Louisiana’s Curiously Liberal Divorce Law: Part I

Though I’m fond of saying “Louisiana has the most liberal divorce law in the civil law world,” I must admit that this statement is something of an exaggeration. In fact, this proposition holds true only for what one might call “contested divorces,” that is, cases in which one of the spouses resists the divorce. With respect to “uncontested divorces,” that is, those in which both spouses consent, Louisiana is, in fact, relatively conservative. Unlike, say, France, which has long permitted spouses to dissolve their marriage, more or less immediately, as long as they both agree, Louisiana never has and still does not. For these reasons, it might be better if I changed my proposition to this: “With respect to contested divorces, Louisiana have the most liberal divorce law in the civil law world.”

The proof of this proposition is provided in the attached chart. In it I’ve set Louisiana’s divorce law alongside the divorce laws of what are undoubtedly the most “socially liberal” of the other civil law jurisdictions, namely, the Netherlands, Belgium, Luxembourg, France, Brazil, and Argentina. As you can see for yourself by comparing these different divorce laws, none of these others jurisdictions is as ready as is Louisiana to permit one spouse, acting alone, to put an end to his or her marriage.

Although reasonable persons may perhaps disagree regarding whether it’s a “good thing” for Louisiana to have the “most liberal divorce law in the civil law world,” no one can deny that this fact is, to say the least, curious. That is so because, as civil law and mixed jurisdictions go, Louisiana is very socially conservative. To be sure, there may be a few jurisdictions in Latin America (for example, Chile) and in Eastern Europe (for example, Poland) with respect to which Louisiana looks like a haven for flaming liberals. But those are the exceptions. And so, one is confronted with something of a political puzzle: how is it that one of the most socially conservative civil law jurisdictions ended up with what is, among civil law jurisdictions, the most socially liberal divorce law?

1 Perhaps I should explain why I selected these jurisdictions rather than others. The answer is that they all display what, at the present moment, is perhaps the clearest indicium of social liberalism, namely, each has recently recognized, in one form or another, same-sex unions. In the Netherlands and Belgium, the law of marriage has itself been re-worked so as to permit same-sex couples to enter it. The other European jurisdictions I’ve selected, although they not gone quite that far (not yet), have nevertheless enacted laws that permit such couples to contract “civil unions.” As for Argentina and Brazil, neither has yet taken even the relatively modest step of enacting legislation that sets up civil unions for same-sex couples; but alone among Latin American jurisdictions, these can boast several major urban centers that have done precisely that via local ordinance.