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Economic Aspects of Woman's Suffrage

Introduced by Mrs. DESPARD.

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By Mrs. DESPARD.

ON Monday, 9th March, 1908, the National Liberal Club Political and Economic Circle held its sixty-seventh dinner.

Mrs. COBDEN UNWIN presided, and MRS. DESPARD submitted a paper on the above subject, as follows:—

Fundamentally all social and political questions are economic. Domestic politics, imperial politics, education, class differences, social conditions—every one, indeed, of the great modern problems has this for its basis. We shall find too, if we closely study history, that it is economic pressure which forces any particular problem to the front, makes it, as we should say, a burning question, seeking and, finally, if trifled with, demanding solution.

That woman's suffrage forms no exception to this rule I hope to be able to prove.

But first, for the sake of my argument, I must look back and show how the momentous changes, culminating in the industrial revolution of the eighteenth and nineteenth centuries, have affected the position of woman from the economic point of view. We are frequently told that home is the true sphere of woman. Once there was some truth in that assertion. Now it is an anachronism. Before the era of machine-made goods and large factories, the woman's home was her workshop, wherein were produced the things that are necessary and comely in domestic life. Baking and brewing and preserving;

the gathering and preparing for use of culinary and medicinal herbs; spinning, weaving, knitting, embroidering—these, with many other arts and crafts, were carried on within the home, and the women who superintended and performed the service which their crafts represented to the community had, as I think, a place and a dignity which is not now accorded to the working woman. The advent of modern industrialism with its employers and hands, its whirring machines and its fierce competition, has killed the old home industries and has driven women into the open labour market to gain a livelihood.

I do not pretend to say that this change was not inevitable. I believe it was. I believe that the inventive genius of humanity was bound to force its way to manifestation, and that the triumph of machinery will result eventually in lessening toil and increasing the wealth which really means the well-being of nations. But, in the meantime, used as it has been and is to gratify individual lust for luxury and power, it has resulted in industrial chaos and a consequent widespread misery. The few have become rich: the many—men as well and women—have been crushed and brutalised.

To realise the economic subjection of men-workers before they had won the right of combination, we should study the industrial history of the early decades of last century—such books, to take two out of many, as the "Life of Sir Samuel Romilly" and Disraeli's lurid pictures of life in the manufacturing districts of England given in "Sybil; or the Two Nations."

The economic pressure of those days brought about the Chartist agitation, originated and moulded the Trade Union movement, and led to the passing of the Reform Bills of last century.

Men, that is to say, found it necessary to protect themselves in their industry and saw that the only means to that end was the possession of political power.

Women, forced through economic stress into the labour world, made to strive with men-workers on the one hand and employers on the other, had, and as yet have, no political protection. Efforts are being made by women themselves, for instance, to form Trade Unions; but these have been practically powerless because, until a class of workers can bring pressure to bear upon the

authorities that regulate their lives, nothing of any importance will be done to improve their position.

Now I hope it will be conceded by all here that the industries carried on by women are—taken generally—monotonous in character, pursued under peculiarly bad conditions, and miserably rewarded. I hope it will be further granted that the women who do not strive in the open market for their livelihood, who live at home and for a certain number of years in their lives bear and bring up children, are practically for the most part unpaid, and that even these are often driven by stress of circumstances into factories and workshops. As a fact, women, although said to be the weaker sex, do, save for an inconsiderable minority, bear much heavier burdens than men.

But it may be, and often is, asked—How will the admission of women to the Parliamentary franchise alter this? That is precisely what I wish to show—first, however, begging you to understand that I do not expect any immediate revolution. Women, who are now seeking to work out their own salvation, must, through the exercise of their right, learn its use and value before they can effectually better their position or improve the world for others.

Looking forward, then, to the future, let us see how the possession of the Parliamentary franchise will affect the economic position of woman, and with her, of course, of the community. I will take, first, the family; secondly, the workshop; thirdly, the State or nation, to each of which the woman undoubtedly belongs.

The family first.—When the citizenship of woman is recognised, her status within the family will rise, and this will work out in several directions:

(*a*) She will be the partner and comrade of husband or brother.

How often have we heard it said by women who are the administrators of their households: "I know nothing about politics!" That means, information about the larger world in which the family moves and has its being is not brought to her. The mother is ignorant on such vital questions as education, taxation, the laws regulating commerce and manufactures, the laws regulating social relations. The raising of the social status of woman which will follow the recognition of her citizenship will change this. Politics will be brought

into the family: questions which affect the life of the people will be discussed at home, and woman, who, through her closer touch with the springs of life, is better instructed than man as to the true needs of the community, will learn how State administration affects the family. One of the effects of this will be, I believe, such pressure of the electorate on Governments as will force them to deal promptly with urgent domestic problems.

(*b*) The raising of the status of woman in the family will have another effect.

To-day the education of the boy is considered of far more importance than that of the girl, and, as a consequence, only a comparatively small number of women are trained to do anything thoroughly. One of woman's greatest arts—the art of rearing and training children—is not taught at all. I believe that the rise in the social status of woman will create a much higher and truer conception of what is due to girls in physical, mental and technical training. That such a change would have a profound effect on the economics of Society is obvious. The advent of a strong, well-developed, wisely instructed generation of women, each one not only instructed in the duties of child training and home administration, which she may or may not be called upon to perform, but having an art or craft in her hands, would do more than anything else to raise humanity to a higher level.

There is one more aspect within the family with which it will be necessary to deal—marriage. To-day women marry, unsuitably in many cases and without any true vocation, because of economic pressure. They have nothing in hand or head to offer the community in exchange for their living; they have no money; they do not care to be dependent on their relatives, who frequently cannot afford to be charged with them. Nothing is left but to marry any one who can give them a living, or (and one is as dishonouring to humanity, as disastrous in its effects, as the other) to live a life of what the world calls shame.

I am glad to know that the increased independence of women is lessening this evil. But it still exists, and it will continue to exist until the social and political status of woman is raised. Then woman will go forth freely to choose her mate, even as her brother man does now, to the great benefit of herself and the race.

2. Woman in the workshop.—The time may come when wifehood and motherhood will be recognised as citizen-duties to be rewarded no less than the other duties that citizens perform. That time has not yet arrived. Now girls and women, married and unmarried, are, through economic pressure, being thrust into workshops and factories, or are compelled to do miserably hard work at home.

It is needless to urge—for we all know it to be true—that women are worse paid and less protected in their work than men. Owing to their deep economic subjection they are literally at the mercy of their employers. Men have found it necessary to protect themselves by combination. Women are being urged to combine; but they can never combine effectually until they possess what a large number of the men workers fought for and gained last century—namely, the power of the vote. I believe that one of the economic results of the entry of women into politics will be that their long-standing grievances as workers will receive attention; and that consequently their value in the labour-market will rise, while, sanitary and other regulations being enforced in the places where they toil, the strain on their nerves and life energies will be less, young women will be better fitted for motherhood and those who prefer to remain single will do better work.

(*b*) The raising of the status of women generally will have a further effect upon the workers when men and women do the same work, as is often the case now—take, for example, education, the Post Office and the Civil Service. Their hours and duties being the same, women will demand and obtain the same conditions and reward as their brothers.

(*c*) Efforts are being made by men now to regulate the work of women—for instance, to replace women by men in restaurants and bars, and to prevent married women from working in factories. It is beside the present question to argue as to the wisdom or folly of such measures. My point is, that men politicians will not succeed alone in making wise and righteous regulations for working women. As it was with the men workers, so it is with the women workers, until they are allowed to have a voice in the nature of the laws by which they are bound in their labour, these laws will necessarily be one-sided. Yet it is essential to the well-being of

the community that the questions relating to women in their lives as workers should be considered. For example, the minds of many good men as well as women are deeply exercised by what is spoken of darkly as the social evil, an evil which, if it is not checked, will presently sap the life-blood of our nation. I am convinced by what I have heard and seen, as a Poor Law Guardian and as for many years a student of social questions, that one of the main causes of the growth of this disease is the economic subjection of women. When girls, seventeen years of age, having to support themselves (and I came across such a case a short time ago) are turned out of workshops on Saturdays, after a week's work, with four shillings in their pocket to live on for the next seven days, what can we expect? Were women's labour even as well regulated and rewarded as men's is, this piteous source of supply would be cut off from the infamous markets of our great cities.

(*d*) There is yet another aspect of this question, one that affects men as well as women. I cannot but believe (and what I have seen of women Inspectors in factories and shops bears this out) that when women have a share in the regulation of industry, they will pay more regard than men have done to the safety and health of those engaged in what are known as the dangerous trades. Life is cheap: machinery is dear; consequently precautions whereby diseases might be prevented and human lives preserved are neglected, and science is not allowed to do her beneficent work. Then, again, deleterious substances which might with a little extra care and cost be eliminated altogether from the production of manufactured articles continue to be used, and we have lead-poisoning and other horrors. Women who are more immediately in touch with life-processes than men, set, I think, a higher value on human lives. When admitted to politics they will act as a check on the ruthless commercialism of our times.

3. I come now to the much larger, perhaps also the more contentious point of view—women as belonging to the State. What effect will the emergence of women into politics have upon the inner life of the nation? I believe that the change, though it may move slowly, will be very great? I believe, moreover, that one of the moving causes in the present revolt of women is to be found in the political atmosphere, which is charged with

forces that must, if brought into play, seriously affect her in her life within the State. This, indeed, constitutes the economic pressure which is making the question of Woman's Suffrage vital in a new sense. When I speak of the inner life of the nation, I mean such questions as education, land, housing, industry, unemployment, peace and war, the incidence of taxation, and provision for the helpless old and infirm people and children who have lost their natural protectors. For these matters form the substance of politics, and many of them are demanding treatment of a more drastic nature, perhaps, than has ever been given to them before.

How are these questions dealt with now? Generally, I assert, from the point of view of party. Out of each one of these election cries have been framed to tickle the ears of the public. There are few parliamentarians who do not put party first and politics second. The result is compromise—a working not for that which is fundamentally right and wise as regards the nation, but for that which will keep a party together and rivet its hold on the electorate. The men of the nation have been trained to this way of acting; and as a consequence we have waves of feeling passing over the country, masses of electors will go Liberal or go Tory, moved by discontent or moved by vague hope of so-called betterment, but without any definite reason.

The training of women has been on different lines. They are more definite, more practical, more persistent. Many of them are coming with fresh minds into the consideration of politics. They will see the economic side of the questions now being agitated, questions that so nearly concern the life of the people—such as the incidence of taxation, the all-round care of children, the equal administration of the law, and industrial organisation—with more vividness and force than men, and they will not be held back, as men have been and are, by tradition and prejudice. They will go for measures rather than men, rather than party.

This, I think, is one of the reasons why statesmen of the old school and party politicians dread the invasion by women of that which has been their province. I have heard this reason given. Women are too straightforward, we are told; they see too clearly what they believe to be the right course to pursue for politicians. They have not learned to temporise. But it is precisely

this which is needed if great social reforms are to be carried through. I cannot but believe that women in politics will give weight to the element of conscience and that this added impetus will quicken the pace of social regeneration.

There is one other aspect.

It is highly probable that with a number of women in the electorate we shall have a different type of men on the floor of the House of Commons.

There is something even more important than the vote, and that is the selection of those candidates that are to come before a constituency. In this, when women form part of the electorate, they will have a voice. Hitherto the choice, naturally, has rested with the men, who have been moved by a variety of considerations—the party of the proposed candidate, his party record, his money, his address and manners, his oratorical gifts They will forgive much for the sake of having a member who will reflect, as they would say, credit on the constituency.

Women, who have certainly more intuition than men, will be guided not only by these considerations, but by others; character, to begin with, then earnestness, determination, straightness of aim and force of purpose will, I think, tell more powerfully with them than the showy gifts of oratory or devotion to a party; and if this be to any degree true, we may have, by and by, a House of Commons powerful enough to break through ancient cumbersome procedure and carry those measures of economic reform for which the nation has so long been waiting.

To sum up, it is my belief that women citizens, bringing into politics the best elements of family life, where men and women rule jointly, will constitute a great and beneficial power in the State; that the rise in the status of woman which will follow the recognition of her citizen rights will materially improve her position in the family, the workshop, and the State; that equality replacing domination on the one hand and subserviency on the other, the moral standard both of man and woman will rise, and that as a result party politics will give place to true statesmanship, the devising and carrying through of measures tending to increase the health, sanity and wealth or well-being of the whole community.

At dessert, Mrs. COBDEN UNWIN proposed the health of "The King," and then expressed much symathy with Sir Henry Campbell Bannerman in his illness, and a hope he might soon be restored to health once more.

In reply to the toast of "Our Guest," Mrs. DESPARD said: I have to speak to-night on the very important question of Woman's Suffrage. I feel very thankful indeed that this part has been forced upon me, for, although my time is very much occupied, yet, the more I look into this subject, the more do I find how many arguments there are which have not struck me before. In the paper before you, which many of you will have read, you will see that we are dealing with this question from an economic point of view, and I feel generally—and I daresay most students of social and political questions will feel with me—that almost all, in fact all, of the more important questions of the time, both social and political, have really and truly an economic basis, and, I think, if we look into history, we shall see that it has been economic pressure which has forced so many important questions to the front, and which makes them burning questions, seeking for solution. Women's Suffrage is no exception to the general rule. I want, in speaking about this subject, to begin by going back a little, and seeing what the economic position of women was, say, 100 or 200 years ago—the economic position of the workers generally and of all women—and to see how very much their position has changed during that time. We are often told that the sphere of women is home, and we do not deny that. I am myself inclined to think that the sphere of man is also at home; but still, 100 or 200 years ago, the woman's home was also her workshop. It was the place where there were carried on many arts and crafts which were useful and comely in domestic life, not only the making of garments, but spinning, weaving, baking and brewing, the gathering and preserving of herbs, preserving of fruits and vegetables, and so on, were all carried on in the home. They were superintended by women, and carried out by women, and I venture to say that woman in those days had a place and work which does not now belong to the working woman. I think we all know what has changed that—the great industrial revolution which came at the end of the eighteenth and

beginning of the nineteenth century, and which is proceeding at the present moment. Instead of the work of the home we have the work of the factory, and on account of the machinery of the factory lessening the amount of labour, both men and women have found themselves thrust into the modern labour market. What has the effect of that been upon men? Men workers have found that it was absolutely necessary for them to obtain political representation in order to gain protection in their work. Any one who wants to study this question can find wonderful material in the books which have been written. The industrial history of the early days of the last century forms very wonderful reading indeed. There are two or three books which I might specially mention—one by Sir Samuel Romilly, another, "The History of Nations," and several other books of industrial life in the Midlands in the early decade of last century; and then there is another book, which though not of much genius, yet its very native horror haunted me for a long time, which goes by the simple title "When I was Young," written by an old potter, and he has related a story of life in the Potteries when he was a boy, and that story kept me awake for many nights, it was so full of horror. As I say, workers have found it necessary to protect themselves. It was the economic pressure of that time which originated and moulded what we call "modern thought," and led to the great Reform Bills of the last century. Let us see what that means? Working men found it necessary to protect themselves; they found it necessary to be represented in the House of Commons. What has happened to woman? Woman, too, was thrust into the labour market. It was absolutely impossible, however we may talk of "womanhood," for them to always remain in the home. Every one who knows anything whatever of our social life, and the life of the workers amongst the poor (and it is a great shame that the workers should be poor), I say every one who knows anything about their life must be perfectly well aware that they must naturally seek for protection in their work, they have had to go into factories, and had to work for their livings away from their homes, and women now find it wiser to seek that protection which men have already earned. For instance, a great many women are being urged to com-

bine in their particular work, or to join Trades Unions, and in order that they may combine effectually it is necessary that they should be able, in regard to their own particular industrial protection, to bring pressure to bear upon their representative. I do not think there is any one here who is not fully convinced of the fact that the economic subjection of women is far greater than the economic subjection of man. We call women the "weaker vessels," but as a fact woman bears far greater burdens than man does. I do not think there is any question about that. How will woman's vote alter this condition? I want to look forward to the future, and I want to show how, as I believe, after looking into this question very thoroughly, how, as I believe, the conceding to woman of that which is really her own, the giving in to her very just demands of citizenship, I want to show how this will affect the position of woman in the family and in the workshop as well as in the State, and remember, of course (I hope we shall all remember this), that that which affects a woman seriously also affects as seriously the whole nation. First of all I want to speak about woman in the family, and show how the economic position will affect her position in the family. We hear a good deal of what has happened to woman in Australia and New Zealand. We hear that instead of her improved rights having sown dissension they have quickened family life. I believe one of the effects of woman becoming a citizen will be that she will become the comrade and partner of man. Indeed, there are no doubt some women here who have done as I have done, who have undertaken the unpleasant duty of canvassing from house to house with regard to votes. We are all considered capable of advising men how they should vote. We are considered capable of doing that, but at the same time are not considered capable of recording a vote. I have been a canvasser in former times, although I never again intend to be one until I am a *citizen*, and I shall then endeavour to do my duty in that way. I will tell you what has often happened to me when I have been canvassing. I have been told that women have so much influence, and yet I have been round and have seen women who were considered clever women, who were evidently good administrators in their homes, very often successful mothers, and when I have spoken to them they have

replied, "I know nothing at all about politics. He tells me nothing about that." That means that those particular questions which concern a woman's family—and this family are members of the State, and the State puts upon the woman the responsibility of educating and upbringing of her children—yet there are questions which she is not supposed to understand at all according to those who say that they "have nothing to do with politics." I think in the future day of which I have been speaking that politics will form a topic of conversation in the family which will be good for the training of the family and also give them improved ideas. I believe myself that bringing women into touch with what are after all domestic questions—because a well-managed State is only built on the model of a well-managed family, I say that will be of great and economic value, because it will bring a greater force to bear upon these very questions. Then there is another point of view, and that is a very important point, upon which I feel very keenly. My youth was spent in days when women's education was considered of much less importance than it is now. The greater part of my mature life has been spent in undoing very much of the education which I was given as a girl, and I know very many middle-class families in which the education of the girls is economised upon in order that the boys may benefit. The girls are supposed to marry by and by, and so not to have to support themselves. I think this view is wrong, not only for the woman herself, but for the race and for the nation. I do not think England can completely estimate what the meaning would be of the advent into the world and society of a generation of women physically great and well developed in every way. I believe that that would make a difference to England of which very few people could form any idea; and when women have their rights granted, and are citizens, then their education will be considered of more importance than at the present time.

Then there is another question—the very important question of marrying. Owing to the way in which women are educated, they are not taught generally to do anything in what may be called a "business-like manner." They do a little of this and that, and do not learn anything thoroughly. I am speaking from the past down, because some of the great women of the last

century did force the door of education, although they had a very hard business to do it. Anyhow, women are more independent now, and they do not look so much to marrying as the only possible career of a self-respecting woman, which I was taught to do; although, being rather an independent girl, I did not take the first chance that came. I was twenty-five years of age before I married, and had already been told that I must look out; and was considered to be pretty much "on the shelf." See what that means. A woman may not have relatives, or may not have relatives that she wishes to be dependent on, and yet have nothing to offer to the community in return for her living, and so must marry the first man who comes along, or else live what is called a life of shame.

Then there is another thing. I now come to the poor woman in the workshop. We know perfectly well, every one of us, that women have had to go into the workshop. They have had to enter into competition with men workers, and also with their employers; and everybody also knows that women are not so well rewarded for their toil as men. They very often have heavier duties than men; and I consider that when they make these grievances known in a constitutional way, as men do, it will be greatly to their advantage. The workshops will not be so hard, their hours will not be so long, and they will be better fitted to be wives and mothers than they otherwise would be. The preparation that workers have for wifehood and motherhood is very hard indeed. Women who have had to work as button-hole stitchers, and so on, work from ten to fourteen hours a day just for a mere pittance. How are they being prepared for motherhood? What sort of wives are they likely to prove? I believe their entry into political life will alter all these things. Then there are other kinds of work in which men and women work together. I am interested in school management, and the men teachers and the women teachers have actually the same duties, and work the same number of hours, with the same responsibility, but the reward of the women is very much less than the reward of the men. I do not think that is right, and I hope that by and by, when woman is really a citizen, that sort of thing will not be allowed to go on. In America men and women teachers are equally well paid for their work.

Then there is another thing which I feel acutely, where I believe, having seen women as factory inspectors and inspectors in poor neighbourhoods, I believe that women will be a great deal more valuable than men in connection with the regulations regarding what are called "Dangerous Trades." It is very awful that the workers in these should not be better protected than they are. Human flesh and blood is cheap, and machinery is dear and costly, and so machinery is not allowed to do its beneficent work. The particular form of poison I come most in contact with is that from lead poisoning. I have actually seen in workhouses both men and women of no more than middle age dying, slowly dying, in torture, from this awful complaint, the swelling out of the joints, occasional attacks of inflammation, all coming from this terrible disease. Now, I believe that woman, owing to her motherhood, and to the fact that she raises children and brings them into life, comes more nearly into touch with the springs of life than man does, and therefore I think that she will prize human life a little more carefully than men. I do not think the £ s. d. will appear so important to her as to men, or that the various money interests in the country will weigh with her more than human life. I think if these things can be done she will have them done. There are many other things which are occasioned by the neglect of the use of proper machinery, such as "phossy-jaw," and which it is possible to almost completely obviate. I believe that when men and women stand together these things will be more looked after than they are at present, and surely this will be a blessed economic result of woman entering into politics.

Now I come to the larger and more contentious side of the question, and that is, women in the State. It cannot be disallowed that she belongs to the family. They cannot disallow that women belong to the workshop; in fact, men are beginning to regulate the labour of women in workshops. They are beginning to prevent women from even going to certain restaurants, and then there is that which if brought to pass will raise tremendous opposition—that is, the prevention of women working in factories. I say nothing as to the advisability of their doing so, but I contend that as to whether it is to be allowed or not women should have something to say. Both men and women know that

these things must be dealt with, and that they ought to be dealt with. It is this economic subjection which lies at the root of that thing which we speak of dimly as a "social evil," and which, if not checked, will eat away not only the women, but the men. These great questions have to be attended to, and that is one of the reasons why they want women to help in the State as well as in the workshop. We want this because we feel and know that these great economic and domestic questions ought to be attended to as speedily as possible. Take any of these Home Questions: the question of Taxation of Land, Education, Housing of the Poor. How are these questions going to be dealt with? At present they are dealt with from a party point of view. A Parliamentarian is generally party first and Politician secondly. They follow methods which they feel are fundamentally right. And why? Because the party politician has given so many pledges to so many different bodies and people in the country that he has to be very careful about what he does. His principal object is to keep his party together, and then his second object is that that party should continue to preserve its firm grip upon the country, and so, although we get promises of satisfaction, yet the main question is only crippled. That is how it appears to me; but, of course, I am only a woman, and can speak only from a woman's point of view. I, however, firmly believe that women will bring rather a fresh spirit into politics. I do not think they care quite so much about all those things, and I have a sort of idea that that is one reason why the old politician, the old party statesman, does not quite like the idea of the entry of woman into politics. Something of the kind has been said in the House of Lords lately, something to the effect that women were apt to want too much, and that what they wanted done they wanted to have done at once. It seems to me that that is the kind of spirit we want in politics. Then there is another thing which we want in connection with the State, and which I think, if women went into politics, we might possibly have, and that is a little change in the *personnel* of the House of Commons. You know that what is more important than the vote is the choice of the candidate. Now, women have a certain amount of intuition. Those qualities which please a particular

district or a particular constituency are, first of all, the party to which the man belongs, then how he has served his party, whether he deserves well of his party, and then still his rhetorical and showy gifts will go a long way. A constituency likes someone who will be a credit to the constituency. I think that these will not be the only qualities which women will ask for. They will ask for earnestness, straightforwardness, and character. That will be a great advantage so far as the whole country is concerned, besides the advantage to the House of Commons. And my belief is that a body of women citizens bringing into political life the very best qualities of family life will be extremely beneficial. I believe that the rising status of women in the family will be beneficial to the whole race and the recognition of the equality of women and men will probably be effectual not only in creating a higher morality, but also in bringing in higher statesmanship. Party will not be considered so much in the future as really high statesmanship, which must ultimately prove for the well-being of the whole community.

Mrs. COBDEN UNWIN said that the subject was now open for discussion, and called upon Mr. Robert Applegarth to speak.

Mr. ROBERT APPLEGARTH: Mrs. Despard, Ladies and Gentlemen,—I am exceedingly obliged to the Committee for giving me an opportunity of hearing Mrs. Despard for the first time. It reminds me of a debate in which I took part in 1857, where I became converted to adult suffrage, and at the age of 74 I do not think there is much likelihood that I will change my opinion. I am sure a great many people could not date their opinions as far back as that. The other day I met a gentleman who in speaking of this question said, amongst other things, "These creatures are not fit to vote." But he ought to have remembered that I knew more about him than it was desirable anyone else should know. I knew that he had lived as a company promoter for 25 years, and my reply was "These creatures are not fit to vote, and such creatures as you are not fit to live." To those who say that it would not be useful for women to have votes let me say that within my short experience little girls have been engaged in brickfields carrying

masses of clay on their heads to the brickworks, women have worked on the banks of coal mines, little boys have been carried on their father's backs into the coal mines, and boys, girls, women and men have had to work together in those large factories, built by capitalists, who have not even had the decency to separate the sexes in matters which were necessary. When the working men leaders of Trades Unions first began to feel the curse upon their home life they met with little sympathy from those interested in making profit out of the labour of women and children, but it soon began to be seen that it was necessary for women to be brought on the scene, and I can now see how much easier our work would have been, and how much more expeditiously it would have been carried out, if we had had more intelligent women's help. We had not the franchise then, but we worked, apart from having the franchise ourselves, for the sake of making our own lives more comfortable, and happy, and more homelike, and I have often wished that gentlemen like the one I have referred to above could have had more experience of living in, working for, and starving with the working people. Then they would have understood they had to work to make the condition of the people more happy. If years ago we had had the help of women, and women had had votes, as they will have some day, then we could have had women inspectors years before we did. The first woman factory inspector was appointed by Sir William Harcourt, and we certainly ought to have had them earlier. If any one doubts for a moment whether women's votes would influence legislation, let me give one instance. Years ago there was an Act which was a disgrace to civilisation which was said to be necessary for the physical welfare of man. Mr. Gladstone appointed a Royal Commission to inquire into the question. It pleased him to ask me to sit on that Commission, and we found that, however good physically it might be to men, it was—as I afterwards described it, and nearly found myself in Holloway in consequence—"damnable" as far as women were concerned. That Act would never had been repealed but for Mrs. Duncan M'Laren, Mrs. Fred. Pennington, and Mrs. Josephine Butler, who was indeed an angel on earth. I never felt for one moment that I could speak freely upon questions regarding women until I met these. Let

me say, in conclusion, that in my judgment as a man, speaking from what has been at least a very varied experience, that women have much better work to do than disturbing meetings. Holloway Gaol is no place for Mrs. Despard. She can do better work outside, and cannot do anything inside. Now let me thank you, Mrs. Despard, for your address, and for allowing me to ramble as I have done, and let me impress upon you the fact that educational work amongst men especially is what you should direct your attention to, and not worrying Cabinet Ministers, because there are other people engaged in political questions as earnest and as sincere as you are, and who are working just as hard in their way as you are in yours, and while you are insisting on your own rights do not forget that there are other people who have rights as well.

Mrs. COBDEN UNWIN: May I say, in reply to Mr. Applegarth, that I think if we look back in the world's history we shall find right down through the centuries men and women have endured imprisonment to gain some great end—some political freedom? Joan of Arc, Bunyan, and many others, and in our own time the Passive Resisters, have suffered imprisonment rather than submit to tyrannical laws, or to other forms of injustice. Women who have to-day suffered imprisonment in the cause of justice have suffered themselves by their actions. They have not brought suffering upon other people, neither have they destroyed lives nor property by their methods. Why, therefore should they not by such means call public attention to their demands? I will now ask Miss Honnor Morten to speak.

Miss HONNOR MORTON: Ladies and Gentlemen,—I think we must all regard it as a privilege and pride to be able to be here to-night with Mrs. Despard and others who have gone to prison for their opinions. I do not think there can be any greater honour than having suffered for what they have considered right. In every movement there has to be the agitator. You cannot get on without agitators. First of all you have your philosopher and your prophet, who tell you that things are all wrong and must be put right; but your philosopher and prophet are probably not listened to. They may have their own small following, but they do not do things. They do the thinking, and then you

have the agitator, who has to go through all the trouble and work—and I know of no work more difficult for women to go through, and at the same time to keep sympathetic and sweet-tempered, than work of the kind which Mrs. Despard has gone through with so much serenity. As I say, you must have the agitator before the politician, and, after your agitator has been forgotten, probably martyred, then comes the politician to make a solid foundation, and I believe most strongly, in spite of what the last speaker said, that the Women's Movement would have never reached its present pitch if it had not been for the agitation that has been carried on. I hope the National Liberal Club will come forward with its practical politicians and carry out what women have put before them as the right thing to be done. I give all honour to Mrs. Despard for what she has gone through.

Mr. LEDGER: Ladies and Gentlemen,—I rise to a point of order. The subject for discussion to-night was most strictly limited. My friend, Mr. Robert Applegarth, broke through the rule, and I hope that no subsequent speaker will compel Mrs. Unwin to come down upon them, but will confine themselves strictly to the economic side of the question.

Major MARTIN HUME: Ladies and Gentlemen,—I have received very suddenly and unexpectedly the order to say a few words, which must be very few indeed. I came quite unprepared, and have not even had time to read Mrs. Despard's paper, but it has been sufficient for me to hear Mrs. Despard's recent speech to put myself in mind of how I should think an old hunter must have felt when he heard the hounds in full cry, and straining his head and legs and taking the first fence, and I have felt once more the old feeling of many years ago, when I was a frightened politician, and perhaps one of the most earnest and strenuous supporters of the enfranchisement of women. When I listened to Mrs. Despard's speech I felt that this touch of nature which brings us back again to our own humanity was the best way to get Woman's Suffrage. Mrs. Despard dwelt very wisely upon the present sorrow, suffering, and injustice all around us. Those going into the homes of the poor see constantly how the woman has always to go to the wall, how she is the first one to go to the wall, and to

give the best portion over to the husband and children; and those who have gone into the houses of the poor know how often the man is unemployed and the woman obliged to supply the bread and cheese, or bread and nothing, for the children. It is the woman who has to wear the boots with brown paper soles and go out and earn the wherewithal to keep the family. The man may or may not try his best, but it always falls upon the woman to beg, borrow, or earn sufficient somehow or another to keep the home going. But whilst going with Mrs. Despard to the full extent of hoping that Woman's Suffrage will benefit the people to the extent of mitigating some of the undoubted sufferings, removing some of the injustice, and relieving some of the unquestionable misery which we see around us, still I am too old a politician now to form Utopian hopes of any political life, and have, in short, lost hope of any political remedy for a great disease. In the first place, I doubt very much whether in a healthy and properly constituted State it ought to be necessary for women to be forced into workshops. I should like to see a reform which would make it unnecessary for a woman to leave her home under the unsatisfactory conditions she is at present obliged to do. We must take things as we find them, and if it is necessary to have women's counsel to remedy women's wrongs, then in Heaven's name let it come as soon as it may. There is another aspect which I think would come to women in their industrial capacity. I refer to the national economic position, and I take it that if women had votes—as they will, no doubt, soon have—their votes would almost be solidly cast for peace. One can tell directly that he comes into the homes of a poor family whether it is the man or the woman who is the Chancellor of the Exchequer to the establishment. If a man is wise enough to hand over the majority of the shillings which he earns for the woman to manage, it is generally much better managed than if they do it themselves. Women may not be able to take a large view of finance, but they take a very close and intimate one; and I am certain if a woman's vote were to be cast tomorrow you would never get a war vote from them, and as I look upon war as a great curse, I therefore think women should get a vote on the same conditions as men, in order, if for nothing else, that a vote for peace

and retrenchment might come from them. These are economic points upon which a woman's vote would be advantageous to the nation at large. I do not think I can go as far as Mrs. Despard in my hopes and anticipations of the great social advantage of Women's Suffrage. I look back at the bitter disappointment it has been to me and others who thought there was going to be a new heaven and a new earth when the franchise was extended to the working-class in town and country. There is no denying the fact that the class we believed we could raise up to a responsibility when they were made full citizens have not satisfied our best hopes regarding them. I know, after having fought four elections, that the working-man is still quite as willing to sell his vote for beer as ever, and consequently I am not too sanguine with regard to the social and economic effect of votes for women; but still I am sure that, after all, the tendency will be for good; and although I believe social reform must come from social rather than political action, I welcome political action as one of the contributory activities which may possibly raise women as well as men. I will not encroach too closely upon that point, or upon another subject on which I should like to have spoken strongly but am warned off; but I must say that we do see that women are suffering terribly industrially, that their wages are starvation wages in most cases, that they are downtrodden in many cases by sweating employers whom men would not suffer for an hour, and if votes will help them, then in God's name let them have votes, and the sooner the better.

Mrs. CONYBEARE: Ladies and Gentlemen,—I only want to say a very few words, and I will try and keep very strictly to the economic result of Women's Suffrage, although when a woman who is rather full of the subject gets up to speak on any one aspect of Women's Suffrage it is not easy to prevent oneself launching into every aspect. I want to emphasise one or two points in Mrs. Despard's paper. Mrs. Despard spoke of the difficulty of the woman who is suddenly brought face to face with the necessity of earning her own livelihood when she has not been properly trained, and she has told us that woman is often driven into marriage, or into what she said was only another alternative, in her opinion, not less evil than a forced marriage, and when a woman has

not been properly trained, which is especially the case in the upper, middle and lower classes, where fathers persistently refuse to spend one-fourth on their daughters that they do on their sons, they are driven into some way of earning their livelihood only open to an untrained worker. They have, perhaps, the profession of teaching elementary lessons to little children, or some untrained manual labour. All these things are overcrowded, because women are not only forced into certain openings, and are not allowed in all. Therefore you have cut-throat competition and starvation wages, from the highest to the lowest; from the sweated nursery governess down to the sweated woman who finishes off your shirts at 2s. 6d. a week, and when you wonder that we women think nothing in this world so important as Woman's Suffrage, because we realise the economic importance of votes for women, perhaps you do not remember that, however hard men have to work, and however badly they are paid, no one works such long hours for such sweated pay as the women of England. I do believe in the economic result of the votes for women, because though the result may not in all cases be what we require, we know that there has been a steady increase of the advantages to men workers in every trade since they had the Franchise, and I think we are justified in arguing that it will do something to raise the condition of women in this country, and that when women become the political equals of men it will go a long way towards their becoming their social equals. Then Mrs. Despard said that if women worked more politically the State would benefit, as women always realise more than men what waste really means, and that really money does not matter in comparison with the evils which are going on at the present time. I also agree with the last speaker, who said that women would never stand waste of money. They will not think it waste of money to save lives but only to take lives, and I think women would certainly be the greatest factors in public life if they were allowed to take their proper place. If women had a vote as to the selection of a Member of Parliament, or even if women were able to sit in the House of Commons—and I do not think anything very terrible would happen if they did—but even if they were allowed to vote for their Member of Parliament, would they not have something to say to

their own particular member who sometimes votes for such huge grants? I should think they would consider there was a little waste sometimes when such a large grant as £50,000 is given to Lord Roberts and nothing to the Crimean veterans, who have done their duty equally to their own country. I feel very strongly that women, especially those who have the disposal of household money, and whose lives are constantly engaged in trying to make money go as far as possible, in the interests not only of themselves, but their husbands and children—and most of us have to do that in our different spheres, and can appreciate the purchasing power of money and try to make every shilling go as far as possible—I feel that they should be able to bring that experience bought in private life into public life, because everybody will agree that wherever we have taken our share we have tended to produce more efficiency and less waste, and I do not think the nation can afford to do without our help. I consider when we think of Woman's Suffrage we should realise that does not mean only the vote, but political, social, and moral equality of men and women. We are all working with the hope that in time things may be judged right or wrong, just in proportion as they are really right or wrong and not simply according to the sex of the person who perpetrates the action, and if we can help towards that by this measure, surely no man will think we women are wrong in putting that first and thinking it most important.

Mr. GEORGE LEDGER: Mrs. Despard, Ladies and Gentlemen,—This being a ladies' night, I, a mere man, will not occupy your attention for very long. There is, however, one thing which I wish to say in regard to this subject. One of our speakers has referred to the great waste which takes place politically throughout the country, and one of the greatest examples of that waste is that we absolutely ignore one-half of the population, which, if it only thought the same as the other half, would not very much matter, but the important thing is that this half will look on nearly every question from a different point of view and from a different aspect, and we should obtain the value of their experience. Tennyson says, "Woman is not undeveloped man, but diverse," and it is that diversity

which we wish to call into the general treasury of the nation, so that we may obtain the greatest advantages to the people. We do not wish to see woman dethroned from her old position of queen in the household. Ruskin says, "Women will be queens always: queens to their husbands, their lovers, and their brothers," and we hope that whenever they are called upon to take their positions in the economic and political world they will be neither idle nor careless queens, grasping at majesty in the least things while not troubling about it in the greatest.

Mrs. HODGKINSON: Mrs. Despard, Ladies and Gentlemen,—I did not know until I came this evening that I should be expected to speak, or I should have lain awake all last night thinking of what I was to say. One thing which I do feel very much in relation to this question is the waste of infant life, and women who are the housekeepers of families must have something to say in regard to the terrible infant mortality, and, in fact, the whole food supply. We are the housekeepers of the families and we must have something to say; in fact, I think the time has come when we should enter into our kingdom.

Miss EVELYN SHARP: Ladies and Gentlemen,—I know that I have to keep to the economic part of this subject of Woman's Suffrage, and it is a very hard matter for a desperate suffragette to do so, but I will try to do my best. There is one point which I should like to touch upon, and that is the question of child labour. In a great country like ours, where there is so much unemployment and distress of that kind, it seems very wrong that so much work should be done by children who ought to be playing. It seems to me that economically that is a very bad thing. It is a great waste of child life, and it is also very bad because it causes so much unemployment. I believe I am right in saying that in Leicester one of the chief causes of unemployment is the large amount of child labour. Children are now employed where men and women used to be employed. Of course, I know that it is very easy to be sentimental on the subject of children, but yet I do not think this question ought to be attacked from a sentimental point of view. We do not feel

sentimental about it when the boy who delivers the papers leaves our copy at the wrong house, and it probably does not strike us that that boy delivers papers before he goes to school, then gets crammed with facts, and then leaves papers again in the evening, and that, after all, you cannot feel surprised if, when he grows up, he develops into a loafer. I cannot say that I am particularly experienced with children, but still, in an elementary school I could easily pick out the children who did not get their play and those who did. I have been into schools in the East End where children are not doing healthy things after their school hours like leaving newspapers, but where they have to go home to sweated home industries, children who do not know the meaning of a game. I could go down any street in the East End after school hours, and before I get to the end children are sitting on the doorsteps making match-boxes or fish baskets, with their fingers all raw from the work. I think those things are shameful, besides being a great economic waste. Men have tried to grapple with this question, and it is not made a sex question; neither will suffragists use their suffrage against men, but to strengthen the hands of the best men. That is what has happened in many countries, and the best men are trying to grapple with these things; but when you do not give us a vote you do not use the very best weapon you have in your hands. The tendency now is to get these things put right by Parliamentary powers. The least intelligent women now is beginning to realise that they have to get at the wrong from the bottom, and so you find everybody who is a social reformer is generally belonging to some society trying to get Parliamentary powers. But the women who are in those leagues cannot do much, although the men on them can do something, while if women had votes they would be able to strengthen the hands of the men. At present Parliament is so handicapped. Men who are dealing with these things have done their best by passing children's Acts, but they have not stopped the employment of children. There is nothing final about these Acts. As a woman, I think that if you had a woman's point of view those Acts would do what they were meant to do. Lately they have been discussing cradles for babies, which is very nice and kind of them

to do, but I do think women ought to have some voice as to these things. I am not a mother, but I think no intelligent, hygienic mother does rock a cradle nowadays. In any case, from an economic point of view, I think questions dealing with children and child labour require that women should have votes as much and more than anything else; and it is that kind of thing which has made me a suffragette, and an advocate of those tactics which I know the Liberal Club must think very terrible indeed.

Mr. JAMES MAY: I am going to speak chiefly on the question of women in the State. We are a nation of political pedlars, and if we want to touch the land question we begin pricking it with a pin instead of taking a crowbar. Indeed, with regard to the many questions of the day we are nothing but pedlars. We have a Bill now with regard to children which I hope will be stiffened up along the lines that no child should be allowed to work under 16 years of age. We are a long way behind Continental nations in this respect. Now as regards women in the House of Commons, I myself have no fear of this. Again and again I have sat on Guardians' Boards with women and have found many suggestions of theirs most excellent which would never have occurred to men. Most of us know perfectly well that women have a certain intuition. I know, from experience through my married life, that if my wife tells me not to trust a man, and I go against her advice, I am certain to be wrong. If that is so we, should not presume that in political life they will not be a great help to men, that along the lines of these great questions which affect our well-being why should we think that women are not competent enough to think and act just as well as the man, say, who follows the plough? I am certain that the nation will never get its full equivalent, that the nation will lose, unless we get women to give us their help and join hands with us along the lines of politics.

Mrs. DESPARD then replied as follows: Ladies and Gentlemen,—My task is now comparatively easy, because practically every one has so far agreed with me. I should like, however, to say one word about Mr. Applegarth's speech. I will not enter into our methods, or

attempt to justify them, but only say that they are our methods. We have thought that ours is the only way to get heard. At a meeting the other day, which was extraordinarily enthusiastic, one old gentlemen got up and said that our methods were simply putting the clock back; but my reply was that two or three years ago even if I had been there to speak on Woman's Suffrage he would not have been there to hear what was said, and that our methods have simply changed the question from a dead question to a living one. I said the other day at Cheltenham that I did not mind opposition because it is a sign of life; it is indifference which kills. A gentleman once said that we wanted a cure for social disease. I think we want some very great change, and that women would bring that change about. One of the speakers says that he is disappointed in regard to the new elements which have been brought into political life. I am also disappointed, though not as much as he is, because we must compare great periods. When we go from day to day we get a little depressed, because to-day seems no better than yesterday, and to-morrow does not seem to promise to be any better than to-day; but if we compare industrial life now with the time before the passing of the Truck Acts, when men and women had to take their wages in such kind as masters had to give them; when we compare the independent position of the worker now, we should be certain that these Reform Bills had done good, and that they augur well for what will come from a woman's vote. I do not think that women are all going to vote the same way. All I can say is, that I think the question of Domestic Economy, which is what we want. What is the use of a big England if we do not have a great England. We want a great imperial race, and that is what appeals so much to the heart of woman, and that is what should appeal to them. I should not have gone to prison for a mere right to vote, but that I believe that it is a key to the door which has been closed to myself and my sisters, and that when that key opens the door we may go through and give our energy, life and work for the country.

Mr. STAPLEY, in proposing a hearty vote of thanks to Mrs. Cobden Unwin for presiding, said: It is a good

thing that we have had this discussion in the National Liberal Club, which has been conducted in such a nice spirit as it has to-night. I have taken great interest in this question for many years. I contested the constituency of Brixton in 1892, and although I was not successful in the election and in being returned to Parliament, the educational advantage to me during the three years prior to 1892 was my association with Lady Sandhurst, who always put in front of all her speeches that she was working for the well-being of the people. She lifted the political questions of that day to a higher plane, and no one can dispute that the services which she rendered have been of great economic value; and the advantage it would be to the State and Society generally of having such women as Mrs. Unwin and Mrs. Despard to help us cannot be over-estimated. I welcome this discussion to-night as calculated to do a great deal of good, and I very much admire the conduct of the lady in the chair, as well as Mrs. Despard, because they are working for a reconstruction of Society; and even if we may not altogether agree with their tactics, we must admire their efforts in working for the end they have in view.

Mrs. COBDEN UNWIN, in replying, said: May I thank the members of the National Liberal Club for their kind hospitality? and in saying this I feel sure I am voicing every woman's thought in thanking them for their sympathetic attitude towards us to-night. And we shall feel still more grateful to this great Liberal Club if, in the near future, its 5,000 or 6,000 members will help us to gain our enfranchisement. We are tired of this agitation, which—speaking for myself—I have been engaged in during the greater part of my life. Many who during that time have worked for this great reform have passed away; but a younger generation has arisen, and when our cause is won—as won it will be—these workers will be free to help you to assist poor humanity to right its wrongs. I know I am speaking on behalf of Mrs. Despard, as well as of myself, in thanking you for your kind reception of us this evening.

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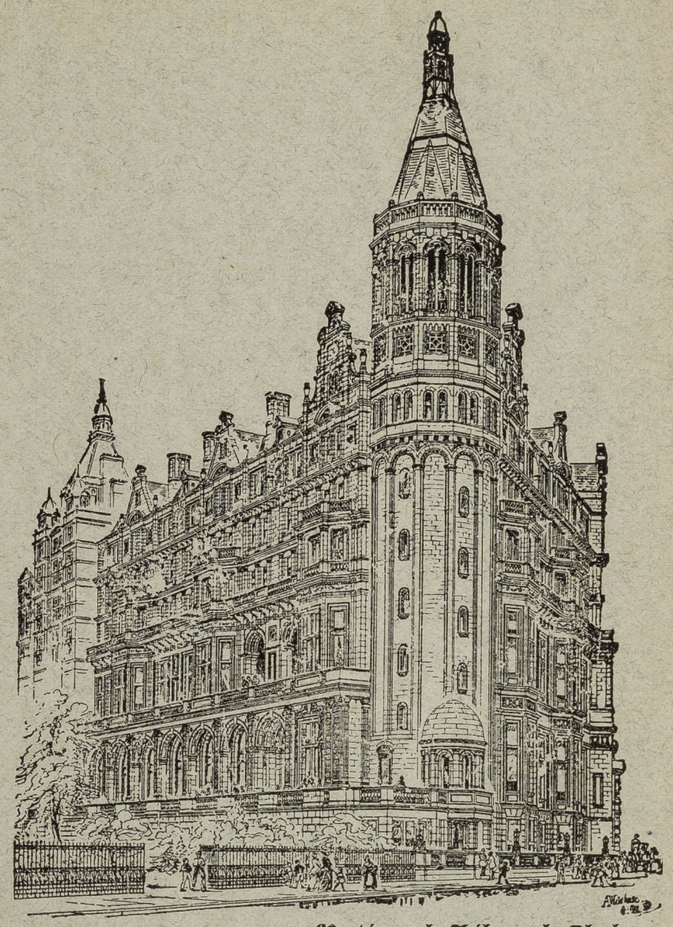

Fabian Tract No. 175.

THE ECONOMIC FOUNDATIONS OF THE WOMEN'S MOVEMENT . . . By M. A.

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The Economic Foundations of the Women's Movement.

The Spiritual Aspect of the Women's Movement.

PURELY economic causes are never sufficient to account entirely for any great revolt of the human spirit. Behind every revolution there lies a spiritual striving, a grasping after an ideal felt rather than seen. Most emphatically is it true that there is a social impulse independent of economic conditions, which has over and over again asserted itself in the demand for the emancipation of women. All the greatest seers and prophets have insisted on the equal value of men and women, and on the right of women to control their own lives. Four centuries before Christ, Plato claimed that in the life of the State women, as well as men, should take their place; and in all the records of Christ's conversations, which the Gospels have handed down to us, there is not one hint that he advocated that subordination of women on which his disciples later on insisted. In Rome also, at the Renaissance, and at the time of the French Revolution, powerful voices were raised in denunciation of the subjection of women.

These demands were, however, only sporadic. At most they affected a small class. It was not until the nineteenth century that the demand of women for political, economic, and educational freedom was heard among any considerable mass of the people. This extension of the demand for emancipation was due to economic changes, to those alterations in human control over environment which are associated with the substitution of mechanical power for human energy in the making of commodities, and with the development of powerful and smoothly working machines in place of human hands and simple tools.

The Effect of the Industrial Revolution.

Probably when Hargreaves invented his spinning jenny, and when Arkwright established his first cotton mill, in which the power of water took the place of the easily wearied arms of humanity, they had no conception of the fact that they were preparing the way for the greatest revolution in human society which has ever taken place since man learnt the use of fire. Yet nothing less was the truth, for then first men learnt how to utilize for their service the energies of the universe without previously absorbing them into their own bodies or into the bodies of domesticated animals in the form of food. Before the end of the eighteenth century man did indeed use water power on a small scale for grinding corn, and the capricious force of the wind for the same end and for propelling sailing vessels.

But the energies of steam and electricity and petrol were lying dormant or running to waste all around him, while he sweated at the forge or the loom, and was hauled slowly over badly made roads by the straining sinews of horses. Now throughout human society inanimate forces are at work, harnessed at last successfully to the service of man, shaping iron and steel plates, setting to work looms and printing presses, propelling enormous trains of waggons, urging leviathan ships across the ocean.

Before this mighty revolution, whatever alterations man wanted made in his world must be made through his own physical exertions; now he sets to work the energies of his environment to remould that environment according to his needs. From himself there is demanded merely the brain work of planning and directing and the nervous strain of tendence on the marvellous machines. It is true that in our badly arranged social system (all of whose concepts of property, contract, wages, and labor are still adjusted to the pre-machine era) the increased control over nature has brought but little advantage to the mass of the workers. But the full effects of the substitution of inanimate for human energy have not yet been seen, and will ultimately work themselves out into conditions of life vastly different from those which we know at present.

Women Before the Industrial Revolution.

Of all the changes introduced by the industrial revolution there is none greater than the alteration brought about in the position of women. Many people believe that it was only in the nineteenth century that women began, on a large scale, to work for their living. There could be no greater mistake. All the evidence goes to show that before the eighteenth century women, with few exceptions, worked as hard and as long as men did. In the sixteenth century women not only helped their husbands in farm work, but they toiled at spinning and carding of flax and wool as a by-industry of their own. Few nineteenth century women could work harder than the wife of a sixteenth century husbandman, whose duties are thus described by Fitzherbert, writing in 1534:

"First swepe thy house, dresse up thy dysshe bord, and sette all thynges in good order within thy house. Milk thy kye, suckle thy calves, sye up thy mylke, take uppe thy children and array them, and provide for thy husband's brekefaste, dinner, souper, and thy children and servants, and take thy part with them. And to ordayne corne and malt to the myll, and bake and brue withal whanne nede is. And meet it to the mill and fro the mill, and se that thou have thy measure again beside the toll, or else the miller dealeth not truly with the or els thy corn is not drye as it should be. Thou must make butter and cheese when thou maist, serve thy swyne both morning and evening. and give thy poleyn [i.e., poultry] meat in the morning; and when tyme of the year cometh thou must take hede how thy hennes, duckes, and geese do ley, and to gather up their eggs, and when they wax broodie to set them there as no beasts, swyne, or other vermin hurt them. . . .

And when they brought forth their birds to see that they be well kept from the gleyd, kites, crowe, polecats, fullymarts, and other vermin. And in the beginning of March or a little before is tyme for a wife to make her garden, and to gette as many good seedes and herbes as she canne, and specially such as be good for the pott and to eat. And also in March is tyme to sowe flax and hemp . . . but how it should be sown, weded, pulled, rippled, watered, washen, dryed, beaten, braked, tawed, heckled, spon, wounded, wrapped, and woven, it needeth not for me to show, for they be wise enough. And thereof may they make shetes, bordclothes, towels, sherts, smocks, and such other necessaries ; and therefore let thy distaff be always ready for a pastime, that thou be not idle. . . . May fortune sometime that thou shalt have so many things to do that thou shalt not well know where is best to begin. . . . It is convenient for a husband to have shepe of his owne for many causes, and then maye his wife have part of the wool to make her husband and herself some clothes. And at the least way she may have the locks of the sheep either to make clothes or blankets and coverlets, or both. And if she have no wool of her own, she may take wool to spyn of clothmakers, and by that means she may have a convenient living and many tymes to do other works. It is a wife's occupation to wynowe all manner of corns, and make malt, to wasshe and wrynge, to make haye, shere corn, and in tyme of nede to helpe her husband fyll the muckwain or dungcart, drive the plough, to load hay, corn, and such other. And to go or ride to the market to sell butter, cheese, milk, eggs, chekyns, capons, henns, pigs, geese, and all manner of corns. And also to bye all manner of necessary things belonging to the household, and to make a trewe reckoning and account to her husband what she hath paid. And if the husband go to the market to bye or sell, as they oft do, he then to show his wife in like manner." *

About two hundred years later a realistic Scotch novelist makes his hero write thus of his second marriage :

"I had placed my affections, with due consideration, on Miss Lizy Kibbock, the well brought up daughter of Mr. Joseph Kibbock, of the Gorbyholm . . . whose cheeses were of such excellent quality that they have, under the name of Delap cheese, spread far and wide over the civilized world. . . . The second Mrs. Balquhidder that was had a genius for management . . . for she was the bee that made my honey. There was such a buying of wool to make blankets, with a booming of the meikle wheel to spin the same, and such birring of the little wheel for sheets and napery, that the manse was for many a day like an organ kist. Then we had milk cows and the calves to bring up and a kirning of butter and a making of cheese. In short, I was almost by myself with the jangle and din . . . and I for a time thought of the peaceful and kindly nature of the first Mrs. Balquhidder with a sigh ; but the outcoming was soon manifest. The second Mrs. Balquhidder sent her butter on the market days to Irville, and her cheese from time to time to

* Fitzherbert's "Book of Husbandry." English Dialect Society. 1882.

Glasgow to Mrs. Firlot, that kept the huxtry in the Salt Market ; and they were both so well made that our dairy was just a coining of money, insomuch that after the first year we had the whole lot of my stipend to put untouched into the bank." *

The Family as the Economic Unit; Marriage an Industrial Partnership.

These extracts—and many like them could be quoted †—show clearly that before the industrial revolution women took a full share in industrial work. The basis of their work, however, was quite different from what it is to-day. Speaking generally, before the industrial revolution the economic unit was the family, and not the individual. So much was this the case, that in the censuses of 1811, 1821, and 1831 it was assumed that all the members of the family would practise the same occupation. Much of the work done by women in the family was of a domestic nature for the immediate service of their husbands and children, and not for profit. In technical language it was the production of use values, and not of exchange values. This can be illustrated from the inventory of the furniture of a middle class house at Brook, near Wingham, in 1760, which is preserved in an auctioneer's catalogue in the British Museum. The equipment of the establishment included a bolting room, where were kept "one large neading trough, one meal tub and sieve, and one quilting frame"; a bottle house, which contained, among other things, "one brine tub, one syder stock and beater, one pickling trough"; a milk house, where were kept "milk keelers, churns, a butter board, and a butter printer." In the "larder" were "pickling pans and stilling tubs"; in the brew house "a mash tub, five brewing keelers, and one bucking tub" (whatever that may have been).

But it would be a mistake to assume that women never worked for profit. The second Mrs. Balquhidder obviously did. It is common to find a woman carrying on the farm or shop of her husband after his death, and the farmer's wife, who has been already described, was her husband's working partner in his business enterprise as well as his housekeeper and servant. In fact, before the nineteenth century marriage was an industrial partnership as well as a relation of affection. The women worked, and worked hard, contributing much to the wealth of England, which was sold in her

* Galt. "Annals of the Parish," Chapter VI. Pages 38-9 of edition in Routledge's Universal Library.

† "The staff consisted of the general manager, John Dalton ; a collier, who prepared the charcoal from the brushwood of the neighboring forest ; a 'blomesmyth,' or 'smythman,' in charge of the 'blomeharth'; and a 'faber,' working at the stryng hearth. . . . The employment of the wives of the foreman and smith lends an air of domesticity to the little settlement. The wife of John Gyll, the 'blomesmyth,' seems to have been a general factotum, sometimes helping her husband or the laborers, then working at the bellows. At first her employment was intermittent and her payment irregular, but later she seems to have settled down to fixed employment at a regular rate of a halfpenny a blome, i.e., a weight of fifteen stones of thirteen pounds each." "Durham County History," Vol. II., p. 279, quoting Account Roll of John Dalton, first Durham ironmaster (about 1410).

markets. This situation must have served to modify considerably the harshness of the common law, which decreed the husband's entire control of his wife's property. Fitzherbert's husbandman, depending as he did on his wife's energy in poultry yard, garden, and spinning room, would not be likely to insist upon his legal rights to take absolute possession of her earnings. And in one way the law recognized the wife's partnership. A husband could not leave his property entirely away from his wife. The widow's ancient right to one third of her husband's property was only abolished in England by the Reform Parliament,* that Parliament which was called together on the basis of the Franchise Act, which for the first time introduced the word "male" into the qualifications of the parliamentary elector.

The Alteration of the Economic Basis of the Family.

Before the industrial revolution, then, the household was, as a general rule, the unit of industry, and women worked in it as members of the family for the production of exchange as well as of use values. Now what was the effect of the industrial revolution on the position of women in relation to these economic activities of the family? Briefly, the answer is that the introduction of machinery, by taking work out of the home and establishing the factory, the railway, and the mine as the organs of industry, broke up the family as an economic unit and diminished the amount of production for use carried on within the home. Brewing, baking, butter-making, spinning, weaving, even—to a large extent—the making of clothes, have ceased to be activities of the family; and increasingly housewives are finding that it is cheaper and more convenient to hand over jam making, laundry work, even window cleaning and floor polishing, to agencies that exist independently of the home. This is an inevitable development. Modern machinery and the use of artificial sources of power immensely cheapen production, but they can only be used by organizations bigger than the family group. So that the economic basis of the family has altered more within the last hundred years than in the whole course of Christian civilization preceding that time.

Inevitably this has reacted on the position of women, whose relation to the family was always closer than that of men; and the changes in the nature and aspirations of women, which have developed in the nineteenth century, are very largely, though not entirely, due to these altered economic conditions.

The Changed Position of Women.

But different classes of women were affected very differently. Among the wealthier people attempts were made to preserve the subordination of women to the family unit, although the economic justification for that dependence had ceased. Among the poor the necessity for the women's contribution to the family income was so strong that they were drafted into the new forms of industrial life

* Dower Act, 3 & 4 Will. IV., c. 105.

without any consideration of their powers or capacities. To put it shortly, parasitism became the fate of the middle class women, ruthless exploitation that of the working class women. The latter were absorbed in large numbers by the new factories, as were also the children, who equally had worked as parts of the family unit; and the first stage of machine production saw the women and children workers cruelly and shamelessly sacrificed to the demands of profit.

The Exploitation of the Working Women.

There is no need to repeat this oft told story, but it may be pointed out that the previous close relation of the women and children to the family unit had rendered them incapable of asserting themselves against the powers of capital and competition. And the low wages which they received made them dangerous rivals of the men and no longer co-operators with them. No one during the first agitation for the Factory Acts seems to have realized that the general labor of women and children pulled down the wages of men. The conditions became so bad that dead in the face of a public opinion more strongly individualistic than has ever been the case either before or since, the State was forced to constitute itself the established guardian of the women and children, and to bring into existence all the machinery of the Factory Acts, by which, first in the textile industries and in mining, later on in in all branches of machine production, and still later in practically the whole field of industry, an attempt was made to preserve women and children from the degradation and suffering due to over long hours and work in unsanitary conditions. The problem is, of course, not yet fully solved. In the industrial world the cheap labor of women is continually threatening new industries. Since these women believe themselves inferior to men, and since most of them expect to marry early and regard their occupation only as a makeshift, they are naturally willing to work more cheaply than men, and so constitute a perpetual menace to the masculine standard of life, while they themselves are subjected to conditions unfit for human beings. It cannot be wondered at that under these circumstances many social reformers regard the work of women outside the home as an evil development. For women in the industrial world are frequently forced to be blacklegs. Moreover, the conditions of modern large scale industry are determined not by the needs of the human beings who work in it, but by the demands of the machinery, and are therefore often unsuitable for women (equally so, in all probability, for men). In the early days of the movement for State regulation of industry, that innovation on the doctrine of *laissez faire* which then prevailed was justified on the ground that women were not free agents. Men, it was asserted, could and should stand out for themselves against the power of their employers. The State ought never to interfere in the wages contracts formed by its citizens among themselves, but women and children were not citizens. They were weak, ignorant, easily exploited. Further, they represented in a special way the human capital of the nation. The men might be used from generation to

generation and the life of the race would still continue, but a nation which lived upon the labor of its women and children was doomed to degeneration.

The Parasitism of the Middle Class Women.

In this view there is, of course, a truth which must never be forgotten. But it ignores another part of the problem, that which confronted the other class of women. The middle class women had so awful and so bitter an experience that for a time they were quite unable to appreciate the need of State protection for women. The result for them of the introduction of machinery was altogether opposite to the effect produced upon the industrial women. As the economic functions of the family diminished, the daughters of lawyers, doctors, wealthy shopkeepers, and manufacturers did not work out new forms of activity for themselves. It would have been against the dignity of their fathers and brothers to permit them to do so. Moreover, it would have diminished their chances of marriage, and would have involved a breach with the people who were nearest and dearest to them. They remained within the family group, occupied in the insignificant domestic duties that still remained and in the futilities of an extraordinarily conventional social intercourse. Dusting, arranging the flowers, and paying calls were the important duties of their existence. The married middle class woman had indeed, as wife and mother, a definite place and important responsibility, though the decay of household activities and the growing habit of living in suburbs, quite apart from the man's business, lessened at every point her contact with the social world and cut even her off more than had ever been the case previously from intercourse with the spheres of industry and commerce. But the unmarried woman, forbidden during her years of greatest vitality and strongest desire for new scenes and fresh interest to find any channels for her energies, save those of "helping mamma" and "visiting the poor," suffered intensely from the inactive parasitism forced upon her. Exploitation brings great suffering; but suffering as acute, though more obscure, is experienced by those whose growing powers and growing need for human contacts are dammed within them by an incomprehensible social fiat, resting really on conditions that had passed away a generation earlier. The only escape from this enforced inactivity and dependence was through marriage. The middle class woman, in fact, was regarded solely from the standpoint of sex. There was no way by which she might satisfy her natural wish to use the welling energies within her other than by becoming the mistress of a household. Naturally, therefore, she often regarded "to be settled" as an end to be aimed at, quite apart from the personality of the man who offered to make her his wife. And the irony of the situation was that to the finer spirits who refused to acquiesce in this degradation of love to the economic plane, there was no other alternative than an existence which became "that useless, blank, pale, slow-trailing thing" of which one of Charlotte Bronte's heroines so bitterly complains.

The Surplus of Women.

As the nineteenth century wore on other tendencies came into play which further increased the hardships of middle class women. The presence of a surplus of women in the middle classes made itself more and more apparent. Probably the cause of this is the emigration of young men, rendered necessary by our enormous colonial development; but it may be that some other and more subtle cause is at work. Exact statistics are difficult to give, as our statistics are not based on class distinctions. But certain conclusions can be drawn, as Miss Clara Collet first pointed out, from the distribution of unmarried males and females over certain ages in different boroughs of London, which to some extent are peopled by different classes of the community. The following table shows how striking the difference is, and how the surplus of females tends to accumulate in the better off districts. Some have urged that these surplus females are really domestic servants. But the number of female unmarried domestic servants over thirty-five is comparatively small.

Number of unmarried males and females between the ages of thirty-five and fifty-five in three wealthy and three poor London boroughs, as given in the Census of 1911.

	Males.	Females.
Hampstead	1,559	4,655
Kensington	2,785	11,395
Chelsea	1,414	3,688
Woolwich	1,861	1,526
Shoreditch	1,689	1,004
Bethnal Green	1,635	1,320

Putting the same facts in another way, for every 100 unmarried men between thirty-five and fifty-five there are in Hampstead 291 unmarried women of the same ages, in Kensington 409, and in Chelsea 260; while in Woolwich to every 100 unmarried men of these ages there are 81 unmarried women, in Shoreditch only 59, and in Bethnal Green 81.

We can cite also an article by Miss Hutchins in the *Englishwoman*, June, 1913, in the course of which she says: "Another means of comparing the prospects of marriage in different social strata is by comparing the proportion of single women in the age group 25-45 in rich and poor districts respectively. In making this comparison we must allow for the numbers of domestic servants, who of course very considerably augment the proportion of single women in the wealthy residential districts. The following table shows that, even if we subtract all the domestic indoor servants from the single women in the age group (which is over-generous, as a small but unknown proportion of them are certainly married or widowed), the single women in Hampstead, Kensington and Paddington are a considerably higher proportion than in Stepney, Shoreditch and Poplar. These districts have been 'selected' only in the sense that they were the first that occurred to the writer as affording a marked contrast of wealth and poverty."

Number and proportion of single women and domestic indoor servants in every 100 women aged 25-45 in certain London boroughs. (Census of 1911.)*

	Number	Per cent. of Women aged 25-45	Difference of percentage
	HAMPSTEAD.		
Single Women ...	11,483	57·3	24·7
Domestic Servants	6,534	32·6	
	KENSINGTON.		
Single Women ...	21,967	56	21·8
Domestic Servants	13,431	34·2	
	PADDINGTON.		
Single Women ...	13,711	46·6	24·5
Domestic Servants	6,473	22·1	
	POPLAR.		
Single Women ...	4,406	19·5	17·3
Domestic Servants	506	2·2	
	SHOREDITCH.		
Single Women ...	2,923	18·1	15·9
Domestic Servants	340	2·2	
	STEPNEY.		
Single Women ...	7,158	18·4	15
Domestic Servants	1,207	3·4	

This table also brings out the extraordinary difference between the proportions of women of the most marriageable period of life married in rich and in poor districts. The same fact is illustrated by the following table, comparing the number of married, single and widowed women among the population living "on private means" and among the general population. The comparison is suggested by Miss Hutchins, but the table used by her in the *Englishwoman* cannot be reproduced here as the new Census does not give the information in the same way.

Number and percentage of single, married and widowed women over 20 years of age in the population living on private means and in the general population in England. (Census of 1911.)

	Living on Private Means		General Population	
	Number	Percentage	Number	Percentage
Unmarried .	136,705	46·5	3,448,442	30·2
Married ...	23,724	8·1	6,610,173	57·9
Widowed ...	133,698	45·4	1,364,715	11·9
Total ...	294,127	100	11,423,330	100

No doubt the figures in this table are distorted by the number of widows who owe their private means to their widowhood, but even allowing for this it is remarkable to discover that the percentage of

* Miss Hutchins's original figures, which were taken from the Census of 1901, have been brought up to date.

married women in the general population is so much greater than in the population living on private means.

But statistical evidence is really not necessary. All hostesses and organizers of middle class social functions know well that one of the constant difficulties with which they have to contend is the over supply of women.

The Salaried Middle Class.

Another new element in the position of the middle class woman arises from the fact that her men relations tend to become salaried officials in place of independent merchants and employers. This means not only that the women can no longer take part in the economic activities of their men relations, but that, in the event of the death of the latter, their position is far more precarious. A business or a shop goes on even after the death of a husband or father who established or inherited it, but when a salaried official dies his family are altogether deprived of the support which he afforded them.

Can He Afford to Get Married?

And again, if a wife is no longer of any direct economic value, if, on the contrary, she is an expense, then men, in many cases probably with reluctance, must defer marriage until they can afford that luxury. To a middle class man before the industrial revolution, as indeed to the men of the working class at present, marriage was not a thing "to be afforded." A wife was a partner, bringing to the relation of wedlock economically, as well as in other and more emotional ways, as much value as she received. But the middle class bachelor contemplating marriage to-day realizes that he must be prepared to double, or more than double, his expenditure, while his wife adds nothing to the income. Therefore he defers marriage, finding often an outlet to his emotions in other directions (it would be interesting to endeavor to trace the relation between prostitution and the use of machinery), and the girl who should be his mate withers unwanted in the "upholstered cage" of her parents' home. Therefore in the nineteenth century the middle class woman had fewer chances of marriage, was less needed in the family life if unmarried, and was liable to find herself when that family life came to an end through the death of a father or brother stranded resourceless on the world.

The Tragedy of the Surplus Women.

It is heartrending to think of the hidden tragedies which these sociological changes brought in their train, the mute sufferings of the women, who, unmated and workless, felt themselves of no value or importance to the world around them. What wonder that in the end a revolt came, and women insisted that in the great world of human activities outside the family they, too, must have place and power. Some echo of this unhappiness found its way into the literature of the Victorian era. Charlotte Bronte utters it in the repinings of poor Caroline Helston.

"Caroline," demanded Miss Keeldar, abruptly, "don't you wish you had a profession—a trade?"

"I wish it fifty times a day. As it is, I often wonder what I came into the world for. I long to have something absorbing and compulsory to fill my head and hands, and to occupy my thoughts."

"Can labor alone make a human being happy?"

"No; but it can give varieties of pain, and prevent us from breaking our hearts with a single tyrant master torture. Besides, successful labor has its recompense; a vacant, weary, lonely, hopeless life has none."

"But hard labor and learned professions, they say, make women masculine, coarse, unwomanly."

"And what does it signify whether unmarried and never-to-be-married women are unattractive and inelegant or not? Provided only they are decent, decorous, and neat, it is enough. The utmost which ought to be required of old maids in the way of appearance is that they should not absolutely offend men's eyes as they pass them in the street. For the rest, they should be allowed, without too much scorn, to be as absorbed, grave, plain looking, and plain dressed as they please."

"You might be an old maid yourself, Caroline; you speak so earnestly."

"I shall be one; it is my destiny. I will never marry a Malone or a Sykes, and no one else will ever marry me." *

"Look at the numerous families of girls in this neighborhood: the Armitages, the Birtwhistles, the Sykes. The brothers of these girls are every one in business or in professions. They have something to do. Their sisters have no earthly employment but household work and sewing; no earthly pleasure but an unprofitable visiting; and no hope in all their life to come of anything better. This stagnant state of things makes them decline in health. They are never well, and their minds and views shrink to wondrous narrowness. The great wish, the sole aim, of everyone of them is to be married. But the majority will never marry; they will die as they now live. They scheme, they plot, they dress to ensnare husbands. The gentlemen turn them into ridicule; they don't want them; they hold them very cheap; they say—I have heard them say it with sneering laughs many a time—the matrimonial market is overstocked. Fathers say so likewise, and are angry with their daughters when they observe their manœuvres. They order them to stay at home. What do they expect them to do at home? If you ask, they would answer, sew and cook. They expect them to do this, and this only, contentedly, regularly, uncomplainingly, all their lives long, as if they had no germs of faculties for anything else. A doctrine as reasonable to hold as it would be that the fathers have no faculties but for eating what their daughters cook, or for wearing what they sew." †

The same restlessness, unconscious as it usually was of its cause, was expressed even more fully by George Gissing in that wonderful

* "Shirley," Chapter XII. † "Shirley," Chapter XXII.

book, "The Odd Women." But to most people the elderly spinster was no more than an occasion for mocking, and yet the same people were most bitter against the women who demanded the right to work, the right to education, and the right to enter politics, those three demands of the disinherited women of middle class Victorian England.

The First Feminist Movement.

The first feminist movement emerged into the open at the time of the Reform Bill of 1867. If its origin is grasped, its peculiar characteristics will be easily understood. It was on the whole a demand of elderly unmarried women for the right to freer activities, as the alternative to an impracticable ideal of marriage and motherhood for every woman.* Therefore it is not astonishing that these early feminists tended on the whole to ignore differences of sex, since those differences had been made the pretext for condemning them to a condition of parasitism, against which a healthy human being was bound to revolt. It was natural enough that these pioneers of the women's movement should insist upon their likeness to men, should demand the right to the same education as men received and the entrance to the same professions as men followed. In their revolt against the degradations which sex parasitism had brought in its train, it was not unnatural that in their dress and bearing they should neglect the grace and charm which a normal man will always desire in women. It was not unnatural either, when they found a section of the public advocating in industry special protection of women by law, that they should regard this as another form of the masculine exclusiveness from which they themselves suffered, so that to them the right of a woman to be a doctor and the right of a woman to work underground in a mine should present themselves as similar demands. Being but middle class women, influenced by the progressive ideals of their class, they were mostly Liberals, and to their special dread of the exclusion of women from human activities, other than those conditioned by sex, was added the strong individualism of the Liberalism of the period. Therefore they naturally set themselves in opposition to the demand for factory legislation, and there arose in consequence misunderstandings between two sections of reformers, the echoes of which have persisted to our own time.

Its Attitude towards Marriage.

The attitude towards marriage of these early feminists has also been much misunderstood. There were, no doubt, a certain number among them who were indifferent or opposed to marriage; but most of them found themselves driven into hostility to normal family relations, mainly because these were used as an argument to convince them that the alterations in the position of women which they desired were impossible. When a woman, struggling for education and the right to work for herself, was met by the objection: "If you

* Lydia Becker, one of the earliest agitators, is reported to have replied to a married woman, who said that she, too, would like a vote, "My dear, a good husband is much better worth having than a vote."

learn Greek or if you become a doctor no one will marry you," is it astonishing that she answered, "I don't care if no one does"? Moreover, as has been already said, the pioneers came mostly from the class of "superfluous women." They knew well that marriage was far from being the certainty or the likelihood which their opponents always assumed it to be. The alternative for them was not work *or* marriage, but work and money of their own *or* a spinstered existence in their fathers' houses. Therefore, naturally most of them put out of their minds, with what bitterness few people have realized, the possibility of marriage and motherhood, and turned instead to develop their own intellectual and spiritual forces, devoting themselves to public work and to the struggle for that independent living which is so sweet to the woman who has revolted against parasitism.

Economic Independence.

Few men understand what importance the modern middle class woman attaches to her economic independence. To men the right to earn a livelihood does not present itself as a hardly won and cherished privilege, but as a tiresome necessity. They may have earned an income with difficulty, but, at least, when they earned it it was theirs to spend as they would. But many women, even wealthy women, dressed in gorgeous raiment, with servants and horses and carriages at their command, never know what it is to be able to spend a guinea on the gratification simply of their own tastes. The money that they receive comes from father or husband, and must be spent as father or husband approve. Workers in the feminist movement are perfectly familiar with the well-dressed and prosperous-looking woman who declares, "Yes, I quite agree with you. I have often thought these things myself, and I wish I could help, but my husband does not approve of Women's Suffrage, and I have no money except what I get from him."* The life of the professional woman is often toilsome and often lonely, but the power of self-direction and self-activity which economic independence brings with it counts for much, and few women who have realized what sex-parasitism means, and have succeeded in emerging from it will ever willingly return to it.

The Two Sections of the Women's Movement.

So, at the present time there are two main sections in the modern women's movement—the movement of the middle class women who are revolting against their exclusion from human activity and insisting, firstly, on their right to education, which is now practically

*The personal experience of the writer will illustrate this point. She was once staying with the wife of a millionaire, and was going on after her visit for a walking tour with a friend in the Lake district. Mrs. D., when she heard of the plan, said: "Are you two going off by yourselves just where you like? That must be delightful. All my life I have never been able to do that kind of thing. Before my marriage I had to go where mamma said, and now, of course, Mr. D. always decides about our holiday." Many a wealthy lady is as much subservient to the whims of her husband as though she were one of his upper servants, which, indeed, in many cases, she is, with the difference that they have holidays and she has none.

conceded on all sides; secondly, on their right to earn a livelihood for themselves, which is rapidly being won; and, thirdly, on their right to share in the control of Government, the point round which the fight is now most fiercely raging. These women are primarily rebelling against the sex-exclusiveness of men, and regard independence and the right to work as the most valuable privilege to be striven for.

On the other hand, there are the women of the working classes, who have been faced with a totally different problem, and who naturally react in a different way. Parasitism has never been forced on them. Even when the working class woman does not earn her own living in the world of industry—though practically all the unmarried girls of the working classes do so—her activities at home are so unending, and she subconsciously feels so important and so valuable, that she has never conceived of herself as useless and shut out from human interests, as was the parasitic middle class woman. What the woman of the proletariat feels as her grievance is that her work is too long and too monotonous, the burden laid upon her too heavy. Moreover, in her case that burden is due to the power of capitalistic exploitation resulting from the injustice of our social system. It is not due, or not, at least, to any considerable extent, to the fact that the men of her class shut her out from gainful occupations. Therefore, among the working women there is less sex consciousness. Evolving social enthusiasm tends to run rather into the channel of the labor revolt in general than into a specific revolution against the conditions alleged to be due to sex differences. The working woman feels her solidarity with the men of her class rather than their antagonism to her. The reforms that she demands are not independence and the right to work, but rather protection against the unending burden of toil which has been laid upon her. A speaker at a working women's congress said once, "It is not work we want, but more love, more leisure to enjoy life, and more beauty." These facts explain the relative lukewarmness of working class women in the distinctively feminist movement, and one of the possible dangers of the future is that the working class women in their right and natural desire to be protected against that exploitation which the first development of machinery brought with it, should allow themselves to drift without observing it into the parasitism which was the lot of middle class women. If the exclusion of married women from all paid work were carried out; if the unmarried women were at the same time prevented from following all those occupations which reactionary male hygienists choose, without adequate investigation, to assume to be bad for women; if at the same time the growth of the public supply of schools and other agencies for the care of children were to go on and the number of children in each family were to continue to diminish; if the home, by reason of the development of machinery and large scale production, were to lose all those remaining economic activities which are carried on within it, then working women might come to live through the same experience as the middle class women have already known.

Sex-consciousness among Working Women.

But changes are proceeding in this situation. The consciousness of their rights and wrongs as a sex is arising among the working class women. They are beginning to see the possibility that even in the fight against capitalist exploitation, on which the men of their class are now entering, their specific interests may be overlooked. The shocking disregard of the needs of women by the Insurance Act has given them a clear proof of this. The great calamity against which the working class woman needs insurance is the death of her husband and bread winner; yet it is commonly stated that in the bargain with the big insurance societies the Government simply threw overboard the plans for a form of insurance which would make more secure the position of widows and orphans. Again, the home-staying working class woman finds that the Government cares little for her health, and makes practically no provision for her care should she fall ill, save in the one case of maternity benefit, and that, by curious irony, was originally to be paid to the husband and not to herself, save where the woman was herself a wage earner. Moreover, the development of social legislation is throwing heavier burdens on the working woman, and is yet making scant provision for her special needs. There are clubs, lectures, holidays provided for men, for boys, for young girls; but for the married working woman how little is done? A few schools for mothers, still mainly supported by private charity, in the poorest districts is about the sum total; yet all the while it is she who bears the burden of the insurance paid by her husband, for it comes in nine cases out of ten out of her housekeeping money. It is she who has to send the children to school clean and tidy and has to keep the great appetites of growing boys satisfied; it is she who is regarded as responsible for buying inflammable flannelette, for not providing fireguards or separate cradles for the babies, and whatever else a Government of men may choose to impose on her. So that there is appearing also among the working women an understanding of the fact that their interests are not altogether safe in the hands of men, though the working class women will never probably arrive at the intense consciousness of sex antagonism which characterizes some sections of the middle class feminists, and is due to men's callous disregard of their claims as human beings.

Changed Views among the Middle Class Women.

At the same time among the middle class women, too, the situation is altering. Many of them are realizing that to earn their own living is not always the joy it had appeared at first, for the living may be so meagre as to provide, at the cost of perpetual toil, only the merest food and shelter. Although the number of girls among the middle classes who are working for their living is steadily increasing, every now and then one comes across a young woman who finds the rigor of her work and the fierce competition too much for her, and hastens back gladly to the parasitic shelter of her relatives' roof. The lower sections of professional women, in short, are coming to understand the possibilities of exploitation, and are dimly beginning to feel

rather than to comprehend the fact that work may be so monotonous and so ill-paid that even their human qualities, and much more their feminine attractiveness, will be beaten out of them in the process of earning their living.

And among the whole community the growth of collectivist feeling is bringing us to realize that State regulation of the conditions of labor is a necessity, and therefore we seldom find now among the feminists that embittered opposition to factory legislation which caused so many difficulties in the seventies and eighties. It is realized on all hands that the position of women in industry is not an exceptional one; that men, too, need protection against over-long hours of work, low wages, and insanitary conditions; and that, therefore, women are not accepting an inferior position in demanding the intervention of the State to secure for them suitable conditions of work.

They Want both Work and Marriage.

An even more momentous change is occurring in the attitude towards marriage. The first generation of feminists did not so much oppose marriage as ignore it; but there is now coming into existence a second generation of advanced women, few at present, but destined to increase. Most of them know nothing at first hand of the old struggles. They have gone to high schools and colleges, and education has come to them as naturally as to their brothers. Many under the care of feminist relatives have been carefully trained to win the economic independence for which their mothers and aunts agonized in vain. And now these younger women find themselves face to face with a new set of problems. The fierceness and bitterness of the old struggles caused the first set of feminists to put the question of marriage and the supposed special disabilities of their sex altogether on one side. To-day many of these elder women, looking at their young relatives in receipt of independent incomes, doing work that is of real value to the world, and enjoying in such matters as foreign travel, theatre and concert going, and the cultivation of friendships a degree of freedom which they had longed for as unattainable, wonder what difficulties the young women of to-day can possibly have to contend with. But there are fundamental human instincts which can be disregarded only for a time. The problem of the modern professional woman is that she is forced to reconcile two needs of her nature which the present constitution of society make irreconcilable. She wants work, she wants the control of her own financial position, she wants education and the right to take part in the human activities of the State, but at the same time she is no longer willing to be shut out from marriage and motherhood. And the present organization of society means that for most women the two are alternatives. In almost all occupations the public acknowledgement of marriage means for a woman dismissal from her post and diminished economic resources. This is the case in practically all the Government posts: women civil servants, including even factory inspectors and school inspectors, are compelled to resign on marriage. Even the women school medical officers of the L.C.C.

are now forced to sign a contract stating that they will retire on marriage,* and although the same rule is not so strict in private business, there, too, it is rare for married women to be employed. Most women, that is to say, can only continue to preserve that economic independence, so keenly appreciated and won by such fierce struggles, on condition of compulsory celibacy and, what to many women is far worse, compulsory childlessness. Against this state of things a revolt is beginning which so far is barely articulate, but which is bound to make itself heard in public before long. What women who have fully thought out the position want, is not this forced alternative between activity in the human world and control of their own economic position on the one hand and marriage and children on the other, *but both*. The normal woman, like the normal man, desires a mate and a child, but she does not therefore desire nothing else. Least of all does she desire to sink back into a state of economic dependence and sex parasitism. Women do not want either love *or* work, but both ; and the full meaning of the feminist movement will not develop until this demand becomes conscious and articulate among the rank and file of the movement.

Can Child-bearing Women Earn their Living?

Now there can be no denying the fact that this demand will raise many difficulties. Some writers, chief of whom is that extraordinarily suggestive and interesting American, Charlotte Perkins Gilman, assume that with improved conditions of household management and the development of large scale housekeeping and publicly managed crêches and nursery schools it will be possible even for childbearing women to continue to earn their own living in such a way that they will be able not only to keep themselves during this period, but to contribute their share towards the bringing up of children, and this without any injury to the children. To the writer this seems a very optimistic attitude. It may, perhaps, be practicable for a few exceptional women, who possess sufficient ability to earn large incomes and have sufficient energy to endure, without breaking down, the twofold strain of working for a living and bringing children into the world. But it is obvious that for the vast majority of women regular work on exactly the same terms as those which men now submit to in office or factory is most undesirable for women during at least six months of the pre-natal and post-natal life of each child. If the child is to be nursed by its mother, as it should be, probably in most cases an even longer period of rest should be taken. The common sense of mankind knows well that just as increasing civilization leads to an increasing protection of children, so, too, it should mean more care for young mothers. During the child-bearing years the welfare of the child should have the precedence over all other considerations. But this does not mean that the woman need be incapacitated for earning her own living during her whole married life. It is not marriage that prevents a

* As these pages pass through the press, the desirability of requiring women doctors to retire on marriage is again being raised on the L.C.C.

woman from working. On the contrary, the married woman who is leading a normal and healthy life is likely to do better work and be a more satisfactory person than the spinster. The real hindrance is not marriage, but motherhood. Most people assume that the two are identical ; but should absorption in maternal duties extend over the whole of married life? The days have gone past (one hopes never to return) when the married woman had a child every one or two years during the whole of the fertile period of life. The modern family, it seems probable, will not consist in the future of more than three or four children, and even if one made the assumption * that the woman should devote herself entirely to the care of the children until the youngest reached school age, there would still remain many years of her life during which she would be strong and fit for work. Indeed, one of the most pathetic sights of to-day is the middle aged woman whose children have ceased to afford her complete occupation. They are absorbed in school life and in the training for their future occupations. The husband, too, gives up his time to his work and his sport, and the woman of forty or fifty, still at the height of her maturity, stronger perhaps, and certainly wiser, than she was in her youth, is left stranded by the current of life, with no interests outside her family ; whilst by the family the necessary task of being "company to mother" is resented and evaded.† How much happier would such women be if, when their children no longer needed all their time, they could return to activities outside the household ; and how much richer would humanity be if it could avail itself of the services of such women. A type might come into existence, of which only one or two instances have yet appeared, of mature women who, as girls, had worked for themselves and known what human life, as opposed to sex life, meant ; who then had lived through the normal feminine experiences of being sought in marriage, loved, and made mothers of children ; and who, ripened and enriched by these experiences, returned in middle age to the activities of the world, knowing—because they have lived through—both sides of life. How enormously valuable such women would be in education and in the medical profession, where, indeed, even now a few of them may be found.

The Problem of the Future.

So, then, the problem before the future is to secure for women freedom and independence, the right to control their own destinies, and yet to make it possible for the same women to be wives and mothers. The solution of this problem will not be easy. It cannot

* The writer is not prepared to admit that this assumption is true in every case, or indeed in many cases. Many women who can *bear* splendid children are not necessarily fit to care for all the details of their health and rearing, and in many cases it would be well that the mother should return to her normal occupation as soon as ever the child no longer required to be nursed every two or three hours, and should use her earnings to pay for the skilled care given in crêche or nursery, resuming charge of the child in the non-working hours. But that this is possible cannot yet be considered as established beyond a doubt.

† See the serial story "Won Over," which appeared in Mrs. Gilman's magazine *The Forerunner* during 1913.

be attained through the methods advocated by either of the schools of thought that now hold the field; neither by the feminists of the more old fashioned sort, on the one hand, who simply demand for women the same rights as men possess, ignoring all the inevitable differences of sex; nor, on the other hand, by those who believe that sex is the only characteristic of women that matters, and disregard in her the human nature that she shares with man. Neither independence alone nor protection alone will meet the case. The whole problem is still so new that it is perhaps best to be cautious in dealing with it, and to avoid committing oneself too soon to any specific solution.

Women in Unpaid Public Work.

It may be that some women after the days of active motherhood are past will find a sufficient sphere in unpaid public work of various kinds, though at present our electoral laws shut out in practice the vast majority of married women from membership of all our public bodies except the less important ones.*

* I am indebted to the Secretary of the Women's Local Government Society for the following note on the electoral laws as they affect the position of married women on public bodies:

For candidature for county and town councils in Great Britain it is necessary to have an electoral qualification, and the candidate's name must appear either on the burgess roll or on the list of county electors. In England and Wales (outside London) married women are in general excluded from standing, as they are not entitled to have their names placed on the register. The Qualification of Women (County and Borough Councils) Act, 1907, removed the disabilities of sex and marriage in regard to candidates, but it did not amend the statute law which demands that candidates for county and town councils shall be electors. Married women can stand in London for the County Council, as the London County Council Electors Act, 1900, gave parochial electors the right to vote for the County Council.

In Scotland and Ireland women owners, women lodgers and women service voters are entitled to be registered, and therefore to stand for county and town councils. In England and Wales these three classes of women cannot have their names placed on the register.

Since 1894 in England and Wales, and since 1898 in Ireland, there has existed a residential qualification alternative with the electoral qualification for the following local government bodies:

England and Wales.	Ireland.
Metropolitan Borough Councils.	Urban District Councils.
Urban District Councils.	Rural District Councils.
Rural District Councils.	Boards of Guardians.
Parish Councils.	
Boards of Guardians.	

It is in virtue of this residential qualification that at least two-thirds of the women guardians in England and Wales are now serving, and at the triennial elections for Metropolitan borough councils last November three-fourths of the women candidates were qualified by residence only.

In Scotland the school board is the only local authority for which the residential qualification is available. A change in the law is urgently needed in all three countries, so as to permit of an alternative residential qualification for candidates to all local government bodies.

It should be observed that even where there is no legal barrier against the candidature of married women for local bodies, few married women can in practice stand where it is neecssary for candidates to be electors, as married women seldom have qualifications as occupiers or owners, their houses being naturally hired or possessed by their husbands.

The new President of the Local Government Board has undertaken to introduce a Bill abolishing some of these anomalies.

The Legal Claim to Half the Husband's Income.

But it would be unreasonable to insist that the older married women as a whole should be confined to unpaid activities of this specific kind. Moreover, the objection which many of the noblest women feel to an undefined dependence on a husband would not be met at all by this suggestion, and we should find that if marriage means the complete relinquishment of a cherished occupation many of the finest women will refuse to marry. Some thinkers advocate that the difficulty should be met by giving to the married woman a legal claim to half her husband's income, and making her jointly responsible with him for the necessary expenditure on the family. There will be cases where the care of the household and children takes up the whole of a woman's time, in which such an arrangement would be quite legitimate, and it may be that it should be a possible legal settlement for those who care to adopt it. But it certainly should not be compulsory on all married couples. In the first place, it would obviously increase the tendency to evade legal marriage, and so would defeat the very purpose which it has in view. Again, dependence is not any the less dependence if definite legal provision is made for the endowment of it. Moreover, it would endow childless women equally with the child-bearing women, and it would continue the endowment during the years when the woman might reasonably return to ordinary economic activities. Therefore (although there will be cases where women will be supported by husbands who can afford to do so, and so will be set free either for the parasitic activities of fashion, sport and charity, or will use their leisure and freedom to carry on work for which no financial return may be expected, such as scientific research or the agitation for social reforms), yet the whole line of development should be in the direction of decreasing and not increasing the legal right of woman to be kept by the man, save when child-bearing and child-nurture are in question.

The Endowment of Motherhood.

Now, these are really specific activities of the greatest possible importance. No act of citizenship is more fundamental than the act of bringing into the world and protecting in his helpless infancy a new citizen, and therefore the most reasonable solution of the problem, though it may not be applicable in every case, is that women during the period when these activities must absorb their whole energies should be supported by a State endowment, but that this State endowment should not continue longer than the time during which they are so absorbed, and that at the end of that time they should be free to return to their former vocations.*

* It is neither possible nor desirable that we should at this stage adopt a dogmatic attitude as to the length of time during which an expectant and nursing mother should be freed from ordinary industry and be supported by a State grant. It will certainly vary from industry to industry. No pregnant woman should follow any occupation where the lifting of heavy weights is necessary or the raising of her arms above her head (obviously ordinary house work should be one of the first industries to be barred).

Such a system would at one blow solve innumerable difficulties. If childbearing is protected by the State, it would not be unreasonable for the State to impose on the women who are possible mothers certain restrictions with regard to the activities which they may follow. Moreover, if the husband is no longer solely responsible for the support of his wife and her children, marriage will become easier among precisely those classes where we desire to encourage it. At the same time, if the dependence of women on marriage disappeared, and with it the inevitable accompanying subordination of their own wishes to their husbands' marital demands, we should establish the most reasonable check on the increase of the population, namely, the woman's natural dislike to excessive and unwished-for childbearing. That decline of the birth rate among the classes with the highest standard of comfort which exists at present would be checked by the greater facilities for marriage, yet, on the other hand, there would be no danger of the too large families which are due to the dependence of women, and which give rise to over population. At present the distribution of children presents the same inequality as the distribution of wealth ; some people have far too many at the same time that others have too few. Another problem which would in time disappear is the inequality of the wages of men and women. The great argument which now weighs with the popular mind in favor of this inequality is the alleged fact that most men have dependants, while most women have not. Unfortunately, this is by no means always true ; and, moreover, this theory overlooks the fact that in a certain number of instances, at all events, women compete with men, and therefore if a lower level of payment is established for women, they will drive the men out altogether, as they have done in typewriting, and are in process of doing in elementary school teaching. What we want to work towards is a system whereby all adult human beings not incapacitated by some specific cause shall work for their living and be paid for it, no distinction of sex being made where similar work is done by men and women. Then the young, the aged, and those adults who for some special reason are unable to earn their living, should be supported by the State from the surplus funds available when rent and interest have been absorbed by the community ; a system of which we have already made a beginning in old age pensions on the one hand, and maintenance scholarships on the other. And among the most honored and respected of all those endowed by the State should be the women who are rendering to it the greatest possible service, that, namely, of ushering into the world its future citizens. But their reward for this service should only cover the time when their maternal duties prevent them from taking any part in industry.

On the other hand, most doctors advocate light out-door occupations. Women during these periods need work and interests and activities quite as much as the single or childless women: especially do they need what is now often denied them—some amount of social life. It would be easy under a properly organized state of Socialism to set aside excellently appropriate work for expectant mothers, and the State maintenance might then only need to cover a few weeks.

This is coming to be realized more and more clearly as the ultimate ideal of the feminist movement, and what we have to do at present is, while not straining our adhesion to it unduly in the face of the conflicts of the present situation, to attempt no changes in the law which will make our ultimate attainment of it impossible ; so that we should watch very carefully any development which may result in intensifying the dependence of women outside the childbearing years. It cannot be denied that the demands of some eugenists who are unable to believe that the necessary protection for motherhood can be given save through absolute dependence on a husband may make in this direction, and the increasing tendency of local authorities and government departments and of some philanthropic employers to exclude women from employment simply because they are legally married is equally a danger.

Socialism and Feminism.

It will be seen that these changes in the status of women cannot come about in our present individualistic society. In the first place, under the existing state of competition in business a woman who drops out for the childbearing period can hardly expect to be reinstated, and the world will probably honestly have to face the fact that certain readjustments, not otherwise desirable, must be made in order that the mother may not be penalized in her later economic life by reason of her motherhood. Even among elementary school teachers to-day a married teacher who frequently demands leave of absence because of her approaching confinement finds herself at a serious disadvantage. The absence and subsequent return of the married women to their work will no doubt be inconvenient, but the inconvenience must be faced, and the women as far as possible be placed at no disadvantage, if we are to put a stop to our present practice of the deliberate sterilization of the ablest and most independent women.*

Such a system could be deliberately and consciously introduced into the public services ; it could be imposed on private enterprise by factory legislation, though with much greater difficulty. But it is the development of Socialism, and that alone, which can make it possible throughout the whole fabric of society for the normal woman to attain her twin demands, independent work and motherhood. It is only Socialism which can make the endowment of the women during the maternal years a possibility, that endowment being one of the first charges on the surplus value or economic rent which the State will absorb ; and until the State has made itself master of the land and the capital of this country, it will not have an income big enough to enable it to provide adequate endowments for the childbearing women. Therefore it becomes clear that the only

* Cf. Shaw, "Man and Superman," p. 220. "Mr. Graham Wallas has already ventured to suggest, as Chairman of the School Management Committee of the London School Board, that the accepted policy of the sterilization of the school mistress, however administratively convenient, is open to criticism from the national stockbreeding point of view."

path to the ultimate and most deep lying ends of the feminist movement is through Socialism, and every wise feminist will find herself more and more compelled to adopt the principles of Socialism. But the wise Socialists must also be feminists. The public spirit of willingness to serve the community which will be necessary if the Socialist principles are to work must be inculcated into children from their earliest days. Can they be so inculcated by women who know nothing of the activities of the world beyond the four walls of their homes? Women, too, must be citizens and fully conscious of the privileges and duties of their citizenship if Socialism is to be attained. Not least among the duties of that citizenship should be what Plato long ago demanded of his women guardians :—that they should bear children for the service of the State.

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SPEECH

OF

JOHN STUART MILL, M.P.

ON

THE ADMISSION OF WOMEN

TO THE

ELECTORAL FRANCHISE.

SPOKEN IN THE HOUSE OF COMMONS,

MAY 20TH, 1867.

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1867.

ON THE

ADMISSION OF WOMEN

TO THE

ELECTORAL FRANCHISE.

I RISE, Sir, to propose an extention of the suffrage which can excite no party or class feeling in this House; which can give no umbrage to the keenest assertor of the claims either of property or of numbers; an extension which has not the smallest tendency to disturb what we have heard so much about lately, the balance of political power; which cannot afflict the most timid alarmist with revolutionary terrors, or offend the most jealous democrat as an infringement of popular rights, or a privilege granted to one class of society at the expense of another. There is nothing to distract our attention from the simple question, whether there is any adequate justification for continuing to exclude an entire half of the community, not only from admission, but from the capability of being ever admitted within the pale of the Constitution, though they may fulfil all the conditions legally and constitutionally sufficient in every case but theirs. Sir, within the limits of our constitution this is a solitary case. There is no other example of an exclusion which is absolute. If the law denied a vote to all but the possessors of £5,000 a year, the poorest man in the nation

might—and now and then would—acquire the suffrage; but neither birth, nor fortune, nor merit, nor exertion, nor intellect, nor even that great disposer of human affairs, accident, can ever enable any woman to have her voice counted in those national affairs which touch her and hers as nearly as any other person in the nation.

Now, Sir, before going any further, allow me to say, that a *primâ facie* case is already made out. It is not just to make distinctions, in rights and privileges, without a positive reason. I do not mean that the electoral franchise, or any other public function, is an abstract right, and that to withhold it from any one, on sufficient grounds of expediency, is a personal wrong; it is a complete misunderstanding of the principle I maintain, to confound this with it; my argument is entirely one of expediency. But there are different orders of expediency; all expediencies are not exactly on the same level; there is an important branch of expediency called justice; and justice, though it does not necessarily require that we should confer political functions on every one, does require that we should not, capriciously and without cause, withhold from one what we give to another. As was most truly said by my right honourable friend the Member for South Lancashire, in the most misunderstood and misrepresented speech I ever remember; to lay a ground for refusing the suffrage to any one, it is necessary to allege either personal unfitness or public danger. Now, can either of these be alleged in the present case? Can it be pretended that women who manage an estate or conduct a business,—who pay rates and taxes, often to a large amount, and frequently from their own earnings,—many of whom are responsible heads of families, and some of whom, in the capacity of schoolmistresses, teach much more than a great number of the male electors have ever learnt,—are not capable of a function of which every male householder is capable? Or is

it feared that if they were admitted to the suffrage they would revolutionize the State,—would deprive us of any of our valued institutions, or that we should have worse laws, or be in any way whatever worse governed, through the effect of their suffrages? No one, Sir, believes anything of the kind.

And it is not only the general principles of justice that are infringed, or at least set aside, by the exclusion of women, merely as women, from any share in the representation; that exclusion is also repugnant to the particular principles of the British Constitution. It violates one of the oldest of our constitutional maxims—a doctrine dear to reformers, and theoretically acknowledged by most Conservatives—that taxation and representation should be co-extensive. Do not women pay taxes? Does not every woman who is *sui juris* contribute exactly as much to the revenue as a man who has the same electoral qualification? If a stake in the country means anything, the owner of freehold or leasehold property has the same stake, whether it is owned by a man or a woman. There is evidence in our constitutional records that women have voted, in counties and in some boroughs, at former, though certainly distant, periods of our history.

The House, however, will doubtless expect that I should not rest my case solely on the general principles either of justice or of the Constitution, but should produce what are called practical arguments. Now, there is one practical argument of great weight, which, I frankly confess, is entirely wanting in the case of women; they do not hold great meetings in the parks, or demonstrations at Islington. How far this omission may be considered to invalidate their claim, I will not undertake to decide; but other practical arguments, practical in the most restricted meaning of the term, are not wanting; and I am prepared to state them, if I may

be permitted first to ask, what are the practical objections? The difficulty which most people feel on this subject, is not a practical objection; there is nothing practical about it; it is a mere feeling—a feeling of strangeness; the proposal is so new; at least they think so, though this is a mistake; it is a very old proposal. Well, Sir, strangeness is a thing which wears off; some things were strange enough to many of us three months ago which are not at all so now; and many are strange now, which will not be strange to the same persons a few years hence, or even, perhaps, a few months. And as for novelty, we live in a world of novelties; the despotism of custom is on the wane; we are not now satisfied with knowing what a thing is, we ask whether it ought to be; and in this House at least, I am bound to believe that an appeal lies from custom to a higher tribunal, in which reason is judge. Now, the reasons which custom is in the habit of giving for itself on this subject are usually very brief. That, indeed, is one of my difficulties; it is not easy to refute an interjection; interjections, however, are the only arguments among those we usually hear on this subject, which it seems to me at all difficult to refute. The others mostly present themselves in such aphorisms as these: Politics are not women's business, and would distract them from their proper duties: Women do not desire the suffrage, but would rather be without it: Women are sufficiently represented by the representation of their male relatives and connexions: Women have power enough already. I shall probably be thought to have done enough in the way of answering, if I answer all this; and it may, perhaps, instigate any honourable gentleman who takes the trouble of replying to me, to produce something more recondite.

Politics, it is said, are not a woman's business. Well, Sir, I rather think that politics are not a man's business either; unless he is one of the few who are selected and

paid to devote their time to the public service, or is a member of this or of the other House. The vast majority of male electors have each his own business, which absorbs nearly the whole of his time; but I have not heard that the few hours occupied, once in a few years, in attending at a polling booth, even if we throw in the time spent in reading newspapers and political treatises, ever causes them to neglect their shops or their counting-houses. I have never understood that those who have votes are worse merchants, or worse lawyers, or worse physicians, or even worse clergymen than other people. One would almost suppose that the British Constitution denied a vote to every one who could not give the greater part of his time to politics: if this were the case, we should have a very limited constituency. But allow me to ask, what is the meaning of political freedom? Is it anything but the control of those who do make their business of politics, by those who do not? Is it not the very essence of constitutional liberty, that men come from their looms and their forges to decide, and decide well, whether they are properly governed, and whom they will be governed by? And the nations which prize this privilege the most, and exercise it most fully, are invariably those who excel the most in the common concerns of life. The ordinary occupations of most women are, and are likely to remain, principally domestic; but the notion that these occupations are incompatible with the keenest interest in national affairs, and in all the great interests of humanity, is as utterly futile as the apprehension, once sincerely entertained, that artisans would desert their workshops and their factories if they were taught to read. I know there is an obscure feeling—a feeling which is ashamed to express itself openly—as if women had no right to care about anything, except how they may be the most useful and devoted servants of some man. But as I am convinced that there is not a single member of this

House, whose conscience accuses him of so mean a feeling, I may say without offence, that this claim to confiscate the whole existence of one half of the species for the supposed convenience of the other, appears to me, independently of its injustice, particularly silly. For who that has had ordinary experience of human affairs, and ordinary capacity of profiting by that experience, fancies that those do their own work best who understand nothing else? A man has lived to little purpose who has not learnt that without general mental cultivation, no particular work that requires understanding is ever done in the best manner. It requires brains to use practical experience; and brains, even without practical experience, go further than any amount of practical experience without brains. But perhaps it is thought that the ordinary occupations of women are more antagonistic than those of men are to the comprehension of public affairs. It is thought, perhaps, that those who are principally charged with the moral education of the future generations of men, cannot be fit to form an opinion about the moral and educational interests of a people: and that those whose chief daily business is the judicious laying-out of money, so as to produce the greatest results with the smallest means, cannot possibly give any lessons to right honourable gentlemen on the other side of the House or on this, who contrive to produce such singularly small results with such vast means.

I feel a degree of confidence, Sir, on this subject, which I could not feel, if the political change, in itself not great or formidable, which I advocate, were not grounded, as beneficent and salutary political changes almost always are, upon a previous social change. The notion of a hard and fast line of separation between women's occupations and men's—of forbidding women to take interest in the things which interest men—belongs to a gone-by state of society, which is receding further and further into the past. We talk of political

revolutions, but we do not sufficiently attend to the fact that there has taken place around us a silent domestic revolution: women and men are, for the first time in history, really each other's companions. Our traditions respecting the proper relations between them have descended from a time when their lives were apart—when they were separate in their thoughts, because they were separate equally in their amusements and in their serious occupations. In former days a man passed his life among men; all his friendships, all his real intimacies, were with men; with men alone did he consult on any serious business; the wife was either a plaything, or an upper servant. All this, among the educated classes, is now changed. The man no longer gives his spare hours to violent outdoor exercises and boisterous conviviality with male associates; the two sexes now pass their lives together; the women of a man's family are his habitual society; the wife is his chief associate, his most confidential friend, and often his most trusted adviser. Now, does a man wish to have for his nearest companion, so closely linked with him, and whose wishes and preferences have so strong a claim on him, one whose thoughts are alien to those which occupy his own mind—one who can neither be a help, a comfort, nor a support, to his noblest feelings and purposes? Is this close and almost exclusive companionship compatible with women's being warned off all large subjects—being taught that they ought not to care for what it is men's duty to care for, and that to have any serious interests outside the household is stepping beyond their province? Is it good for a man to live in complete communion of thoughts and feelings with one who is studiously kept inferior to himself, whose earthly interests are forcibly confined within four walls, and who cultivates, as a grace of character, ignorance and indifference about the most inspiring subjects, those among which his highest duties are cast? Does any one suppose

that this can happen without detriment to the man's own character? Sir, the time is now come when, unless women are raised to the level of men, men will be pulled down to theirs. The women of a man's family are either a stimulus and a support to his highest aspirations, or a drag upon them. You may keep them ignorant of politics, but you cannot prevent them from concerning themselves with the least respectable part of politics—its personalities; if they do not understand and cannot enter into the man's feelings of public duty, they do care about his personal interests, and that is the scale into which their weight will certainly be thrown. They will be an influence always at hand, co-operating with the man's selfish promptings, lying in wait for his moments of moral irresolution, and doubling the strength of every temptation. Even if they maintain a modest forbearance, the mere absence of their sympathy will hang a dead-weight on his moral energies, making him unwilling to make sacrifices which they will feel, and to forego social advantages and successes in which they would share, for objects which they cannot appreciate. Supposing him fortunate enough to escape any actual sacrifice of conscience, the indirect effect on the higher parts of his own character is still deplorable. Under an idle notion that the beauties of character of the two sexes are mutually incompatible, men are afraid of manly women; but those who have considered the nature and power of social influences well know, that unless there are manly women, there will not much longer be manly men. When men and women are really companions, if women are frivolous, men will be frivolous; if women care for nothing but personal interest and idle vanities, men in general will care for little else: the two sexes must now rise or sink together. It may be said that women may take interest in great public questions without having votes; they may, certainly; but how many of them will? Education

and society have exhausted their power in inculcating on women that their proper rule of conduct is what society expects from them; and the denial of the vote is a proclamation intelligible to every one, that whatever else society may expect, it does not expect that they should concern themselves with public interests. Why, the whole of a girl's thoughts and feelings are toned down by it from her school-days; she does not take the interest even in national history which her brothers do, because it is to be no business of hers when she grows up. If there are women—and now happily there are many—who do interest themselves in these subjects, and do study them, it is because the force within is strong enough to bear up against the worst kind of discouragement, that which acts not by interposing obstacles, which may be struggled against, but by deadening the spirit which faces and conquers obstacles.

We are told, Sir, that women do not wish for the suffrage. If the fact were so, it would only prove that all women are still under this deadening influence; that the opiate still benumbs their mind and conscience. But great numbers of women do desire the suffrage, and have asked for it by petitions to this House. How do we know how many more thousands there may be, who have not asked for what they do not hope to get; or for fear of what may be thought of them by men, or by other women; or from the feeling, so sedulously cultivated in them by their education —aversion to make themselves conspicuous? Men must have a rare power of self-delusion, if they suppose that leading questions put to the ladies of their family or of their acquaintance will elicit their real sentiments, or will be answered with complete sincerity by one woman in ten thousand. No one is so well schooled as most women are in making a virtue of necessity; it costs little to disclaim caring for what is not offered; and frankness in the expres-

sion of sentiments which may be unpleasing and may be thought uncomplimentary to their nearest connections, is not one of the virtues which a woman's education tends to cultivate, and is, moreover, a virtue attended with sufficient risk, to induce prudent women usually to reserve its exercise for cases in which there is a nearer and a more personal interest at stake. However this may be, those who do not care for the suffrage will not use it; either they will not register, or if they do, they will vote as their male relatives advise: by which, as the advantage will probably be about equally shared among all classes, no harm will be done. Those, be they few or many, who do value the privilege, will exercise it, and will receive that stimulus to their faculties, and that widening and liberalizing influence over their feelings and sympathies, which the suffrage seldom fails to produce on those who are admitted to it. Meanwhile an unworthy stigma would be removed from the whole sex. The law would cease to declare them incapable of serious things; would cease to proclaim that their opinions and wishes are unworthy of regard, on things which concern them equally with men, and on many things which concern them much more than men. They would no longer be classed with children, idiots, and lunatics, as incapable of taking care of either themselves or others, and needing that everything should be done for them, without asking their consent. If only one woman in twenty thousand used the suffrage, to be declared capable of it would be a boon to all women. Even that theoretical enfranchisement would remove a weight from the expansion of their faculties, the real mischief of which is much greater than the apparent.

Then it is said, that women do not need direct power, having so much indirect, through their influence over their male relatives and connections. I should like to carry this argument a little further. Rich people have a great deal of

indirect influence. Is this a reason for refusing them votes? Does any one propose a rating qualification the wrong way, or bring in a Reform Bill to disfranchise all who live in a £500 house, or pay £100 a year in direct taxes? Unless this rule for distributing the franchise is to be reserved for the exclusive benefit of women, it would follow that persons of more than a certain fortune should be allowed to bribe, but should not be allowed to vote. Sir, it is true that women have great power. It is part of my case that they have great power; but they have it under the worst possible conditions, because it is indirect, and therefore irresponsible. I want to make this great power a responsible power. I want to make the woman feel her conscience interested in its honest exercise. I want her to feel that it is not given to her as a mere means of personal ascendency. I want to make her influence work by a manly interchange of opinion, and not by cajolery. I want to awaken in her the political point of honour. Many a woman already influences greatly the political conduct of the men connected with her, and sometimes, by force of will, actually governs it; but she is never supposed to have anything to do with it; the man whom she influences, and perhaps misleads, is alone responsible; her power is like the back-stairs influence of a favourite. Sir, I demand that all who exercise power should have the burthen laid on them of knowing something about the things they have power over. With the acknowledged right to a voice, would come a sense of the corresponding duty. Women are not usually inferior in tenderness of conscience to men. Make the woman a moral agent in these matters: show that you expect from her a political conscience: and when she has learnt to understand the transcendent importance of these things, she will know why it is wrong to sacrifice political convictions to personal interest or vanity; she will understand that political integrity is not

a foolish personal crotchet, which a man is bound, for the sake of his family, to give up, but a solemn duty: and the men whom she can influence will be better men in all public matters, and not, as they often are now, worse men by the whole amount of her influence.

But at least, it will be said, women do not suffer any practical inconvenience, as women, by not having a vote. The interests of all women are safe in the hands of their fathers, husbands, and brothers, who have the same interest with them, and not only know, far better than they do, what is good for them, but care much more for them than they care for themselves. Sir, this is exactly what is said of all unrepresented classes. The operatives, for instance: are they not virtually represented by the representation of their employers? Are not the interest of the employers and that of the employed, when properly understood, the same? To insinuate the contrary, is it not the horrible crime of setting class against class? Is not the farmer equally interested with the labourer in the prosperity of agriculture,—the cotton manufacturer equally with his workmen in the high price of calicoes? Are they not both interested alike in taking off taxes? And, generally, have not employers and employed a common interest against all outsiders, just as husband and wife have against all outside the family? And what is more, are not all employers good, kind, benevolent men, who love their workpeople, and always desire to do what is most for their good? All these assertions are as true, and as much to the purpose, as the corresponding assertions respecting men and women. Sir, we do not live in Arcadia, but, as we were lately reminded, *in fœce Romuli:* and in that region workmen need other protection than that of their employers, and women other protection than that of their men. I should like to have a return laid before this House of the number of women who are annually beaten to

death, kicked to death, or trampled to death by their male protectors: and, in an opposite column, the amount of the sentences passed, in those cases in which the dastardly criminals did not get off altogether. I should also like to have, in a third column, the amount of property, the unlawful taking of which was, at the same sessions or assizes, by the same judge, thought worthy of the same amount of punishment. We should then have an arithmetical estimate of the value set by a male legislature and male tribunals on the murder of a woman, often by torture continued through years, which, if there is any shame in us, would make us hang our heads. Sir, before it is affirmed that women do not suffer in their interests, as women, by the denial of a vote, it should be considered whether women have no grievances; whether the laws, and those practices which laws can reach, are in every way as favourable to women as to men. Now, how stands the fact? In the matter of education, for instance. We continually hear that the most important part of national education is that of mothers because they educate the future men. Is this importance really attached to it? Are there many fathers who care as much, or are willing to expend as much, for the education of their daughters as of their sons? Where are the Universities, where the High Schools, or the schools of any high description, for them? If it be said that girls are better educated at home, where are the training-schools for governesses? What has become of the endowments which the bounty of our ancestors destined for the education, not of one sex only, but of both indiscriminately? I am told by one of the highest authorities on the subject, that in the majority of the endowments the provision made is not for boys, but for education generally; in one great endowment, Christ's Hospital, it is expressly for both: that institution now maintains and educates 1,100 boys, and exactly 26 girls.

And when they attain womanhood, how does it fare with that great and increasing portion of the sex, who, sprung from the educated classes, have not inherited a provision, and not having obtained one by marriage, or disdaining to marry merely for a provision, depend on their exertions for subsistence? Hardly any decent educated occupation, save one, is open to them. They are either governesses or nothing. A fact has recently occurred, well worthy of commemoration in connection with this subject. A young lady, Miss Garrett, from no pressure of necessity, but from an honourable desire to employ her activity in alleviating human suffering, studied the medical profession. Having duly qualified herself, she, with an energy and perseverance which cannot be too highly praised, knocked successively at all the doors through which, by law, access is obtained into the medical profession. Having found all other doors fast shut, she fortunately discovered one which had accidentally been left ajar. The Society of Apothecaries, it seems, had forgotten to shut out those who they never thought would attempt to come in, and through this narrow entrance this young lady found her way into this profession. But so objectionable did it appear to this learned body that women should be the medical attendants even of women, that the narrow wicket through which Miss Garrett entered has been closed after her, and no second Miss Garrett will be allowed to pass through it. And this is *instar omnium*. No sooner do women show themselves capable of competing with men in any career, than that career, if it be lucrative or honourable, is closed to them. A short time ago, women might be Associates of the Royal Academy; but they were so distinguishing themselves, they were assuming so honourable a place in their art, that this privilege also has been withdrawn. This is the sort of care taken of women's interests by the men who so faithfully represent them. This is the way we treat unmarried women. And how is it

with the married? They, it may be said, are not interested in this motion; and they are not directly interested; but it interests, even directly, many who have been married, as well as others who will be. Now, by the common law of England, all that a wife has, belongs absolutely to the husband; he may tear it all from her, squander every penny of it in debauchery, leave her to support by her labour herself and her children, and if by heroic exertion and self-sacrifice she is able to put by something for their future wants, unless she is judicially separated from him he can pounce down upon her savings, and leave her penniless. And such cases are of quite common occurrence. Sir, if we were besotted enough to think these things right, there would be more excuse for us; but we know better. The richer classes take care to exempt their own daughters from the consequences of this abominable state of the law. By the contrivance of marriage settlements, they are able in each case to make a private law for themselves, and they invariably do so. Why do we not provide that justice for the daughters of the poor, which we take care to provide for our own daughters? Why is not that which is done in every case that we personally care for, made the law of the land, so that a poor man's child, whose parents could not afford the expense of a settlement, may retain a right to any little property that may devolve on her, and may have a voice in the disposal of her own earnings, which, in the case of many husbands, are the best and only reliable part of the incomings of the family? I am sometimes asked what practical grievances I propose to remedy by giving women a vote. I propose, for one thing, to remedy this. I give these instances to prove that women are not the petted children of society which many people seem to think they are—that they have not the over-abundance, the superfluity of power that is ascribed to them, and are not sufficiently

represented by the representation of the men who have not had the heart to do for them this simple and obvious piece of justice. Sir, grievances of less magnitude than the law of the property of married women, when suffered by parties less inured to passive submission, have provoked revolutions. We ought not to take advantage of the security we feel against any such consequence in the present case, to withhold from a limited number of women that moderate amount of participation in the enactment and improvement of our laws, which this motion solicits for them, and which would enable the general feelings of women to be heard in this House through a few male representatives. We ought not to deny to them, what we are conceding to everybody else—a right to be consulted; the ordinary chance of placing in the great Council of the nation a few organs of their sentiments—of having, what every petty trade or profession has, a few members who feel specially called on to attend to their interests, and to point out how those interests are affected by the law, or by any proposed changes in it. No more is asked by this motion; and when the time comes, as it certainly will come, when this will be granted, I feel the firmest conviction that you will never repent of the concession.

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WOMAN
UNDER
A LIBERAL GOVERNMENT
1906-1914

An account of the manner in which Liberal Principles are applied to "the Protected Sex."

By WINIFRED HOLIDAY

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Woman under a Liberal Government 1906-1914.

When the Liberal Government was formed in 1906, women suffragists from all quarters co-operated in a great constitutional deputation on May 19th, to the Prime Minister, Sir Henry Campbell-Bannerman. It numbered 350 persons; it included Members of Parliament representing 200 signatures to a Suffrage Petition from members of all parties in Parliament, and delegates from 25 great organisations, amongst whom were representatives from 184,000 English and Scottish Liberal Women. The first woman on it to speak was Miss Emily Davies, *who had worked forty years for the cause.*

What was the Premier's response?

After assuring them of his entire sympathy, he told them that the Cabinet was divided on the question, that he could give them no pledge, and said, *"I have only one thing to preach to you, and that is the virtue of patience."*

Has the Liberal record since then been such as to justify women in being patient? Let us briefly examine some of its leading features.

1. GOVERNMENT AS EMPLOYER.

The Government employs directly over 50,000 women, whom it pays throughout at a lower rate than men for the same work. In addition to these it is responsible for two large classes of workers. 1. Teachers. 2. Employees of Government Contractors. Of these last many are shamelessly sweated, especially those engaged on Army Clothing, and cannot with the hardest labour earn a living wage, because, though the "fair wages clause" inserted in the contracts applies theoretically to both sexes, in practice it applies only to men.* The clause runs thus: 'The contractor shall, under penalty of a fine or otherwise, pay rates of wages and observe hours of labour not less favourable than those commonly recognised by employers and trades societies (or in the absence of such recognised wages and hours those which in practice prevail among good employers) in the trade in the district where the work is carried out."

Now a standard rate of wages for the men employed by contractors is almost universal, but Mr. Haldane himself pointed out in the Commons that *this is not so for women*: "The clothing industry," (he said) "is very imperfectly organised, and the consequent absence of any recognised rates for any given work tends to weaken the effect of the fair wages clause." As

* See "Women's Votes and Wages," F. W. Pethick Lawrence, p. 16.

an example of this it was found that 3¾d. for finishing trousers, ¼d. a pair for putting footstraps on Cavalry overalls, and other work at similar rates were the wages paid to a widow engaged on Army Contract work, who was charged at Westminster Police Court in April, 1909, with attempted suicide. Two, three, or four shillings a week—*six, if she worked full time, 10½ hours a day,* were her earnings. The contractors rightly pointed out that *the fault lay with the Government for not standardising the wages.** Far from taking steps to amend this state of affairs, that brutal taskmaster, the Liberal Government, evidently considered even these starvation wages too high, for in 1911 Lord Haldane reduced the pay for trouser-workers to 2¼d. per pair, while in the next two years women in other Army clothing departments had their weekly earnings reduced by amounts varying from 4/- to 5/6.

During the Post Office agitation the women employees asked for equal pay for equal work, and in giving evidence conclusively proved their case. The Holt Report not only ignored their claims, but in certain instances recommended changes which, if carried out, will increase the present disparity between the maximum wages paid to men and women telegraph and counter clerks from 20/- a week to 22/- a week.

The "Times," a staunch opponent of Votes for Women, is compelled to admit (March 18, 1914) that "Government offices are notorious sinners in the matter of under-paying their women employees; . . this amounts to a positive scandal in the case of the women Sanitary Inspectors, who in return for the investment of their capital in a highly specialized training, and for the performance of arduous and very responsible duties, cannot at present hope for a salary of more than £200 a year."

Speaking of the inequality of Government pay for men and women, Mr. Lloyd George himself said, (Dec. 5, 1908, Albert Hall) "That inequality would be impossible if women had the same right to vote, and therefore to call the Government to account, as men have."

2. INTERFERENCE WITH WOMEN'S OCCUPATIONS.

On the pretext that a bouquet is a "manufactured article" the florists trade was brought under the Factory and Workshops Act, which forbids the employment of women at night. As this threatened the livelihood of the skilled and highly paid women who decorated houses for balls and receptions, a vigorous agitation ensued, and the Home Secretary, (Mr. H. Gladstone) appointed Judge Ruegg as Commissioner to report on the

* On the L.C.C. where women have votes, tailoring wages *are* standardised.

matter. After exhaustive investigation, he recommended exemptions to permit of women retaining this work, which would otherwise pass into the hands of foreign workmen. Nevertheless, the Home Secretary actually reversed his own Commissioner's judgment, and as the law now stands, the women will lose this essentially womanly trade whenever it is put into operation.

The women pit-brow workers had to fight hard to retain their work under the Coal Mines Bill, and the Home Office insisted on applying a clause of the Children's Employment Act to these capable adult women, under which it will be easier than before to find excuses for dismissing them, in spite of all the medical evidence that their occupation is both healthy and decent.

Barmaids, women acrobats, and married women employed in factories, have all in turn been threatened by this Government, and have no guarantee that they may not be turned adrift at any time. Is it right arbitrarily to debar women from earning an honest living in any form, when the alternatives are starvation, suicide or the streets?

3. DIVORCE COMMISSION.

The Divorce laws are notoriously unjust and oppressive to women, and in November, 1909, the Government appointed a Royal Commission to enquire into the whole subject, on which two women were included as Commissioners.

The recommendations in the majority report, signed by all the Commissioners but three, are beneficial and far-reaching. Among the most important are the following.*

That whatever grounds are permitted to a husband for obtaining a divorce from his wife, should be available for a wife against her husband. That the following additional grounds for divorce be recognised by law: (a) wilful desertion without reasonable cause, (b) cruelty, (c) habitual drunkenness, (d) incurable insanity, (e) death sentence commuted to penal servitude for life. Among additional grounds for a decree of nullity we find "where one party is suffering, at the time of marriage, from a venereal disease in a communicable form, and the fact is not disclosed to the other party."

A Bill based on these and other recommendations in the report would enormously benefit women, especially those of the working classes, but the Government persistently refuses to give any idea when, if ever, they intend to bring forward such a measure.

* Liberal Year Book, 1913.

When it is a question of injuring women workers, or reducing their pay, the Government can move rapidly, but when it is a question of lightening their heavy burdens the Government stands still.

4. GOVERNMENT AND TAXATION OF WOMEN.

In August 1911, Mr. Lloyd George proposed a resolution in the Commons which was carried, that members should be paid £400 a year.* Thus the Government is responsible for the scandal of women taxpayers being actually forced to contribute to the salaries of M.P.'s in whose selection they are allowed no voice, and who can legislate against the interests and wishes of the very people who are helping to pay them.

Through the activities of the Women's Tax Resistance League public attention has been called to the contradictions between the Income Tax Laws and the Married Women's Property Act. Under the first of these a married woman's income is deemed to be the husband's, who can be taxed both on his income and hers. Under the second, a married woman's income is her own, and she need tell her husband nothing about it. Result, endless confusion, and frequently injustice to both parties, as was amply proved by the celebrated Wilks case, the publicity of which compelled Mr. Lloyd George to promise to deal with the subject in his next Finance Act. Again, abatements on the Income Tax of married women are only allowed by the Inland Revenue to the *husband,* even when he has no income of his own. On November 4th, 1912, Mr. Lloyd George was asked in the House whether he would amend the law so as to enable married women to recover on their own behalf. He replied that such amendment would involve "very considerable changes and adjustments in the Income Tax Law, and he could not at present undertake to propose it." The following further question and answer are interesting. Mr. Guiness: "Does the right hon. gentleman think the present system just?" Mr. Lloyd George: "I think there are certain advantages in it."† "Advantages" to the Exchequer, however dishonest, (and this particular one is sheer robbery) are preferred by the Chancellor to an act of common justice to voteless women.

The present income tax penalises marriage . For example. ‡A man earning £270 per annum marries a woman with £150 per annum from investments. If single, a man would pay 9d. on the £110,—viz., £4 2s. 6d., (£160 exempt) and the woman nothing. When married they are charged on £420 (£150 exempt) and will pay 9d. on the man's earned balance of £120 (£4 10s.) *and 1/2 on the woman's unearned* £150, viz., £8 15s.; total £13 5s.; penalty on marriage £9 2s. 6d. per annum! Yet in marriage it is probable that expenses will increase by the birth of children. It should be noted that the rebate now granted on each child can *never* be claimed by the wife, and if a widow with children re-marries, the rebate on these children will go to the *stepfather.*

* Liberal Year Book, 1912.

† *Manchester Guardian,* November 5th, 1912.

‡ "Married Women and Income Tax," Women's Tax Resistance League, 98, St. Martin's Lane.

Mr. Lloyd George met a deputation from the Women's Tax Resistance League on June 10th, 1913, and was pressed to say why he had not kept the promise alluded to in a previous paragraph. His answer was naïve. "It would cost him 1½ millions a year, and where else could he get it?"* In conclusion he said " I agree that the present law treats married women as if they had no legal existence, and that is a *legal humiliation you are certainly entitled to protest against.*"

5. WOMEN UNDER THE INSURANCE ACT.

The injustices and hardships to women under this Act are so many and various that it is impossible to give an adequate idea of them here. A few examples must suffice.

(1) Women were brought into the Act and their rate of contribution calculated and benefits arranged on the assumption that their illnesses would be in the same proportion as men's. This elementary calculation is now proved to be inadequate, and the result may be that the women may have to pay increased contributions, or accept a largely reduced benefit.

(2) Women who work in their own homes, looking after their husbands and children, are excluded from the Act; they may not even become *voluntary* contributors at 6d. a week; and the provision that women who have been insured on marriage may, if they wish, continue to pay 3d. a week and get reduced benefits, is largely inoperative because married women have very seldom the 3d. a week of their own to spare. It is also most expensive as an Insurance result. This is the fundamental absurdity of a National Health Scheme, which makes no provision for the health of the most important person in the community—the home-keeping Mother—beyond the Maternity Benefit, which is largely absorbed in doctor's fees—the doctors having raised their charges for this service since the Act came into force.

(3) The rate of contribution presses very hardly on poorly paid women, more especially since in many industries employers are recovering their share by various means, (a) reduction in

*The Budget of 1914, in which Mr. Lloyd George ultimately promised to deal with the matter, only increases the burden on voteless women, a characteristic proceeding which the "Nation" of May 9th, rightly describes as an "act of coercion."

the contract rates, or (b) insisting on more work being done for the same rate, (c) making fewer people do the same amount of work, or (d) compelling them to find their own materials where they had not previously done so. For example, a woman who had worked for years in an East End factory was paid at piece rates. Since the Act came in, the firm has compelled her to provide her own cotton. As her work is machining this sometimes runs to nearly 1/- a week.

*On the question of temporary or permanent cessation of employment, men are protected for 12 months under section 79, but in practice this is often ignored in dealing with women, who, on marrying and leaving employment, are often ordered to decide, *within three months,* whether or not they have left employment. If the woman, who often does not know, decides that she has left, but owing to lack of means later on returns to work, *she is treated as a new member,* losing the advantage of the flat rate, which only refers *to widows* re-entering employment.

THE MATERNITY BENEFIT.

Let us freely admit that the idea underlying this section of the Act is generous, bold and statesmanlike. It will always stand to Mr. Lloyd George's credit. The greater the pity that both in framing and administration so many faults mar the granting of it. Its omissions are amazing. For example—the Act (1st Schedule, Part I) allows certain classes of men to be excepted from the scheme provided they are otherwise entitled to benefits not less favourable than those given under the Act. But these equivalent benefits need only be such as concern *sickness and disablement.* The wives had been entirely forgotten, for no mention is made of Maternity benefit! Thus, while the "excepted" men, numbering nearly three hundred thousand get their sickness and disablement benefits, *their wives lose the maternity benefit they would otherwise have received in respect of their husbands' insurance.*

The wives of deposit contributors, or women who are themselves deposit contributors, numbering more than 200,000, are practically outside the reach of the Maternity Benefit, for under the deposit system the payments are wholly insufficient to meet it. Yet their need is as great as that of other women.

The greatest number of complaints and most widely felt grievance refer to the refusal of sickness benefit to married insured women for disablement during pregnancy, on the ground that pregnancy is not a disease, but a condition. The old rule in many Friendly Societies allowed no benefit for it,

* For full details see *New Statesman Supplement*, March 14th, 1914.

and although the Act supersedes these rules and makes "incapacity for work," and not disease, the ground for sickness benefit, great confusion exists on the point, which the Insurance Commissioners have done little to clear up, and as a result great hardships have been inflicted on many poor women.

When Mr. Lloyd George was drafting the Insurance scheme widows with young children were to receive 5/- a week, and 1/6 a week for every child of tender years. But the great Insurance Companies blocked this as against their interests, and when the bill was laid before Parliament the widow and orphan were omitted. Previous, however, to the introduction of last year's Amending Act, Mr. Masterman alluded in a speech in the House, to the possibility of such death benefits being added to this "great scheme," and was loudly applauded. He was at once approached by the Insurance Companies, and informed them in a letter dated May 8th, 1913, that they need have no apprehensions that the Amending Bill would include Death Benefits; the Government pledge given in 1911 on this point still held good." If women had votes would their interests and those of the children be thus ignored?

It must be remembered that, to quote Mr. McKinnon Wood's speech in the Commons, December 18th, 1911: *"The Treasury does not guarantee the benefits* for which compulsory contributions are made under the Bill." For the State to impose compulsory insurance on men without guaranteeing the benefits is an injustice. To impose it on voteless women is a double injustice. Men can, if they wish, turn out the Government that passed the Act. Women cannot.

Speaking at a Liberal Women's meeting on November 15th, 1909, Mr. Runcimann said "the Government's legislation had probably touched the interests of women on more points than those of men." If that was true in 1909 how much truer still is it since the Insurance Act was passed!

6. GOVERNMENT AND THE WHITE SLAVE TRAFFIC.

In June, 1912, the Government was threatened by the Women's Liberal Federation with a breach of "amicable relations" on the suffrage question. Indisposed to meet their demand for enfranchisement, the Government looked round to see in what way they could pacify them, and decided to grant facilities for the passing of the Criminal Law Amendment (White Slave Traffic) Bill, on behalf of which a vigorous agitation was being carried on in the country. This sudden concession was the more dramatic because only a few days previously (June 5th) Mr. Lloyd George, speaking for the Government, had point blank refused facilities for this Bill.

During its passage through Parliament the efficacy of the Bill was greatly marred, but it was hoped that if properly administered good results would yet be obtained.

In July, 1913, occurred the first case to be tried at the London Sessions under the new Act.* "Queenie Gerald's" flat in Piccadilly was raided by the police in June. Rumours at once sprang up implicating men of high position. At the Police Court the court was cleared. Mr. Travers Humphreys in prosecuting stated (see *Manchester Guardian* report) that "a number of letters were found [at the flat] which made it quite clear that apart from the accused herself, and apart from the girls and what she made out of them, *she was carrying on the trade of a procuress.*" "Queenie Gerald's" real name was mentioned in Court, but suppressed with the consent of the magistrate. She pleaded "not guilty." The trial at the London Sessions followed. Again the Court was cleared, and the press was asked *not to publish names.* In spite of what Mr. Humphreys had said the indictment contained no *charge of procuring;* such a charge would have necessitated *the disclosure of names.* The defendant now pleaded guilty, and received the light sentence of three months. Pressed in the House by Mr. Keir Hardie as to why the charge of procuring was not included in the indictment, Mr. McKenna declared that "Mr. T. Humphreys only used the word procuress in the colloquial sense." Reminded by Mr. Hardie that Mr. Lawrie, who tried the case, had also said "There is some evidence that the woman had acted as a procuress," Mr. McKenna replied "That statement was incorrect on the facts of the case," and finally, referring again to Mr. T. Humphrey's statement (mentioned above), he actually said, "that statement, if correctly reported, *is not a true statement.*"

It will be seen from this brief outline that for some reason Mr. McKenna was supremely anxious at all costs to shelter "Queenie Gerald" from further exposure, even if in so doing he had from his place in the House to accuse the judge trying the case of being "incorrect on the facts," and the prosecuting attorney, a lawyer of high standing, of lying!

We may be sure that all persons engaged in the White Slave Traffic were closely watching the action of the Home Office in this crucial case, and that they rejoiced in the result.†

* For detailed information on this scandalous case we refer our readers to "The Queenie Gerald Case," by Keir Hardie, M.P., National Labour Press.

† N.B.—We also refer our readers to the pamphlet entitled "The Protection of Criminals by the Government and the Law Courts" (Women's Freedom League, 1, Robert Street, Adelphi), for an example of the way in which the Home Office and the Law Officers "protect" young girls from men, a subject which requires a treatise to itself.

7. GOVERNMENT AND WOMAN SUFFRAGE.

Private members' bills for Woman Suffrage were introduced in 1908 and 1909, the first—a moderate measure—having a majority of 189 on the second reading, the second, for Adult Suffrage, only 35. Both were dropped. In 1910, with a new Parliament, the Conciliation Committee was formed of M.P.'s from all sides of the House in favour of Woman Suffrage, and drew up a Bill on which they believed all its supporters would agree.

It was, however, furiously attacked by Mr. Lloyd George and Mr. Churchill, (a) because it was too moderate, (b) it did not admit of amendment. Nevertheless the second reading passed by 110, a majority larger than the Government themselves could command.

Following King Edward's death, the Government held a closed-door conference on the House of Lords, during which time Parliament sat idle. As the excuse for dropping the earlier Suffrage Bills had been "pressure of business" the Government was urged to allow facilities for the remaining stages of the Conciliation Bill in this unoccupied interval. *They refused.*

A public agitation ensued, backed by petitions from all the great municipal bodies in the Kingdom in favour of the Bill. But on October 27th, Mr. Asquith replying to a deputation of women in his constituency, *still refused* facilities for it. Asked about 1911, he replied "Wait and see."

The beginning of 1911 saw yet another Parliament and Government. The Conciliation Committee now brought in a revised Bill, framed to meet the objections raised to the first, which passed the second reading by a majority of 167, only 88 voting against it. After some negotiations, Mr. Asquith, in two letters to Lord Lytton, in June and August respectively, gave definite pledges that the Government would grant facilities for the remaining stages of the Bill in 1912.

The following November 7th Mr. Asquith suddenly announced that the Government intended to bring in a Manhood Suffrage Bill, the franchise to be based on citizenship, and votes to be given "to citizens of full age and competent understanding."

Evidently Mr. Asquith considered that no woman could be a person of competent understanding, as no mention was made of women!

However, on November 18th, he invited a deputation from all the Suffrage Societies, at which four questions were put to him by the National Union of Women's Suffrage Societies.

1. Is it the intention of the Government that the Reform Bill shall go through all its stages in 1912?

2. Will the Bill be drafted in such a way as to admit of any amendments introducing women on other terms than men?

3. Will the Government undertake not to oppose such amendments?

4. Will the Government regard any amendment enfranchising women which is carried as an integral part of the Bill in all its stages?

To all of these he replied in the affirmative.

On November 24th, Mr. Lloyd George, speaking at Bath, boasted that by the introduction of the Manhood Suffrage Bill, the Conciliation Bill had been "torpedoed." This was quite true. Our professed friends, Sir E. Grey, Sir John Simon, Mr. Lloyd George, all assured us that our chances of carrying Women's Suffrage as part of the Government Reform Bill were infinitely better than a mere private member's Bill,—the suffrage societies were themselves divided between the two alternatives, and the chances of the Conciliation Bill, formerly so rosy, rapidly dwindled. In addition, rumours were sedulously spread that the carrying of a suffrage measure would be a personal humiliation to Mr. Asquith, who would resign, and on this ground the Irish Party, a majority of whom had hitherto supported it, voted against it when the third reading was reached on March 28th, 1912; in fact not a single Irishman voted for it, even of those who had joined the Conciliation Committee. Of its other previous supporters a number of Labour members were absent owing to the coal strike—many Liberals joined the Irish in the supposed interests of Home Rule, while others professed indignation with militancy. The Bill was defeated by the narrow majority of 14.

There remained the Amendments to the Reform Bill. Mr. Asquith did not scruple to put this Bill into the hands of the bitterest opponents of Women's Suffrage to pilot through the House (Mr. Harcourt and Mr. Pease) while, concerning his own speech on the second reading, Mr. Snowden, M.P., wrote,* "There is no more disgraceful episode in Mr. Asquith's career." The rumours that had killed the Conciliation Bill were revived by Mr. Churchill, and only denied at the last moment, when they had done their work.

Finally, the famous pledge which the Government had given fifteen months earlier, was shattered by the Speaker's ruling, on Jan. 27th, 1913, that the Reform Bill was so drafted as not to admit of Women's Suffrage amendments. The whole edifice, bill and amendments, collapsed. The "Observer," an enemy of Women's Suffrage, admitted that "these extraordinary proceedings were a satire on male Government." But the severest con-

* *Christian Commonwealth.*

demnation of them had been pronounced beforehand by Mr. Lloyd George. Speaking on February 23rd, 1912, he said, "When I hear suggestions that the Government propose not to introduce a Reform Bill, or if they do introduce it that it will not be persevered with, or that it will not be drafted in such a way as to give opportunity for amendment, I say that it is an imputaton *of deep dishonour which I decline to discuss. No Government could commit such an outrage on public faith without forfeiting the respect of every honest man and woman in the land.*"

The Government, through Mr. Asquith, shortly afterwards suggested that another private member's bill should be allowed facilities as an adequate substitute for their broken pledge. Needless to say, the whole body of Suffragists rejected this farcical offer with indignation.

Woman Suffrage amendments had been moved to the Reform Bills of 1867 and 1884, and were perfectly in order. Had the Government really meant to keep their pledge to women on the 1912-13 Bill, they had only to follow these earlier precedents to redeem their honour. The fact that they have never even hinted at such a course needs no further comment than that of the Chancellor, quoted above.

8. COERCION.

The story of this Government's persistent efforts to crush the women's movement by coercion is so long, and withal so familiar, that it is impossible here to give it even in outline. One or two outstanding facts only can be mentioned, such as:

(a) The savage sentences at the beginning of the militant movement on women of the highest standing and character (Mrs. Despard, Mrs. Cobden-Sanderson, and many others) for purely technical offences, such as obstruction.

(b) The repeated refusal of Mr. Asquith, both as Chancellor of the Exchequer and Premier, to receive deputations, even when these were organised in strict accordance with the requirements of the law, and of the Bill of Rights, which declares that "it is the right of the subject to petition the King, and all commitments and prosecutions for such petitioning are illegal,"—and the sending of great bodies of police mounted and on foot, to meet these defenceless women with force.

(c) The culmination of these brutal scenes on November 18, 1910, (Black Friday) when so atrocious was the conduct of the police that an enquiry into it was demanded in the Commons, but refused by Mr. Churchill, then Home Secretary.

(d) The introduction in 1909 of forcible feeding—an illegal

assault on women adopting the hunger-strike as a protest against substituting coercion for enfranchisement,—carried out frequently with great cruelty, and at all times in a manner wholly different from "artificial feeding" as practised in hospitals.

(e) The passing of the "Cat and Mouse" Act, i.e., releasing hunger-strikers on a licence, and recapturing them when sufficiently recovered to undergo further starvation. Parliament professed to believe that this Act would avoid the torture of forcible feeding, but Mr. McKenna made it clear* that such was not his own intention, and both have since been practised simultaneously.

(f) The revival of obsolete coercive laws dating as far back as Edward III., for the purpose of suppressing freedom of speech by arresting and imprisoning persons for "sedition" who were *not guilty of any crime known to modern law*. Even here, this bad old law was unjustly administered, men imprisoned under it being allowed to go free after a few days' hunger-strike, and without any forcible feeding, (Mr. Lansbury and others) while women for similar offences were repeatedly arrested and forcibly fed.

It will be seen from this that where an ancient statute *grants certain rights* to the people, and protects them in the exercise of these rights, as in the Bill of Rights, that statute is treated by this Liberal Government as obsolete—for women. But, where an ancient and long-forgotten statute *deprives the people of rights*, and punishes them if they attempt to exercise them, the Liberal Government unearths and revives it—for the special benefit of women.

CONCLUSION.

Such is the record, given of necessity in the barest outline, on the strength of which party Liberals are still found exhorting women—as did Sir H. C. Bannerman in 1906—to practise the "virtue of patience." We reply that in the face of such evils, patience not only ceases to be a virtue, it becomes a vice, and an ignoble one. Mr. Asquith, speaking on a private member's Women's Suffrage Bill in 1913, said,† "The case that has been presented showing that the Parliament of this country has been unduly negligent of or oblivious to the interests of women, is a case totally destitute of foundation, and wholly incapable of proof." The above record, brief as it is, serves at any rate (1) to disprove this assertion (2) to bring out the principal points

* See *Hansard*, April 21st, 1913.

† *Hansard*, May 6th.

in the attitude of the Government on matters relating to women. These show that the Government is united in

1. Conniving at the sweating of women.
2. Legislating for them without their consent, and to their detriment.
3. Taxing them without their consent and to their detriment.
4. Reducing their own law concerning White Slavery to a farce.
5. Ignoring their most solemn pledges to them.
6. Coercing them and torturing them.

On one point alone they profess to be divided, viz., Woman Suffrage. What does this difference amount to in practice? The suffragists in the Cabinet say in effect to their anti-suffrage colleagues "It is unfortunate that we are divided concerning the demand of women for the vote, but since *you* refuse to do anything for them, *we* will agree to do nothing."

So that even on the one remaining point we find that A Divided Cabinet = A United Cabinet. It is in fact a "Cabinet trick" worthy of Maskelyne and Devant, and would be comical were not the results so tragic.

But those results are writ large in a mass of preventable human suffering and human waste, and in that ever-accumulating sense of bitterness and anger which invariably follows in the train of injustice. The Liberal Government has drifted into *Government by Anarchy*, for it has neither the courage to be genuinely democratic, nor genuinely despotic. It denies representative government to those who seek it by peaceful methods, it coerces those whom its own misdeeds have driven into violence, it piles one legislative grievance on another, it breaks its own laws, it is without method, policy, or principle; its rule is misrule. And since it governs by anarchy, so has it created anarchists who reply to it with fire and bomb. Such has ever been the result of government without the consent of the governed, in whatever part of the world it is found, and whatever the party label worn by the men who attempt it. It is because of this denial to women of the elementary rights of citizenship that all women's suffrage societies are unitedly anti-government to-day, for so long as women are denied the vote, we know that, no matter what the political complexion of the party in power may be, there will be no such thing in England as Justice for Women.

DIVORCE OR SEPARATION: WHICH?

BY

RICHARD T. GATES.

WITH AN INTRODUCTORY NOTE

BY

Dr. C. W. SALEEBY, F.R.S.E.

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DEDICATED TO MY FRIEND

LIEUTENANT W. G. RAMSAY-FAIRFAX, R.N.

In appreciation of his zeal and untiring efforts
in the cause of Divorce Law Reform,
and in remembrance of many
strenuous days spent
with him in
Africa.

PREFACE.

IN compiling the facts and figures stated in the following essay, I was influenced by the desire to place before the minds of as large a section of the Public as possible the pernicious effect which the legal recognition of a system of permanent separation without a power of re-marriage necessarily entails. I can only hope that the subsequent pages may assist towards such a general realization of the pressing evil of this system of separation that a reform of the Laws will be demanded by a popular majority.

For his kindness in writing the introductory note to this essay I tender to Dr. Saleeby my most grateful and sincere thanks.

R. T. G.

20, COPTHALL AVENUE, E.C.,
September, 1910.

INTRODUCTORY NOTE

By Dr. C. W. SALEEBY, F.R.S.E.

To those who believe in any law at all the argument must appeal that contemptible laws tend to bring all law into contempt. In practice and in consequence, whether considered from the point of view of the present or the interests of the future, the law which it is the object of the following essay to alter is contemptible. It is difficult to imagine that anyone will challenge that statement. But in principle the granting of separation orders is evidently defensible on the ground that marriage is indissoluble. The State which grants divorce cannot take that ground, however ; and on any other it appears to me that separation orders, as at present granted, are contemptible in principle as in practice.

In the following pages the evidence has been scrupulously and formidably marshalled and I take it that, having done me the honour to ask for an Introductory Note to a work of such substance and sincerity, the author will find his high purpose best served by a statement of those general principles of Eugenics or Race-Culture to which I have devoted many years in the belief that they underlie all progress and all prosperity and that the culture of the racial life is the vital industry of any people.

The Eugenist—to employ a term which is now finding general adoption—is definitely committed to the principle and practice of marriage. Irresponsibles there are, who do Eugenics injury by foolish and degrading allusions to the stud-farm, or misrepresent it by saying that we desire people to be "forcibly mated by the police." Eugenics as I understand and advocate it is infinitely removed from such notions.

Mankind has inherited marriage as a social, nay more, a racial institution, from the ancestors who we all now acknowledge. Wherever there is sex there is mating—even amongst the malaria parasites that invade our blood—but not until one fact obtains may we rightly call mating, marriage. That fact is *common parental care* of offspring. Elsewhere I have defined marriage as that institution wherethrough motherhood, originally unaided, is supported, buttressed and amplified by fatherhood, which, no longer merely a physiological relation, becomes co-equal, or almost so, with motherhood in the nurture and education of the

coming race. Animal marriage, thus understood, may be observed amongst certain of the fishes even as—for instance, the sticklebacks, of whom the male helps to house and protect the young—and becomes of increasing importance and duration as life ascends and as the period of immaturity is prolonged. It is at its highest amongst the birds and amongst the mammals, of whom we ourselves are the highest. Careful comparative study of the duration of marriage amongst the lower animals suggests the generalisation that the union tends to last as long as the period of immaturity of the offspring. That is what we should expect, if marriage be what I have here argued from the biological point of view. It also supports the notable and indeed classical *dictum* of Wesermarck regarding mankind, that marriage is rooted in the family and not the family in marriage. Lastly, we must note that the period of development, demanding the utmost from combined or "common parental care" is so long in mankind, and the reproductive period so extensive that, on the natural analogies, human marriage ought undoubtedly to be life-long.

That is the position from which, as one believes, the biologist must approach the institution of human marriage with a massive and accumulated bias in its favour derived from the contemplation of the vital practice of unimaginable ages. It is the observed fact of nature that marriage is an institution older than any existing Church or Society, older than mankind or the mammalian order ; and, as Fabre and Maeterlinck's study of insects has shown, older than the backbone. Thus one much more than accepts the saying of Gœthe that "marriage is the origin and summit of all civilisation." If to the evolutionary record we add the observations of the anthropologist we may assure all and sundry, critics and friends alike, that we yield to no ecclesiastic, to no legalist, to none who stand upon the ancient ways, in our acceptance of marriage. For every hundred years of sanction cited by the theologian I will cite a million.

Therefore it is through marriage as the great means and condition, first, of sexual selection, and second, of nurture of childhood, in our own species, that the sane Eugenist would work. And for him all reform of marriage laws—including divorce laws, which are part of the laws of marriage—must be eugenic reform. That which elevates the natural or hereditary constitution and the nurtural conditions of childhood—that, in a word, which is eugenic—is necessarily right and will be to the end of ends. If, then, separation orders or anything else mean the degradation of parenthood by clandestine associations and by so-called "illegitimate" births with their high rate of infant

mortality; if they mean that the drunken man is left free to reproduce his like under evil conditions, whilst the healthy and decent woman, eugenically worthy to be a mother of the future, having been separated from him, cannot become a mother under the conditions best for her children, then these orders are in so far condemned by the natural which are therefore the divine principles of Eugenics.

From my standpoint, the duty of society in these matters is profoundly modified by the presence or absence of children, and the possibility or impossibility of their production. Space does not avail for detailed consideration here. But it may be briefly stated that I divide and define Eugenics in three orders; Positive Eugenics, which is the encouragement of parenthood on the part of the worthy; Negative Eugenics, which is the discouragement of parenthood on the part of the unworthy; and Preventive Eugenics, which endeavours to prevent the damaging of worthy stocks by what I call the *racial poisons*, notably the venereal diseases, lead and alcohol. [It may be remembered, and forgotten, that Professor Karl Pearson has found the influence of parental alcoholism to be, if anything, favourable to the offspring—having unfortunately omitted to ascertain, in a single one of the cases under his purview, whether the alcoholism or the offspring came first.] Only through marriage, rightly honoured and safeguarded, can these great ends—so great that by them, in the upshot, will all others be judged—find their attainment. To the best of my judgment they are none of them served and all of them thwarted by our system of separation orders, and would be directly served by the substitution for these of divorce on the lines hereinafter defined.

That is why, in the interests alike of marriage and the future, one earnestly commends these pages to every reader who believes, or may be persuaded to believe, that for a nation as for an individual there is no wealth but life; and that the choice for Great Britain is between the acceptance of the principles of Eugenics and the fate of all her Imperial predecessors from Babylon to Spain. Nay, the issue is larger yet: nothing less than the life of this world to come is at stake.

C. W. SALEEBY.

DIVORCE OR SEPARATION: WHICH?

IN England and Wales there are no less than three different methods whereby a husband and wife may be legally separated from each other, each method carrying with it a legal disability to re-marry.

They are as follows:—

1. Separations granted by Magistrates under the Summary Jurisdiction (Married Women) Act, 1895, and the Licensing Act, 1902, S. 2.
2. Judicial Separations granted in the High Court under the Divorce Act of 1857.
3. Extra-judicial Separations, or deeds of separation entered into voluntarily by the parties concerned.

These classes of separation will be considered in the order stated, but, prior to this, the origin of the principle of separation, or divorce *a mensa et thoro*, will be dealt with, after which I shall endeavour to demonstrate that not only is the theory of separation a fallacious one, but one that is also at the present day a most unsatisfactory remedy to apply, and is, in addition, productive of most pernicious results, in consequence of which it would appear that the operations of such an evil principle, if not entirely abolished, should at least be curtailed.

The origin of the principle of Judicial Separation is no doubt to be traced to the early days of Christianity when permanent celibacy was looked upon by the early fathers as one of the cardinal virtues, and in course of time this principle of separation became part of the Canon Law of the Western Catholic Church, which, declining to recognise the dissolubility of marriage by divorce, formulated this principle to counteract in some measure the difficulties attendant upon such a policy.

This doctrine of indissolubility of marriage was finally settled by the Council of Trent (Session 24, A.D., 1563), when the following declaration was put forth :—

> "The first parent of the human race, by divine inspiration, declared the bond of matrimony to be perpetual and indissoluble, when he said 'this is now bone of my bones, and flesh of my flesh; therefore shall a man leave his father and his mother, and shall cleave to his wife; and the two shall be one flesh.'"

This same Council in the same session (Can. 12) defined that matrimonial causes, as they are connected with a sacrament, belong to ecclesiastical judges.

This theory was never finally disposed of in this country till the passing of the Divorce Act, of 1857, although in the reign of Henry the VIIIth. Archbishop Cranmer, in accordance with various Acts which were passed for the purpose, compiled the well-known "*Reformatio legum Ecclesiasticarum*" which, under Cap. 19, recommended that separation from bed and board should be entirely abolished, and this would no doubt have been the law of this country had it not been for the early death of Edward VIth.

It is in consequence of an historical accident, therefore, that we have at the present day a system of separation, which is nothing but the legal survival of the Roman Catholic theory of absolute indissolubility.

The first Acts, under which Cranmer and his colleagues drew up the recommendation referred to, were passed in 1534, and four years later, on the 14th day of June, 1538, we have it recorded that the then Lord Chancellor of England, The Rt. Hon. Sir Thomas Audley, granted a decree of judicial separation to one Jeffery Jenny, and Jane, his wife.

The Royal Commission on Divorce of 1850, in their Report referred to this and a similar case, and remarked that the conclusion to be drawn therefrom was :—

> "they show that parties divorced *a mensa et thoro* were endeavouring to find some competent tribunal which would set them free from the marriage bond, and enable them to contract a second marriage." (1)

Attention has been directed to the foregoing facts for a two-fold purpose, firstly to illustrate that over 350 years ago the principle of separation was recognised in this country to be an unsatisfactory one, and secondly to show that any remarks and suggestions which may be made hereafter in

1. Rept., Royal Commision on Divorce, Pub., 1853, p. 7.

connection with this subject, are not entirely novel and hitherto unheard of.

In the debates on the Bill of 1857 we find no less a statesman than Viscount Palmerston in the House of Commons making this statement :—

> "The position in which man and wife were placed by these judicial separations was a most objectionable one, and if marriage were dissolved at all, he thought that it should be dissolved altogether, that the parties should be entirely set free, and that they shonld be able to contract other engagements. He thought that parting man and wife by these judicial separations placed both of them in situations of great temptation, where they were liable to form connections which it was not desirable to encourage."(2)

And the Bishop of Exeter, in the House of Lords, even took a stronger view when he said :—

> "With regard to the doctrine of divorce *a mensa et thoro*, he thought that it was wholly inapplicable to the nature of the offence, and to the circumstances of the law. It was unknown by the Church of Christ at any period, except under the dominion of Rome; but they were now asked permanently to inflict the corrupt system of that Church upon the Church and the nation of England."(3)

Prior to the passing of the Divorce Act of 1857, it was a recognised doctrine of the law that the permanent separation of married persons was against public policy, and proceedings could be institued in the Ecclesiastical Courts by a husband against his wife, or a wife against her husband, who had withdrawn from cohabitation without lawful excuse, to obtain an order directing such wife or husband to return to cohabitation. This is exemplified by the case of Barlee v. Barlee (4) which was tried in 1822, and when Sir John Nichol said :—

> "By the law of this Country, married persons are bound to live together; and, if either withdraws without lawful cause, the other may, by suit of the Ecclesiastical Court, compel the party withdrawing to return to co-habitation. The only lawful cause for withdrawing is the cruelty or adultery of the other party; for, this Court (The Court of Arches for Canterbury) can take no cognizance of disputes about property or mutual agreements to live separate."

2. Hansard's Parliamentary Debates. Vol. cxlvii., 3rd Series.
3. Op. Cit, Vol. cxlvi., 3rd Series
4. Barlee v. Barlee, 1 Add. 305 (1822).

If however, a husband or wife, disobeyed a decree for restitution it was punishable, after monition, by attachment, and the defaulting party was accordingly imprisoned, and, although that theory purported to be the same in the Act of 1857, it was generally used for quite a different purpose as was pointed out by Sir James Hannen, in 1879 in the case of Marshall v. Marshall[5] when he said:—

> "And I must further observe that, so far are suits for restitution of conjugal rights from being in truth and in fact, what theoretically they purport to be, proceedings for the purpose of insisting on the fulfiment of the obligations of married persons to live together, I have never known an instance in which it has appeared that the suit was instituted for any other purpose than to enforce a money demand."

The passing of the Matrimonial Causes Act, 1884, finally disposed of any rights the State had in compelling its married citizens to live together, for by Section 2 of that Act it is provided:—

> "From and after the passing of this Act, a decree for restitution of conjugal rights shall not be enforced by attachment."

This same Act, under section 5, decrees that failure to comply with a decree of restitution shall be deemed desertion, and that a sentence of judicial separation may be pronounced therefor, and that any husband who has been guilty of adultery and whose wife shall obtain a decree of restitution may thereafter be divorced by her. Only as recently as 1907, Lord Gorell, referring to this matter in the case of Kennedy v. Kennedy,[6] said:—

> "It must be remembered that the avowed object at the present time, in the vast majority of suits for restitution of conjugal rights by wives, is not restituion at all, nor even an allowance; but in the event of non-compliance with the decree on the part of the respondent (husband) and with the further offence on his part of adultery, to obtain a divorce. It is not too much to say that the restitution portion of the proceedings is a farce; because their true object is not the object which appears on the face of them."

The authorities quoted illustrate the evolution of the law during the past 80 or 90 years in regard to the question of separation. Although the Ecclesiastical Courts granted separations, their grounds for so doing were very limited (cruelty and adultery), and further such separations were not easy to obtain, and such Courts did endeavour to make married persons fulfil their obligations by living together. The law of the present day takes an exactly opposite view, especially so since the passing of the Act of 1895, since which it has been busily employed in encouraging, through the medium of the Police Courts, separation orders broadcast, which may condemn the parties obtaining them either to a life of celibacy, or immorality, both of which states are against public policy and the general welfare of the nation.

5. Marshall v. Marshall (1879), 5 P.D. 23.
6. Kennedy v. Kennedy (1907), P. 51.

Although the principle of separation has been retained by nearly all modern legislatures, the majority of Protestant legislatures recognizes that dangerous results are likely to ensue if separation can be made permanent, and in consequence many of them have embodied in their various codes, clauses enacting separation over a more or less prolonged period to be a good cause for divorce.

SEPARATION IN FOREIGN COUNTRIES.[7]

In AUSTRIA where the Civil Code, which has been supplemented and modified by later laws, dates from 1811, all citizens are entitled to apply for a separation, both on ordinary grounds allowed by law or by mutual consent. In the latter class of separation, the Court is required to make an attempt at three several times, at intervals of at least eight days, to reconcile the parties, unless a certificate is presented showing that these attempts have been made by their regular parish clergyman. Also, in contested actions of separation, the Court is required to take the same steps, and the trial is not proceeded with until such a reconciliation is found to be impossible. Further, although separated parties are free to unite, they are required to give notice to the Court before so doing.

7. Extracted from:—
   (*a*) Pt. I. Special Rept. on Marriage and Divorce, 1867-1906 issued by the U.S.A Dept. of Commerce and Labour Bureau, 1909.
   (*b*) A paper presented to Parliament in 1894 ("Miscellaneous No. 2, 1894") containing Returns in which an outline was given of the Marriage and Divorce Laws prevailing in Foreign Countries, etc.
   (*c*) A paper containing Reports on the Laws on Divorce and Marriage in Foreign Countries presented to Parliament in 1903. In continuation of "Miscellaneous No. 2 (1894)."
   (*d*) Returns showing the state of the Law on Divorce in the most important Foreign Countries and Colonies, presented to Parliament in 1894 Nos. 144-145, and 323-324.
   (*e*) Papers relating to the Laws of Marriage and Divorce in Self-Governing British Colonies. Presented to Parliament in 1903.

In HUNGARY where the Civil Law dates from 1894, separations are granted on the same grounds as a divorce, and separated parties can at any time renew the marriage relation on announcement of this fact to the Court granting the decree, also after the lapse of two years from a decree of separation taking effect, it is competent for either party to have such separation changed into an absolute divorce.

In BELGIUM where the laws are based on the Code Napoleon established in 1803, Judicial Separation is allowed for the same causes as divorce with the exception that it is not possible to obtain a separation by mutual consent. In all cases where separations have been granted, excepting on the ground of the wife's adultery, the original respondent may, three years after the decree, sue for an absolute divorce, which may be granted unless the original petitioner consents to resume cohabitation immediately.

In DENMARK where the law dates from 1683, although it has been modified and added to at various times since, separation may be granted for an indefinite period, and although separation by mutual consent is recognized, a formal authorisation is necessary from the superior magistrate, and if a separation is opposed, authorisation can only be given by the Minister of Justice: further, it is possible, where a separation has lasted three years and both parties desire a dissolution of marriage, for a divorce to be obtained.

In FRANCE, although the law is based on the Civil Code of 1803, the law in regard to divorce and separation as it stands to day was not established until 1884. Under the existing law separation is granted on the same grounds as divorce, although it was only as recently as March 10th, 1908, that the French Senate by a majority of 184 votes to 82 passed a law allowing a decree of judicial separation of three years duration to be converted into one of absolute divorce upon the application of either party.

In the GERMAN EMPIRE where the new Civil Code went into effect as recently as 1900, separation is granted on the same grounds as divorce, but the defendant may demand a decree absolute, instead of separation; further, a separation may at any subsequent date, on petition of either party, be changed to an absolute divorce, provided the marital life has not been renewed.

In HOLLAND the Civil Code has been in force since 1838, and separation may be obtained upon the same grounds as divorce, as also other grounds. The Courts will also grant a separation upon the joint petition of the parties without any

cause being named. Such separation is not granted in the first two years of marriage, and the Court requires a proper deed to be drawn up, requires the parties to appear before it in person, and endeavours to bring about a reconciliation. If, however, the parties persist, the judge orders them to appear before the Court at the expiration of six months, and he does not render his decision till another six months have passed. After a separation has existed for five years either of the parties to the marriage may petition that it be changed to an absolute divorce.

In NORWAY the laws are in a large part the same as those of Denmark, and separation is granted on several grounds, it is also allowed on the mutual request of both parties, and after a separation has lasted three years, a decree of divorce may be obtained, either on the request of both parties, or, if circumstances warrant, on the request of one of the parties only.

In SERVIA the law dates from the Civil Code enacted in 1844, and the law at present is partly founded on that code and the law passed in 1890. Judicial separations are only granted in hope of a reconciliation. If, however, the parties do not become reconciled within five years, and if both so petition, an absolute divorce is pronounced.

In SWEDEN the principles of the present law are those of the Code of 1734 to which there have been various additions, the last being in 1898. Judicial Separation in this country is often only the preliminary to an absolute divorce. It can be granted when hate and violent anger arise between husband and wife, and one of them reports the matter to the rector of the parish, and if, after they have been admonished, such admonition proves fruitless, the Court grants a separation for one year, and if such separation continues for a year without reconciliation, a divorce can then be obtained.

In SWITZERLAND the federal law dates from 1876. No encouragement is however given to separation, such only being granted when none of the six causes for which divorce is granted exists, and only if it appears that, from circumstances in the case, the marriage relations are greatly strained, and then the Court may grant either an absolute divorce, or a judicial separation of not more than two years duration. If the latter is granted and if at the expiration of the two years no reconciliation has taken place, a petition for absolute divorce may be brought which the Court may either grant or deny. In any case, however, separations at the expiration of two years cannot be renewed.

In ITALY where the marriage laws date from the Civil Code of 1866 no divorce is granted. Judicial Separation is however

permitted, and although separation by mutual agreement is allowed, it is not valid unless ratified by the Court after an attempt at reconciliation has been made. In other cases of separation, the parties are obliged to appear before the president of the Court, who endeavours to effect a reconciliation, and it is not till this has proved unsuccessful that the case goes to the Court for trial.

In the various provinces of CANADA, and in TASMANIA, QUEENSLAND, WESTERN AUSTRALIA, NEW SOUTH WALES, VICTORIA, SOUTH AUSTRALIA, and NEW ZEALAND the laws in regard to separation are similar to those prevailing in England, the three last mentioned Colonies, however, being the only ones who have introduced in their legislatures, measures similar to our Act of 1895.

In IRELAND under the Act of 1870 Judicial Separation may be granted by the Ecclesiastical Courts on similar grounds to this country; there are, however, no police court separations.

Judicial Separations have been granted in SCOTLAND over a very long period for adultery, cruelty, and since 1903 for habitual drunkeness. Prior to January 1st, 1908, when the Sheriffs Court (Scotland) Act, 1907, became law, all separations were only granted in the Court of Session at Edinburgh.[8] The new Act, however, conferred jurisdiction in this direction upon Sheriffs Courts thoroughout Scotland,

Out of the fifty States in the Continental U.S.A., one (South Carolina) grants neither divorce nor separation, twenty-six do not grant separations at all, and of the remaining States, two of them prior to 1896 and 1903, did not grant separations, six grant it for ever or a limited time, one to the wife only, and for ever or a limited time, and two allow decrees of separation to be changed into divorces after five and two years respectively, while the remaining States have in the majority of cases such a number of causes for which divorce is allowed, that separation can hardly be said to be encouraged.

In JAPAN, where the present law came into force in 1898, and also in Bulgaria and Roumania, no separations are granted at all.

From the countries whose laws relating to separation have just been quoted it is seen that almost all of them endeavour to minimize the risk of separation becoming permanent, the exceptions being our own Colonies, who, while following more or less our lead in regard to Judicial Separation, have only in three instances adopted similar legislation to our act of 1895.

8. Rept. of Judicial Statistics for Scotland 1908, p.p. 98, 101.

MAGISTERIAL SEPARATIONS.

I will now turn to the Act of 1895 and the Act of 1902, and the separation orders that are granted thereunder.

The number of Separation Orders granted during the 13 years ending 1908, the latest date for which statistics are available, totalled no less than 86,960.[9] This represents an average for each year of 6,689, which may be taken as the number granted in 1909, and which will be granted in 1910, making a further 13,378 orders to add to those already enumerated.

By the end of 1910, therefore, there will have been granted in the 15 years during which these Acts have been in force a grand total of 100,338 separation orders, and as each separation directly affects two people, the Law will have parted upwards of 200,000 married citizens, without considering in the least what happened to them after, or the possible effect of such separations upon, not only the individuals, but the community at large.

These separations are no doubt due to many other causes than those for which on the face of it they appear to be obtained, and in many instances are probably the outcome of a combination of causes.

Some of the causes, both direct and indirect, of such a large number of orders being applied for appear to be as follows:—

1. The five statutory grounds which are allowed to the wife only under the Act of 1895, and which are briefly:
   - *(a)* Aggravated assault.
   - *(b)* Assault and conviction thereon.
   - *(c)* Desertion.
   - *(d)* Persistent cruelty causing wife to leave her husband.
   - *(e)* Neglect to maintain wife and children, causing wife to leave the husband.
2. The statutory ground allowed to either husband or wife under the Act of 1902, *i.e.* Habitual Drunkenness.
3. Adultery.
4. Intoxicating liquor.
5. Unemployment.
6. Poverty.
7. Easy facilities at the present day for travelling abroad.
8. Improvident marriages.
9. Employment of married women.

9. Pt. II. Civil Judicial Statistics, England & Wales, pub. 1910, p. 17.

10. Increasing temperamental variation among men and women in civilization.
11. Easy facilities for obtaining separation orders.
12. Lack of reasonable facilities, and reasonable grounds for obtaining a divorce, and the present prohibitive cost of a divorce suit.

As already stated, doubtless many separations are the outcome of a combination of causes. Thus, a man may take to drink (Cause 4) whereby he loses his employment (Cause 5), the result may be poverty (Cause 6), which in turn may produce *(e)* of Cause 1 (neglect to maintain), finally ending in a separation for this latter cause only.

Or Cause 10 (temperamental variation), whereby the chances of mis-mating are enormously increased, results in two persons of exactly opposite temperaments marrying, which may produce *(d)* of Cause 1 (persistent cruelty) which ends in a separation for such cause.

Then again, Causes 3 (adultery) and 7 (easy facilities for going abroad) may produce *(c)* of Cause 1 (desertion) *i.e.* a man gets entangled with another woman, and runs away with her to the Colonies or the U.S.A. Cause 12 (inadequate facilities for divorce) thereupon affects the wife owing to desertion alone not being a ground for divorce, and in consequence Clause 11 (easy facilities for separation) is naturally taken advantage of.

Further, Cause 9 (employment of married women), with its resultant demoralizing reaction of home slackness, may be answerable for Causes 3 (adultery) and 4 (drunkenness), the latter of which coupled with 5 (unemployment) may produce *(e)* of Cause 1 (neglect to maintain), which in its turn becomes the actual ground upon which a separation order is granted.

In connection with Cause 9, I believe, from inquiries instituted by Messrs. Cadbury in Birmingham, the fact was disclosed that the proportion of sober and steady men was nearly twice as great in families where the wives do not work out as in homes presided over by employed women.

The causes enumerated could no doubt be augmented. This, however, does not appear necessary, and I will therefore endeavour to demonstrate some of the effects, a matter not so easy as may at first appear. Some of the effects seem to be as follows:—

1. By obtaining a Separation Order a woman may thereafter be debarred from re-marrying unless the death of her husband intervenes.
2. Injustice to both men and women.

3. Bigamy.
4. Concubinage.
5. Prostitution.
6. Illegitimacy.
7. Drunkenness.

Under Section 27 of the Divorce Act of 1857 it is required that a woman suing for divorce must prove misconduct coupled with either cruelty or desertion for two years and upwards. The effect of this on separations granted by magistrates under the Act of 1895 is as follows:—A woman whose husband deserts her and who,—without waiting the two years prescribed by the Act of 1857—obtains a separation order with a provision that the applicant be no longer bound to cohabit with her husband,[10] is thereafter debarred from obtaining a divorce, even if her husband subsequently commits adultery, unless the unlikely contingency arises of her husband returning and assaulting her.

The law on this point was decisively laid down by Lord Gorell in the case of Dodd v. Dodd[11] tried in 1906, and more recently by the full Court of Appeal in the case of Harriman v. Harriman,[12] decided in February, 1909, so that such separation orders are in fact a permanent separation of two persons without any power of re-marriage.

It is reasonable to assume that in the majority of cases poor women are unacquainted with the decisions referred to, and in consequence do not wait as long as two years before they apply for a separation order. This is supported by the information contained in a letter which I have received from Mr. Freke Palmer, a solicitor with wide experience of such cases in West London. In his letter to me he says:—

> "The desertion upon which a Married Woman can get a Separation Order under the Summary Jurisdiction (Married Women) Act, 1895, is a matter which is left to the discretion of the Magistrate to decide. I have never known a Magistrate consider that the Desertion should have to extend over a period of two years, and in advising a woman whether she had a case or not I should not consider so much the time since the wife was deserted, but I should more particularly consider whether the circumstances were such as would convince a Magistrate that the man intended to desert his wife

10. Summary Jurisdiction (Married Women) Act, 1905, Sec. 5, Clause (1)
11. Dodd v. Dodd (1906), P. 189.
    Also Taylor v. Taylor before Mr. Justice Bucknill.
    The Times, June 18th, 1907.
12. *The Times* Law Reports, February 9th, 1909.

and not return. I have conducted cases when the desertion has been only for three or four weeks, and I have been successful in getting Orders made in such cases."

That letter amply illustrates that, although a woman may have only been deserted three or four weeks, she is able to go to a magistrate and for a nominal sum obtain an order, which immediately places her in the position of being neither widow, wife, nor maid, which is obviously a most perilous and unsatisfactory position for any woman, especially a young one, to be placed in.

This effect, therefore, in its turn becomes a cause, inasmuch as such permanent separation is both conducive to and responsible for prostitution, concubinage, illegitimacy, and other forms of immorality.

Effect No. 2 (Injustice to men and women) is illustrated in regard to the former by the fact that men have hardly any rights at all under the Act of 1895, and although a wife can obtain a separation if her husband assaults her, he has no such redress, unless he proceeds to the High Court and sues for a Judicial Separation on the ground of cruelty. Further, in many instances, a husband who perhaps is earning but £1 10s. 0d. per week may be ordered to pay his wife, say 7s. 6d. maintenance out of such earnings, and although she may thereafter live a loose life which he, may be, is well aware of, he is still bound to pay such maintenance, owing to the fact that, through having to work hard and long hours, he has neither time or opportunity to collect evidence to get the order discharged. No doubt in a number of cases the husband does prove his wife's misconduct, and under Section 7[13] of the Act obtains a discharge of the order, the probable effect of which is that the wife drifts on to the streets and swells the large army of the undesirable and unfortunate class.

Another illustration is that a husband against whom a separation order has been made may fall out of employment. In consequence thereof the payment of maintenance gets in arrears, the wife, if she is vindictive, can then have him sent to gaol, one effect of which is that the ratepayers suffer by the extra cost upon the rates of having to support a strong healthy man in prison and his wife and children outside.

13. ....If any married woman upon whose application an order shall have been made under this Act, or the Acts mentioned in the Schedule hereto, or either of them, shall voluntarily resume cohabitation with her husband, or shall commit an act of adultery, such order shall upon proof thereof be discharged.

A case bearing out the foregoing and which came under my personal notice is as follows:—

A respectable tradesman, after living happily with his wife for about nine years, got to loggerheads with her on account of a "single man" lodger, who was subsequently found to be a married man living apart from his wife, and who, although made to leave the house by the husband, continued to call when he was away, even after a move had been made to another house. This, after about eight years of more or less unhappiness, culminated in a quarrel in which the husband struck his wife; she thereupon summoned him for assault, the magistrate binding him over to keep the peace for six months.

Two days later his wife left him with six children, the eldest fourteen and the youngest under two years of age, and applied for a summons against him for refusing to provide reasonable maintenance. The magistrate adjourned the case for a fortnight, with a view to a mutual separation being arranged, and at the adjourned hearing of the case remarked that he quite believed they lived a miserable life, and would be far better apart. Finally, by agreement between the parties, an order was made for the husband to pay his wife 13s. 6d. weekly. This sum he paid regularly for twelve months, when he began to get into financial difficulties, and falling over four weeks in arrears with the maintenance allowance (after which time a man can be committed to prison in default of payment) a warrant was immediately obtained by his wife and he was sent to prison for a month. Obtaining the arrears of maintenance from a friend he was released, but shortly after had to give up his place of business, in consequence of which his earnings were much reduced, so much so that he applied to a magistrate for a reduction of the weekly allowance. The magistrate, however, would not grant this, and four months later, being again in arrears, he was committed to prison in default of paying about £3. He again borrowed the money due and was released, and once again applied to the magistrate for a reduction of the maintenance allowance, but without success.

Three months had hardly passed when he was again arrested and sent to prison, this time for six weeks, the arrears of maintenance due on this occasion amounting to £12. Being without means and unable to borrow the necessary money he had to remain in gaol, and he then caused three of his children to be handed over to his wife, who immediately applied for them to be placed in the Workhouse; the Guardians, however, refused, but allowed her poor relief.

Early in the morning on which the husband was released, his wife waited outside the prison gates and handed over the three little children to him, she having previously endeavoured to get the Relieving Officer of the Guardians to have him arrested for the cost of the poor relief allowed to her while he was in prison.

After this the wife verbally agreed not to press for maintenance if the husband kept the children, and did not trouble him for some two or three years, during which time he obtained a permanent position of trust. Once again, however, his wife had him arrested, the arrears at this date having accumulated to the extent of about £150, and he was sentenced to three months imprisonment. Fortunately for him, his brother came forward and paid £10, at the same time promising to pay off the arrears by monthly payments of £1, and he was released, when he once more endeavoured to get the maintenance order reduced.

Another four months having passed, he was again arrested and sent to prison for a month, being unable to pay arrears amounting to £8 10s. 0d., and, having to remain in gaol on this occasion, he thereby lost his employment. Two days before his release he was served with a further summons for the arrears to date, and upon leaving prison was compelled to appear at the Police Court, and although explaining the fact that, through being in gaol, he was unable to obtain or earn any money he was again sent back for two months, during which period of incarceration he petitioned the Home Secretary, who informed him he had no power whatever to interfere in such cases.

Upon being released, after being in prison two months, he again applied to have the maintenance allowance reduced and was at last successful in getting a reduction to 10s. 0d. per week.

When I last heard of this man he had been out of prison three weeks, was out of employment, had no means or home, was almost destitute, had three children to support, and was being threatened that unless he paid £8, the amount of arrears which had accrued while he was in prison and for the three weeks following his release, that he would be sent back to prison again.

There are, of course, many men against whom a maintenance order is made, who, although they could pay, will not do so. Such as these, however, rarely go to gaol, they more often quit the country, and here we see an illustration of the injustice to the woman. Thus the wife may quarrel with her husband, leave him and obtain an order on the ground of his neglect to maintain her. He refuses to pay, leaves the country, and in consequence she cannot divorce him as the order may bar her pleading desertion.

Effect No. 3 (Bigamy) is naturally almost always the outcome of the separation of husbands and wives, although the causes of such separations may as before stated be many. In the fifteen years—1893-1907—no less than 1,615[14] persons were tried in England and Wales for the offence of bigamy, Judicial Separations, Separation Orders, and private deeds of separation being in all probability responsible for only a part of this number, the main cause perhaps being desertion, and the limited grounds for which divorce is allowed by the law.

From the following figures, although very far from being conclusive, it would appear that the Act of 1895 is beginning to become a conributory factor to bigamous marriages:—

During the three years preceding that Act (1893, 1894, and 1895) the number of cases tried for bigamy averaged each year 107[15]; during the next seven years (1896-1902) the annual average dropped to 102[16], while for the five years (1903-1907) the annual average increased to 116[17]. It is rather difficult to explain the fall in the average for the first seven years after the passing of the Act, it may be, however, that during these years the separations granted had not begun to pall to the extent they do after a longer period. Also up to the end of 1902 there had only been granted 44,899[18] separation orders, whereas by the end of 1907 such separations had increased by a further 34,796[19], and from these two factors it would seem that the more separated people there are at any given time, and the longer such separations have been in existence, so in proportion is there more likelihood of bigamy. It is true the increase shown is a small one, but it may be that the effect in this direction is only now becoming apparent.

That Effect No. 4. (Concubinage) is an effect of permanent separation is witnessed by the following extract from a letter which appeared in the *Daily Telegraph*[20] over the name of Mr. S. Paul Taylor, one of the Stipendary Magistrates of the Metropolis, who, although upholding our system of separation, wrote:—

> "Only yesterday I dealt with a summons for arrears, where the respondent, the husband, was living with another woman and had children by her. I made the usual order in spite of the man's assertion, very

14. Pt. I., Criminal Statistics, England and Wales, 1907, p. 19.
15. Ibid.
16. Ibid.
17. Ibid.
18. Pt II., Civil Jud. Statistics, England and Wales, 1904, p. 28.
19. Ibid, 1907, p. 35.
20. *The Daily Telegraph*, August 23rd, 1910.

probably true, that he could not pay the money owing to his other expenses. Cases of this kind are of daily occurrence. . . ."

Mr. Taylor's is not the only testimony, as through the courtesy of Dr. Harold Scurfield, the Medical Officer of Health for the City of Sheffield, I am able to set before the reader some cases taken from a number with which I have been kindly furnished by him.

In his capacity as Medical Officer of Health Dr. Scurfield has working under him a considerable staff of women inspectors whose duty it is to visit a large proportion of households where births occur—upwards of 10,000 every year—for the purpose of advising the mothers, and also to visit the homes of children reported by the school teachers as being sent to school in a neglected condition. Through the work of these inspectors, Dr. Scurfield is brought into touch with the circumstances of a large number of families, and he has found that there are a large number of cases where the homes are unsatisfactory and the children neglected owing to the confirmed drinking habits of one or other of the legally married parents; and that, on the other hand, there are a considerable number of good homes in which children are being well treated, in the case of which the man and woman are not married owing to the fact that the man or the woman (or both) has felt compelled to separate from his or her lawfully wedded partner. Dr. Scurfield has also found that, owing to the prohibitive cost of a divorce suit, the innocent partner frequently contracts an irregular union resulting in a family of illegitimate children who are in other respects well reared in a good home. Some illustrative cases are as follows:—

A. married B. when she was sixteen, and he was twenty-one. They have had eight children—six born alive. For three years they lived happily together, when the man's father died leaving him a recipe for embrocation. The man began making the embrocation, earning money easily, and spending it in drink. He ill-treated his wife, neglected her for other women, and often left her and the children with insufficient food. They were regularly visited by the N.S.P.C.C. Inspector. In 1907, the woman obtained a separation and maintenance order. After making one payment B. went to prison. A. now lives with C. and has a clean and well kept home. C. is a bachelor; he says that he would not be so for long if she were free, and if they could save up enough to set her free they would do so, but this is impossible as it takes his 21s. 0d. to keep the house going.

D. was deserted by her husband ten years ago. There were five children by the marriage, the youngest being seven months old when the desertion took place. The husband treated his wife very badly and made her life miserable. He lost his work through drink. D. obtained a separation order, but no payments were made under it. She has not heard of her husband for nine years and does not know whether he is alive or dead. Four years ago she met E., who was a widower, and she has lived with him as his wife. They have two illegitimate children. E. is devoted to her and has always been most considerate—he would marry her if she were free. She is very unhappy at times because she cannot marry E., and is sensitive about it. They have a very clean, comfortable home, and both give one the impression of being very respectable. There are legitimate children of both parents living with them. D. has some girls in service, and E. has a son married. They are all on good terms with D. and E.

F. married G. Soon after marriage G. started drinking and continued to do so up to the time she eloped with another man. She took with her her husband's week's earnings and has not been heard of by him since. H. married I. H. turned out badly. He drank heavily, brought strange women into the house and finally deserted his wife. F. and I now live happily together with the two legitimate children of I. The children are well cared for, and F. and I would marry if they were free to do so.

J. married K. in 1896. There was one child of the marriage. When the child was nine months old K. separated from her husband on account of his drunken habits and ill-usage of herself and her child. The child went to live with its grandmother, and K. went to service for seven years. During that time she met a widower with one child by his marriage. She went to live with him as his wife, and they now have two children of their own—one three years old and the other six months old. They have a good home and are apparently very happy together, and he would make her his wife if it were possible. K.'s legitimate child and the widower's legitimate child live with them.

L. married M. when twenty-two years of age. Soon after the marriage he began to ill-treat her and would not work. L.'s parents helped them in business, but M. continued to ill-treat his wife, and on one occasion gave her

a beating. She took out a summons, but did not face the Court. After five years of unhappy married life she separated from her husband and returned to her parents taking her two children with her. The husband was to pay 3s. 0d. per week. At the end of nine months he ceased to send the money and L. has never heard from him since. For seven years L. lived with her parents. After their death she found it a great struggle to live and pay the rent. N. came forward and helped L., giving her money to pay the rent and taking lodgings in the house. N. and L. have lived happily together for four years, and there are two children of this union. They regret that they are not married, both for their own and their children's sake. N. provides for M.'s two children as well as his own.

The foregoing are but few of many, in only one city. It is too awful to contemplate what the total may be for the whole country.

Effect No. 5 (Prostitution) has already been illustrated by showing how a woman separated from her husband may by misconduct forfeit her alimony, with the result that she drifts on to the streets and prostitution.

To what extent separation orders are responsible for illegitimacy it is not possible to ascertain. It cannot possibly be denied, however, that they do in a considerable measure contribute to the large number of illegitimate children born in this country every year.

The Archbishop of Canterbury, speaking in the House of Lords, on July 14th, 1909, against the motion moved by Lord Gorell to confer Jurisdiction in Divorce on County Courts, stated that it had been argued that the granting of separation orders had increased illegitimacy. He (the Archbishop), however, would meet that by reference to statistics, and in the course of such reference the Archbishop said :—[21]

> "In the last thirty years there has been a perfectly steady diminution in the number of illegitimate births, and that diminution has not been in the least affected or retarded by the passing of the particular Acts of 1895 and 1902. There has been no check to the decrease."

After quoting various figures, the Archbishop further said :—

> "The statistics, I quite admit, cannot be relied upon as in themselves proving the matter one way or the other, but if we accept the argument of the noble Lord (Lord Gorell) we ought to find in statistics what we do not find, evidence in the direction of the consequences he would apprehend. So far from the statistics corresponding with the result that argument would lead us to expect, they show abundantly that we ought to be very cautious before we accept the noble Lord's conclusions."

21. *The Times*, July 15th, 1909.

It is much to be regretted that such an eminent Divine as the Archbishop should have expressed himself so forcibly in regard to statistics without in the first instance making sure of his ground. He could not have possibly considered the statistical tables with the care that was necessary, otherwise he would never have spoken so strongly, and in consequence it is also necessary to be very cautious before accepting his conclusions, as the following statistics demonstrate :—

From 1876 to 1908 the illegitimate birth rate per 1,000 unmarried and widowed women, aged 15-45 years, has declined in the following proportions, adopting the average rate in the five years 1876-1880 as a standard of 100.[22]

5 years	1876-1880	...	100.
„	1881-1885	...	90.
„	1886-1890	...	74.
„	1891-1895	...	68.
„	1896-1900	...	60.
8 years	1891-1908	...	55.

This table shows that while for the 15 years 1881-1895 the proportion dropped 32, for the 13 years 1896-1908, since the passing of the Act of 1895, the proportion has only fallen 13.

Then again the illegitimate birth rate per 1,000 unmarried and widowed women, aged 15-45 years, has from 1876 to 1906 in each tenth year been as follows :—[23]

1876	...	14·6 per 1,000.
1886	...	12·8 „ „
1896	...	9·7 „ „
1906	...	8·1 „ „

This table shows a fall of 1·8 per cent. in the 10 years ending 1886, 3·1 per cent. in the 10 years ending 1896, and only 1·6 per cent. for the 10 years ending 1906.

Further, the proportions of illegitimate births per 1,000 unmarried and married women, aged 15-45 years, since 1899,

22. 71st Report of the Registrar General of Birth, Deaths and Marriages in England and Wales, 1908 (p. xxvi., diagram iii).
23. Ibid (p. xxvi).

from which time we can calculate that separation orders would begin to make an impression on illegitimacy are as follows:—[24]

1899	...	8·9 per 1,000.
1900	...	8·6 „ „
1901	...	8·4 „ „
1902	...	8·4 „ „
1903	...	8·4 „ „
1904	...	8·4 „ „
1905	...	8·2 „ „
1906	...	8·1 „ „
1907	...	7 8 „ „
1908	...	8·0 „ „

These figures show the rate to be more or less steady, in fact it was absolutely steady in the four years 1901-1904.

From a careful consideration of the three separate tables of statistics, it will be seen that the decline in illegitimacy has been considerably retarded, and is nothing like as great since the passing of the Act of 1895, as it was prior thereto, and it would therefore appear that these separation orders contribute in no small measure to the illegitimacy rate, and this in spite of the fact that, although the proportion of unmarried and widowed women of 15-45 years has increased, their fertility has dimished to such an extent that had such proportion of women been as fertile in 1908 as the proportion of 1876-1880 the number of illegitimate births in 1908 would have been 67 649[25] instead of 37·531 as recorded. This diminution of fertility is no doubt in a great part due, to greater facilities for obtaining preventatives and for utilizing methods for the artificial restriction of population, and it may well be that, in large centres such as London where separations are high and illegitimacy low, such facilities are greater and in consequence more taken advantage of, with the result that illegitimacy is lower than in country districts.

Separation orders and the resultant lack of home ties probably account for effect No. 7 (drunkenness) many of both sexes being, in consequence, driven to frequent public houses.

JUDICIAL SEPARATIONS.

The total number of decrees of Judicial Separations granted in the High Court during the 25 years 1883-1907 was 795, such separations having steadily decreased during the whole of that

24. 71st Report of the Registrar General of Births, Deaths and Marriages in England and Wales, 1908 (p. xxvi.).
25. Ibid (p. xxviii.).

period as may be seen in the following tables:—[26]

Decrees granted in the 5 years,	1883-1887	... 226
„ „ „	1888-1892	... 173
„ „ „	1893-1897	... 147
„ „ „	1898-1902	... 133
„ „ „	1903-1907	... 116
	Total	795

Of this total only 26 decrees were granted to husbands.

The explanation of the decrease shown above is probably accounted for by the corresponding increase in divorce suits, and the small number of decrees granted to husbands is of course due to the different basis upon which the law places the sexes.

The Statutory grounds upon which Judicical Separations may be applied for are adultery, cruelty, or desertion without cause for two years and upwards[27]. And these are the direct causes for which decrees are granted, the indirect causes being in all probability similar in many instances to those already attributed to separation orders.

The effects of Judicial Separations may also be assumed to be similar to those produced by the latter, although of course to a proportionately smaller extent. Judicial Separations may also have the following effect:—

A wife may make a husband's life unbearable, with the result that he leaves her, she can then sue for restitution of conjugal rights, obtain a decree ordering him to return, which should he fail to comply with it,enables her to obtain a decree of Judicial Separation on the ground of his desertion; she is granted alimony, and although he is in reality the injured party, so long as his wife lives he is condemned to a life either of celibacy or of immorality, or, should he subsequently misconduct himself, she can then divorce him, and this may all be the outcome of no real fault of his in the first instance.

Again, a woman who is entitled to sue for a divorce can vary the relief laid down by the law and sue for a Judicial Separation. The law thereby openly permits injustice to be done by placing the nature of the punishment to be inflicted in the hand of the injured, though possibly vindictive, party, the result being that because the wife so chooses the husband is unable to remarry, the disastrous consequence of which has already been illustrated.

26. Civil Judicial Statistics, England and Wales, 1907 (p. 45).
27. The Matrimonial Causes Act, 1857. Sec. 16.

SEPARATION BY PRIVATE DEED.

It is not possible to ascertain the number of Extra-judicial Separations, *i.e.*—separations entered into by Deed on the mutual consent of the parties, inasmuch as the law requires no record to be made thereof, from which it appears the State does not consider it has any rights in the matter. So far as I have been able to ascertain, England is the only country that encourages this kind of separation, some of the Continental nations not recognizing separation by mutual consent at all, and others requiring the same to be duly approved by the Court.

To endeavour to arrive at some conclusion as to the probable number of separation deeds that are drawn up annually, I have communicated with a number of Solicitors enquiring of them whether they considered it reasonable to assume that each of the 16,000 solicitors on the Rolls, would draw up at least an average of one deed each year.

Their replies are as follows :—

"I think it not unreasonable to assume that every Solicitor on the average draws one separation deed in the course of one year. I may say, however, that I have drawn no such deed for the last three years, though this may be because I always discourage such arrangements."

"My opinion is that it is reasonable to assume that every Solicitor practising in England draws in the course of a year at least one deed of separation. I have never met a Solicitor yet who has not had this experience. Of course there are some firms who draw up a large number. Then, of course, there are a great many cases where husband and wife prepare some sort of letter or document agreeing to separation without the intervention of a professional man. I have, in my experience come across this."

"In answer to your enquiry I think you can very reasonably assume that every Solicitor on the average draws at least one separation deed in the course of one year."

"I should say that your assumption that we draw on an average one deed of separation per year is in my case correct, it is certainly, at all events, not over stated."

"We write to say that as far as our practice is concerned, we certainly think it reasonable to assume that most Solicitors on the average draw at least one separation deed in the course of a year."

"I hardly think that one could go to the extent of assuming that every Solicitor on an average draws one separation deed in the course of a year. I think you might put it down that one-third of them do, and then, of course, I am speaking without authority, and merely guessing."

"It is, of course, absolutely impossible to state how many private deeds there are in a year in agreement between husband and wife, as, of course, the very object of these deeds is their privacy. There are several Solicitors who never draw one in the whole course of their practice and there are others like myself who draw several in a year. I am afraid I cannot say anything nearer than this."

"I should think one separation deed a year is more than the average of every Solicitor to be concerned in, and you will remember that practically every deed is drawn by one Solicitor for one party, and approved by another Solicitor for the other party; so don't count the same deed twice. I am afraid your estimate will have to be something of a guess in the end."

"I regret, however, that I cannot give you even an approximate idea as to the number of private separation deeds drawn up by Solicitors annually."

"I should be only too pleased to give you any assistance I could, but it is impossible for us to offer an opinion as to the number of separation deeds in other legal offices."

Although the foregoing proves little either one way or the other, they afford some basis upon which to form an estimate and with no risk of overestimation it may be assumed that there are at least 2,000 private deeds of separation entered into annually which are drawn up by solicitors.

It has already been seen that by the Act of 1895 a woman who obtains a Magistrate's Order may thereby be for ever

debarred from obtaining a divorce on the ground of her husband's subsequent adultery. The same sort of disability exists in regard to private deeds of separation executed by husband and wife; this was illustrated by the case of Balcombe v. Balcombe[28] tried before Lord Gorrell in 1908.

In the absence of a deed of separation, when a wife condones her husband's cruelty, and consents to live with him again, his subsequent adultery will revive the cruelty and that will entitle her to a decree of divorce, but it appears that where she has once signed a deed of separation waiving, as is customary, any right to redress in respect of misconduct previous to the deed, the doctrine of revival is excluded, and she is debarred from obtaining a divorce if her husband subsequently commits adultery.

In delivering judgment in the case of Balcombe v. Balcombe the President said[29]:—

> "If a husband brought a suit in the present circumstances he would have been successful. But the wife's position was different, as in addition to her husband's adultery she had to prove his desertion or cruelty, and the case might be one in which she could not succeed on these points, as there might be a deed of separation or a magistrates' order subsisting, which would act as a bar."

From this effect alone it is apparent that a deed of separation may be productive of gross injustice to the woman.

As was declared by Sir John Nichol in 1822[30], the Ecclesiastical Courts took no cognisance of "Mutual agreements to separate." But since the case of Wilson v. Wilson[31] decided by the House of Lords in 1848, the State has vested these agreements with legal rights which may be against public policy, on account of injustice inflicted, although the State has no rights or voice in determining whether such separations should be entered into or not. If the State is particular to have a voice and interest regarding marriages, births, divorces, judicial separations, and magistrates' separations, then why not separations by private deed?

Apart from injustice to women, private deeds of separation also produce deplorable results, similar to those attributed to both Judicial and Magisterial Separations, and it should be remembered that the great majority of persons who separate under private deeds belong to the higher classes who, on account

28. Balcombe v. Balcombe, 1908, P. 176.
29. Ibid.
30. Barlee v. Barlee, ante p. 5.
31. Wilson v. Wilson, 1 H. of L 538 (1848).

of family and social ties, often put up with years of married misery before finally separating. To live the rest of their lives in a state of permanent separation with no hope of remarriage is, to such as these, terribly hard, the compulsion to choose between permanent continency and adultery often seriously affecting them mentally, morally, and physically.

ILLUSTRATIVE CASES.

Some of the foregoing causes and effects of the various methods of separation enumerated are illustrated by the following letters received by the Divorce Law Reform Union, being but few of a very large number:—

"I was married five years ago and all went well for a few weeks when through gambling my husband lost his position . . . . when my boy was eight months old I obtained a summons for maintenance from Mr. Curtis Bennet, then at Marylebone, and was granted the custody of the child and 15/- maintenance. The first month I had to go to Court again but Mr. Bennet refused a summons and granted a warrant, after that I received another three weeks alimony and since April, 1903, when my husband is supposed to have sailed for Canada—whether he did or not I cannot say—I have not heard of him . . . I cannot get the advice I should like to have, having only just the money per week to keep my boy boarded out. Hoping that some redress will come along as being only 24 years old I may still have time to live a happier life than at present."

"I am sure it would be a boon to many an aching heart, if something were done to revise the existing Laws. I myself have been married since I was 16 years of age, to a woman my senior. From knowing her, to going through the form of marriage, then parting was six weeks, and I have not lived with her since, neither do I intend. I pay to her every week, but I do not go near her. I have been parted nearly 16 years. The most miserable point, in fact, is that I am courting a young lady for the past three years who knows all the circumstances, and she is willing to wait for me; this lady I love as dearly as I love my life, and I am only too willing to live a good honourable life. I have been a member of the Police Force here for the past twelve years and I have tried all in my power for promotion, which, I succeeded in getting twelve months ago, then when they found out the above, they reduced me to constable, then, my salary 2/- per week, and transferred me away from all my friends; life hardly seems worth living to me. But it would be a blessing if something were done, I may say that 6/- per week was the order of of the court, but owing to her unfaithfulness, she herself reduced

it to 3s. I am still living in dread at any time of being dismissed from the force, and still, I have never been reported for anything during my service, which I think is creditable to me."

"I think it quite time something was done in this matter of great importance. Is it correct that last year the law was so amended as to allow anyone obtaining a Separation Order that after five years it was sufficient ground to obtain a divorce, according to the London paper, this is quite correct, only it seems too good to be true. I got an Order eight years ago, and have never seen my husband since that day in court so feel I should like to know if this is correct. I have two children and teach the piano, and keep a lady lodger and do all I can to make ends meet. I cannot get a divorce, that is only for the rich, and yet if I should remarry I should be imprisoned for bigamy, and sometimes I feel very much depressed, and am only 36, so feel it very much. Indeed, my position at times is unbearable, and I feel the sooner the the law is altered the better. No wonder England is so full of immorality, the present state of the law encourages it."

"Can you give me any idea when Mr. Bottomley's Bill is likely to come before Parliament, with regard to reform in the divorce laws of this country. I am separated from my wife on account of her unfaithfulness but unfortunately have to support her as the evidence was not strong enough to convince the magistrates, and although I know she continues to meet men I am unable to catch her. Of course it is entirely out of the question as regards reconciliation, I am therefore anxious with regard to the Bill which provided a ray of hope. There are, I am sorry to say, many in the same position as myself, suffering through the injustice of our laws in this respect, and I have thought something might be done to petition Parliament in regard to this matter. Only those in the same terrible position as myself can describe the suffering daily endured."

[Would it not be better that such a separation order should be convertible into an absolute divorce after a definite period—R.T.G.).]

"Ten years ago I obtained a Judicial Separation on account of the misconduct of my husband. He added moral cruelty compared with which the few bruises necessary to give me complete freedom would have been kindness. If a divorce were granted after a separation had lasted a certain number of years, would not this be the simplest way of righting the present absurd and unjust laws in this country?"

"I was married against the wish of my people on the 1st March, 1886, at St. Andrew's Church, West Kensington, and in

November, 1894, she asked for a separation which I granted on mutual consent, and then I saw her in 1896 in London, very familiar with a man . . . but who was the instigator of the separation . . . I have heard through good sources that that man has left her and she was carrying on with a young man with some money. I have not seen her since 1901, and I cannot find out whether she is alive or dead. Most of her people disown her, and tell me that they don't know where she is and they don't want to! I wish to get married again but cannot prove her death."

"I am one of the many unfortunates who made a gross matrimonial blunder. The inevitable happened, and a deed of separation later (and after much suffering) marked a parting of the ways. But the prospect of, say, 30 years of lonliness is by no means inviting, and I, for one, should passionately welcome an opportunity of release from the hateful bondage implied by the term "husband"; "The Church" objects to any relaxing of the divorce conditions. Surely its adherents must be blind to the fact that more sin accrues through holding men and women to a bondage that galls one or both of those concerned to all sorts of madness, than could possibly happen through a severance of the unhappy yoke."

"My wife within two years of marriage made my life a misery by her acts of deception, her drunkeness and neglect. Finally when I made the discovery that she had incurred debts in all directions and pawned everything possible, she decamped with her belongings. Notwithstanding all this, I forgave her, sold up half the home and started a smaller home in a new place, and by harder devotion to business managed to pay everybody. I had however barely got straight when the old trouble started again. Her debts were a continual worry, and her intemperance and deceit led to violent quarrels. Finally she demanded a separation and made my life unutterably wretched until I agreed to it. For the second time my home was sold at a great sacrifice. Now I who am without relations and therefore practically absolutely alone in the world am doomed to a miserable existence in lodgings and the woman who has ruined my life roams about the country glorying in her freedom, living at ease on the maintenace allowance which the law compels me to pay. My position as . . . to a municipal Institution compels me to live an exemplary life. Unless I go to endless expense in having her followed and watched with a view to divorce I have no remedy. Is this fair, is it justice!"

It is sometimes argued that Separation Laws provide an interval for the parties obtaining such separations to reflect whether it would not be better, after all, for them to come together again.

Whether many, and what proportion of separated persons return to cohabitation is not possible to ascertain, probably in some instances the parties may resume matrimonial life, although it does not appear to happen often, and the apparent disadvantages so greatly outweigh the assumed advantage of the system, that an argument on that ground cannot be seriously considered.

Further, the separation laws themselves have nothing to do with bringing people together again when they have once parted, in fact Clause A of Sect. 5, of the Act of 1895, may be interpreted very unpleasantly for a husband who goes near his wife after a protection order has been made against him.

PUBLIC OPINION.

Before proceeding to deal with the question of what amendments should be made in the law relating to separation, it is desirable to ascertain, if possible, the feeling of public opinion in the matter, which feeling is almost always expressed through the medium of the press.

To do this, however, it is not necessary to quote even a fiftieth part of such expressions as have appeared, and which have, indeed, been exceptionally numerous, in consequence the following limited number have been selected, being excerpts from leading articles which appeared during a period of four years ending 1909:—

WESTMINSTER GAZETTE, APRIL 30th, 1906.

"Undoubtedly the position of people living under permanent separation orders without divorce is an anomalous one which has a tendency to produce immorality."

LIVERPOOL EXPRESS, MAY 3rd, 1906.

"It is a vexed question and one upon which opinion will be much divided, but the existing law could be remedied to advantage and the community at large would be the gainers thereby rather than otherwise."

CHURCH TIMES, MAY 4th, 1906.

"That the existing law, with all its inequalities, inflicts hardship in certain cases, we are not prepared to deny; neither should we be opposed to alteration tending to minimise injustice."

DAILY TELEGRAPH, MAY 7th, 1906.

"It is not and it cannot be denied to be a fact, that a law exists which is declared to be contrary to the interests of public morality by the highest authority concerned in its interpretation upon the bench. A law of that kind ought not to remain upon the Statute Book for twenty-four hours after a declaration of that character."

OBSERVER, SEPTEMBER 1st, 1907.

"The thing is to look upon this question from the sociological, from the anthropological point of view of the State and the individual. The real difficulty lies with cases of unforeseen incompatibility arising after marriage, and with regard to the scope of admissable incompatibility. Separation is always a doubtful remedy—morally."

GLOBE, MARCH 23rd, 1908.

"All, save a few irreconcilable theorists, have long since made up their minds that divorce is both justifiable and necessary on certain grounds, they question, however, whether the existing law of England goes far enough in certain directions, while it perhaps goes almost too far in others."

DAILY TELEGRAPH, AUGUST 6TH, 1908.

"We have often commented upon the open scandal and injustice caused by the defective state of the law with regard to the most sacred of all human relations. It is difficult to believe that in a Christian and civilised country there is permitted to exist by statute an intermediate condition, neither that of matrimony nor divorce, which leaves to the woman nothing of marriage but its harshest fetters, and yet leaves the man free in everything but name. The situation created by the rapid increase of separation arrangements is not even remotely realised by the average person. But a profound moral evil is there. It has been created by artificial and irresolute legislation. The abuse has been maintained and is increasing, not only in despite but in direct defiance, of all that is sound in public opinion. . . . . Human nature being what we know it to be, it is futility, and worse, to blind our eyes to the practical consequences following in a very large number of instances from the artificial and perilous condition of judicial separation."

OBSERVER, AUGUST 9th, 1908.

"Attention has been properly drawn to the rapid increase in the number of judicial separations, which create a state of things the most repugnant to any sound conception of public policy by practically annulling marriage without restoring legal freedom."

DAILY CHRONICLE, AUGUST 10th, 1908.

"Social justice demands that there should be a well-guarded opportunity of escape from a contract which has been broken, and the continuance of the penalties of which is directly conducive to extended and flagrant immorality."

BIRMINGHAM MAIL, AUGUST 10th, 1908.

"Of these "police court divorces" as they are called, there have been over 80,000 in the past thirteen years. Who can doubt that, in a considerable proportion of these cases the interests of morality would have been better conserved by the granting of a divorce?"

DAILY TELEGRAPH, SEPTEMBER 4th, 1908.

"Those who know human nature will best realise the inevitable consequence—chartered libertinage on the part of many separated husbands; an endless number of irregular unions; while in the case of the innocent parties to the separation it often means severe temptation, which only the strongest characters can resist, and where charity is practically compelled to condone a fall. We talk about the scandals of easy divorce in other countries; is not this scandal of our own making just as bad and just as odious?"

DAILY CHRONICLE, FEBRUARY 11th, 1909.

"Put shortly, the position is this, that an Act, which was merely intended to make separation easy, has had the result of making divorce difficult or impossible. . . . . What is an illused wife, if she have not ample means, to do? If she refrains from the cheap and easy redress of the Act of 1895, she must submit to continued ill-treatment; if she seeks that redress, she forfeits thereafter the right of divorce. This is a flagrant absurdity and a very real injustice."

DAILY NEWS, FEBRUARY 11th, 1909.

"What we do hope is that now the whole question has been brought into notice steps will be taken to reform the whole law of divorce and separation. It is certainly not well that the rights of divorce should be as unequal as they are, or that the great majority of unhappy marriages should result in a half divorce that is often worse than that which it has superseded."

STANDARD, APRIL 8th, 1909.

"Thus it comes about that the magistrates find themselves engaged with increasing frequency in dissolving marriages by a kind of legal fiction. Ill-assorted couples of the working classes, unable to go to the High Court, appear before the stipendiary and obtain a separation, which enables them to live apart, but does not give either party the right to marry again."

MANCHESTER DISPATCH, APRIL 8th, 1909.

"Those who dislike the idea of divorce naturally wish to keep things exactly in their present position. The mere fact that it is recognised is bad enough, but they reap some small consolation from the fact that it is almost impracticable. In their zeal for morality they seem to loose sight of the fact that, as divorce cannot be obtained, the magistrates' courts set 14,000 people apart every year, without releasing them from the marriage tie, and without making the slightest provision for respect to be paid to that tie, thus cheapening it and making it a mockery in the eyes of a considerable section of the population."

THE GUARDIAN, APRIL 14th, 1909.

"We think it exceedingly probable that these orders are responsible for far more immorality than divorce itself. Whereas divorce recognises and registers the civil results of immorality actually committed, separation orders facilitate and encourage its future commission by placing thousands of married men and women in a position of enforced celibacy."

THE TIMES, JULY 19th, 1909.

"We do not weaken the marriage law, it is said, by removing some obvious and accidental unjust effects; the freedom with which judicial separations are granted is a scandal, and does mischief to the respect in which marriage is held among the

poor. It is urged, and obviously with some force, that the worst way of preserving the sanctity of marriage is to facilitate separations, which, with human nature as it is, very often become in fact, though not legally, divorces."

DAILY GRAPHIC, OCTOBER 29th, 1909.

"It is admitted by everyone that on two points, at any rate, the present law is unsatisfactory. . . . . Either separation ought to be made less easy, or divorce easier. The half-way house is from every point of view undesirable. It is almost a contradiction in terms that the law should treat two people as man and wife and yet forbid them to live together."

BIRMINGHAM DESPATCH, NOVEMBER 2nd, 1909.

"What is the known result of these separation orders? First undoubtedly, proper relief to a sufferer, and then, as certainly because there is no power of re-marriage, much immorality and illegitimacy. It is not in the interest of society, nor in that of the persons themselves, that such a state of things should exist, and it is particularly hard on the working classes, whose dependence on a comfortable ordered home is a real and vital fact in their lives."

THE CHURCHMAN, DECEMBER, 1909.

"The practice of granting separation orders to-day is often connected with conditions that are nothing short of intolerable, and unless Churchmen are prepared to say that divorce is not permissible under any circumstances whatever, it cannot be worse to grant divorce rather than separation orders for the one cause for which such orders are now available."

In addition to the expressions just quoted numerous articles condemning the anomalous state of the Law have appeared in a very large number of newspapers and reviews throughout the country all of which amply illustrate that public opinion is against a system of separation which provides no power of re-marriage.

Further, LORD GORELL in delivering judgment in the case of Dodd v. Dodd, on April 27th, 1906, said:—

> "It is desirable, in my judgment, as bearing on the subject under consideration, to express the conviction which has forced itself upon me that *permanent separation without divorce* has a distinct tendency to encourage immorality, and is an unsatisfactory remedy to apply to the evils it is supposed to prevent.[32]

32. Dodd v. Dodd (1906), p. 189, ante p. 13.

And SIR GEORGE LEWIS, who has been advocating reform for upwards of twenty-five years, in an interview stated:—[33]

> "Thousands of Judicial Separation Orders are granted every year—in 1907 the total was 6,747. In a few cases, no doubt the injured parties do forgive and try to forget, and husband and wife come together again. But the grounds on which a man or woman generally obtains a separation order are such as, in my opinion, render it unlikely that they will ever live together happily in the future. I speak from very long and very varied experience when I say that a man or woman who has been cruelly treated by wife or husband should be able to obtain not only a judicial separation, but the equivalent to what is now known as a 'decree nisi.' This should automatically become an absolute decree of divorce in six months or so."

In addition, Mr. PLOWDEN, the well-known Metropolitan Magistrate, in an interview said:—[34]

> "I am certainly of opinion that there is more chance of immorality with a judicial separation than with divorce, for a divorced woman always has the chance of marrying again. My opinion is that a wife who is entitled to a judicial separation on any of the grounds on which she may at present obtain it, viz., desertion, persistent cruelty, neglect to maintain, and habitual drunkenness, is entitled to obtain a divorce on any of the same grounds."

I shall only refer to two other opinions, both being contained in letters received by me, one being from such an eminent judge as Lord Lindley, and the other from Dr. Saleeby, the well-known physician and sociologist.

LORD LINDLEY says:—

> "But I agree with the President of the Divorce Court in thinking that our Divorce Laws require revision, and that permanent separation as distinguished from divorce ought to be re-considered."

DR. SALEEBY says:—

> "As regards the effect of permanent separation without the power of re-marriage, there is obviously room for only one opinion; and the expert voice can only emphasise what ordinary common-sense will say in condemning these atrocious separation orders."

An instructive comparison of the separations granted in England and Wales during the ten years, 1897-1906, and also in

33. *The Daily Mirror*, March 18th, 1908.
34. *The Observer*, April 28th, 1906.

other countries for which statistics are available is set forth hereunder. In this table private deeds of separation have been calculated as taking place in England and Wales at the rate of only 2,000 per annum.

COUNTRY.	Total Years.	PERIOD.	ANNUAL AVERAGE POPULATION.	TOTAL SEPARATIONS.	ANNUAL AVERAGE SEPARATIONS.	Annual Average per 100,000 population.
England and Wales (including magistrates' separations and private deeds.)	10	1897-1906	32,787,200	87,386	8,738	26·7
France ...	9	1897-1905	38,771,100	20,042	2,227	5·7
Austria ...	10	1897-1906	26,291,000	15,350	1,535	6·6
Italy	8	1897-1904	32,380,596	6,513	814	2·5
Holland ...	10	1897-1906	5,275,800	1,617	162	3·1
Norway ...	10	1897-1906	2,224,600	1,434	143	6·5
Scotland ...	9	1898-1906	4,530,222	309	34	*
Ireland ...	10	1897-1906	4,449,700	42	4	*
Hungary ...	9	1898-1906	19,213,444	15	1·6	*

* Less than 1, per 100,000 population.

A cursory inspection of the figures in the foregoing table reveals the remarkable fact that in England and Wales the separations taking place during the period under review have been nearly twice as many as in all the other countries put together.

A brief summary of all of the foregoing facts and figures show:—

1. The operation in England and Wales of three different methods of separation. (Judicial, Magisterial and by Private Deed.)

2. That such separations may by law become permanent.
3. They are conducive to, and producive of, much immorality.
4. They are a source of injustice.
5. They have long been recognised as an unsatisfactory remedy.
6. That the permanent separation of married persons is more or less discouraged by nearly all civilized nations.

Nor let it be forgotten that, as before stated, during the last 15 years upwards of 200,000 married persons have been separated by legal process, to say nothing of the vast number separated by private deeds. In the face of these facts it is small wonder that the legitimate birthrate has during this period fallen 10 per cent.[35] and that some 40,000 illegitimate children have been born annually.

SUGGESTED AMENDMENTS.

An amendment of the laws relating to separation would, therefore, appear to be not only necessary, but also of considerable urgency, and as it does not seem possible to abolish separation entirely, inasmuch as, apart from any law, there will always be a certain number of married persons, who, without recourse to courts or deeds, will mutually agree each to go their separate ways in the world, it is advisable that the present laws be amended so as to provide a system of temporary separation, since it is possible that a temporary separation may have its uses as a period of probation whereby a subsequent reconciliation may be effected.

The amendments which I would suggest are as follow:—

1. Assuming that jurisdiction in matrimonial cases is not conferred upon County Courts, and that there is no alteration in the general law of divorce, then Magistrates' Separation Orders should:—

   (*a*) After three years' separation be convertible into a decree of absolute divorce upon application of either party, providing always the marital relation had not been resumed in the meantime.

   (*b*) Provide that clause A of sec. 5 of the Act of 1895, providing that an applicant be no longer bound to cohabit with her husband should only be inserted in orders where it is absolutely necessary to protect

35. 71st Rept. of Reg. Gen. of Births, Deaths, and Marriages in England and Wales, 1908, p. xxvi., table D.

the wife against her husband's cruelty, and all orders containing such proviso should be made for a period not exceeding one year,, to be renewed at the end of that time if so desired by the wife.

(*c*) In cases of habitual drunkenness granted under the Act of 1902 not allow a decree absolute unless the separation has lasted five years and the person against whom such order has been made has been confined in an inebriates' home for at least two separate terms of one year each or a single term of three years.

(*d*) Be granted to a husband whose wife shall have been convicted summarily of an aggravated assault upon him, or whose wife shall have been convicted upon indictment of an assault upon him and sentenced to pay a fine of more than £5 or to a term of imprisonment exceeding two months, or whose wife shall have deserted him.

Judicial Separation should:—

(*a*) After three years' separation be convertible into a decree of absolute divorce in like manner as suggested for magistrates' orders.

(*b*) Be granted for desertion on similar lines to a magistrate's separation order, *i.e.*, without necessarily waiting the period of two years required by the Act of 1857[36].

(*c*) Be obtainable in the High Court on the grounds of habitual drunkenness with similar provisions as suggested for magistrates' orders.

Private Deeds of Separation should:—

(*a*) Require that a copy of any and every such deed be duly registered either at Somerset House or the Principal Registry of the High Court by the solicitor engaged in drawing up such document, a penalty to be enforced for non-registration.

(*b*) After three years' separation be convertible in like manner as suggested for magistrates' orders, the application for a decree absolute in these cases to be made to the High Court.

36. Thus, by striking out the words "without cause for two years and upwards" in Section 16 of the Act of 1857, magistrates' separations would no longer bar a woman from divorce.

(*c*) *Ipso facto* invalidate any clause in any deed likely to prevent either party who subsequently, during the three years mentioned in clause *(b)*, has good grounds for sueing for a divorce from so sueing.

2. All persons under each class of separation resuming the marital relation should be required to file a declaration thereof either at Somerset House, or at some other Registry that may appear more convenient, as the State would then have cognizance of the number of its married citizens who were at any given time legally living separate from each other, which would seem desirable both on economic and sociological grounds.

3. The law relating to divorce should be extended, as the effect thereof upon separations would be immediately to sweep away many anomalies and much injustice, and it therefore appears that:—

(*a*) The law should place the sexes upon an equal footing and enable a woman to obtain a divorce for adultery alone, the result of which would be to dispose of the disabilities which have been illustrated as attaching to both magistrates' and private deeds of separation.

(*b*) It might also be advisable to transfer the power of granting Separation Orders to County Courts in those districts where the Courts of Summary Jurisdiction are not presided over by Stipendiary Magistrates, in which case the applicant for a decree absolute under clause *(b)* (private deeds of separation) should also be allowed to apply to either the High Court, or the County Court of the district in which such applicant resided.

Briefly summarizing the foregoing suggestions it appears that the most satisfactory amendments in the law relating to separations would be brought about by:—

1. Conferring jurisdiction in matrimonial cases upon County Courts, thereby reducing the cost of a divorce suit.

2. An amendment of the Divorce Law, placing the sexes on an equal basis.

3. Removing jurisdiction in separation cases from all Courts of Summary Jurisdiction not presided over by Stipendiary Magistrates, to County Courts.

4. Allowing *all* Judicial, Magisterial, and private separations to be converted at a subsequent date into a decree absolute of divorce, subject to the conditions previously suggested.

5. Requiring a record to be made of all deeds of separations as also of all reconciliations, and the return of separated parties to cohabitation.

It will be seen that the amendments suggested would not only dispose of the principle of permanent separation, but would also minimize injustice, and immorality, and further vest in the State powers whereby it would be able to ascertain at any time the number of its married citizens who were legally living apart.

Further, it is a fact that it is daily beginning to be regarded as a thing in no way disreputable to defy Laws which are so anomalous, inexpedient, inconsiderate, illogical, unjust, and contrary to reason and commonsense, and already a counter institution—without safeguards—is gradually encroaching on the domain of marriage, and is beginning to be acknowledged as an institution. Unless reforms are made in the very near future—not only the individuals who are affected and who ignore the law—but the whole of the community at large will suffer in consequence. There are no greater enemies to the institution of marriage than those who oppose reasonable reforms of the Laws relating thereto.

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DIVORCE PROBLEMS OF TO-DAY

BY

E. S. P. HAYNES

(Late Scholar of Balliol College, Oxford)

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Price ONE SHILLING.

Dedicated to my Wife,

ORIANA HUXLEY HAYNES,

IN GRATEFUL ACKNOWLEDGMENT OF MANY USEFUL

SUGGESTIONS.

PREFACE.

At the request of the Divorce Law Reform Union, and by the courtesy of the editors of the FORTNIGHTLY REVIEW and ENGLISH REVIEW, I have collected the following papers for publication. They have all appeared between December, 1906, and May, 1910, though I began writing and working on the subject as early as 1904. The interval of four or five years has marked a great change in public opinion. Five years ago a fierce "taboo" was in force against the very discussion of the problem, and I owe a great debt to the editor of the FORTNIGHTLY REVIEW for opening the door of that distinguished periodical to the subject at the time that he did. Owing, however, to Lord Gorell's fearless utterances at a period of life when most men are only too ready to acquiesce in things as they are, to the ceaseless and untiring exertions of my colleagues Mr. Ramsay-Fairfax and Mr. Richard T. Gates on the Executive Committee of the Union, and to the friendly co-operation of the newspapers, especially the DAILY TELEGRAPH, the subject became well ventilated and finally, at the end of October, 1909, a Royal Commission was appointed.

If the reports of Royal Commissions were always acted upon, there would be no necessity to republish propaganda and the decision of the sitting Commission might be anticipated as a final settlement of the question. Unluckily, however, experience has often shown how little notice is taken of such reports. It is scarcely likely that the Commissioners will not recommend any reforms, but it is more than probable that any reforms they may recommend will be hotly

opposed in Parliament and elsewhere, even if such opposition were only to be expected from men who genuinely detested any change. Opposition, however, must be anticipated not only from convinced opponents, but also from men who, consciously or unconsciously, sacrifice their own private convictions to the supposed requirements of an official or parliamentary position, and whose position lends weight to arguments which would otherwise have very little weight at all.

It is, therefore, hoped that this little pamphlet may be of use not only to friends of the cause but also to those who wish to approach the subject with an open mind. I wish to emphasize the fact that I have always tried to keep an open mind myself, and a careful comparison of these essays will show how even in a few years I have modified my opinion on one or two questions. For this reason I claim no finality for any one of my proposals, but only put them forward in the hope of their being of use among the many other suggestions that are being made before the Royal Commission.

I cannot pretend to the advantage of any extensive experience in the region of divorce practice, which is possibly the reason why I advocate less drastic measures than, for example, Sir George Lewis. I can only hazard the conjecture that if the general public had had even the narrow and occasional glimpses that I have had of the divorce law and the preventible suffering due to it, or had seen the letters that come before the Divorce Law Reform Union, they would with one heart and mind set about remoulding the most unholy jumble of civil and ecclesiastical abuses that has ever disgraced the jurisprudence of Western Europe.

August, 1910.

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THE ANOMALIES OF THE ENGLISH DIVORCE LAW.

Reprinted from the FORTNIGHTLY REVIEW, December, 1906.

The Statute of 1857, by which divorce was made possible in this country without the expense of obtaining a private Act of Parliament, was largely due to the famous sentence pronounced by Mr. Justice Maule on a poor man for bigamy. Most readers will remember the fine irony with which the judge pointed out to the prisoner how, after being deserted by an unfaithful wife, and having married again chiefly for the sake of his young children, he should have tracked his wife's seducer, brought an action for damages against a person who was probably a pauper, and finally petitioned the House of Lords for a divorce, which in all would have cost about five or six hundred pounds to a man who was not worth as many pence. Most readers, however, are probably not aware that, *in spite of the facilities given for proceedings in forma pauperis, the cost for a poor man (especially if he lives in the country) of obtaining a divorce is almost equally prohibitive in our own day.* Mr. Plowden has publicly declared his belief that police magistrates should have the power of granting divorces, and in the debates of 1857 many speakers strongly urged that such power should be given to the County Courts, where much

more obscure questions of fact than cruelty, desertion, or adultery are daily proved.

Another judge has now come forward as the advocate of reform. The President of the Divorce Court* has recently given a weighty and authoritative opinion in favour of altering the absurd compromises and anomalies which are embodied in the Act of 1857 and result from the working of the different statutes that have succeeded it. His courageous words cannot be too highly praised. The usual apathy of happily married persons, whose happiness should at least make them realise how wretched an unfortunate marriage can be, the opposition of Protestant bishops and other members of the Church of England, who for some mysterious reason conceive themselves pledged to the maintenance of certain Roman Catholic doctrines which by a historical accident still remain embedded in the English law, and the general indifference to the sufferings of a class who are happily a minority of the whole community, greatly hamper the success of any appeal to public opinion as such, and a judicial expression of discontent is the only event which is likely to bring about a better state of things.

The particular set of facts on which the President had to decide were as follows:—The wife, who was the petitioner in the suit before him, had married her husband, the respondent, in 1891. In 1896 the respondent had given way to drink, and, although living with his wife, neglected to provide for her and his child, and was being kept by her. The wife consequently left him and went to her mother, and in

* Now Lord Gorell.

September, 1896, obtained an order under the Summary Jurisdiction (Married Women) Act 1895 that she should no longer be compelled to cohabit with the husband, and that he should pay her a weekly sum of 10s. This he never did. Subsequently the wife discovered that the husband had been guilty of adultery, and in August, 1905, petitioned for a divorce on the ground of his adultery and desertion, which latter offence, if he was guilty of it, had lasted considerably longer than the two years' limit required by the Act of 1857. The President found that the husband had not, in fact, been guilty of desertion at all, since he would have been only too glad to come back and live on his wife again, and that as he had been guilty of adultery only, the wife was merely entitled to a judicial separation, with an order against the husband for her support. She was, therefore, no better able to obtain maintenance than before, and was condemned to a single life during the life of her unfaithful husband.

The following important results appear from this state of the law:—

(1) In no circumstances whatever can a wife obtain a divorce from a penniless husband except by going to the expense of an action in the High Court, for which she may lack the means; and if she has previously obtained a magistrate's order, she is probably altogether debarred from a divorce, for, if she is not bound to cohabit with her husband, he cannot commit the matrimonial offence of desertion, and it is most improbable that he will have any opportunity of committing the offence of cruelty.

(2) It is clear that a husband is more severely

punished for committing the single offence of adultery than if he is guilty of adultery and desertion or cruelty, since in the latter case he obtains liberty of re-marriage, and probably does not suffer any greater financial loss by way of alimony.

In the latter part of his judgment the President pointed out that the magistrates granted over 7,000 orders of this kind a year, "so that at any given time there must be an extremely large number of people living separate under orders made during the previous years." Tracing the history of the law, he showed how the "remedy of permanent separation" was condemned by the Royal Commission issued by Henry VIII., and renewed by Edward VI., on the ground that it "produced great abuses and scandal in the marriage state, and that the innocent party should be permitted to obtain a divorce for . . . desertion." He might have added that the remedy of divorce was also recommended for certain kinds of cruelty. Undoubtedly our law, but for the early death of Edward VI., would have resembled that of Scotland and all other Protestant countries but this country and some of our Colonies, in giving women the right to divorce an unfaithful husband, and to both men and women the right of divorce in cases of desertion. The President considered it desirable "to express the conviction that permanent separation without divorce has a distinct tendency to encourage immorality," and he doubted whether "any reform would be effective and adequate which did not abolish permanent separation as distinguished from divorce, place the sexes on an equality as regards offence and relief, and permit a decree being obtained for such

definite grave causes of offence as render future cohabitation impracticable and frustrate the objects of marriage."

We have only to turn to the debates on the Act of 1857 to find Lord Palmerston condemning judicial separations, Mr. Gladstone advocating equality between the sexes, and Lord Lyndhurst most vehemently supporting the proposal that desertion should be made a cause of divorce.

The above extracts from the judgment of the one person in England who might be expected to be entitled to express a proper opinion on the matter might seem sufficiently reasonable to the average person. They met, however, frankly hostile criticism in *The Times*. The writer of a leading article on the judgment stated that "the time has not come, if it ever will come, for removing all the anomalies which the President condemns." And why? Because "in the opinion of many persons—some would hold a majority—in this country and several others, the right course in this matter is not to be determined by considerations of public policy, however clear or strong." Such an argument might be expected from anarchists, anti-vaccinationists, or the Peculiar People, but it is somewhat startling in the columns of *The Times*.

Let us try to understand the sentiments of the "persons" referred to. In the first place there is the religious argument. The Council of Trent recapitulated the doctrines of the Roman Catholic Church in prohibiting divorce *a vinculo* for any reason whatever, but it also formulated the doctrine that celibacy and virginity were ethically superior to the married state. The Council, no doubt, forgot to take official

cognisance of the condition of contemporary monasteries and nunneries, just as the modern opponent of divorce apparently ignores the social condonation of adultery which would seem to prevail in countries like Italy and Spain, where no divorce is allowed.

To support judicial separations through thick and thin, in spite of all that is said of their effects on society, seems rather like vindicating religion at the expense of morality. The whole doctrine is logically derived from the Early Christian and medieval conception which, for some reason or other, associated saintliness with celibacy and virginity. It must not be forgotten that saintliness was also associated with deliberate want of personal cleanliness, but personal cleanliness has ceased in more modern times to be morally discreditable.

There is, however, a widespread feeling that nothing should be done to weaken the marriage tie, and that every opportunity should be given for reconciliation. The strenuous efforts of magistrates, of lawyers, and of the relations of the disputing spouses are in almost every case exerted to try to mend their quarrels. Yet not only are such efforts unvailing, but even abandonment of the closest personal ties and the hatred of scandal and publicity generally fail to deter two human beings whose society has become intolerable to each other from recourse to litigation. The truth is that married persons are not usually united by any sense of legal coercion or obligation The private considerations that go to prevent the dissolution of a home are far more powerful than any inducements held out by the law. Where all these have vanished, the husband will agree to pay almost

any alimony to be rid of the wife, and the wife will face any publicity, to be rid of the husband, and if they are not free to re-marry, but are merely united by the legal caricature of a union called a judicial separation, it is only too probable that other ties of an illicit kind will result.

It only remains to be remarked that under the Roman law and the present law of Scotland, by which marriage was, and is, regarded as a contract dissoluble at the option of either party for such a breach of its terms as shakes its very foundations, neither society in general, nor the family in particular, ever ceased to exist or flourish.

The proposals for alteration of the law, which would, I think, be approved by many thoughtful persons are as follows :—

(1) To make wilful desertion for three years a cause for divorce.

(2) To give equal rights to both sexes.

(3) To give a discretionary relief of divorce where the home is broken up by lunacy.

(4) To afford facilities for divorce in the County Courts.

I shall examine each of these points separately.

(1) To make desertion a cause for divorce is only to follow the example of all Protestant countries. The same precautions that are now taken to prevent collusive suits would no doubt remain in force. The hardship of the present law is very great, both for men and women. Most readers will remember the case of *Regina* v. *Jackson*, where a husband was deserted by his wife at the church door, and was unable to obtain any remedy. The Ecclesiastical

Courts at least gave a remedy. If the absent spouse would not return, he or she could in the last resort be imprisoned, but since the Act of 1884 all that can be obtained is a payment or settlement of money. Of what use is this right to a husband? If the wife has any money at all, it is almost certain to be subject to what is called a "restraint on anticipation," and against this formidable machinery even the High Court is powerless.

The hardship on the wife presses in another way. Her husband may run off with another woman to the Antipodes, and it may require a small fortune to trace him. Meanwhile the wife and children may be left absolutely without any means of support. A poor woman with a large family is, therefore, condemned to all the miseries of indigent widowhood until her husband dies, and even then she is no better off unless she can legally prove his death, which cannot be done unless his whereabouts are known to her.

If a poor woman obtains a magistrate's order on the ground of desertion, she can never get a divorce at all, even if her husband commits adultery, unless he comes back and assaults her. For the period of desertion required under the Act of 1895 is less than the two years' limit required by the Act of 1857, and the desertion of the husband is terminated by the magistrate's order which relieves the wife of obligation to cohabit with the husband, and if the wife obtains this, she cannot complain of desertion as from the date of the order.

(2) To give a wife the right of divorcing an unfaithful husband seems to be only just, whether or not the offence may be less grave in the husband than in the

wife. I have before alluded to the President's remark that the husband is more seriously punished for committing one matrimonial offence than by committing two. But the wife also suffers by being condemned to a single life for the rest of her days. There may be cases in which the wife might condone her husband's misconduct, but the serious consequences of it ought clearly to entitle her to the right of divorce. It is difficult to deal with all the aspects of this question, but no one with any experience can deny the grave physical dangers that may result to the wife even if the husband be not criminally careless, and owing to the testamentary freedom of the husband cases are not unknown where a man has left the bulk of his property to a woman with whom he was on more intimate terms than with his wife.

It must, however, be apparent that although the infidelity of a wife may be a more serious offence against society than that of the husband, yet the consequences of the husband's misconduct may be quite as serious for a wife personally, as her offence may be for society at large.

(3) The proposal to give a discretionary relief by divorce where the home is broken up by lunacy is, perhaps, a more doubtful matter. The insanity of a person at the very moment of marriage is in law a ground for annulling the marriage, but if the ceremony was entered into during a lucid interval, it is not, however great may have been the deception practised by the relatives of the lunatic upon the unfortunate person who contracts such a union. Insanity is a ground for dissolving any kind of ordinary contract, and the fact that such a marriage implies the probable birth of insane

children seems only to add a further reason for making such a contract dissoluble on grounds of public policy. Certain precautions, however, might be taken. For example, the insanity would have to continue for a period of five years, and the doctors employed to report upon the patient might be specially appointed by the Court, as they now are in nullity cases.

(4) I do not think that much more need be said about the policy of giving facilities for divorce in a County Court. Even if the *in forma pauperis* procedure is adopted in the High Court, the expense of bringing witnesses to London and obtaining proper advice there would in many most deserving cases be prohibitive, and I believe that there is some ground for supposing that many cases brought *in forma pauperis* are brought by persons by no means so poor as they claim to be. Until such facilities are given it is difficult to see how the state of the law with regard to the poor has been materially improved since the days of Mr. Justice Maule, and few who have even a superficial knowledge of the working classes would not admit that there is room for considerable improvement in their ideas of the sanctity of marriage and respect for the law of marriage.

There is, perhaps, a common tendency to suppose that there can be no logical choice between prohibiting divorce altogether and allowing it on grounds which make it, in fact, dissoluble by incompatibility of temper. If we are to have a compromise, it may be argued, why should not the compromise of 1857 be as good as any other? I cannot see why this argument might not be used with equal force of any other contract. Yet what should we think of a person

arguing that the commercial stability of a society depended upon making business partnerships indissoluble except by the deaths of the parties thereto? It is clear that people who find they have a common interest in working together will remain together, and that if they have not, no amount of legal coercion will make them do so. The mere fact that marriage has yet another element, viz., personal affection and intimacy, added to that of common interest, makes the argument even stronger since in case of dispute an element is introduced of personal aversion.

There is only one other point upon which I need touch, and that is one of procedure more than legislation. It is the ease afforded by the present publicity of the Divorce Court for inflicting an injury upon the reputation of a person which can never be wiped out. I may perhaps be allowed to give some typical instances of this. In a recent action a charge of misconduct was made by a wife against her husband in connection with a dead woman. The husband of the dead woman appeared in court to defend her memory, and the charge fell to the ground; but why should so grave and apparently unfounded an attack upon a dead woman have been published in the newspapers? No innocent woman can be accused of what is an offence of the same gravity as a criminal offence for a man and escape the imputation that she was given the benefit of the doubt. A husband may falsely accuse his wife of adultery, and after the suit is over she is compelled to go back to his house if she wishes either for maintenance or the society of her children. A husband or wife may maliciously accuse a doctor or a young unmarried girl

of adultery, and the persons thus accused may for more than a year have no chance of vindicating their characters. Even a triumphant refutation of the charge brings no remedy against the accuser. Any person, if falsely and maliciously accused of dishonesty, may subsequently take proceedings against his or her accuser for malicious prosecution, but, if maliciously accused of adultery, has no such remedy. There is, I believe, more publicity in the English courts, so far as these matters are concerned, than elsewhere, and this is directly due to the ecclesiastical notion that offences of this type should be exposed to public censure. Little enough appears to be thought of the suffering caused to innocent parties, who are clearly entitled to consideration. If we are to have publicity at all, I cannot see why the same procedure should not be adopted as prevails with regard to the solicitors accused of professional misconduct. The proceedings are heard in private, and if the solicitor clears himself, the accusation against him is not made public; if, however, he is found guilty, the conviction is publicly recorded against him. Surely an innocent man or woman should have the same privileges when confronted with an accusation the very utterance of which may irreparably damage him or her.

THE COLONIAL MARRIAGES ACT, 1906.

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Our legislators, when ostensibly anxious to remove an anomaly, frequently succeed in creating fresh anomalies by way of compromise. The Colonial Marriages (Deceased Wife's Sister) Act is a good instance in point. The effect of it is, briefly, as follows: In Colonies as important as Australia, Queensland, Canada, Natal, Cape Colony, and New Zealand marriage with a deceased wife's sister is legal. Before the passing of the Act persons domiciled and married in such Colonies were, according to our law, legally married, and their children were legitimate for most purposes, but were assumed to be illegitimate for the following purposes: since (1) they could not *inherit* English land at all, *e.g.* in cases of intestacy; (2) if they succeeded to English land under a will or settlement, they were treated by the Inland Revenue as strangers in blood to their parents, and (3) they could not succeed at all to honours and dignities.

Lord James of Hereford well described a common example in the debate on the second reading of the Bill.* "A man came to this country after having married his deceased wife's sister in the Colonies, and

* Here and in the following pages I cite the report of the debate in *The Times* of May 16th, 1906.

died leaving freehold and leasehold property. Thereupon his representative in making a return would declare that A. B. having made a will leaving to his son C. D. *lawfully begotten* certain leasehold property, that property should pay 2 per cent. duty. Then he would go on to say that A. B. having left C. D. *not born in lawful wedlock* certain freehold property, the latter should pay 10 per cent. duty."

The act accordingly relieved from these disabilities the issue of a Colonial marriage with a deceased wife's sister, and the Deceased Wife's Sister Act, 1907, by legalising such marriages in England, makes the Act of 1906 unnecessary, but intensifies all the anomalies of the situation. The legal origin of the above-mentioned disabilities is directly traceable to the growth of local and territorial systems of legislation in the Middle Ages. Such legislation entirely controlled questions relating to the ownership of land or immovable property situate within the bounds of such local or territorial jurisdiction. On the other hand, movable or "personal" property (which in England includes leaseholds) devolved according to the law of the owner's domicile. The medieval system still survives in our jurisprudence, and gives rise to the anomaly which has now been abolished only in regard to Colonial marriages with a deceased wife's sister.

It is not, however, entirely clear whether the English law of real property was ever in fact properly invoked, and the Act itself begins with a statement that its purpose is to remove any doubts.

In all questions which involve our Courts recognising the validity of any given marriage the doctrine

has constantly been laid down that the capacity for contracting any marriage depends exclusively on the domicile of the person. In his *Conflict of Laws* Mr. Dicey writes that in its widest scope the old prohibition of English law against marriage with a deceased wife's sister, and the existing prohibitions, *e.g.* against marriage with a deceased husband's brother, applies to all persons, whether British subjects or aliens, domiciled in England, and *to such persons only.** This doctrine holds good of all marriages, except marriages in polygamous countries, or marriages "stamped as incestuous by the general consent of Christendom." Marriages between a brother and sister would presumably fall within this definition, but an Italian marriage with a deceased husband's brother has been judicially excepted from the definition.†

In this last case an English lady domiciled in Italy married her deceased husband's brother, which the Italian law recognises as a valid marriage, and the marriage was recognised as valid by the English Courts. By virtue of the same doctrine a divorce for desertion between two parties domiciled in Scotland is recognised as valid in England. The doubt that exists, therefore, is as to the nature of that validity. But is it not expedient, not to say just, that *all* marriages celebrated according to the law of the domicile of the parties should be recognised as valid *for all purposes* in England? Is it not oppressive, on grounds of common justice, to go behind the law of a person's domicile and to apply the law of England merely in regard to succession to land, honours, and

* *Conflict of Laws*, p. 645, Note 1.

† In re Bozzelli's *Settlement*.

dignities? And would it not be unquestionably the better plan to remove all doubts by dealing with the whole question of principle involved instead of capriciously relieving a small class of persons?

For the doubts referred to in the Act apply to a whole number of other persons with whose position I will presently deal. It is astonishing that no attempt was made to go to the root of the matter and to abolish the medieval distinction between land and personal property in this instance.* This proposal is not so daring as it sounds. Our law of real property still bears many traces of its feudal and medieval origin, but for almost a hundred years our legislators have done their best to assimilate the law of real property (so far as possible) to that of personal property. This policy reached its culmination in the Land Transfer Act of 1897, which vested land in the personal representatives of the deceased owner.

As the law now stands, the following persons are left to suffer whatever disabilities were removed by the Act for the benefit of a particular class:

(1) The children of persons who marry a deceased husband's brother or a deceased wife's niece. Such marriages are legal in some Colonies, and in many foreign countries, not to say the Channel Islands.

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* This would merely have meant abolishing the highly artificial rule laid down in *Birtwistle* v. *Vardill* in 1840, which prevents English land descending upon an intestacy to persons recognised as legitimate by English law for *all* purposes except that of succeeding to land, honours, and dignities. I call it artificial because the law of real property in England is here made to ride roughshod over the law of a person's *status*, which depends upon his domicile. Honours and dignities follow the feudal law of descent.

(2) The children by re-marriage of persons of doubtful domicile who re-marry after being divorced on grounds not recognised as grounds for divorce by English law. The divorce laws of Scotland, Cape Colony, Natal, New South Wales, Victoria, and New Zealand all recognise such grounds, *e.g.* they all allow divorce in cases of desertion, and in one Colony simply to persons residing there.

(3) The children of all persons who legitimate such children by subsequent marriage in Colonies where such legitimation is legal.

(4) The children of all Englishmen domiciled in foreign countries who legitimate such children by subsequent marriage in countries where the law allows it.

Lord Halifax made special reference to the second class above referred to in the debate. Logically, he was, I think, right to include them in the discussion. If the law of England can once be logically applied, it is clear that a person divorced on grounds not recognised by English law labours under the same incapacity for marriage (to another person) as prevents a woman domiciled in England from marrying her deceased husband's brother. But how can it be expedient, merely in regard to English land and honours, for the English Courts to be compelled to go into the whole history of a Colonial divorce previous to a subsequent marriage, and are such proceedings any less likely to give offence to our Colonies than the doubts which previously existed concerning the effect of a marriage with a deceased wife's sister?

In connection with the last two classes it may be

mentioned that legitimation by subsequent marriage is lawful in Scotland, in many of our Colonies, in most European countries, and in many of the United States of America. It would no doubt also be the law of this country but for the Toryism of the English barons of the thirteenth century, who opposed the idea with the somewhat unintelligent remark *Nolumus leges Angliæ mutare.*

The above considerations taken by themselves might well justify some effort towards achieving a logical simplicity in our laws. But I have by no means exhausted the legal tangles of the situation. A fresh collection of them arises from the English preference of the medieval criterion of domicile to the modern criterion of nationality which is almost universally adopted on the continent.

Domicile is by no means so easy a matter as it sounds. A man may live part of the year in one country, and part of the year in another, and his domicile is difficult enough to determine in that case. Again, an Englishman may live for years in a foreign country with the intention of returning to England, yet die there. In this case, owing to his intention, his domicile is held to be English. A man's habits and intentions may be disputed about with great ease for years after his death without any very clear result being obtained. The test of nationality is obviously more certain than that of domicile.

The question of domicile is closely bound up with succession to English land under a will or settlement, and I will give three examples by way of illustration.

Example 1.—English land is devised by will "to the eldest son of Mr. John Smith," whom I will call

William Smith. Mr. John Smith died domiciled in a colony which permitted legitimation by subsequent marriage, and William Smith is the eldest son of the family thus legitimated.

To take the land under the will William Smith has to prove to the English Courts (1) that his father died domiciled in the Colony, and (2) that the law of the Colony permits legitimation by subsequent marriage.

The proof of domicile usually involves either (*a*) taking evidence in the Colony on commission, or (*b*) bringing Colonial witnesses to England. If, however, John Smith is still alive, William Smith will probably be advised to petition for a decree that he is legitimate under the Legitimacy Declaration Act, 1858. This sounds simple enough, but in addition to incurring the expenses of proving domicile, William Smith is in this procedure, for some reason, made to pay the costs of all parties to the suit (probably his opponents) whether he succeeds or not.

William Smith's title to take under the will arises by virtue of a decision of the Chancery Division in 1892,* and not from any statute.

Example 2.—It has not yet been decided if he could take the land, supposing that it had devolved to him under a settlement, *e.g.* as tenant in tail, but high legal authorities are of opinion that the same principle would apply and that he would succeed to the land in this case also.

Example 3.—Supposing John Smith had died in France, or, in fact, any European country which pre-

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* In re Grey's *Trusts.*

fers the criterion of nationality to that of domicile, even more complications arise. Let us assume that William Smith surmounts all the difficulties of proving that his father died domiciled in France. The question then arises whether or not he is legitimate by French law.

If this inquiry be addressed to a French lawyer, the French lawyer before replying asks, "Was the late Mr. John Smith a British subject or not? Few Englishmen formally abandon their nationality, and there is every probability that Mr. Smith did remain, in fact, a British subject. "In that case," the French lawyer will say, "we have nothing to do with the matter. These questions are by our law referred to the law of the nation to which Mr. John Smith belonged, and we therefore cannot give you any opinion as to William Smith's legitimacy according to our law, though it is true that our law does permit French citizens to legitimate children by subsequent marriage."

Here is an interesting deadlock known to lawyers as *renvoi*, *i.e.* the matter referred to French law is by French law referred back to English law. By this time Mr. William Smith will be fairly exasperated even if he is still solvent. In this particular case, however, he will probably succeed. The decisions in France and Belgium now admit the principle that Mr. William Smith should be allowed to take the benefit of their laws, and Mr. William Smith may therefore be regarded as legitimate by the law of Mr. John Smith's domicile. But many Italian jurists are of a different opinion. The question obviously permits of being well argued on both sides.

I have made but a rapid survey of the complications due to our law as it stands, but there are possibly many more, and in these days of travel the cases become more frequent. I venture to submit that the present state of things is beneficial only to lawyers.

I hope I have made it clear that an alteration of the law of real property tends in no way to alter the law of marriage or to involve any approval or disapproval of other laws of marriage. In the debate on the second reading of the Colonial Marriages (Deceased Wife's Sister) Act some of the speakers appeared to imagine that the English law of marriage was in some way at stake. Some confusion of thought was certainly pardonable, though it was perhaps odd to find a distinguished prelate solemnly discussing the merits of a man marrying his "*widow's niece*"!

Clearly, however, the difficulties in regard to proof of domicile and the *renvoi* will remain so long as we adhere to our criterion of domicile to the exclusion of nationality. Why not then, it may be said, adopt the criterion of nationality? The answer is that to be a British subject is merely to be subject to a number of conflicting laws of marriage and divorce within the British Empire. I have already mentioned the Colonies in which the grounds for divorce are different from those accepted by English law. I need only add that in Ireland and certain Canadian provinces a divorce can only be obtained by Act of Parliament, while in the Channel Islands and Newfoundland there is no divorce law at all. It is more than arguable that owing to the peculiar jurisdiction of the Indian Courts in divorce a man may be divorced in Calcutta, and return to find himself married to the divorced wife in

London. There can be little doubt that the present system brings about a number of marriages and divorces which are legal in one place and illegal in another, and that the uncertainties of domicile are regrettable from every point of view.

Some attempt at unifying the marriage and divorce laws of the British Empire must obviously precede any attempt to remedy the uncertainties of domicile. The prospect is enough to daunt the boldest statesman, but perhaps we may gather some courage from the example of the United States. Across the Atlantic a national divorce Congress, including "bishops, governors, jurists, and sociologists," has put forward "a model Statute" for the whole Commonwealth. The statute recognises six grounds for divorce, viz. :— adultery, bigamy, conviction and sentence for crime (followed by continuous imprisonment for at least two years), extreme cruelty such as to endanger life and health, and habitual drunkenness or wilful desertion for two years. This courageous attempt at unity may fail, but it was certainly worth making. Is it impossible to submit the same problem to an Imperial Conference? The difficulties are scarcely more insurmountable in the case of the British Empire than in the case of the United States. Some such attempt is already being made in regard to the law of naturalisation.

The indifference of Englishmen to abuses that arise from slipshod thought and legislation is truly surprising. To start out by denying any right of divorce at all is logical enough. But to grant such a right in a haphazard way, to adopt a medley of medieval rules for determining legitimacy, and calmly to leave a

whole number of anomalies unremedied, can only be due either to laziness of mind or to the knowledge that such measures are not immediately comprehensible to the electorate at large, and hence have little value on a party programme. It is women and children who suffer most from the present state of confusion, and surely it is time that something should be done for them.

The remarks which Lord Brougham made on this subject more than sixty years ago have lost none of their force to-day :—"That there should be a set of questions incalculably important, perhaps the most important, to the interests and feelings of individuals which can ever arise in Courts of Justice, and that these questions should be left surrounded with doubt and incapable of decision for want of some statutory enactment regarding the subject-matter, is truly lamentable, and not a little discreditable to our jurisprudence."

There is undoubtedly a crying need for the appointment of a Royal Commission, such as Lord Halifax has suggested, to clear away the absurdities which I have endeavoured to describe.

OUR DIVORCE LAW.

AN EXPLANATION OF ITS ANOMALIES AND AN ARGUMENT FOR ITS REFORM.

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The conventional attitude to divorce resembles the Early Christian attitude to marriage. The Early Church held up celibacy and virginity as the ideal state of men and women; the sexual relation, like other corporeal indulgences, *e.g.*, bathing, was in itself sinful. The marriage tie was, therefore, analogous to a license to sell intoxicating liquors; it severely limited and regulated an instinct the satisfaction of which might lead to untold mischief. The only justification of marriage was the fear that an absolute refusal to recognise the existence of reproduction by natural means (instead of by what Gibbon calls a "harmless process of vegetation") might lead to even greater evils.

The Early Christian theory of marriage as an evil has never found its way into English law. On the contrary, the State has always directly discouraged anything likely to diminish the supply of fighting men, and our Germanic ancestors, before becoming acquainted with Christianity, regarded divorce as a necessary remedy for adultery, desertion, and even involuntary capture of the other spouse by an enemy.

The doctrine of marriage being indissoluble in England is almost entirely bound up with the Roman

Catholic doctrine of marriage being a sacrament, which was never abandoned till the Reformation. The sacramental doctrine once renounced, Churchmen asked themselves whether marriage was, or was not, of its nature indissoluble. This, of course, involved an appeal to the primitive Church, and more especially to the Early Fathers, many of whom were inclined to concede the privilege of divorce instead of separation, to the innocent party.

The net result was that Cranmer and others drew up a scheme for altering the ecclesiastical law so as to grant divorce for adultery, desertion, cruelty, and even incompatibility of temperament. The other main feature of the scheme was the abolition of separation without divorce as a remedy. They condemned separation as a cause of immorality. This scheme, if carried out, would have assimilated our laws to those of other Protestant countries. It was never accomplished owing to the early death of Edward VI., but the ecclesiastical courts, nevertheless, granted decrees which were deemed to give liberty of remarriage, till the end of the sixteenth century, when the Star Chamber intervened, and a "bond" of chastity was required from the parties who obtained a decree. No distinction in this connection was made between innocent and guilty parties. From about 1700 and onwards the practice of obtaining a divorce by Act of Parliament came into being.

Such an Act required as a condition precedent, first, a civil action and, secondly, an ecclesiastical decree of separation. This practice continued till 1857, when the law was altered owing to the attack made upon it by Mr. Justice Maule in 1845.

From about 1700 to 1857 the ecclesiastical courts granted these decrees with the full knowledge that they could be used as instruments to obtain a divorce by Act of Parliament, the bishops voting for the Acts as they did until 1904 in the case of Irish divorces.* A number of the bishops supported the doctrine that marriage was dissoluble, and Archbishop Sumner and Tait, then Bishop of London, actively supported the divorce Act of 1857. This statute represented a compromise between the advocates of divorce and those who from convictions based partly on particular readings of the Gospels, partly on grounds of ordinary reasoning, and partly on grounds of prejudice against any innovation, upheld the doctrine that marriage should be indissoluble. There was, of course, also a large body of men who professed to be bound, and to bind others, by the Roman Catholic dogma. These latter persons have taken upon themselves the responsibility of discouraging the clergy from marrying a divorced person, whether innocent or guilty, and by so doing have done much to destroy the national character of the Church of England.

Whether or not the Church of England is entitled to repudiate the precept and practice of Cranmer and other bishops and clergymen in the past is a problem that may be relegated to the theological jurist, but those who regard the existence of a national church as an integral part of the national organism, are naturally inclined to deplore the present official attitude of the Church.

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* Irish divorce bills are now passed into law by a committee of the law lords, which is scarcely constitutional.

The doctrine of indissolubility, however, finds other supporters on purely rational grounds, which were very well expressed by Lord Redesdale when he dissented from the recommendations of the Royal Commission in 1850. He strongly objected to divorce on the ground that it "closed the door, once and for all, on the possibility of reconciliation." It was also for this reason that the Commission advocated the remedy of separation instead of divorce in cases of desertion or cruelty, and, in the wife's case, for adultery only.

The strength of this argument cannot be denied, though cases are known of divorced persons remarrying one another. Even if the parties separated were tempted to misconduct during the period of separation this evil would be small compared with destroying any prospect of their actual and ultimate reunion. The answer is that examples of such reunion are extremely rare. Death itself does not so effectually destroy the marriage tie as the infliction and remembrance of an intolerable wrong, and nothing less than this is likely to bring really worthy persons into court. An unworthy person may occasionally use the Divorce Court for his or her own purposes, but the absence of such a court would not improve the conduct of such a person. Considering the ties that have to be destroyed, the scandal that has to be faced, and the duration of time between the filing of a petition and the making of the decree absolute, the possibilities of reconciliation are almost certainly extinct before a marriage is finally dissolved. Examples of reconciliation are, of course, almost as rare where the suit fails.

Lord Redesdale's second argument was that the

mere knowledge that the marriage tie could be dissolved would necessarily increase the chances of divorce and thus diminish the chances of domestic happiness. This deserves to be discussed in detail, although Lord Redesdale only indulged in generalities. Roughly speaking, there are three types of marriage. There is the supremely happy marriage of well-assorted persons which cannot be dissolved except by death. In such marriages even the incurable insanity of one spouse would leave the other without any heart to contract another marriage. The experience of such a marriage must necessarily prejudice against legal divorce any person who cannot realise, either in imagination or by the sympathetic observation of other persons, the possibilities of misery in an unhappy marriage. This marriage is obviously left untouched by any legislation.

The second type of marriage is that of persons who are not perhaps particularly congenial to each other. The obvious restrictions imposed by civilised manners upon young men and women really getting to know one another may have led to their forming quite inaccurate notions of each other. The mistake may be on one side or mutual, but it is not necessarily irremediable. They start with a common interest and a necessity of mutual accommodation which is automatically strengthened as years go on. The existence of children is for decent people an obvious restraint upon wayward desires. Among other obvious restraints come the domestic instinct, the desire for the approval of society, the influence of habit, and mutual affection and respect. These restraints are often potent enough to prevent the innocent party

taking legal proceedings against the other, but the guilty party is further restrained by such motives as the wife's fear of social ruin, and the husband's fear of losing lucrative appointments or being forced to sacrifice a considerable part of his income to a wife who is no wife, until her death. It is, therefore, the ordinary human affections and a healthy public opinion that keep even uncongenial persons together, and these considerations operated most forcibly to prevent the wholesale prevalence of divorce during a long period of Roman history when the facilities of divorce made marriage almost dissoluble at will.

The third type of marriage covers many varieties that obviously need the remedy of dissolution. We need not always presume delinquency. A person married to an incurable lunatic of five years' standing is obviously entitled to relief on grounds of public policy, and the only possible argument against granting such relief is the lack of absolute certitude in medical knowledge. Yet such lack of certitude does not prevent the State from asserting an absolute control over the person and property of a lunatic.

Again, two persons may marry and discover a perfectly genuine incompatibility of temperament. The existence of such incompatibility in a purely physical sense is as well known among human beings as it is among animals. There seems, therefore, an obvious presumption that it can be psychical as well as physical.

Milton vividly described such incompatibility in his essay on divorce. To give such persons even a limited right to determine their union would possibly be dangerous. But where the incompatibility is genuine

the fear of public opinion will not keep them together and they will inevitably take steps to dissolve the tie.

If one of them, thereupon, inevitably proceeds to incur the disapproval of society by giving the other the right to dissolve the tie, the compulsion of the wife to adultery, or of the husband to desertion or cruelty and adultery, is more harmful to public morals than the compulsion to desertion under a law which would grant divorce for wilful and malicious desertion, as in Scotland.

No legislative or administrative machinery can ever make such divorces impracticable. To impose the necessity of a matrimonial offence is merely to impose a powerful test of sincerity. Many persons would prefer not to make adultery an absolutely essential constituent of the test, as it is now.

Coming to the question of delinquency, there is the marriage where one party is guilty of conduct which frustrates the objects of marriage, and this is dealt with, however inadequately, by our law. Where both parties are guilty of such conduct our law denies relief except in special circumstances, and in this respect it again differs from other Protestant countries and, to the detriment of public morality, follows ecclesiastical principles which have been elsewhere discarded.

To sum up, Lord Redesdale and thinkers of his type deny any remedy but that of separation in the third class of marriages above described. Their principal arguments are that divorce closes the door to reconciliation and tends to break up the home.

They ignore the facts that no society has ever yet found itself able to dispense with divorce or its

equivalent*, and that, except in a few Roman Catholic countries and Colonies which have imported their law from England and not since changed it, the remedy of separation without remarriage has been abolished because of the obvious temptations it creates to illicit intercourse. They ignore the fact that England has set up a more rigorous state of things than other Protestant countries, and that the Roman Catholic Church solves the problem of divorce with the unsatisfactory device of fictitious annulment. In the Middle Ages a former contract with another person or "a degree of relationship even to the remotest branches" (which was "sometimes discovered by means of a fictitious genealogy") was sufficient cause to annul a marriage, however sacramental. Even this remedy, however, was only to be bought at a price, and the poorer classes presumably took the law into their own hands.

These facts unquestionably throw the burden of proof on the opponents of divorce. It is for them to prove that husbands and wives separated by law are frequently reconciled, and even if they could do this they would have to set off against them the number of husbands and wives who remarry after being divorced. It is for them to prove that divorce breaks up more homes than are broken up in Roman Catholic countries, and even if they could do this they would have to take into account the systematic tolerance of open adultery that the absence of divorce so frequently creates.

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* Either in the shape of nullity decrees, or by change of domicile or nationality. I refer to what goes on in European countries where divorce is prohibited, *e.g.*, Italy and Austria.

Lord Redesdale further opposed any change in the law on the ground that there was "no popular demand for it." It seems difficult to understand why the Act of 1857 was passed without any popular demand, but the statement is worth noticing because it might quite as easily be made now.

I shall hereafter have something to say about the traditional indifference of English legislators to personal, as compared with proprietary, wrongs, but, apart from this, the test of popular demand cannot be so fairly applied to this question as to others. Most people are notoriously indifferent to forms of misery unknown to themselves and unlikely to affect themselves. The victims of the law as it now stands do not like to air their grievances by mass meetings or any other form of publicity, and if they did so they would probably be reproached with the suggestion that they were unduly biassed in the matter. They either grin and bear their sorrows or disregard the law. Putting aside the hostility of Roman Catholics and their followers, most Englishmen regard divorce, as I said before, as analogous to a license to sell intoxicating liquors. The parallel is instructive because, just as many men will not publicly rebuke the overbearing tyranny of some teetotalers for fear of being thought to advocate the cause of the drunkard, so many men are afraid to advocate the rational extension of divorce for fear of being thought to advocate free love. Rational divorce is, therefore, as difficult to promote as the existence of rational places of public refreshment.

In these circumstances the only persons likely to speak freely are those who by their avocations are

brought into direct contact with the anomalies of the law, that is to say, judges, counsel, magistrates, and solicitors. In April, 1906, Lord Gorell, then President of the Divorce Court, condemned the present law, root and branch. His example was speedily followed by many magistrates and by a solicitor so experienced as Sir George Lewis, who had also denounced the law twenty years ago. The newspapers sounded an unanimous chorus of approval. A Royal Commission was on many sides suggested. Yet in spite of this nothing was done by the Legislature, although no stronger expression of public opinion could have been made if we consider the circumstances that restrain the expression of it in regard to this particular problem. Again, on February 5th, 1909, in a speech at Liverpool Lord Gorell said: "In Divorce Court procedure there is now one law for the rich and another for the poor." Further, four days later, on February 9th, in delivering his judgment in the Court of Appeal in a similar case to that which called forth Lord Gorell's condemnation in 1906, Lord Justice Fletcher Moulton said: "It is the serious reproach of our existing Divorce Laws that the relief they grant is practically out of the reach of the working classes in this country by reason of expense and the absence of local courts empowered to grant it," and again the press have uttered a universal expression of approval. The abuse remains untouched.*

Yet family life is not too highly respected by those who regard rational divorce as an attack upon it.

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* A Royal Commission was appointed only in October, 1909.

The whole tendency of modern legislation is to break up the family as a unit and to weaken parental responsibility for the child. To pauperise the poor and to provide for the illegitimate children of employees who earn less than £250 a year at the expense of the employer seems quite reasonable to the British public. In our traditional groove of coarse and unreflecting sentimentality we will give money to the poor and deny them the elements of self-respect. We subsidise their illegitimate children at the expense of their wives and legitimate children, but burden the rates with the maintenance of deserted wives whose husbands have disappeared, and deny to the offspring of illicit unions the simple justice of being legitimated by the subsequent marriage of their parents.

The absurdities of English law are most readily exposed by comparison with the law of more enlightened countries, and these absurdities cover a very wide range. For the moment, I will merely compare our laws with those of modern Germany.

In modern England the State is at present actively promoting in every police court the separation of husband and wife without the possibility of re-marriage, and it legalises and enforces voluntary separations, both public and private, in every class of life. In modern Germany the separation without remarriage of husband and wife is not recognised by the State, except in the case of Roman Catholics, and even then a separation is subsequently convertible into a divorce at the option of either party. The remedy of the injured spouse is divorce or nothing. The remedy of separation, whether voluntary or

compulsory, is rightly condemned as being contrary to public policy.

It may be instructive to mention one or two other features of German law in regard to marriage and family life. In England a male is deemed capable of marriage at 14 and a female at 12, and although parental consent is commonly demanded of persons under 21, any fraudulent statement of its having been obtained does not invalidate the ceremony. In Germany a male cannot marry under 21 or a female under 18, whether parental consent is available or not. In England a man may, and not infrequently does, cut his wife and family out of his will. In Germany the rights of wife and children are properly safeguarded by limiting this liberty of disposition. In England a father need not do more for his children than keep them out of the workhouse unless he has brought himself under divorce jurisdiction. In Germany he is obliged to maintain them in a suitable manner. In England a spendthrift or dipsomaniac can only be controlled when he has spent all his money. In Germany such persons are protected from themselves by the family Council. In England an illegitimate child can never be legitimated by the subsequent marriage of the parents, though a child of perhaps doubtful paternity may rank as a dependant under the Workmen's Compensation Acts. In Germany this humane and reasonable opportunity of making reparation to the child exists as a matter of course.

In its essential principles the German law is in line with that of most civilised countries, while our law is not. There are, of course, historical reasons for this,

which I shall discuss hereafter. But our law of divorce is only one example, among many, of our hidebound attachment to ancient abuses. It is of the utmost importance to realise that divorce law reform will merely bring our jurisprudence up to the level of the modern enlightened state. It involves no revolutionary disturbance of anything but our crusted ignorance of how modern civilisation works outside England. It sets out to place the family on a firmer basis, to regulate the marriage contract on equitable lines, and to improve the chances of the future generation in a country where deserted wives fill the workhouses and 40,000 illegitimate children are born every year.

The anomalies of the English law, as distinct from other laws, are largely due to insularity. We have always tended to fall away from the main current of European thought and action. As Mr. Arthur Strong once remarked, "The English were never Catholics, but always turbulent islanders." Our insularity, in fact, usually took an anti-clerical form in the middle ages. Thus, when the humane provision of the Canon Law for legitimation of children by subsequent marriage was laid before a Council of English barons early in the thirteenth century they refused to discuss it, and only cried out, "Nolumus leges Angliae mutare" ("We will not alter the laws of England"). The testamentary freedom of the husband grew up quite casually, and in the "province of York" was only established in 1692. But the main prejudice against the old law, which ensured the family a fixed proportion of personal property, was due to its ecclesiastical origin. The same sort of hostility seems to have existed in regard

to the Court of Chancery, which was created to supply remedies which could not be found in the Common Law, and the very existence of such a Court did much to stunt the growth and improvement of the Common Law.

It was only this insular feeling that enabled Henry VIII. to set up the "regal papacy" which the contemporary potentates of Europe failed to achieve, though they were all equally anxious to do so. It was our insular position that saved us from the upheaval of revolution in the eighteenth century. Revolutions have distinct disadvantages, but there can be no doubt that the French revolution made a clean sweep of many ancient anomalies—feudal and otherwise—which continued to exist in England, and that many European countries gained enormously from the adoption of the Napoleonic Code.

All this goes some way to explain our deep-rooted veneration for the Common Law which grew out of English custom, and particularly the custom of the King's Court in the thirteenth century. Its obvious merits cannot be denied. It makes for liberty and individualism. Its theory is that men must sink or swim. It is so elastic and adaptable that in these respects it compares favourably nowadays with the more rigid and inflexible characteristics of modern equity. But it has marked traces of its barbarous origin. The relatives of a murdered man in the middle ages were content with a pecuniary compensation from the murderer. By analogy, in our own day a man whose daughter is seduced, is entitled to sue the seducer for damages for loss of the daughter's service while she is with child, and an injured husband can

sue the seducer of his wife for damages. In fact, before 1857, the injured husband could claim no relief from the civil law but that of damages.

Our law has always treated proprietary rights with more respect than personal rights. The poacher often fares worse than the wife-beater. It is only quite recently that criminals had any right of appeal, though endless facilities for appeal existed in civil suits. This probably accounts for a certain tendency in English legislation to busy itself mainly with taking money out of Peter's pocket to put it into Paul's.

A modern political programme turns almost exclusively on questions of property, *e.g.*, the rights of landlord and tenant, employer and employee, Free Trade and Protection, rival methods of taxation, and so forth. Educational and temperance reforms are fundamentally involved with large financial problems. Questions of *status* such as those of marriage, legitimacy, domicile, &c., are left severely alone, and such changes as have occurred were oddly casual and remote from legislative regulation. Medieval forms of marriage by consent existed till Lord Hardwicke's Act of 1753, and their abolition excited strenuous opposition. We have preserved the medieval test of domicile in international law as opposed to the modern and more certain test of nationality.

English sentiment, in short, is curiously indifferent to any claim but that of poverty. It is conspicuously lacking in imagination. A young and good-looking criminal can always rely on a generous measure of popular benevolence. A young wife condemned by her husband's desertion to all the miseries of indigent but perpetual widowhood, or a young husband for

ever tied to an incurable lunatic, makes no appeal to the British public, and the reiteration of rusty and senseless platitudes is all that they are likely to hear by way of sympathy.

It is, therefore, scarcely surprising that we have lamentably failed to regulate marriage and divorce after the pattern of modern civilisation, and that the existing anomalies of the law are still viewed with indifference. Such a state of things certainly justifies every effort to educate public opinion being made by those who, without any personal grievance in the matter, desire to remedy not only a grave social injustice but also a grave social danger.

DIVORCE LAW REFORM.

Reprinted from the ENGLISH REVIEW, November, 1909.

There are still many worthy citizens in this country who are quite startled by the proposition that the poor should enjoy the same relief as the rich for their matrimonial troubles. Their surprise is usually of the kind that one would anticipate from suggesting that every poor man should have a City banquet once a week out of the public funds. In subsequent discussion they may argue, as the Archbishop of Canterbury did the other day, that to give facilities for the dissolution of a poor man's marriage in certain selected County Courts is "to lower the gravity of the ideal." In the end they will either perceive the logical force of the argument or will say that all divorce is very wrong, but no opponent of divorce, whether lay or clerical, has ever yet promoted any active measure for the repeal of the Matrimonial Causes Act, 1857.* In these circumstances, those politicians who oppose the extension of divorce to the poor invariably evade all argument unless they are absolutely forced into it as they were on July 14 last in the House of Lords.

I eagerly followed this debate in order to ascertain what possible arguments could be urged against giving the poor the enjoyment of the rights which they were expressly granted by the Divorce Act of 1857. The 40th section of the Act provides that "it shall be

* Since this article was published Lord Halifax and his supporters have taken the hint.

lawful for the Court to direct one or more issues to be tried in any Court of Common Law, and either *before a Judge of Assize* in any county or at the sittings for the trial of causes in London or Middlesex, and either by a special or common jury, in like manner as is now done by the Court of Chancery." This section was judicially interpreted in 1861 as intended to "empower the Court to delegate questions of fact in issue, which may be tried at a much more moderate expense in the country than in London, in the same manner as may be done by the Court of Chancery. . ." The Court ordered the cause in question (*Richards* v. *Richards*) to be tried at the next Shrewsbury Assizes to save expense. The last instance of this power being invoked was in 1871 in the case of *Snowball* v. *Snowball*, where an order was moved for that the issues of fact, which were cruelty and adultery, should be tried at the Assizes at Durham, as all the material witnesses resided at or near that town, but this was declined on the objection of the husband, who had had to give security for costs and preferred to have the case tried in London.

The only possible objection to the use of this machinery is that the division of labour involved seems to a lawyer a little impracticable, but the mere existence of the section vindicates the principle that the poor are in law entitled to equal rights—the principle for which Samuel Romilly made heroic efforts in the early decades of the nineteenth century and for which the *Times* was vehemently fighting in 1854. It is a pity that the suggestion, made in the debates of 1857, that the County Courts should have divorce jurisdiction was not then adopted, but what-

ever the means, the end cannot be repudiated. Justice must be brought as near the poor man's door as possible. The crushing expense of bringing witnesses to London and of leaving his work is imposed on the poor man *in this one instance only*. Such a hardship does not exist in the case of any other litigation. Moreover, as Lord Gorell pointed out, the wife of a provincial artisan, if she is backed by rich relations or a rich lover, has her husband at her mercy.

As I anticipated, the principal resource of Lord Gorell's opponents was to confuse the issues as skilfully as possible. All that the Archbishop of Canterbury could do was to lay stress upon the slow decline of illegitimate births since 1857 and to argue that the separation orders granted by magistrates under the Summary Jurisdiction (Married Women) Act, 1895, had not increased the number, but this argument is clearly unconvincing having regard to the progressive decline of the general birth-rate. Certain items of miscellaneous information were also brought forward, the weight and importance of which were reduced to vanishing point by Mr. Plowden's letter on the subject in the *Times* of July 19 last.

The only other available resource was to suggest that justice for the poor must "open the door" to proposals for altering the English law of divorce as it stands. If this means that the present law is so iniquitous that it will not do to expose its abuses on a large scale, the objection cannot be allowed even from admirers of compromise. But the Archbishop, Lord Halifax, and Lord Halsbury unsparingly condemned the law as it now stands. This being the case, one would scarcely have expected

them to nip in the bud an experiment which would expose the evils of divorce in all their nakedness and multiplicity. Allusions were made to the exuberance of American divorce in various States. The analogy is plainly ridiculous because in this country judges are not elected by popular vote and are in fact very different in all material respects from American judges. Our traditions of legal procedure and respect for law are happily not those of Dakota or even of New York. But if Lord Gorell's proposals were really likely to bring about such a state of things, what a golden opportunity was at hand for the opponents of divorce, after a proper interval of experiment, to abolish divorce altogether and to establish the idyllic conditions of a certain American State where, owing to the absence of divorce, the laws of succession are adapted to the complicated requirements of polygamy and concubinage! *

The sober fact of the matter is that the official opponents of divorce have very good reason to fear the discussion of the question either on grounds of theology or public policy. No theologian can justify a poor man being divorced by his wife because his poverty and remoteness from London makes it impossible for him to defend the suit, and, on the general question of principle, the Rev. C. J. Shebbeare has conclusively exposed, in the August number of the *Nineteenth Century and After*, the historical ignorance of any Anglican who may seek to bolster up the strict Anglican theory of marriage by appealing to Catholic theory or practice.

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* I mean South Carolina.

As regards public policy no thinking person has ever ventured to deny that divorce must exist in some form or other, if only as a choice of evils.

Securus judicat orbis terrarum. The Roman Church chooses the legal fiction of annulment, the modern State chooses divorce. Any one who wishes to verify the history and reality of this proposition for himself need only study the admirable chapters on Marriage and Divorce in Mr. L. T. Hobhouse's "Morals and Evolution."

If the Assizes and County Courts are not available only one alternative remains, which is to give a magistrate's separation order the effect of a divorce after the lapse of a certain time (say two or five years) unless the parties are meanwhile reconciled. This is the scheme of a Bill once drafted by the Executive Committee of the Divorce Law Reform Union for Mr. Bottomley and which is now before the House of Commons. The machinery at least ensures cheapness and accessibility, but it might involve granting divorce for reasons of perhaps questionable necessity, such as an isolated act of cruelty or a short period of desertion. On the whole, Lord Gorell's proposals are unquestionably the best yet put forward to remedy a grievance the reality of which is beyond dispute.

The debate in the House of Lords ended by the Lord Chancellor promising an inquiry into the question whether the County Courts should have divorce jurisdiction. It would since appear, however, that the Government are prepared to go further and to appoint a Royal Commission to investigate not only the disabilities of the poor but also the working of

the present law under what has been called the "Concordat of 1857." It is earnestly to be hoped that such a Commission will be able to suggest some solution of the following problems, *i.e.*, (1) the question of insanity; (2) the substitution of divorce for separation as a remedy; (3) the hopeless confusion and absurdity arising from the conflict of domicile and nationality in mixed marriages; and (4) the question of publicity.

(1) The question of insanity is by far the most difficult. In December, 1906, I suggested in the *Fortnightly Review* that divorce should be optional where the insanity of the spouse had continued uninterruptedly for five years and was certified by the Court doctors to be incurable. Those who look after lunatic asylums generally agree that the combination of the two tests is fairly safe. Thus melancholia may last for more than five years, yet it could rarely be certified as incurable. A marriage with a lunatic can never be annulled if the ceremony took place during what is called a "lucid interval." Yet there are many cases to-day in which a person has been entrapped into marrying a lunatic by a mean and wicked conspiracy on the part of the lunatic's relations under such conditions that there is no means of repudiating the fraud. Such fraud is an outrage not only on the individual but also on the public interest, having regard to the possibility of lunatic issue. In legal language it is a crime as well as a wrong.

(2) The permanent separation of married persons is clearly against public policy. This was a recognised doctrine in English law up to about 1800, and it was

not finally and logically discarded until the case of *Regina* v. *Jackson* in the eighties, when it was decided that a wife was entitled to desert her husband. Temporary separation may have its uses as a period of probation, but the permanent separation of husband and wife constitutes a permanent temptation to immorality unless the parties are either abnormal or well past middle age. This elementary fact is legally acknowledged in all Protestant countries but England and a few British colonies. The recognition of it was as much the fundamental principle of the excellent reforms advocated by Cranmer and other eminent divines in the reign of Henry VIII. as it is to-day of the humane jurisprudence that prevails in modern Germany. Yet in England we are actively promoting and encouraging the separation of husband and wife without possibility of remarriage in every police-court, and legalising and enforcing voluntary deeds of separation in every rank of life. The effect of such deeds and police-court orders is to sanction libertinage on the part of the husband and to expose the wife to penury and social ruin if she is guilty of a single act of infidelity to a husband who is in fact no husband.

(3) The conflict of laws in mixed marriages leads to a person being married in one country and unmarried in another. The most recent and notorious case was that of a Frenchman who, without obtaining the parental consent required thereto by French law, married an English lady in England. The test of French jurisdiction is nationality, the test of English jurisdiction is domicile, and according to English law the domicile of the wife is that of the husband. In this case the Frenchman returned to France and

took steps to annul the marriage on the ground of his parents not having given their consent. The English lady was no wife in France yet his wife in England because the marriage contract was valid in England. Her husband's domicile was clearly French, and this was held to prevent her from obtaining relief in the English Courts. For England to abandon the test of domicile and to adopt the test of nationality would involve setting up a uniform law of marriage and divorce throughout the Empire, and the widest diversities prevail even between the laws of England, Scotland, and Ireland, to say nothing of the Channel Islands. The only practicable solution would seem to be some modification of the rules which associate the domicile of the wife with that of the husband.

(4) The publication of divorce proceedings as opposed to the publication of the decree inflicts grave injury on many individuals and certainly is not in the public interest. Such publication is the exception rather than the rule in modern civilised countries. Its only advantage lies in the remote chance of publicity bringing fresh witnesses or evidence to light, but this scarcely outweighs the grave disadvantages. It cannot be more of a deterrent than the inevitable knowledge that the friends of the spouses must ultimately obtain of the result of the proceedings where one of them is guilty, while unfounded charges, if once published, must seriously prejudice the innocent. Unfounded charges are by no means unheard of. Moreover, newspaper reports of the kind that now exist cannot but demoralise a large section of the public if only by emphasising and exaggerating the example of

certain persons who do not represent normal society. Shortly after the Divorce Act of 1857 came into operation Queen Victoria used her best endeavours to reform this state of things, but the Lord Chancellor of the day found himself powerless against the British dread of secrecy. There need be no reason for this fear so long as the Courts are open to the public, and the time has surely come to end a state of things which is equally injurious to the individual and the community.

THE CHURCH AND DIVORCE LAW REFORM.

Reprinted from the FORTNIGHTLY REVIEW, April, 1910.

"The Theologian may find peace in the thought that he is subject to the conditions of the age rather than one of its moving powers."—Jowett in *Essays and Reviews*.

DURING the last six years the movement for divorce law reform has made considerable progress, and has resulted in the appointment of a Royal Commission. Those who, like myself, had been crying in the wilderness long before April, 1906, observed a very different state of opinion growing up after the famous judgment of that date in *Dodd* v. *Dodd*.* The Divorce Law Reform Union derives increasing support from the public, and, under their auspices, a Bill designed to make judicial separation decrees and magisterial separation orders mature into decrees of divorce and to relieve the spouses of lunatics and felons, was introduced into the House of Commons. An animated correspondence in the columns of the *Daily Telegraph* during August and September, 1908, afforded striking evidence of the rising tide of discontent with the law as it now stands.

Finally the hearing, in 1909, of the now celebrated case of *Harriman* v. *Harriman*† before six judges in the

* For the facts of this case, *see* p. 8. † A case similar to *Dodd* v. *Dodd*.

Court of Appeal roused the public conscience by its reiterated exposure of the hardships of the poor, to which the case of *Dodd* v. *Dodd* had already drawn attention.

Even *The Times*, after pouring cold water on Lord Gorell's suggestions for reform in April, 1906, became aware in February, 1909, that the feelings of persons who, three years before, were alleged to repudiate the claims of public policy, might safely be postponed to the growing popular demand for equality before the law as between rich and poor. It is only odd that *The Times* should have taken the line that it did in April, 1906, after eloquently pleading for cheap and accessible divorces in 1854. One can only say, "*O tempora, O mores.*" *The Times* of 1854 had a reforming zeal only worthy of the *Daily Telegraph* in 1908, not to mention Sir Samuel Romilly a hundred years ago.

Meantime the clerical party had not been idle. In the Pan-Anglican Congress of 1908 Mr. G. W. E. Russell denounced persons who had remarried after divorce as guilty of "legalised concubinage." Respectable citizens who have contracted such marriages may well ask Mr. Russell if he prefers illicit unions to lawful marriages, or if he would desire to repeat the advice of Pope Clement VII. to Henry VIII., to commit bigamy without obtaining a divorce?* Other speakers at the Congress anathematised divorce in a manner not unworthy of the Council of Trent, and fortified their remarks by divers allusions to divorces in the United States, where the administration of all

* *See* Lord Acton's Essays.

justice is, to say the least, very different in character from what we are accustomed to obtain in Europe. Nevertheless, on January 7th, 1909, the Archbishop of Canterbury felt it his duty to admonish the vicar of Charing that he was "not justified in repelling from Holy Communion" a lady who had divorced her first husband under the present law and had subsequently married a second husband in church.

In view of all that has passed it is extremely important to understand the line that the Church is likely to take now and the reasons that she can urge in opposition to rational divorce. If the Church is part of the Catholic Church, then she ought to provide the ecclesiastical facilities for annulling marriages that exist in the Catholic Church. If she is Protestant, then she ought to recognise the dissolubility of marriage for just cause after the example of Cranmer, Knox, and other Protestant reformers. If she represents a blend of Catholicism and Protestantism, then she ought to formulate an ideal consistent with the character of the blend. But she has merely shirked the problem, as I propose to show later, ever since the lamentable decease of Cranmer's *Reformatio legum ecclesiasticarum.*

Lawyers profess themselves unable to discover what is called the "law of the Church," whether written or unwritten. But if such a law exists, let us try to know what it is and how it bears on the subject of divorce. We are dealing with almost the oldest national institution in existence, and even "polite Sadducees" can scarcely desire that the Church should sever herself from the main stream of national progress. At present, however, it looks as if the official

attitude of the Church is to be one of uncompromising hostility to any reform, even if such reform merely gives equal rights to rich and poor. Such an attitude will, of course, be taken with the hope of strong popular support, and all religious bodies can usually rely on the support of persons whose emotions dominate their reason.

The Catholic *ideal* of marriage as sacramental and indissoluble must necessarily appeal to all. Few persons on the verge of marriage betray that desire for limited liability which Mr. Bernard Shaw dwells upon in his play, *Getting Married.* It is more human and generous to feel, as well as repeat, the formula, "For better, for worse." The preservation of such an ideal, *as an ideal,* is no doubt of vital importance to the welfare of the race. But the Catholic Church recognised that human institutions, however ideal, must be shaped by the realities of human life. She therefore solved the problem of divorce by the fiction of annulment as opposed to divorce. This fiction had all the uses of a legal fiction for preserving a legal principle. By a neat turn of casuistry, which in the Middle Ages even led to the expedient of fictitious genealogies, a marriage could be pronounced to be no marriage. In other words, the Church repudiated by a technical machinery the notion that any marriage could really have been celebrated between two parties who had imperfectly comprehended the beauty and glory of the sacrament which they were purporting to celebrate. It is, however, doubtful if the poor often, if ever, obtained any benefit from this procedure,* and in its practical application it frequently illustrated that

* They do now.

astonishing divergence between theory and practice which baffles the modern student of medieval history.*

In this connection, too, one must not forget that no such facilities now exist in the Ecclesiastical Courts of England, and clerical opponents of divorce would do well to ruminate upon this important difference between the Church of England and the Church of Rome. It at least demonstrates beyond question that the sacramental idea of marriage can only be an exemplar for an imperfect world, and that marriage was made for man, and not man for marriage. Moreover, in so far as this idea is based upon any superstitious regard for celibacy and virginity as such, it is not likely to win the approval of the modern European. It is clear, then, that the most exalted theory of marriage known to modern Europe has failed to solve the inherent difficulties of the problem.†

This consideration need no more deter those who feel themselves bound by such an ideal from following it than from respecting the early Christian denunciation of second marriages by widows or widowers as adultery. Nothing can be more touching than unwavering fidelity to the memory of a dead marriage or of a dead husband or wife, but what is to be gained by making it compulsory by legal or any other

* The Church is no doubt less accommodating nowadays. But Pope Benedict XIV., in 1741, severely denounced the ease with which marriages were annulled, and the doctrine of "want of consent" receives a more elastic construction, even nowadays, in the ecclesiastical courts than in the English divorce court.

† Ireland is sometimes cited as an example of severe sexual morality. But the Catholic Church must set off against this the very different state of things in Spain and Central and Southern Italy. There is also some reason to believe that Irish girls with child are shipped off to Glasgow and Liverpool for their confinements.

coercion? It is, therefore, unreasonable for the Church to rely upon nothing but emotions and ideals in a grave question of public policy.

The Church can, of course, always feel assured of support from the reaction of the human mind against the "intolerable impact of a new idea." I need only cite one instance of this. In 1753, Lord Hardwicke, then Lord Chancellor, carried a Bill for the abolition of "consensual" marriages which, though clandestinely celebrated by instantaneous or verbal interchange of consent, were indissoluble, and had led to widespread scandal and illegitimacy. Mr. Macqueen tells us that in regard to this admirable statute "it was said that even the legislature itself could hardly make void that which was valid by the law of God and the law of nature . . . For an Act of Parliament to declare nugatory and worthless that which had, in all ages, been deemed binding and religious, was something too dreadful to be thought of in a Christian community." The more enlightened clergy will scarcely wish to count upon this kind of sentiment in making up their minds.

Finally there remains to be considered what the Archbishop of Canterbury calls "the conflict of Christian opinion on the subject," which is formidable enough. Among the Early Fathers who sanctioned remarriage after divorce may be cited the illustrious names of Tertullian, Ambrose, Chrysostom, Hilary, and Justin Martyr. Archbishop Theodore of Canterbury sanctioned in the seventh century the remarriage of the innocent party, and also of the guilty party after two years, if repentant, though he did not consider such remarriage an ideal course.

The final decision of the Catholic Church on the subject is not established even in Western Europe, beyond all doubt and exception, till the Council of Trent in 1563, up to which date the history of the question can be summarised in Gibbon's sentence: "The ambiguous Word of Christ is flexible to any interpretation that the wisdom of a legislator can demand." The "ambiguous Word of Christ" can scarcely be discussed to advantage in the pages of this REVIEW. But the "ambiguity" was officially recognised in the resolution of the Pan-Anglican Congress in 1908, and it is clear that Christ's Words refer only to a "writing of divorcement" and not to any judicial process. It is at any rate not unimportant that the Greek Church and the reformed Churches recognise, and always have recognised, the validity and propriety of divorce as opposed to separation.

The history of divorce in England is not so well known as it ought to be on the ecclesiastical side. It is fairly common knowledge that Cranmer and others recommended a law of divorce that would have given liberty of remarriage in the case of adultery, cruelty, and desertion, and abolished permanent separation as opposed to divorce. At the Reformation the doctrine of a sacrament in marriage was abandoned, and this revived the controversy whether marriage was of its nature indissoluble. An anonymous writer in the *Law Quarterly Review** boldly asserted six years ago that there is no Canon of the Church of England either in the province of York or Canterbury which declares marriage indissoluble in itself. The doubts

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* October, 1904.

that prevailed at any rate led to Cranmer, and various other Bishops, allowing Lord Northampton to divorce his first wife and marry another. Lord Northampton got the second marriage confirmed by an Act of Parliament, which was repealed under Queen Mary on the ground that the Act had been procured by untrue statements, but *not on the ground of marriage being indissoluble.* At the end of the sixteenth century the ecclesiastical sentence of divorce was held not to give liberty of remarriage; but the crucial issue was so far left unsettled that Laud in 1605 married the Earl of Devonshire to Lady Rich, whom Lord Rich had divorced for adultery with the Earl.*

When Lord Roos obtained a divorce by Act of Parliament in 1668, Cosin, Bishop of Durham, trenchantly argued that marriage was dissoluble on the ground of adultery, and in the case of a similar Act obtained by the Duke of Norfolk in 1700 the bishops used strong words about the "Popery" of those who thought otherwise. In 1809 it was proposed that such Acts should prohibit the remarriage of the guilty party, which the Archbishop of Canterbury, on behalf of himself and all the bishops, vehemently opposed. He observed that, "by the *Divine law* there was a liberty to marry again, or else unquestionably that reverend Bench would before now have interposed." It need only be added that Archbishop Sumner and Tait, then Bishop of London, supported the Divorce Act of 1857. Is it really possible that all

* A writer in the *Guardian* criticised me for not mentioning Laud's subsequent repentance, but I was not concerned with his state of mind. I am only concerned with the state of the law which allowed him to officiate.

these facts were unknown to the majority of ecclesiastics, who, at the Pan-Anglican Congress, carried the resolution that "when an innocent person has, by means of a Court of Law, divorced a spouse for adultery, it is undesirable that such a contract should receive the blessing of the Church"?

Can it really be admitted that in a country where deserted wives crowd the workhouses, where close on 40,000 illegitimate children are born every year, where concubinage is so common that in the country districts of England deserted husbands and wives, debarred by poverty from obtaining divorces, dispense with the ceremony of marriage altogether, and where illegal unions are frequently condoned on moral grounds (according to Lord Courtney of Penwith's recent letter to *The Times*), the bishops and clergy can properly defend the "sanctity of the home" by appealing to precedents which are in fact no precedents? It is at least to be hoped that they will seriously study both history and theology before they deliberately censure the appointment of a Royal Commission on the subject or the findings of such a Commission if appointed.*

Everyone recognises that divorce results from a choice of evils. Most men and women will deprecate suggestions of divorce by mutual consent (except possibly in the case of childless marriages) or suggestions that divorce should be granted in cases of inebriety, the drug-habit, or "ungovernable temper." Such facilities might prove too strong a temptation for

* The Bishop of Bristol suggested the appointment of such a Commission in 1896, and in 1907 the Bishop of Chester said that he would support the proposal.

persons rendered unscrupulous by a guilty passion. Others may desire a probationary period of separation as opposed to permanent separation. But it is at least clear that the law as it stands violates almost every principle of justice and morality, and that Englishmen are rapidly becoming aware of the fact. The bishops and clergy will not long succeed in retarding this revolt of the public conscience by arguments and exhortations of the type that many of them have hitherto adopted, and least of all by attempts at social or ecclesiastical boycott. It is rather for them to lead the way towards a reasonable monogamy at a time when even the institution of the family is being attacked by the Socialists whom they are so anxious not to offend.

ECCLESIASTICAL SURVIVALS IN DIVORCE.

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THE passionate reluctance of Englishmen to break with the past is nowhere more conspicuous than in the Matrimonial Causes Act of 1857. That Act introduced the quite new principle of divorce *a vinculo* in the Law Courts, but preserved almost in their entirety the old ecclesiastical remedies and procedure side by side with divorce. Fortunately, or unfortunately, the new wine of divorce has almost completely burst the old bottles of ecclesiasticism. Suits for judicial separation are fast decreasing, and the suit for restitution of conjugal rights has paradoxically enough become a recognised stepping stone to the dissolution of the marriage tie. The *status quo* bears about as close a relation to the ecclesiastical ideal as the mutilated law of real property to-day bears to the highly logical and symmetrical conveyancing of the period before 1845. Indeed, the ecclesiastical ideal was very definite and well reasoned, and it was certainly far less favourable to the separation of husband and wife than our present law is. For example, our present law differs from nearly every other in preserving the legal husk of the marriage tie where both parties are at fault and claim freedom. It unites them for ever (in law, though not in fact) by the endearing tie of mutual injury. They are, no doubt, assumed (as Lord

Stowell said in an old suit) to "find sources of mutual forgiveness in the humiliation of mutual guilt." "Forsan et haec meminisse juvabit" was the caustic remark of Lord Hannen when he exhorted two spouses to return to each other after a successfully defended divorce suit. Unluckily, human beings are usually not so forgiving—especially when all their most intimate disputes have been ventilated in the newspapers. So far as our law is concerned, such persons are turned back again into the world irrevocably fettered to memories of misery and disgrace. Even if one wishes to return to the other the Court does not allow any suit for restitution of conjugal rights.

The old Canon Law differed widely from ours. It inculcated and enforced the Christian duty of forgiveness. According to the Decretals of Gregory IX. it was decided that if (*e.g.*) a husband obtained a separation from his wife on the ground of her adultery and subsequently erred himself the Ecclesiastical Court must force the husband under pain of excommunication to return to the wife. Again, up to 1884 our law retained the relics of the ecclesiastical machinery for enforcing the decree for restitution of conjugal rights. From their own point of view the Canon lawyers supported the interests of society and the family, but the decaying survivals of the Canon law in our own day are nothing but a fantastic mockery of all that they were once designed to represent. Anglican dignitaries and others who uphold the *status quo*, seem to be quite ignorant of all this and suggest no alternative solution of the problem.

Since 1857 the suit for restitution of conjugal rights is only adopted by the wife either as a money demand or as a genteel preliminary to a divorce which is presumably not unwelcome to either party. For a husband it is since 1884 of no use at all. It may never have been of much use, yet Greville relates a romantic tale of the early nineteenth century in which the wife was according to the ecclesiastical traditions compelled to return to her husband, and a happy marriage subsequently justified the litigious pertinacity which carried him up to the House of Lords. Moreover, in these days no judge would grant a decree of restitution to one of two guilty spouses, though on the other hand their mutual guilt equally debars them from divorce.

The medieval Church appears always to have been eager to presume marriage wherever possible, and to enforce the cohabitation of husband and wife, in spite of a decided laxity in annulling marriage for reasons which appear oddly frivolous to the modern student. This very laudable anxiety to promote reconciliation instead of separation without remarriage to some extent harmonises the view of the medieval Church with that of the modern State. I cannot imagine any Canonist contemplating with satisfaction our English encouragement of separation deeds and separation orders or the activities of the King's Proctor, who is employed by the State to prevent the divorce of guilty couples but does nothing whatever to bring them together again.

The King's Proctor, whom I wish only to criticise in his strictly official capacity, has become almost a fetish of the English mind, though his activities in divorce date only from 1860. The contemplation of the guilt of

the persons who are trapped by his espionage appears to blind the average newspaper editor to the grave considerations of public policy involved in the question. I desire to record that the *Westminster Gazette* has alone done me the honour of printing a letter on the subject, though I have written to many other journals. Yet the official proceedings of the King's Proctor are condemned as mischievous when successful, and productive of great hardship when unsuccessful, by every lawyer and layman with whom I have ever discussed the subject.

The *raison d'être* of the King's Proctor is to detect collusion and the concealment of material facts from the Court with a view to preventing divorce by consent and to enforcing the doctrine of recrimination. In practice, however, the King's Proctor very rarely intervenes to prevent collusion—an offence which no person need commit who is wealthy enough to obtain skilled advice on the subject—and in order to obtain a decent proportion of successful interventions, he has to employ most of his time in investigating the malicious gossip and tittle tattle of the poorer classes, who enjoy less privacy than the rich and cannot afford the luxury of surreptitious trips on the Continent. Hence, a poor man who has saved money for years to obtain a divorce, often finds that he cannot get his decree made absolute without having to rebut a whole series of charges ranging back, as in one recent case, more than twenty years. Moreover, in nearly every case he is debarred, even if he succeeds, from recovering costs against the King's Proctor. This in nine cases out of ten spells financial ruin. If he is guilty he is forced back into a concubinage which can only be

outwardly respectable in the event of his contriving to escape gossip and blackmail. The same remarks hold good in the case of a wife, except that she is faced with the possibility of prostitution as well as the probability of concubinage.

It is always difficult to prove a negative, but, so far as I can ascertain, the Ecclesiastical Court before 1857 had no extra-judicial machinery for detecting collusion or enforcing recrimination, and even in 1857 it was thought that the hearing of every case by three judges would be a sufficient safeguard. The reasons for this are fairly obvious. It was not difficult for the parties to separate voluntarily, and towards the end of the eighteenth century the device of separation deeds began to grow up. If we omit financial considerations neither party had very much to gain from a separation, and a deed was obviously preferable, since a victorious petitioner who had not the means to obtain an Act of Parliament had to give a bond for at least £100 to live chastely after the decree. This bond was presumably done away with by the statutory divorce if a private Act was subsequently obtained. Certain precautions, however, were taken in the House of Lords. The petitioner had to attend for examination at the bar of the House on the second reading of the Bill, and the witnesses again gave evidence to prove the adultery.

Probably the principal safeguard against collusion in the Ecclesiastical Courts was the fact that a guilty party benefited financially by successful recrimination. Where the parties were in agreement on financial matters they were more than likely to be content with a separation deed. In this way the guilty party had

a direct interest in bringing a countercharge, and this is still the case in Scotland where the guilt of both parties only touches the question of finance and does not affect the dissolution of the marriage tie. Such a condition of things happily relieves the State from undertaking duties of an unpleasantly inquisitorial and detective nature.

The question of collusion naturally gave rise to much discussion in 1857, and, as I said before, it was enacted that three judges should try each suit. This caused such arrears in other work that the Matrimonial Causes Act, 1860, was passed to give the King's Proctor (who had previously existed as a Probate Official) or any other person power to intervene, after a decree *nisi* had been granted, to show cause why the said decree should not be made absolute "by reason of the same having been obtained by collusion or by reason of material facts not brought before the Court." The bill was introduced in the Lords, who, much to the scandal of the Commons, inserted a clause that the King's Proctor should be re-imbursed by the Treasury for any deficiency of costs.

I am informed by my friend, Mr. Freke Palmer, that the King's Proctor used to intervene much more frequently than now, and that the resulting scandal led to a provision in the Matrimonial Causes Act 1878 that the King's Proctor might be mulcted in costs, but he was by the same Act entitled to apply to the Treasury for payment of these costs. Under this Act the taxpayer is still responsible for the mistakes of the King's Proctor, and the successful petitioner can only recover his costs by showing that the intervention was "unreasonable," which is far from easy to do.

The system is not likely to encourage caution on the part of the King's Proctor.

It seems scarcely necessary to recapitulate the evils of the present law on this point ranging, as they do, from grave hardship to individuals to the most important questions of public interest. It should not be difficult to suggest a better alternative.

The main questions are those of collusion and recrimination. Mr. Justice Bargrave Deane has defined collusion as an "*active* agreement" of the parties to procure a divorce. The clearest cases are (1) that of a husband committing two matrimonial offences in order to be free of his wife with her concurrence, (2) that of either party bribing the other into an agreement not to defend or not to raise countercharges.

It is clear not only that such cases are almost impossible to prevent if both parties are of the same mind and act discreetly, but also that the Attorney General, as in Scotland, would be quite as competent as the King's Proctor to intervene in cases of open scandal. In a limited sense divorce by consent must always exist. All that can be done is to make the process as much of an obstacle race as possible. The compulsion of one party to commit a matrimonial offence and the legal prohibition of any active agreement between the parties create a substantial deterrent against the parties rashly and unadvisedly embarking on so grave a step, or against one discontented spouse making life so intolerable for the other as to bring about a consent that is, in its origin, more one-sided than mutual.

On the other hand the doctrine of recrimination is

undoubtedly anti-social and mischievous in so far as it stands in the way of such marriages being dissolved. Moreover, the present system directly induces the suppression of material facts because the parties, in their anxiety to be rid of each other, have every motive to suppress countercharges. It also involves grievous hardship to the citizen and unnecessary expense to the State. But the adoption of the Scottish system would give each party a financial motive for bringing all the facts before the Court, and this of itself would minimise the evils of clandestine collusion. The doctrine of coming to the Court "with clean hands" applies very sensibly to financial disputes but not to the public policy of divorce. The maintenance of the present system is neither logical nor expedient either according to ecclesiastical or civil notions.

For similar reasons it would be well to abolish the restitution suit now that it has lost all its old meaning. If either party consistently refuses to consort with the other such refusal should constitute the offence of desertion and should be established by evidence instead of by obsolete procedure.

It seems also inexpedient to allow separation as a remedy. If two spouses agree to live apart because they object to divorce as a remedy there is nothing to prevent them from doing so. But I cannot see why the law should assist them to live apart while still married if one of them subsequently changes his or her mind. Similarly I fail to see why either spouse should have the option of separation or divorce as a remedy. If the essential conditions of marriage are frustrated and either party has good

legal cause to be rid of the other, the law ought to grant divorce or nothing. If the injured party does not want divorce, then there remains the choice either of enduring for one reason or another the burden of an unhappy marriage, perhaps the noblest form of self-sacrifice that can be imagined, or of agreeing to live apart without any legal protection from molestation. But so long as our laws sanction separation without possibility of remarriage so long we shall continue to multiply irregular unions and to witness the misery and crime resulting from them, to say nothing of unnecessary illegitimacy. Even under the present law bigamy and concubinage have ceased to be as common among the well-to-do classes as they were before 1857. The same cannot be said of the classes who cannot afford divorce. But in all classes alike the establishment of a cheap and reasonable divorce law would raise the whole ideal of marriage, and it would add incalculably to the welfare and happiness of the nation. The existing state of things is indefensible; it has none of the merits, and nearly all the defects, of the Canon Law.

EPILOGUE.

After writing and thinking on the subject of this book for upwards of six years I find that there are two main questions always cropping up. The first question is that of divorce by consent. Where there are children I do not think that facilities for divorce by mutual consent should be given. Where there are no children I cannot see why they should not be given after the lapse of two years, provided that all possible steps are taken by the Court to reconcile the parties and that the parties are put to the trouble and expense of publicly appearing before the Court at half-yearly intervals during this period and formally reiterating their determination to be free of each other. Each party should be compellable to appear.

The second question is how far heedless persons are likely to take advantage of facilities for divorce merely because such facilities are created. The opponents of divorce always assume that further facilities for divorce would mean the immediate dissolution of previously happy marriages. This seems to me as reasonable as if one were to assume that a man who was given a revolver would immediately start shooting everyone he meets. My own reading of history and experience of life leads me to think that marriage

is on the whole a stable relation, and everyone must know many examples where a voluntary union lasts a lifetime without any legal coercion. Happily-married persons might conceivably be parted by some sudden passion, but if they had any real affection for each other they would almost certainly come together again.

These, however, are the two crucial problems of Divorce Law Reform, and all serious discussion and reflection on the subject must centre round them. I can only hope that this little collection of pamphlets may serve to promote serious discussion and reflection instead of ecclesiastical or rhetorical fireworks.

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