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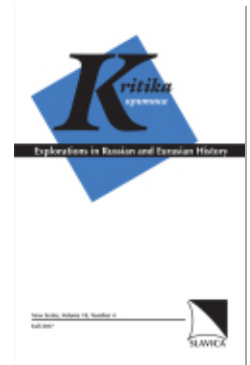
A Living Law: Divorce Contracts in Early Modern Russia

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A Living Law

Divorce Contracts in Early Modern Russia

ANNA JOUKOVSKAIA

GEORGE DANDIN: Ah! I give it up altogether, and I can see no help for it. When one has married, as I have done, a wicked wife, the best step which one can take is to go and throw one's self into the water, head foremost.

—Molière

The historiographical reconstruction of early modern Muscovite divorce and remarriage law and practices was initiated at the end of the 19th century by Russian legal historians as an erudite prerequisite to the study of modern Russian family law or, alternatively, as a part of comparative law studies.¹ All but abandoned for many decades, it was resumed not long ago from a different and broader perspective. Gregory Freeze and Daniel Kaiser were the first to introduce the analysis of marriage law and practices into two distinct, though connected, discussions about, first, the place and role of Orthodoxy in different strata of early modern Russian society and, second, the evolution of the extent and efficiency of church and state control over the tsar's subjects. The evidence about divorce and remarriage practices collected by Freeze tends to reinforce his general argument that, at least at the popular level, Orthodoxy exerted but weak spiritual authority, while the church was unable to monitor its adherents effectively until the 1760s.² Kaiser uses the same kind of material to argue, on the contrary, that the majority of Muscovite

¹ A. D. Sposobin, *O razvode v Rossii* (Moscow: M. N. Lavrov, 1881); A. I. Zagorovskii, *O razvode po russkomu pravu* (Khar'kov: M. F. Zil'berberg, 1884); M. F. Vladimirkii-Budanov, *Obzor istorii russkogo prava*, 2nd ed. (St. Petersburg: N. Ia. Ogloblin, 1888).

² Gregory L. Freeze, "Bringing Order to the Russian Family: Marriage and Divorce in Imperial Russia, 1760–1860," *Journal of Modern History* 62, 4 (1990): 709–46; Freeze, *The Russian Levites: Parish Clergy in the Eighteenth Century* (Cambridge, MA: Harvard University Press, 1977). See also Georg Michels, *At War with the Church: Religious Dissent in Seventeenth-Century Russia* (Stanford, CA: Stanford University Press, 1999).

Christians had appropriated fundamental elements of Christian practice by the 17th century, while the church administration was far from impotent before parishioners.³

This contradiction suggests that citing divorce and remarriage practices in broader discussions of religiosity may be premature, for our source base remains insufficient: we simply do not have a coherent picture of practices either locally or across the entire empire. The present article aims to enrich this source base, focusing on a practice of divorcing by contract without the intervention of the church court. It synthesizes preceding research on so-called divorce letters (*razvodnoe pis'mo, otpusknaia gramota, svobodnoe pis'mo, zapis'*) and adds a proportionally significant number of newly discovered contracts, which allows us to take a step forward in elaborating a more complete and, in fact, a more consensual picture. On the one hand, the material presented in this article corroborates and enhances the vision of severe limitations upon the power of the church courts to control divorce and remarriage among the provincial populace. On the other hand, the same materials show that divorcing outside the church institutions did not automatically indicate the rejection of Christian rules or values. Men and women who chose to divorce by contract did not exhibit less formal respect for Orthodox principles than those who duly subjected themselves to episcopal authority.



The study of divorce and remarriage practices throughout the medieval and early modern Christian world encounters serious difficulties due to the lack of sources. Deeply influenced by the church doctrine of indissolubility of marriage, Catholic societies, and even Protestant ones (despite the Reformists' rejection of the sacramental status of matrimony), do not constitute propitious contexts for the study of these practices, for when they existed, people tended to hide them.⁴ Eastern Slavic Christendom presents a somewhat different case. Here a relatively liberal Byzantine marriage law prevailed for a very long time. In certain countries it continued to function well into the 19th

³ Daniel H. Kaiser, "Whose Wife Will She Be at the Resurrection?: Marriage and Remarriage in Early Modern Russia," *Slavic Review* 62, 2 (2003): 302–23; Kaiser, "Church Control over Marriage in Seventeenth-Century Russia," *Russian Review* 65, 4 (2006): 567–85. See also Valerie A. Kivelson and Robert H. Greene, eds., *Orthodox Russia: Belief and Practice under the Tsars* (University Park: Pennsylvania State University Press, 2003).

⁴ Roderick Philips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge: Cambridge University Press, 1988).

century.⁵ In Russia, the authorities started to develop an uncompromising church doctrine and powerful law enforcement mechanisms in the 1720s, and progressively transformed their divorce and remarriage policy into one of the most draconian in Europe. But prior to this shift, the tsar's subjects, in contrast to Western Christians, did not have an especially strong incentive either to repress a need for divorce and remarriage or to conceal these practices. While early Russian sources of this kind are astonishingly scanty, the cause for this silence should be imputed more to the historically unfavorable conditions in the creation and preservation of family archives than to the rarity of the practice.⁶

Furthermore, for the whole of Europe, available sources are primarily judicial documents. Precious as these are, they present at least two major drawbacks for the study of divorce and remarriage. First, they cover situations of conflict and only hint at consensual practices that could have been frequent or even predominant in certain societies. Second, court records allow an analysis of the relationships between theory and practice through comparison of the law with the actions of judges, but they are less informative on the degree to which society as a whole may have internalized the prescriptions of canonists on marital practices.⁷ Thus to attain a complete picture, the study of extrajudicial practices appears necessary.

Having largely focused their attention on written law and court files, historians of Russia have made little effort to locate sources revealing extrajudicial practices of divorce. Yet their existence is known through the testimonies of foreign travelers: Baron Sigismund von Herberstein, Captain Jacques Margeret, Jacob Reutenfels, and others mentioned them.⁸ A hypothesis about their important place in early modern Russian society was formulated by Aleksandr Ivanovich Zagorovskii in the 1880s. Zagorovskii extrapolated his observations based on Belarusian divorce contracts, suggesting that in Muscovite Russia as well, "two currents coexisted: divorces according to the canons and rules of the church, and divorces according to the custom, independent from the church rules and sometimes contrary

⁵ Constanța Vintilă-Ghițulescu, "Autour du divorce: Disputes et réconciliations au tribunal (Valachie, 1750–1830)," *Annales de démographie historique* 2, 118 (2009): 77–99.

⁶ S. I. Tsemenkova, *Istoriia arkhivov Rossii s drevneishikh vremen do nachala XX veka* (Ekaterinburg: Izdatel'stvo Ural'skogo universiteta, 2015).

⁷ James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: University of Chicago Press, 1987), 588.

⁸ Sigismund von Herberstein, *Moscovia der Hauptstadt in Reissen* (Vienna: Michael Zimmerman, 1557); Jacques Margeret, *Estat de l'Empire de Russie et Grand Duché de Muscovie* (Paris: Mathieu Guillemot, 1607); Jacob Reutenfels, *De rebus Muschoviticiis ad serenissimum Magnum Hetruriae Ducem Cosmum tertium* (Padua: P. M. Frambotti, 1680).

to them. Recognized by the secular government, the latter were not always rejected by the spiritual one.”⁹

Serious interest in early modern Russian divorce contracts arose among historians in the 1990s.¹⁰ Several interpretations of this practice have been proposed. According to Gregory Freeze and Nada Boškovska, men and women who terminated marriages with contracts “as they saw fit” and eventually remarried were unconscious of the law or even deliberately ignored it, while the church did not have the institutional means to enforce it.¹¹ Marianna Murav’eva states that “self-divorce may be considered a flexible mechanism of private settling in a context of the repressive system of marriage regulation by the Russian church.”¹² And Ol’ga Kosheleva considers that “people created their own rules of life and acted according to them.”¹³

It would be difficult to assess which of these interpretations is the most accurate without bringing in more historical material. Indeed, if we take the period before the foundation of the Holy Synod, the collegial institution that replaced the patriarch as the head of the Russian Church in 1721 (a symbolic time limit that corresponds to the start of a more active state policy on marital questions), we find that historians have located only seven complete divorce letters: four documents from the 17th century and three from the early 18th. References to several more divorce letters appear in court files, but the original texts are usually not reproduced. To remedy the scantiness of the source base, I have conducted an extensive search in the books of contract registration (*knigi zapisi kreposteĭ*), a type of archival source that has almost never been systematically exploited by historians, and discovered eleven previously unknown divorce letters from the era of Peter the Great.¹⁴ These new sources make it possible to reassess the knowledge about divorce and remarriage

⁹ Zagorovskii, *O razvode*, 263.

¹⁰ Nada Boškovska, *Die Russische Frau im 17. Jahrhundert* (Vienna: Böhlau, 1998) 68–87; Robin Bisha, “Marriage, Church, and Community in 18th-Century St. Petersburg,” in *Women and Gender in 18th-century Russia*, ed. Wendy Rosslyn (Aldershot, UK: Ashgate, 2003), 227–42; Ol’ga Kosheleva, “‘Without Going to a Regular Court...’: The Phenomenon of the ‘Divorce Letter’ in Petrine Russia,” in *Women in Russian Culture and Society, 1700–1825*, ed. Rosslyn and Alessandra Tosi (Basingstoke, UK: Palgrave Macmillan, 2007), 107–24; M. K. Tsaturova, *Tri veka russkogo razvoda (XVI–XVIII veka)* (Moscow: Logos, 2011), 188–204; Kosheleva, “‘Ne khodia k pravil’nomu sudu...’: Fenomen ‘razvodnogo pis’ma’ v Rossii petrovskogo vremeni,” in *Kazus: Individual’noe i unikal’noe v istorii* (Moscow: Novyi khronograf, 2016), 325–42.

¹¹ Freeze, “Bringing Order to the Russian Family,” 713, 720; Boškovska, *Russische Frau*, 79.

¹² M. G. Murav’eva and N. L. Pushkareva, eds., *Bytovoe nasilie v istorii rossiiskoi povsednevnosti (XI–XXI vv.)* (St. Petersburg: Evropeiskii universitet, 2012), 80.

¹³ Kosheleva, “‘Ne khodia k pravil’nomu sudu...,’” 326.

¹⁴ Books of contract registration were introduced in Moscow and in many provincial towns in 1700, following an order of Peter the Great. See A. V. Zhukovskaia [Anna Joukovskaia], “Ot

practices in early modern Russia. But before we switch to analyzing them, a brief overview of formal Muscovite attitudes toward divorce might be useful.

Muscovite Attitudes toward Divorce in Comparative Perspective

Since the emergence of the monogamous nuclear family as a basic socio-economic unit, men and women have struggled to survive without a physically sound spouse. In Russia, the percentage of marriages approached 100 percent during the 18th century.¹⁵ Remarriage following widowhood was common all over the Christian world.¹⁶ But mortality was not the only factor that broke up conjugal units. Infirmary, long-term military recruitment, and economic precariousness also led to widespread breakup of marriages, as did individual factors such as conjugal violence or sexual deviance. Under the pressure of such dynamics, married couples often ceased to function as economic survival units, and the spouses faced the objective necessity of divorce before they could consider remarriage.

Every part of Christendom dealt with this fundamental problem in its own way.¹⁷ Catholic countries offered a single legal solution practically accessible to ordinary people: separation. It was a highly inadequate remedy, for it did not allow remarriage. Using the words of a French 18th-century critic, “separations are much more repugnant than divorce, because separation isolates two human beings and leaves them in a kind of nonbeing.”¹⁸ However, many people seized this legal instrument for lack of a better option.¹⁹ Forms of marriage termination permitting a new wedding, although they existed theoretically, were well-nigh impossible.²⁰ As a result, in isolated zones of the Catholic world where economic pressure was particularly strong, illegal divorces followed by concubinage could become common, even producing a sentiment of involuntary de-Christianization in the population, as Carlo Levi

porucheniiia k uchrezhdeniiu: A. A. Kurbatov i ‘krepostnoe delo’ pri Petre I,” *Ocherki feodal’noi Rossii*, no. 13 (2009): 314–76.

¹⁵ Boris N. Mironov, *The Social History of Imperial Russia, 1700–1917*, with Ben Eklof, 2 vols. (Boulder, CO: Westview, 2000), 1:172.

¹⁶ Martine Segalen, *Historical Anthropology of the Family*, trans. J. C. Whitehouse and Sarah Matthews (Cambridge: Cambridge University Press, 1986), 32.

¹⁷ Philips, *Putting Asunder*; Eve Levin, *Sex and Society in the World of the Orthodox Slavs, 900–1700* (Ithaca, NY: Cornell University Press, 1989).

¹⁸ Louis Sébastien Mercier, *Tableau de Paris* (Geneva: Slatkine Reprints, 1979), 629–31.

¹⁹ Dozens of separations were announced every year in Paris: 145 in 1710, 92 in 1720, 105 in 1730, and so on. See Giacomo Francini, “Moralia coniugalia ou de l’impossible sacralité du mariage à l’époque de la raison, 1750–1792” (PhD diss., EHESS, 1998), table 17, 311.

²⁰ In 18th-century Paris, with its half-million population, such cases could be counted on one’s fingers (*ibid.*, 174–200).

discovered as late as the 1930s in a part of southern Italy severely affected by a rural exodus.²¹

Protestant England authorized divorce, but the complexity and the cost of the procedures prevented almost everyone but the very wealthy from using this means of marriage termination. Formal private deeds of separation developed in 1650 to meet the need of nonadulterous couples to break from a cohabitation that, for whatever reason, had become insupportable. However popular among the middling sort and even the elite, this institution no more opened the way to remarriage than the Catholic separation, leading only to the formation of a bigamous household.²²

The Muscovite legal system differed from its Catholic and Protestant counterparts in providing two paths for divorce with the possibility of remarriage accessible to all strata of the population: the authorized way sanctioned by a church court; and a less official but accepted form of mutual agreement, formalized in a divorce letter.

To divorce in court, a husband, a wife, or a couple could file a petition with the head of a diocese. The cases were judged primarily on the basis of a digest common to the Eastern Slavs called *Kormchaia* (literally, The Pilot), which was a complex compendium of canon law extracted from Byzantine nomocanons.²³ The second printed edition of *Kormchaia* (1653) functioned as a sort of official code.²⁴ Medieval Russian Regulations (*Ustavy*) of St. Vladimir and of Iaroslav Mudryi, Decrees of the Russian Church Councils (*Sobory*), and various charters (*gramoty*), instructions (*nakazy, instruksii*) and written sermons (*poucheniia*) by the hierarchs of the Russian church were other important sources of canon law in use during the Muscovite period that contained norms about divorce and remarriage.²⁵

Taken together, these written sources recognized a rather long series of reasons for marriage termination, which can be summarized as follows:

- adultery of the wife; adultery of the husband (only under certain aggravated circumstances);

²¹ Carlo Levi, *Cristo si è fermato a Eboli* (Turin: Einaudi, 1990), 88–90.

²² Lawrence Stone, *Road to Divorce: England, 1530–1987* (Oxford: Oxford University Press, 1990), 149–82.

²³ Ivan Zuzek, *Kormčaja kniga: Studies on the Chief Code of Russian Canon Law* (Rome: Pontificium Institutum Orientalium, 1964); Daniel Kaiser, *The Growth of the Law in Medieval Russia* (Princeton, NJ: Princeton University Press, 1980). References to the very rich literature in Russian on the subject can be found in these works.

²⁴ Zagorovskii, *O razvode*, 89.

²⁵ V. A. Tsy-pin, *Tserkovnoe pravo: Kurs leksii* (Moscow: Kruglyi stol po religioznomu obrazovaniiu, 1994).

- loss of innocence before marriage (by the wife);
- indecent behavior of the wife (spending a night away from home with the exception of her father's house, going to public baths or places of entertainment including pothouses without the husband's permission) or the husband (concubinage, slanderous accusation of adultery against the wife, offense against the wife's chastity);
- attempted or intended murder of one spouse by the other;
- absence without any notice for at least five years, confirmed by sworn testimonies of the absent spouse's death (if the absent one returned, he could try to resume the marriage, even if the other spouse had contracted another marriage in the meantime; if the first husband refused to resume the marriage, the second marriage was deemed illegal anyway);
- captivity;
- desire of one of the spouses to enter a monastery (with the other's consent);
- refusal of one of the spouses to accept baptism;
- state treason (this motive was not recognized in practice).²⁶

Cruel treatment or the poor management of the family fortune, which occupied a prominent place in some Western legal traditions (the *Coutume de Paris*, for example), were not recognized by the written sources of canon law in use in Muscovite Russia.²⁷ In cases of serious maltreatment confirmed by the parents of the victim, hierarchs could punish the guilty party and even pronounce temporary separation but did not grant divorce.²⁸

Finally, some of the most important causes of disruption of the conjugal unit—serious malady and inability to procreate—were treated in the written law in a highly contradictory way. Some sources authorized divorce on the basis of prolonged disease, disability (blindness, for example), and impotence (sexual incapacity to consummate the marriage for three years). Others explicitly prohibited it. Both injunctions coexisted under the cover of *Kormchaia*.²⁹

²⁶ Zagorovskii, *O razvode*, 133–34.

²⁷ See Francini, *Moralia*, 185–87. Wiesner-Hanks writes that “divorce was allowed, for incompatibility, drunkenness, and violence as well as adultery” by the early modern Russian “legal provisions.” In this statement, only the part concerning adultery is correct: see Merry E. Wiesner-Hanks, *Christianity and Sexuality in the Early Modern World: Regulating Desire, Reforming Practice* (London: Routledge, 2000), 130.

²⁸ See the examples in Tsaturova, *Tri veka russkogo razvoda*, 71–72.

²⁹ D. Kaizer [Daniel Kaiser], “Razvod, ser'eznaia bolezni' i supruzheskaia liubov' v Rossii v XVII v.,” in *Ot Drevnei Rusi k novoi Rossii: Iubileinyi sbornik, posviashchennyi chlenu-korrespondentu RAN Ia. N. Shchapovu*, ed. A. N. Sakharov et al. (Moscow: Palomnicheskii tsentr Moskovskogo Patriarkhata, 2005), 260–62.

Seeking divorce in a court presented serious practical difficulties, especially for common people, even if a spouse could claim one of the eligible causes. First, during the period under study, the number of dioceses in Russian territory was less than twenty, which means that most people had to travel hundreds of kilometers from home to find a bishop or the patriarch. Once in town, they had to stay there for the whole trial, for they had no right to be represented. In civil trials, one could hope to recover expenses for travel from one's opponent, but divorce cases excluded this possibility. Second, *Kormchaia* was not a law code in a strict sense of the word but a collection of patristic texts conceived at different times and under the influence of diverse cultural, social, and economic contexts; it was a conglomerate of often contradictory judgments, all of them vested with equal authority by the Russian church. Understanding and synthesizing *Kormchaia*, other sources of canon law, and the *Ulozhenie* of 1649 (which contained procedural law), must have been a very difficult task even for a trained person, let alone an illiterate one.³⁰ The supplicant could not avoid hiring both an ordinary scribal assistant and a legal adviser to help him through a complicated set of formalities, which included the submission of different forms of evidence (oral and written declarations, witness testimony, official documents) and eventually face-to-face confrontations. These advisers (usually they were bishop's clerks) did not come cheap. Furthermore, in cases when spouses did not agree, it was easy for their respective advisers to craft valid legal arguments supporting contrary propositions (see below), lengthening the trial and increasing its cost. These two circumstances indicate that diocesan courts were inaccessible in practice to the vast majority of the tsar's subjects, even though archival sources show that they were used not only by nobles or rich merchants but also by ordinary folk from time to time, and not unsuccessfully.³¹ Even those who possessed the material means to request episcopal justice may have willingly abstained from it. *Kormchaia* was so full of contradictions and cryptic injunctions that the interpretation depended very much upon the personal views of a given judge on the sacrament of marriage and the exigencies of life, so that one could never be sure of the result of the trial.

On the whole, the diocesan court does not seem to have been a particularly attractive place for spouses facing an urgent need to part company and willing to move on separately with their lives. Probably for this reason, some people disregarded both the Christian strictures and the church authorities and acted

³⁰ Richard Hellie, trans. and ed., *The Muscovite Law Code (Ulozhenie) of 1649* (Irvine, CA: Charles Schlacks Jr., 1988).

³¹ Kaiser, "Whose Wife Will She Be?," 311–18.

according to folkloric traditions. A 16th-century Italian traveler gives an idea of one such practice in the following picturesque passage:

Lay persons can (when it happens that husband and wife agree) divorce between themselves and leave each other; to do so they use this ceremony of walking along a stream of water, the husband on one side and the wife on the other, carrying a piece of thin cloth, and both push and tear at it, so both get just a bit of it in their hands, and having done this both can go where they like it best and stay free of each other.³²

Whether practices of this kind were frequent in early modern Russia is a question that will probably never be answered due to a lack of sources. What does seem clear, however, is that terminating a marriage through a divorce letter appeared to be an alternative strategy for those who would neither go to a high-level church court (for whatever reason) nor embrace pagan rites.

With only eighteen divorce letters from the whole of the pre-imperial period in our possession, it is still impossible to decide whether divorcing by contract was common in the Muscovite state. We can be sure, though, of the durability and wide geographical distribution of this practice. We have four "letters" from the 17th century (starting in 1638) and 14 from the first two decades of the 18th century. The contracts were concluded all over the country, in such distant places as Vologda, Ladoga, St. Petersburg, Sevsk, Tambov, Tikhvin, or Shatsk.³³ Eleven "letters" were composed over a short period of time (1704–19) in one place, the town of Sevsk (in southwestern Russia). Here contractual divorces happened almost every year, sometimes several times a year.³⁴ No equivalent corpus of church-court records concerning divorce has been discovered up to now. This fact shows that, at least in some

³² Raffaello Barberini, *Relazione di Moscovia scritta da Raffaello Barberini (1565)*, ed. Maria Giulia Barberini and Idalberto Fei (Palermo: Sellerio, 1996), 17.

³³ (1) A contract between Nastas'ia Svishcheva and her husband, stating her illness (1638), in Kosheleva, "‘Ne khodia k pravil'nomu sudu...,'" 334; (2–3) Melaniia, a town dweller's wife from Tikhvin, declares her desire to enter a convent because of her illness (1675); and Paraskov'ia, a peasant's wife from the Ladoga region declares herself ill, incapable of living with her husband, and willing to enter a convent (1697), both in *Akty iuridicheskie, ili sobranie form starinnogo deloproizvodstva* (St. Petersburg: Sobstvennaia Ego Imperatorskogo Velichestva tipografia, 1838), 425–26; (4) a contract between Nikifor Islenev, a noble, and his wife Solomonida (1687); B. N. Morozov and Nadia Boshkovskaia, "Razvodnaia zapis' XVII v.," *Rodina*, no. 10 (1992), 95; (5) a "free letter" by St. Petersburg resident Kuz'ma Kolesnikov (1718), in Kosheleva, "‘Ne khodia k pravil'nomu sudu...,'" 327–28; (6–7) divorce letters from a merchant, Ivan Rybnikov (1720), and a sexton, Stepan Vymorkov (1722), in Kosheleva, "Without Going to a Regular Court," 110–11.

³⁴ Rossiiskii gosudarstvennyi arkhiv drevnikh aktov (RGADA) f. 615, op. 1, d. 9913, l. 150; d. 9912, ll. 4–5 ob., ll. 95–95 ob.; d. 9916, ll. 6 ob., 108 ob.–9, 118–18 ob.; d. 9917, l. 9 ob.; d. 9921, ll. 15–15 ob., l. 55; d. 9922, l. 116; d. 9924, l. 104 ob.; d. 9927, ll. 143 ob.–44.

places, the practice of divorcing by contract was probably regarded as normal, while going to a bishop's court remained exceptional.³⁵

Combining previously known and fresh evidence allows us to propose new answers to old questions. What was the official legal status of the divorce letter? How did it function in reality? How was it viewed by the central and local authorities and by the population?

The Divorce Letter as a Legal Instrument

1 August 1714. Komaritskaia Crown domain resident's son of the village Podlesnye Novoselki Denis Sabachnik gave this document (*zapis*) to his wife Avdot'ia, Efrem's daughter, stating the following: that he, Denis, has been married to her, Avdot'ia, for almost 16 years, and that since their wedding he, Denis, never shared a bed with her (*postel' nogo prebyvaniia ne bylo*), Avdot'ia, and in the month of July of this year 1714 she, Avdot'ia, requested to be free of him, Denis, and now he, Denis, makes her, Avdot'ia, free of himself, and if the great sovereign authorizes her, Avdot'ia, to marry someone else, then he, Denis, will not plead against it, and he, Denis, is not to take another wife and will give her dowry back in its entirety; Sevs clerk's son Danila Sudeikin has signed this document in place of Denis at his request.³⁶

The letters were usually written on behalf of the spouse whose behavior or circumstances were considered responsible for the divorce (even if that person did not want to terminate the marriage). The letters consisted of two parts: a declaration of the reasons for ending the marriage, followed by the conditions of termination. In most cases, no additional information is available that would allow us to check the spouses' statements about the motives pushing them to break up the marriage. But this does not make divorce contracts an inferior type of historical source in comparison with judicial files. To be sure, when people came to a church court, their ostensible reasons for divorce were supposed to withstand an examination by the authorities; in case of a trial, the declarations of the opposing parties were cross-checked against each other. Still, for a historian, the series of mutual accusations and counterevidence in the form of opposing testimony that compose a typical Muscovite trial record hardly represent a better instrument for discovering who was telling the truth than the laconic formulae of divorce contracts. In both cases, we cannot judge with certainty the veracity of assertions. But we can observe and analyze the choice of arguments, which allows us to make

³⁵ In fact, 17th-century divorce court records are so rare that even experienced historians of family life believe (wrongly) that they do not exist (Tsurova, *Tri veka russkogo razvoda*, 98).

³⁶ RGADA f. 615, op. 1, d. 9924, l. 104 ob.

inferences about the legal culture. As in the case of “pardon tales” studied by Natalie Zemon Davis, divorce letters were a “collaborative product” (drafted through the common effort of the spouse[s], the scribe, and sometimes the priest), and even if a letter did not stick to the facts, it “can still be analyzed in terms of the life and values” of the persons involved.³⁷ As Arlette Farge has remarked, words are more than testimonies, “they are fragments of ethics.”³⁸ Let us listen to the words 18th-century Russian townspeople and peasants chose to explain the reasons that, from their point of view, justified breaking a marriage. The most frequent motive in documents under study is an illness, including sexual incapacity:

By the will of God, I became sick [*uchinilasja mne skorb’*] after childbirth, and because of this sickness it was impossible for me, Marfa, to live with him [*zhit’ s nim*], Kandrati, and I, Marfa, have not lived with him, Kondrati, for more than four years.³⁹

By God’s will and because of my illness [*ot bolezni*] I do not live with him, Prokofii.⁴⁰

My wife, Ekaterina, pleaded that she cannot [*ne v mozh’*] live with me because of her illness and wants to enter a monastery.⁴¹

By God’s will I got an illness [*zaskorbela zhivotnoi bolezni*] many years ago, and my left hand was paralyzed and I cannot use that hand, and because of this illness I have not lived with my husband as a wife should [*s muzhem svoim po zakonu ne zhivu*] for many years.⁴²

After her wedding they never had a lawful marriage [*zakonnogo braka u nikh ne edinozhdy ne byvalo*] for more than four years.⁴³

Other spouses explained that they had been separated by circumstances such as military recruitment for so many years that their marriage had ended de facto:

³⁷ Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford, CA: Stanford University Press, 1987).

³⁸ Arlette Farge, *The Allure of the Archives*, trans. Thomas Scott-Railton (New Haven: Yale University Press, 2013).

³⁹ RGADA f. 615, op. 1, d. 9912, ll. 4–5 ob.

⁴⁰ Ibid., ll. 95–95 ob.

⁴¹ Ibid., d. 9916, ll. 118–18 ob.

⁴² Ibid., d. 9921, ll. 15–15 ob.

⁴³ RGADA f. 442, op. 1, d. 2, l. 224 ob.

Because of the tsar's service I, Mikhaila, have not seen her [*svidaniia ne bylo*], Marfa, for about seven years, and after my departure she, my wife Marfa, left Putivl' and settled in Sevsk ... and married a musketeer, Prokofii Gavrilov.⁴⁴

He, Danila, was in the tsar's service for seven years, and after his, Danila's, departure, because of news and letters from third parties [*po vedomasti i po pismam postoronnikh liudei* (sic)] declaring his, Danila's, death in service, his wife, Anna, married because of indigence and to find sustenance [*ot skudosti i dlia prokormleniia*].⁴⁵

Sometimes a man and his wife composed the letter together, not giving any reason but stressing their mutual inclination to divorce:

Having discussed it between ourselves, we have amicably [*poliubovno*] agreed.⁴⁶

As we see in the above citations, the "letters" used two approaches to presenting the reasons for divorce. Some authors exactly reproduced the terms of the law. They may have been sincere, or they may have lied. If the latter, we can at least be sure of their legal competence. Others followed the spirit of the law but did not stick to the letter of the regulations. For example, contrary to the requirements of *Kormchaia*, they loosely interpret leprosy as any malady that destroys the economic value of the matrimonial unit.⁴⁷ In cases of long absence, some "letters" imply that the missing spouse's whereabouts were in fact well known, although such implication destroyed the judicial value of the contract.⁴⁸ An imperfect correlation between the reasons put forward in a divorce letter and those of the law can signify one of two possibilities. Either the authors were giving a sincere description of a real situation, or they had produced an awkward lie, not being familiar with the exact terms of the law.

On the whole, only four motives were used in "letters" known to us to justify divorce:

- monastic vow (prospective or already executed) without any explanation of its cause;
- long-term malady and/or disability prohibiting one of the spouses from "living" with the other, sometimes accompanied by an intention to

⁴⁴ RGADA f. 615, op. 1, d. 9919, l. 6 ob.

⁴⁵ Ibid., d. 9922, l. 116.

⁴⁶ As in a contract concluded in 1706 by Danila, a resident of Sevsk, and his "Cherkassian" wife, Efimia, after ten years of living apart (ibid., d. 9917, l. 9 ob.).

⁴⁷ Ibid., d. 9912, ll. 4–5 ob., ll. 95–95 ob.; d. 9916, ll. 118–18 ob.; d. 9921, ll. 15–15 ob.

⁴⁸ Ibid., d. 9917, l. 9 ob.

enter a monastery (to judge by the description of the diseases, the word *zhit'* implied not only sexual intercourse but also, if not primarily, the capacity to perform one's economic role in the family);

- long separation, even if the location of the spouse who left home has not been unknown; the duration of absence is always specified (more than four years); and
- inability to consummate the marriage (the duration is specified, between 4 and 15 years).

The four other reasons that, according to the *Kormchaia*, justified divorce (adultery, slanderous accusations of adultery, murderous intentions, or indecent behavior) were frequently invoked in court, but no divorce letter currently known to us adduces any one of them. That is not surprising, given that these causes implied open conflict between the spouses, while a divorce contract could be concluded only if the spouses agreed (more or less willingly) about the fact and the terms of the divorce.

The terms themselves usually received only a brief mention. Some "letters" state the return of the dowry, even if it was the wife who provoked the divorce.⁴⁹ In other cases, the husband promised a yearly maintenance to his ex-wife: "to feed her, Ekaterina, he, Pontelei, will give her grain of all kinds until his death: two chetverts [about 210 liters] of rye; a half-chetvert of wheat, hemp, and buckwheat each; and a quarter-chetvert of peas."⁵⁰

One deed contains an interesting clause that transferred the custody of a young child from the father to the mother, notwithstanding the fact that she intended to enter a convent (which contradicts the opinion of A. D. Sposobin and A. I. Zagorovskii, who supposed that the "innocent" spouse kept the children, and of Eve Levin, who thought that children always stayed with the father): "and as to the son that I, Ekaterina, have got with him, Sidor, this son of mine will live with me, Ekaterina."⁵¹

The spouses realized very well that, like any other contract, the divorce letter could function only as long as neither party changed his or her mind. Thus many contracts were accompanied by a bond to be forfeited if the terms

⁴⁹ For example, in 1704, Fekla, the wife of a Sevsk resident, being "unable to live with her husband because of her illness," had her dowry restored so that she could maintain herself in a convent (ibid., d. 9912, ll. 95–95 ob.).

⁵⁰ A peasant from Komaritskaia Crown Domain (1719) (ibid., d. 9927, ll. 143 ob.–44).

⁵¹ Sposobin, *O razvode*, 239; Zagorovskii, *O razvode*, 48–49; Levin, *Sex and Society*, 120. The husband, a peasant from Komaritskaia Crown Domain, promises to maintain his wife (who declares herself incapable of living with him because of her illness) and his son in the convent; the husband stipulates his right to remarry (1705) (RGADA f. 615, op. 1, d. 9916, ll. 118–18 ob.).

of the deed were broken.⁵² Were these bonds supposed to be enforced with the help of the tsar's courts? What was the legal status of divorce letters from the viewpoints of the authors and the authorities? Evidence suggests that local civil and church authorities demonstrated a ready acceptance of the contractual divorce and remarriage. The divorce contracts were put on record verbatim on stamped paper by the state registrar (*nadsmotrshchik krepostnykh del*) like all other kinds of contracts, to be kept in the tsar's archives until the end of the world. Parish priests were widely known to help draft divorce letters and certify them, as well as to remarry people divorced by contract. Even the higher-level church courts did not systematically reject the divorce letters submitted for their consideration, nor punish the spouses for having written them.⁵³ Certainly, the most learned hierarchs did not approve of these practices, lamented against them, and occasionally tried to check them.⁵⁴ But neither the church nor the tsar pronounced an explicit prohibition against terminating marriages by contract. In 1730, the Synod forbade priests from participating in any way in the drafting of divorce letters.⁵⁵ But the decree did not mention private individuals, who thereby remained free to conclude them. In 1767, the Synod felt obliged to issue a special interdiction aimed at priests against concluding marriages "from a living spouse," which could only mean that contractual divorces continued after the decree of 1730.⁵⁶

As long as the hierarchs who thought that divorcing by contract and remarriage were bad things for a Christian postponed giving a clear message to the parish clergy, or failed to be heard and obeyed, there was no reason why simple parishioners should have been aware of the uncanonical nature of divorce letters. Those divorcing spouses who did not hesitate to appeal to the authorities to guarantee the binding nature of their contract clearly thought they were acting inside the limits of the law. Men and women freely presented their divorce letters for official registration in their town governor's office, or in a tithe chamber (*desiatil'nich'ia izba*), an administrative-judicial institution of the church that existed in every town. In cases of breach of

⁵² A Sevsk musketeer and a Sevsk resident with their respective wives and the latter's relatives in 1704 (*ibid.*, d. 9912, ll. 4–5 ob., 95–95 ob.); a Sevsk dweller and his wife in 1706 (d. 9917, l. 9 ob.); a Sevsk musketeer who has been absent for seven years, with his wife remarried to another musketeer, in 1708 (d. 9919, l. 6 ob.); a "Cherkassian" couple in 1711 (d. 9921, ll. 15–15 ob.).

⁵³ Kosheleva, "Without Going to a Regular Court," 111–12.

⁵⁴ Tsaturova, *Tri veka russkogo razvoda*, 189–90.

⁵⁵ *Polnoe sobranie zakonov Rossiiskoi imperii* (hereafter *PSZ*) (St. Petersburg: Tipografiia Vtorogo otdeleniia sobstvennoi Ego Imperatorskogo Velichestva kantseliarii, 1831), 8:no. 5655.

⁵⁶ *PSZ*, 18:no. 12935.

contract, ex-spouses brought their divorce letters to church courts, evidently in hope of defending their agreement. Last, divorce contracts were not used as an argument in internal community conflicts, although neighbors were generally quite ready to invoke other violations of church law. To take an example, in 1704 a Sevsk merchant, Luk'ian Zaitsev, won an auction for a mill over the provincial nobleman Petr Nazbitskii. Immediately after the auction, the loser registered with the town governor a denunciation against the winner, accusing him of having entered into a consanguineous marriage (an act that everyone knew to be liable to severe punishment).⁵⁷ Documents do not tell the rest of the story, but knowing how the system worked, we might suppose that had Luk'ian refused to find a compromise with Petr about the mill, Petr could have forced Luk'ian to undertake a long and costly journey to Moscow to defend his union with his wife, whether the accusations were true or not.⁵⁸ If the divorce contracts, to the best of our knowledge, did not backfire in the same way, it means that the parishioners did not consider them an irregularity. On the contrary, the tsar's subjects who proved unhappy in their marriages probably thought that divorce letters, documents drafted according to accepted legal knowhow and officially registered by the local authorities, would prevent the idea of using their divorce against them from popping into a malevolent neighbor's mind.

A passage in the *Spiritual Regulation* (Dukhovnyi reglament) of the bishop Feofan Prokopovich, which was confirmed in 1721 as a statute of the Holy Synod, illuminates not only the eminent author's judgment about one of the most frequent forms of contractual divorce and remarriage but also society's views on it:

A custom exists, when a husband and a wife make a mutual agreement that the husband will take monastic vows and the wife will be free to marry another. This divorce seems to be legitimate [*pravil'nyi*] in the eyes of the simple folk, but it is very contrary to the word of God.... In any case, even if there existed a sufficient reason for divorce, a husband and a wife should not divorce on their own volition but ask their bishop.⁵⁹

In modern Russian, the word *pravil'nyi* (right) has a very weak connection with the law, but in the early 18th century its meaning was much more specific. It derived from the word *pravilo* (rule), which meant church law

⁵⁷ RGADA f. 615, op. 1, d. 9913, ll. 227–27 ob., 228.

⁵⁸ Nancy Kollmann, *Crime and Punishment in Early Modern Russia* (New York: Cambridge University Press, 2012).

⁵⁹ N. A. Voskresenskii, *Zakonodatel'nye akty Petra I* (Moscow: Izdatel'stvo Akademii nauk SSSR, 1945), 594.

(the church court was called *pravil'nyi sud*, and the *Kormchaia* was frequently referred to as *pravil'naia kniga*). So what Feofan Prokopovich actually said was that ordinary people thought they were acting in conformity with church law when they divorced by contract and remarried. To be sure, from the bishop's point of view, they thought so erroneously. For us, however, it is most important that Prokopovich noted the existence of this belief, which apparently was so ancient, firm, and widespread that he could not help characterizing it as a "custom."

All these facts clearly demonstrate that divorce by contract eventually followed by remarriage were well-known legal practices that were looked askance at but tolerated by the higher church authorities and broadly accepted by the population and the civil and church authorities at the local level. Spouses who preferred divorcing by contract to seeking divorce in a bishop's court did not avoid the court because they wanted to circumvent church law, but because they were looking for a more accessible means to act according to common social understandings of church law.

Lawrence Stone's conclusions about English private separation deeds may be applied to the Russian divorce letters: it was an "institution which flourished in the margins of the law, but was totally reliant upon the legal skills of conveyancers in drafting the deeds in such a way as to survive the hostility to them of many distinguished judges."⁶⁰ Let us take a closer look at the "conveyancers" who were available in early modern Russia.

The Law and the "Legal Artisans"

The civil and church officials who lent an active hand in drafting divorce contracts and putting them on record, or acted as intermediaries helping husbands and wives to reach an agreement about the conditions of divorce, belonged to two different groups. First, there were parish priests, who possessed little knowledge of church law, since most of them had never been to any kind of school.⁶¹ Second, there were three sorts of scribes, many of whom belonged to much the same social and cultural milieu as the parish priests. The most competent were church clerks (*patriarskie pod'iachie*) who served the hierarchs and were supposed to have received some bookish training in church law in the monasteries. Less competent but much more accessible to parishioners were civil administration clerks (*prikaznye pod'iachie*) and especially town-square clerks and scribes (*ploshchadnye pod'iachie* and *d'iachki*). These last could have obtained only a portion of bookish knowledge by hearsay and

⁶⁰ Stone, *Road to Divorce*, 182.

⁶¹ P. S. Stefanovich, *Prikhod i prikhodskoe dukhovenstvo v Rossii v XVI–XVII vekakh* (Moscow: Indrik, 2002).

practical training in the town square (*ploshchad*), a place in the towns or the larger villages where generations of public scribes perpetuated traditions of drafting documents and providing basic legal advice on all kinds of subjects.⁶²

The parish priests, notwithstanding their status as church servants, belonged on the side of their parishioners. We do not know if parish priests used to draft divorce letters, but they certainly agreed to act as witnesses, before and even after the prohibition of 1730. Moreover, they played an active role as intermediaries between the spouses who sought to divorce. That people were not afraid to consult their confessors about the subject seems natural, but the fact that institutional help to divorce was also available at the local level is particularly revealing. The tithe chambers intervened in favor of divorce and remarriage without appealing to higher authority. To take an example, in February 1720, Sof'ia, a peasant wife from Sevsk District, brought to the local tithe chamber a written request stating that her marriage with her husband, Iakov, had not been consummated in more than four years and paid a registration tax. The same day, the tithe chamber sent for her husband. Apparently, the members of the tithe chamber (all of them local priests) explained to him that, due to his sexual handicap (*nesovershenstvo v udekh*), his wife had a right to ask for divorce, for five months later a tax was paid for the registration of a "free letter" given to Sof'ia by her husband, declaring that she was to be considered an unmarried woman.⁶³

For a glimpse of the legal proficiency of the church clerks, let us take an example from court files in the archives of the Patriarch's Residence that offers a particularly vivid illustration of their activities as lawyers. In 1698, a sergeant of the Guards, Dei Priagaev, decided to marry. However, the priest refused to celebrate his marriage, for the sergeant had been married thrice already, and the church prohibited the fourth marriage, to say nothing of the fact that the sergeant's third wife was still alive (the two previous ones having died). The sergeant argued that this lady was not really his wife for she, in turn, appeared to have a former living husband of whose existence he, the sergeant, had known nothing when he contracted this marriage. The case (a rather common one) was brought before Patriarch Adrian. The court file consists of two disquisitions on the *Kormchaia* with multiple precise citations and page references, prepared by the patriarch's scribes. The first

⁶² Peter B. Brown, "Bureaucratic Administration in Seventeenth-Century Russia," in *Modernizing Muscovy: Reform and Social Change in Seventeenth-Century Russia*, ed. Jarmo Kotilaine and Marshall T. Poe (London: Routledge, 2016), 57–78; Anna Joukovskaia, "Unsalaries and Unfed: Town Clerks' Means of Survival in Southwest Russia under Peter I," *Kritika* 14, 4 (2013): 715–39.

⁶³ For the church elders' tax register, see RGADA f. 442, op. 1, d. 2, ll. 224 ob., 237, 239.

one proves that the sergeant's third marriage was a true one and that it would be illicit to marry him once more. The second argues the contrary, the third marriage was in fact an "illicit adulterous fornication" and not a marriage, and the sergeant could be married again after a proper church punishment. The patriarch ruled in favor of the sergeant.⁶⁴ We do not know if he did so because that argument appeared more convincing, or because his practical wisdom told him it was a more reasonable solution, or because he found the sergeant himself appealing. The point is that these kinds of materials offer ample evidence that the church clerks in the Patriarch's Court and probably at the larger monasteries were very well versed in *Kormchaia* and the Ulozhenie and able to give extensive legal advice on questions of marriage termination and remarriage. But unless someone decided to plead in a church court, the population did not normally come in contact with them.

The degree of competence in these matters possessed by civil administration clerks and town-square clerks and scribes was much lower. The divorce letters do not contain any direct citations from *Kormchaia*. In fact, they do not mention it at all. However, as we have already seen, these clerks were quite capable of presenting the reasons for marriage termination in ways that were consistent with church law. Considering the scarcity of sources of knowledge and training, this was already an important achievement. Besides the church clerks, few laymen in Russia had ever read *Kormchaia* by themselves (whether most priests did remains an open question). We know that the Ulozhenie of 1649 was a kind of bestseller, so that even small provincial administrators procured a copy for themselves.⁶⁵ But a similar study concerning *Kormchaia* does not exist.⁶⁶ Presuming that every monastery possessed a manuscript or a printed copy and a few learned clerks, we can suppose that knowledge of church law did spread, thanks to the circulation of men and manuscript excerpts from books or judicial files between the monasteries and the town squares. It was the only possible way for civil administration clerks and town-square clerks to acquire and retransmit knowledge. These clerks, usually

⁶⁴ Gosudarstvennyi istoricheskii muzei (GIM), Sbornie rukopisei, Sinodal'nye gramoty, no. 1536/549. I thank Natal'ia Kobiak for bringing this document to my attention.

⁶⁵ L. A. Timoshina, "Realizatsiia izdaniia i tirazhei Sobornogo Ulozheniia na rubezhe 1640–1650-kh gg.," *Vestnik Nizhnevartovskogo gosudarstvennogo gumanitarnogo universiteta*, no. 2 (2009): 48; Viktor Borisov, "The Tomilovs, Siberian *Deti Boiarskie*: Career, Social Connections, and Lifestyle at the Age of Transition from Tsardom to Empire," *Cahiers du monde russe* 57, 2–3 (2016): 443.

⁶⁶ *Kormchaia* was printed in 1650, 1653, 1787, and five times in the 19th century. According to E. V. Luk'ianova, of the 1,200 copies printed in 1653, 79 were given as gifts (to the tsar, the patriarch, archbishops, etc.), and the remaining 1,121 went on sale at 2 rubles apiece; in 1653, 653 copies were sold. See L. N. Gorbunova and E. V. Luk'ianova, eds., *Moskovskie kirillovskie izdaniia v sobraniakh RGADA: Katalog*, 3: 1651–1653 (Moscow: Indrik, 2003), 50.

noticed by historians only for their role in the tsar's administration, were in fact true self-made "legal artisans" (*zakonoiskusniki*), who in their daily contacts with all social groups on every sort of subject, forged and maintained current juridical formulas and common patterns of legal thinking.⁶⁷ When their clients came to consult them on matters of divorce and remarriage, these clerks shared their own knowledge of church law, which was true in spirit but inevitably imprecise in details.

The scholastically trained Kievan monks whom Peter the Great put at the head of the Russian church definitely became dissatisfied with *Kormchaia* and other more or less ancient sources of Russian canon law. Like their occidental colleagues of the time, such as Luigi Antonio Muratori, they felt it was urgent to "rationalize" the legislation, concentrating the codifying activity in the hands of the monarch.⁶⁸ But until these ideas led to concrete legislative measures, the spouses who divorced by contract were neither criminals nor anarchists but law-abiding Christians. At least one is allowed to assert that they complied with ideas of the law that were widely shared by local church authorities and the "legal artisans" who "practiced" it.

Conclusion

With only seven old and eleven new divorce contracts, we remain very far from statistically relevant numbers. Further systematic study of the contract registration books from other towns may yield a more complete picture. But as fragments of pottery indicate the proportions of a jar and pieces of bone the structure of a skeleton, our small corpus of divorce letters shows quite clearly that we are dealing with a vigorous legal tradition rather than with a freak.

The hierarchs who raised their voices against the tradition of contractual divorce during the 17th and early 18th centuries do not appear to have succeeded in muzzling it. They failed to impose their convictions not only upon civil administration clerks and town-square clerks, who after all did not belong to the church's chain of command, but also upon parish priests who were their direct subordinates. This fact reinforces the opinion of those historians who think that the central church institutions had limited control over local processes. Limited here does not mean weak but rather inefficient in statistical terms. The hierarchs and their chancelleries were powerful in the

⁶⁷ The term *zakonoiskusniki* is borrowed from Gavriil Dobrynin, *Istinnoe povestvovanie ili zhizn' Gavriila Dobrynina, im samim pisannaia v Mogileve i Vitebske, 1752–1823* (St. Petersburg: V. I. Golobin, 1872), 76.

⁶⁸ On Muratori, see António Manuel Hespanha, *Cultura jurídica europeia: Síntese de um Milénio* (Coimbra: Almedina, 2012), 179–80.

sense that they were capable of reaching and controlling any individual in the empire at any given moment. But they could not monitor the whole of the empire's population on a regular basis. This point is what divorce letters help demonstrate. At the same time, this article shows that neither the spouses who divorced by contract nor the civil and church officials who helped them do so situated themselves outside Orthodoxy. The reasons for divorce invoked in the letters came as close to church law as the collective local state of knowledge of it would allow. Thus if the hierarchs failed to enforce their monopoly on divorce and remarriage procedures on the one hand, on the other hand they succeeded in instilling loyalty to the rules of Christian marriage.

In the narrower and more specific context of divorce and remarriage practices, the materials analyzed in this article suggest an interpretation that varies from previously held opinions. Certainly, individuals who did not know or disregarded the law were numerous enough. But the divorce contracts testify to a different attitude. It is neither ignorance nor refusal to obey, as Freeze and Boškovska have suggested. It is not the creation of independent, private rules in the context of a repressive legal system, as Kosheleva and Murav'eva propose. Rather, the divorce letter tradition reflects the quality of the written law and the mode of its reception. On the one hand, *Kormchaia* did not dictate a clear set of rules like a modern code, nor did it even present a more or less coherent set of cases like the *Ulozhenie* of 1649. It was a thousand-year-old collection of sacred writings by the church fathers. Up to a certain point, the Russian church seemed satisfied to remain a living repository of this ancient and sacred wisdom. On the other hand, the local scribes drafting divorce letters and the parish priests judging divorce and remarriage cases did not totally ignore or circumvent the law but attempted, as Robin Bisha has correctly deduced, "to reconcile the popular conception about conjugal pairs with the ecclesiastical definition of valid marriage."⁶⁹

Divorcing partners, local scribes, and parish priests did not rely directly on the law (how could they if they did not have access to accurate reference books?) but on something that Feofan Prokopovich called custom. It might be more appropriate to use Eugen Ehrlich's term "living law" (*lebendes Recht*) to describe the alloy of Christian canon, native legal tradition, and immediate, existential imperatives that is reflected in early modern Russian divorce contracts.⁷⁰ Thus for a very long time, the divorce and remarriage law functioned in a sort of symbiosis between law and life until, at the peak of the Russian Enlightenment, the learned hierarchs, intensifying their engagement

⁶⁹ Bisha, *Marriage, Church, and Community*, 233.

⁷⁰ Eugen Ehrlich, *Grundlegend der Soziologie des Rechts* (Munich: Duncker & Humblot, 1913).

in social discipline, produced the rigid and uncompromising thing we are used to call the law, while the secular government furnished the means of its effective enforcement. As a result, up to 1917, the tsar's subjects found themselves facing the virtual impossibility of legal marriage termination, let alone remarriage. This reality imposed considerable moral, spiritual, and psychological pressure on all levels of society and pushed certain unhappy spouses to desperate actions, as in the case of the railway employee Nikolai Gimmer, who faked his own death to dissolve his marriage and give his wife a chance to remarry. This story inspired a play by Lev Tolstoi, *The Living Corpse*, that was staged at the Moscow Art Theater in 1911, exposing the inadequacies of the imperial divorce law to public judgment and discussion.

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