this question cannot be documented thoroughly due to the absence of detailed data, and other factors which enter into the situation, such as fluctuations in the extent of migratory divorce. For example, Willcox explains the sharp drop in the New York rate from 1876 to 1878, as due to the large number of New Yorkers who flocked to Utah to take advantage of the liberal requirements in Utah's divorce law for those years.<sup>7</sup> The gaps in the New York data for the critical years during World War I and the depression of the 1930's do not enable us to examine the course of the rate during those periods. However, since the rate from 1937 to 1939 was at a much higher level than from 1930 to 1932, it is evident that there was an upward trend with improved economic conditions.

We are on much safer ground in evaluating the effect of World War II on the dissolution rate in New York. For this period, it is apparent from Table 1 that the trend in New York approximated the national pattern. In the nation, the rate in 1946 was two and one-quarter times that for 1940,<sup>8</sup> while in New York it was two and one-half. Moreover, in both the nation and State, the rate in 1948 was about two-fifths above the 1940 level. Thus, the war and economic conditions of recent years have had the same effect on marital dissolutions in New York as in the other states.

In view of the stringent New York divorce law, let us ex-

<sup>7</sup> Willcox, Walter F.: *THE DIVORCE PROBLEM: A STUDY IN STATISTICS*. New York, Columbia University, 1897, pp. 53-54.

<sup>8</sup> Based on civilian population, for comparability with the trend in New York State.

amine in greater detail the recent data for the State to explain the similarity in its trend to that of the country as a whole.

THE ROLE OF ANNULMENTS IN NEW YORK

Four types of matrimonial dissolutions may be granted in New York, namely, absolute divorce, dissolution of marriage, annulment, and limited divorce (Table 2). At this point, we will restrict ourselves to the first three of these actions—those

Table 2. Number of matrimonial decrees granted in New York State, 1940-1948.

AREA AND TYPE OF DECREE	1940	1941	1942	1943	1944	1945	1946	1947	1948
<i>New York State</i>									
Absolute									
Divorce	7,220	7,640	7,970	7,640	9,050	10,770	15,040	11,750	9,310
Dissolution of Marriage <sup>1</sup>	590	570	810	700	810	900	980	860	680
Annulment	2,210	2,650	2,830	2,780	3,280	4,330	8,110	5,580	4,760
Limited									
Divorce	600	630	680	640	800	850	940	1,110	1,090
<i>New York City</i>									
Absolute									
Divorce	3,532	3,743	3,984	3,519	4,274	4,832	6,956	6,176	4,481
Dissolution of Marriage <sup>1</sup>	262	327	418	451	520	554	630	571	474
Annulment	1,143	1,263	1,579	1,408	1,738	2,208	3,851	3,185	2,788
Limited									
Divorce	306	364	389	349	397	386	445	651	667
<i>Buffalo (Erie County)</i>									
Absolute									
Divorce	460	466	457	501	616	705	892	561	549
Dissolution of Marriage <sup>1</sup>	166	93	203	70	79	90	73	34	31
Annulment	399	587	377	475	476	512	1,121	380	282
Limited									
Divorce	69	51	51	49	94	111	80	68	81
<i>Rest of State<sup>2</sup></i>									
Absolute									
Divorce	3,228	3,431	3,529	3,620	4,160	5,233	7,192	5,013	4,280
Dissolution of Marriage <sup>1</sup>	162	150	189	179	211	256	277	255	175
Annulment	668	800	874	897	1,066	1,610	3,138	2,015	1,690
Limited									
Divorce	225	215	240	242	309	353	415	391	342

<sup>1</sup> Enoch Arden decrees.

<sup>2</sup> Includes estimates for ten counties from which no information was obtained—Albany, Monroe, Niagara, Otsego, Putnam, Schoharie, Schuyler, Seneca, Sullivan and Tompkins.

that permanently dissolve a marriage. Limited divorces, or separations as they are commonly called, will be discussed in a later section.

Absolute divorce may be granted in New York for adultery only. From 1940 to 1948, these decrees averaged 9,600 a year. They reached a peak of 15,000 in 1946, double their number in 1940.

A marriage may also be dissolved in New York if a spouse is absent for five years and presumed to be dead. These dissolutions of marriage or Enoch Arden decrees, which are included with divorce in other states, amounted to only 770 per year from 1940 to 1948, or to less than one for every twelve decrees granted for adultery. Obviously, these decrees are too few to affect materially the total dissolution rate in the State.

In addition, a marriage may be dissolved in New York by annulment. In the country as a whole, annulments have constituted only a small proportion of the total legal dissolutions. At the peak in 1946, when close to 22,000 annulments were granted in the United States, they represented only 3.5 per cent of the total. In California and New York, however, they were of much greater importance. Thus in California, annulments constituted somewhat more than one-ninth of all legal marriage dissolutions in 1948. In New York they were an even larger proportion of the total; almost one quarter of the marital dissolutions in 1940, and since 1946 almost one third. In at least five counties<sup>9</sup> in New York, the number of annulments now exceeds the number of absolute divorces. Moreover, in the nine years from 1940 to 1948, an average of 4,060 annulments per year were granted in New York State; almost one-third of the total in the United States.

Thus, it is evident that annulment is a method frequently used for dissolution of marriage in New York. This is not surprising since the grounds for annulment provided by the State's law are relatively broad in scope. They include force, duress,

<sup>9</sup> In 1948, these counties were Columbia, Greene, Orleans, Richmond, and Wyoming.

fraud, bigamy, incurable physical incapacity, non-age, want of understanding, and incurable insanity.

Unfortunately, the New York data regarding annulment and divorce are not available by duration of marriage. However, since the great preponderance of annulments in the country as a whole are granted in the first five years of marriage, it seems reasonable to assume that this is also the case for annulments granted in New York. Certainly, this would help to explain the fact that the dissolution rate in New York followed closely the United States trend in the war and early postwar years. In other words, it is very likely that annulments served as the primary vehicle for dissolving unstable war marriages, and that divorces were used principally for dissolving marriages of longer duration.

#### EFFECT OF THE NEW YORK LAW

The divorce problem has been the subject of as much or more controversy in New York than in any other of the forty-nine legal jurisdictions in the United States. The State's divorce law dates back to 1787, when the legislature first established divorce on the grounds of adultery. Over the years there have been some modifications and additions to the law. In the original Act, for example, the defendant was forbidden to remarry. Today, remarriage is permitted after three years. The problem of remarriage, however, is still important since many divorced New Yorkers remarry in Connecticut and in other neighboring states.

The second basic step in constructing New York's divorce statutes occurred in 1813, when the Revised Laws originated the remedy of separations or limited divorces. This remedy was at first restricted to the wife, and it was not until 1880 that the right was definitely made applicable to husband and wife alike. Other important changes in the New York laws include the addition of Enoch Arden decrees in 1922, and the liberalization of the residence requirements for all types of matrimonial actions. However, the greatest advance in New York has un-

doubtedly come not through the evolution of the law itself, but rather through the fact that the courts have taken a more liberal attitude toward interpretation and application of the law. At least this was true until the recent perjury investigations in New York County.<sup>10</sup> In the large counties in New York, official referees appointed by the court handle the great majority of matrimonial actions. Prior to December 1948 the courts accepted, almost without review, the recommendations of these referees.<sup>11</sup>

Attempts to amend and "liberalize" the New York divorce law have been made in various forms, both direct and indirect. New York took the initiative toward the end of the 19th century in petitioning for national uniform divorce legislation. In the 1930's, attempts were made to amend the law directly in the State Legislature. Since 1945, the Association of the Bar of New York City has sponsored and endorsed a number of suggested revisions of the law, but without success. Indeed, in the 1949 session of the State Legislature a resolution was introduced in the Assembly proposing a commission to study the causes and effects of matrimonial problems, and to recommend changes in the State law. Even this proposal for an inquiry, which is many steps removed from actually changing the law, was killed in the Assembly Ways and Means Committee.

Available statistics and numerous newspaper articles make it clear that New Yorkers often establish temporary residence in other states in order to secure divorce. No precise measure of the extent of these migratory divorces is available. On the basis of data on the place of marriage of those divorced in 1922, Cahen estimated that about 30 per cent of all divorces granted to New Yorkers were obtained outside the State.<sup>12</sup> This esti-

<sup>10</sup> On November 30, 1948, New York District Attorney Frank S. Hogan announced the arrest of six members of an alleged "divorce ring" on charges of perjury and subornation of perjury, and thereafter a grand jury investigation was launched of all uncontested matrimonial actions disposed of during the preceding two years.

<sup>11</sup> A decision by the Appellate Division on May 25, 1949 may actually accelerate the trend toward uncontested annulments in the State. It appears that the decision virtually strips Supreme Court justices of authority to refuse an annulment, once a referee has made such a recommendation.

<sup>12</sup> Cahen, Alfred: *STATISTICAL ANALYSIS OF AMERICAN DIVORCE*. New York, Columbia University Press, 1932, p. 68.

mate is at best an educated guess since Cahen allowed for New Yorkers who migrate to other states to establish permanent residence, but did not take into account those citizens of other states who move to New York after marriage. Statistics for a series of years from 1916 to 1938, showing the place of divorce for persons remarrying in upstate New York, confirm Cahen's conclusion that a sizable proportion of New Yorkers secure divorce in other jurisdictions.<sup>13</sup> These data are similarly affected by migration, and also by the fact that many New Yorkers who go to Reno, for example, remarry there after their divorce. In the absence of valid information we can only speculate on the true extent of marital dissolutions among New Yorkers. Undoubtedly, however, it is of significant magnitude; perhaps as much as one-third to one-half greater than the number recorded in New York State. Then, too, it is probable that some persons, without the financial means of migrating to other jurisdictions, give up attempts to dissolve their "broken" marriages. It is also likely that many others take the "poor man's out," and desert their families, or partially resolve their difficulties by securing a limited divorce in the State.

Limited divorces may be granted in New York on the grounds of extreme cruelty, desertion, and non-support by husband. Apparently, however, relatively few New Yorkers apply for these decrees since the number granted has averaged only 820 per year. Their number varied from as low as 600 in 1940 to 1,100 in 1947 and 1948 (Table 2).

The low dissolution rate in New York has often been attributed to the State's large population of Catholics and the foreign-born. This factor, however, does not appear to explain completely New York's divorce record. The population in Massachusetts, Illinois, and Pennsylvania also includes a large proportion of such persons, yet in each of these States the recorded divorce rate is higher than New York's. In Massachusetts, for example, the rate in the past nine years was one

<sup>13</sup> FIFTY-EIGHTH ANNUAL REPORT. New York State Department of Health, vol. 2, page 262 for 1937, and earlier reports for years prior to 1937; data for 1938 tabulated but not published.

and one-half times what it was in New York. Massachusetts, of course, has a more liberal divorce law; absolute decrees may be granted on seven different grounds.

The situation in New York also contrasts sharply with that in Virginia. There, for example, the recorded rate of legally dissolved marriages is double the New York rate, and bed and board (separation) decrees average two and three-quarter times the number of limited divorces granted in New York. For all of the states in the country, however, there does not appear to be any relationship between the frequency of separation decrees and the dissolution rate. Census data on the marital

Table 3. Divorced or separated<sup>1</sup> persons as per cent of those ever married (excluding the widowed), white population, 15 years of age and over, United States and New York State, 1940.<sup>2</sup>

AGE	WHITE MALES						WHITE FEMALES					
	Divorced		Separated <sup>1</sup>		Divorced or Separated		Divorced		Separated <sup>1</sup>		Divorced or Separated	
	United States	New York	United States	New York	United States	New York	United States	New York	United States	New York	United States	New York
15 & Over <sup>3</sup>	1.8	0.9	6.5	9.9	8.3	10.8	2.4	1.4	4.7	6.4	7.1	7.8
15-19	1.0	.9	20.9	38.4	21.9	39.3	1.2	.4	7.1	8.7	8.3	9.1
20-24	1.1	.4	5.8	7.1	6.9	7.5	1.8	.7	4.5	5.1	6.3	5.8
25-29	1.4	.6	3.8	4.4	5.2	5.0	2.3	1.2	3.6	4.5	5.9	5.7
30-34	1.8	.9	3.4	4.2	5.2	5.1	2.9	1.8	3.5	4.7	6.4	6.5
35-39	2.2	1.1	3.7	4.7	5.9	5.8	3.3	2.1	3.7	5.2	7.0	7.3
40-44	2.4	1.2	4.0	5.4	6.4	6.6	3.2	2.0	3.9	5.5	7.1	7.5
45-49	2.3	1.2	4.1	5.7	6.4	6.9	2.9	1.8	4.1	5.9	7.0	7.7
50-54	2.4	1.1	4.5	6.2	6.9	7.3	2.7	1.6	4.4	6.3	7.1	7.9
55-59	2.3	1.1	4.6	6.4	6.9	7.5	2.5	1.5	4.6	6.7	7.1	8.2
60-64	2.2	.9	4.7	6.6	6.9	7.5	2.3	1.3	4.8	7.1	7.1	8.4
65-69	2.2	.9	4.9	7.0	7.1	7.9	2.1	1.2	5.4	8.1	7.5	9.3
70-74	2.0	.8	5.1	7.3	7.1	8.1	1.9	1.1	6.1	9.6	8.0	10.7
75-79	1.9	.8	5.9	8.5	7.8	9.3	1.9	1.0	8.3	12.6	10.2	13.6
80-84	1.7	.6	7.0	10.3	8.7	10.9	2.0	.9	13.0	19.2	15.0	20.1
85 & Over	1.8	.8	10.2	14.9	12.0	15.7	2.7	1.2	24.6	32.9	27.3	34.1

<sup>1</sup> Married, spouse absent.

<sup>2</sup> Basic data from POPULATION, Vol. IV, 1940 Census, United States—Tables 6 and 9, pp. 17 and 25, New York—Tables 7 and 11, pp. 23 and 38. Washington, D. C., Bureau of the Census, 1943.

<sup>3</sup> Standardized for age on the basis of the age distribution of the total population in the United States, 1940.



status of the white population in the United States in 1940 also indicate no correlation between the proportions divorced and separated in the individual states.

Although relatively few New Yorkers obtain limited divorces in the State, informal separations are apparently frequently resorted to (Table 3). For example, in the Census of 1940 the proportion of the white women ever married (excluding widows) reported as living apart from their husband was one-third greater in New York than in the country as a whole. By contrast, New Yorkers were less frequently reported as divorced than the national average.

When using Census reports as an index of marital disruptions, it is important to recognize certain limitations in the data. First, persons who are divorced or separated are likely to be attracted to large urban centers. New York City, especially, is a magnet for these people. Then, too, the figures relate to persons divorced and not remarried, so that geographic differences in the rate of remarriage undoubtedly affect the data. Finally, the data understate the true situation in New York since a sizable proportion of marital dissolutions in that State are by annulment, and annulees are classified as single persons in Census reports.

With these limitations in mind, we can consider the total frequency of marital disruptions in 1940 among white persons, 15 years of age and over. The index used is the proportion divorced or separated of those ever married, excluding the widowed. Judged by this criterion, New York State is above the national average, even if the data are not inflated to allow for annulees. Among women, the age-adjusted proportion is 7.8 per cent in New York, as compared with 7.1 per cent in the United States as a whole. The disparity is even more pronounced among white men, 10.8 per cent in New York and 8.3 per cent in the United States.<sup>14</sup>

<sup>14</sup> Judged by the 1940 Census data for white women, thirty-four states have a smaller proportion divorced or separated than New York; for white men, thirty-nine states.

Thus, it is evident that although the recorded rate of marital disruptions in New York is the second lowest in the country, migratory divorces, separations and desertions raise the total disruptions above the national average.