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MARRIAGE, DIVORCE, AND EUGENICS

In this paper it is proposed to discuss, with due brevity, the theories of Marriage and Divorce which during Christian times have prevailed in England, and the modifications of the existing law on those subjects which we may expect in the near future. These modifications will be brought about (1) by the advance made in biological science, (2) by the spread of truer conceptions of the responsibilities of parenthood. No attempt will here be made to discuss either the ceremonies or the property incidents of marriage, which have varied as nationality and custom have varied. To do so would require a volume. On the other hand, the 'theories' of marriage are neither numerous nor perplexing. To the present writer, indeed, there appear to be only three: First, the theory that marriage is a Sacrament, and on that account indissoluble; secondly, the theory that marriage is a civil contract dissoluble at the instance of either party by reason of certain acts or defaults of the other party; thirdly, the Eugenic theory that, since marriage is an institution for (among other things) the continuance of the human race, it should be subject to regulation by the community which must be either helped or hindered in its progress by the children that are born into it.

I

To enable us to gauge aright the value of the sacramental theory of marriage it is necessary to recall the history of the Canon law, which, prior to the Reformation, was binding on clergy and laity alike throughout Western Europe.

The Canon law consists of rules made from time to time by the Christian Church to regulate its own internal administration and its relations to the secular powers. It is derived from several sources. The earliest part of it was 'The Apostolic Constitutions,' reduced to a formal shape in the third century. In the

fifth century appeared a collection of the letters of advice received by the Bishops of the West from their chief Bishop, the Pope of Rome. These letters were styled 'The Decretals.' In the sixth century another set of Church ordinances was issued as a whole under the title of 'The Apostolic Canons.' These Constitutions, letters of advice, and Canons were binding on the entire Christian Church until the happening of the disruptive event to be next mentioned.

In the middle of the eleventh century the Eastern Church separated from the Western, and thereafter each Church had its own code of laws. In the twelfth century the ordinances binding on the Western Church were catalogued and arranged by the Bishop of the ancient city of Chartres. This collection was subsequently revised after the model of 'Justinian's Pandects,' and was distributed into books or parts by Gratian, a Benedictine monk. The first book, called 'Gratian's Decree,' embodied the formal resolutions on doctrine and discipline of the General Councils of the Church from the fourth century onwards. The second book, called 'The Decretals,' brought up to date the Papal letters of advice, the earlier of which had furnished the material of the 'Apostolic Canons.' The third book, 'The Extravagants of John XXII. and other Popes,' consisted of miscellaneous matters not dealt with in the preceding books. The whole work, with later additions, formed, and still forms, the body of the Canon law (*Corpus Juris Canonici*), from which in the sixteenth century the Protestant reformers of Western Europe (including, of course, Great Britain) succeeded, not without human sacrifices, in shaking themselves free.

The staple—so to say—of the Canon law was the resolutions or decrees of the General Councils of the Church. Of these Councils Dean Milman, in his *History of Latin Christianity*, speaks in disparaging terms. He characterises them as 'an unattractive feature of Christianity' by reason of 'the violence, injustice and subservience to authority' too often displayed in them. Certainly they were quite unsuited to legislate on marriage, for of the persons attending and voting at them the great majority were not only unmarried, but were pledged by solemn vows to lifelong celibacy. Moreover, in the times when these Councils assembled the cardinal Christian virtue was not charity but chastity. The business of the saint was, as Mr. Lecky says, 'to eradicate a natural appetite in order to attain a condition which was emphatically abnormal.' Here is one illustration. St. Jerome, in the fourth century, commenting on the story of the Flood, gravely informed his followers that the 'clean animals,' which entered the ark in sevens, typified unmarried folk, and the

'unclean animals' which entered the ark in pairs typified married folk. He adds, with a stroke of unconscious humour, that the number of the unclean animals was limited to a single pair of each kind with the object of making it impossible for either member of the pair to perpetrate a second marriage.

The ante-medieval theologians were great adepts at wresting texts of Scripture from their obvious meaning in order to bolster up their own special views, but they did not rely on Scripture alone. When that failed them they fell back on unverifiable Church tradition. For instance, being unable to get over the fact that St. Peter was a married man, they alleged it to be a Church tradition that he as well as the other married Apostles renounced, after their conversion, those marital relations which before their conversion they considered to be an 'inseparable accident' of conjugal life.

No trace of the sacramental theory of marriage is to be found in the first two centuries. The theory only emerged in the third century, and was not formally and finally accepted as a tenet of Catholic faith until a sitting of the Council of Trent, which in the second half of the sixteenth century issued the following decree:

> If anyone shall say that the Church errs in teaching, according to the doctrines of the Apostles and Evangelists, that the bond of matrimony cannot be dissolved on account of the adultery of either party, and that neither, not even the innocent who has given no cause for the separation, can, while the other survives, contract a second marriage, and that adultery is committed by the husband who divorces his wife and marries another, and by the wife who divorces her husband and marries another, such an one shall be ACCURSED.

In the Latin Catechism issued by Pope Pius the Fifth pursuant to an order of this same Council (an English translation appeared in 1839) is to be found an exposition of the above tenet along with some remarkable details. The faithful are there informed not only that marriage is a Sacrament, but that our first parents were well and truly married in the Garden of Eden before they fell, 'prior to which event, according to the Holy Fathers, no consummation took place.' The authors of the Catechism were apparently of opinion that such consummation was part of 'the fall,' occasioned by the weakness of human nature. If this were so, it seems to follow logically that the original intention of the Creator must have been to bring humanity to a full stop after it had run for two lives, and that this intention was frustrated by the folly of a woman who succumbed to a beguiling serpent. However, in a later passage, quite inconsistent with the earlier one, we read that marriage was instituted 'at the beginning' for

the express purpose of *avoiding* the extinction of humanity, and was subsequently elevated to the dignity of a Sacrament 'for the procreation (*sic*) and education of a people in the religion and worship of the true God and of our Saviour Jesus Christ.' A catechumen of to-day who accepts this teaching must either have insufficient brains or marvellous credulity.

As men became more enlightened, the doctrine of the Church that marriage was indissoluble gave serious offence to the laity. Accordingly the advisers of the Pope, perceiving that its rigour must be relaxed, set about to devise 'emergency exits' without sacrificing Church principles. Their device took this form. They declared that marriages, although they could not be *dissolved*, might be *annulled ab initio* for sufficient causes, and that what were sufficient causes it was for the Church to determine. Differences of religion, a former marriage, a vow of chastity, taking holy orders, were all held to be 'impedimenta dirimentia'—a term which served to cover, as the late Bishop Creighton remarked, 'a subterranean labyrinth of subterfuges.'

But the astute ecclesiastics went still further. Availing themselves of a passage in St. Matthew's Gospel—'they twain shall be one flesh'—they broke through the barrier between affinity and consanguinity, and declared that unless a dispensation from the Pope was obtained—and, it may be presumed, duly paid for—one spouse could not marry the kin of another spouse if the kinship was within the fifth degree. Our civil Courts have been reproached for admitting untrue 'legal fictions' in order to further the administration of justice; but, in audacity, the fictions of the Ecclesiastical Courts beat the fictions of the civil law hollow.

II

The first severe blow dealt by the secular arm to the sacramental theory of marriage took the form of dissolution by private Act of Parliament. This experiment was tried shortly after the Reformation, in Queen Elizabeth's time, but was stopped by the Star Chamber. It was revived not long afterwards, when the Star Chamber itself was stopped. Private Acts, however, were expensive luxuries, and before they could be obtained several preliminaries had to be gone through. The procedure was caustically, but correctly, explained by an eminent early Victorian judge when passing sentence for bigamy on a man whose wife had deserted him for another man, taking with her as many of his goods and chattels as she and her lover could lay their hands on. Mr. Justice Maule's words, or rather the version of them that has

been handed down to us, are well known to all lawyers, but are worth repeating here. They were to the following effect :

> Prisoner at the bar, you have committed a grievous error. You should have gone to the Ecclesiastical Court and obtained a divorce *a mensa et thoro*. You should then have brought an action for damages against your wife's seducer. He would probably not have been able to pay anything, whilst you would have had to bear your own costs of the action, which would have amounted perhaps to 150*l*. You should next have got a Bill introduced into the House of Lords and proved your case to the satisfaction of that House. This would have cost you 1000*l*. Having taken successfully all these steps, you would have been able to marry again. You tell me you are a poor man and have not a thousand pence, but it is my duty to tell you that there is not one law for the rich and another for the poor.
>
> The sentence of the Court is that you be imprisoned for one day. The day will, according to legal custom, run from the commencement of the Assizes. I therefore order your immediate discharge.

Abuses which survive serious argument are often found to yield to satire. Not long after this trial took place a Royal Commission was appointed to review the law of divorce. Pursuant to recommendations made by that Commission the Divorce Act of 1857 was passed. This Act set up a brand-new matrimonial tribunal from which relief could be had at a moderate cost on proof of certain specified matrimonial offences.

The chief of these offences (when the husband is the applicant) is the adultery of his wife, and (when the wife is the applicant) the adultery of her husband—not, however, simple adultery on his part, but adultery coupled with cruelty, or with desertion for not less than two years. The only remedy of the wife for simple adultery of her husband was, and is, 'judicial separation,' which does not confer the right to marry again.

The working of the Act of 1857 and of the supplemental Act of 1895 is now, as is well known, being inquired into by another Royal Commission, which began its sittings last March under the chairmanship of Lord Gorell, formerly President of the 'Probate, Divorce and Admiralty Division of the High Court of Justice.' The labours of this Commission not being yet concluded, it would be unbecoming in me to offer any criticism on the historical, statistical, or other evidence of fact already taken before it; but 'opinions' expressed by the eminent persons consulted may, as I conceive, be freely commented on. They show much divergence of view in regard to that same legal inequality between the sexes to which I have just called attention. Many of the witnesses condemn this inequality as both immoral and unjust. With this condemnation I cannot agree. For, in the first place, complete matrimonial equality is impossible, Nature having otherwise ordained. Husbands do not take their turn in

child-bearing—it might be well if some of them did, for they would then realise in their own persons the sufferings which their wives, often unwilling victims, have to undergo. In the next place, in 99 cases out of 100, the consequences are not the same, and, in the eye of the law, consequences must always count.

Moreover, the argument for equalisation implies that the circumstances of adultery, as distinguished from the act itself, are always alike. This is to make the same mistake as was made by the *Code Napoléon*, and, until recently, by our own criminal administration, according to both of which the same measure of punishment was, as a rule, meted out to all crimes falling within the same category, with very little regard to the character of the criminal. In England we have 'changed all that,' and in France, too, there has been a great improvement. Thanks in part to Professor Saleilles' *L'Individualisation de la Peine*, which appeared in 1898, the principle of fitting the punishment to the criminal rather than to the crime has during the last few years been largely acted on in the French courts. The frequent awards of 'Borstal sentences' to males between eighteen and twenty-five are corresponding examples at home.

I am aware that in Scotland and many Continental countries the right to a divorce where there has been a sexual lapse is equal as between the sexes, but one would like to know in how many instances a wife has there sued for divorce on the ground of isolated, or (as Lord Mersey phrased it) 'accidental' adultery. One would also like to know whether the actual instances that have occurred have not been cases of collusion—that is to say, both parties have desired divorce on grounds not disclosed to the Court, and adultery by the husband has been admitted, or not denied, by him, in order to give the Court jurisdiction to decree a dissolution.

No; the weak feature of our existing law, and one that gives to the injured wife just cause of complaint, is that no such distinction is made in our Divorce Court between the simple and the aggravated adultery of the husband as is made in our criminal courts between 'common' and 'aggravated' assault. The adultery may have been committed in circumstances of indignity to the wife; it may have been so promiscuous and persistent as to imply deep moral degradation; or it may have been so focussed and concentrated upon a particular individual as plainly to indicate to the wife that her husband's love has gone elsewhere. Yet in all these cases the wife's only remedy is 'judicial separation,' which enables her to keep him at a distance, but does not carry with it her freedom. It is a grievous hardship to a young and innocent wife to be tied fast to an irreclaimable libertine whom

she despises and probably hates, but who is careful not to commit any other matrimonial offence which would entitle her to a complete release.

The hardship which a wife, wedded to an unfaithful partner, may have to suffer under the existing law is great; but greater still is the hardship of the husband whose wife's irritable and irritating temper without positive violence, whose incorrigible extravagance or constant groundless jealousy, makes his home unbearable and destroys his peace of mind. The wife is in such cases morally cruel, but, her cruelty not amounting to 'legal cruelty,' her husband has no remedy, not even that of judicial separation. Lord Stowell, in a famous case, defined 'legal cruelty' as 'a reasonable apprehension of bodily hurt,' and he explained that by 'reasonable' he meant 'not arising from an exquisite and diseased sensibility of mind. 'Petty vexations applied to such a constitution of mind may,' he said, 'in time wear out the animal machine, but still they are not cases for legal relief. People must relieve themselves as well as they can by prudent resistance, by calling in the succours of religion and the consolation of friends.' This definition of 'legal cruelty,' given more than a century ago, was confirmed, or, at all events, not dissented from, by the House of Lords in the case of *Russell* v. *Russell*, decided in 1897. It is high time that the definition was extended so as to cover the cases just referred to and bring them within the jurisdiction of the Court of Divorce. I do not forget the saying that 'hard cases make bad law'—a saying often misapplied. To judges and magistrates, who have to administer the law as they find it, the saying serves as a caution against misinterpreting the law, but it has no application to the Legislature. For the Legislature can by *amending* the law get rid of 'hard cases,' or, at any rate, reduce them to a minimum.

III

I now pass on to contrast the Church of England's official view of marriage and divorce with the view of the School of Eugenics. But first a few words on the English Marriage Service.

This Service is undoubtedly a fine specimen of stately, musical English prose, but, reflecting, as it does in parts, the Tridentine Catechism, much of it is sadly out of date. Its references to the Book of Genesis are particularly unfortunate. Sarah, the wife—and, strange to say, the half-sister—of Abraham, was not precisely the sort of woman one would select for an example at the present day. To begin with, she was, we are told, ninety years old before

she gave birth to a child. Her prolonged barrenness naturally caused deep disappointment to herself and her husband, for Abraham had great possessions. At last she took a step which could only have been taken in a land where polygamy was rife and tolerated. She suggested to Abraham that he should make a concubine of her own personal attendant, Hagar, and he seems to have agreed as a matter of course. As soon, however, as Hagar had done her part and 'raised up seed to Abraham,' Sarah, in a fit of furious jealousy, drove her and her babe out into the wilderness to perish. It is a touching picture, that of the young mother sitting by a 'fountain of water' with an 'angel of the Lord' consoling her. But the only moral to be drawn from the narrative is that wives may be very unreasonable, and also terribly unjust. To which of the newly married couple, both of whom are supposed to know their Bible, is this warning to-day addressed? To the bridegroom or to the bride? Perhaps to both, since jealousy as a disturbing factor in conjugal life is not the monopoly of either sex.

Again, in this same Service the marrying pair are exhorted to 'live faithfully together as did Isaac and Rebecca.' But Rebecca was anything but a model wife. She practised a heartless deception on her husband when his eyes were dim with age, thereby fraudulently depriving her elder son of his father's blessing because she preferred her younger son. There seems to have been nothing against Esau, for when he sold his birthright he was 'at the point to die.' When Isaac asked for venison he hastened to procure it by starting on a hunting expedition. It shocks the lay, unprejudiced mind to read that Rebecca carried out her treacherous plot while her eldest born was thus discharging a 'pious' duty.

It will, perhaps, be said in defence that these old-world allusions are harmless because no one attends to them—that the principals are dazed by their new positions, that their female relations and friends are busy examining each other's 'frocks,' and that the men, having no corresponding distraction, are too bored to listen. But what a grand opportunity is lost for a live oral address, such as I once heard delivered in the chapel attached to a monastery in the South of Europe, setting forth the responsibilities of the married state, or (if this is asking too much) for calling in aid one of those effective long pauses whose silence is more eloquent than spoken words! What, anyway, is the use of telling a twentieth-century young woman that she is 'to be subject to her husband as Sarah obeyed Abraham, calling him "lord"'? She has no intention of doing anything of the kind, and, if she had, the manners of her circle would soon induce her to alter her mind.

One other point. This Service begins by informing the bride and bridegroom that marriage was 'ordained' for three

purposes: (1) For the procreation of children (this for brides of all ages); (2) for a remedy against sexual sin; (3) for the mutual society, help, and comfort the one spouse ought to have of the other both in prosperity and adversity. Admirably conceived, admirably expressed, but surely the order of the purposes is wrong, and the first and the third ought to have been transposed. Many of the happiest and most successful marriages have been childless. On the other hand, many that have been fruitful have been made miserable because the mental or bodily condition of the children has been such that it would have been better if these children had never been born. The official Church takes no note of these things. It blesses indiscriminately the union of every couple that asks for its blessing, provided only that the necessary notices have been given and that there is no evidence of any such 'lawful impediment' as is indicated in the 'Table of Kindred and Affinity' printed at the end of the Prayer-book.

The work which the Church fails to do—is perhaps incompetent to do—is left to be done by Eugenics. With an eye both to domestic happiness and to the progress of humanity, Eugenics urges the importance of 'right selection' *before* marriage, holding that without such selection the vows of love and fidelity exchanged at the altar may, and probably will, turn out to be a mockery. For the same reason Eugenists protest against the giving in marriage of young women by their parents and guardians with a view to secure what is vulgarly called 'a good match.' A really 'good match' requires not only mutual love, but common or reciprocal interests in life; that is to say, either that both parties should be interested in the same things, or, better still, that each should be interested in the 'things' of the other while cultivating separate interests of his or her own. This is the key to that intimate association and friendship which stands the test of time. This it is, when there are added to it the 'things of the Spirit,' that makes a happy home. Eugenics, although it primarily means, as everyone knows, 'good breeding,' also includes good environment. It therefore lays very great stress on the happiness of the home, for happy homes make happy children, and happy children have far better chance than unhappy children of growing into good and useful citizens.

When—as, alas! not infrequently happens—parents, though continuing to live under the same roof, have become estranged from each other, owing, it may be, not so much to any definite fault on either side as to differences of temperaments and tastes, which, widening with the years, have little by little riven them asunder—then the children, with their extraordinary intuition, quickly become aware of the fact. They feel it before they are conscious

of perceiving it. Far better for them had their parents agreed to part than that, without any intention to do so, they should reveal the secret of their unhappiness, or, from purely worldly considerations, live artificial, make-believe lives in order to 'keep up appearances.' How often does the acute, confidential lawyer, called in to unravel some matrimonial tangle of 'the classes,' make the following appeal to wife or husband, 'For the sake of the children try again'! And when his advice is followed the veteran expert rejoices that at least on that occasion he did 'a good work.' Yet in cases of ascertained, deep-rooted incompatibility it may well be that the plea 'for the sake of the children' is really one of the most cogent arguments for separation—a separation which shall be voluntary and have in it nothing of anger, nothing of after-bitterness. For the persons who act on the advice so given may, it is true, remain together for a time, ostensibly united, but in fact more disunited than before, fondly imagining the while that the children 'know nothing,' whereas these same children have fully grasped the situation, are possibly sitting in the seat of judgment, or else, with hidden flame in their hearts, taking sides with one parent against the other. A frank avowal of life's actualities is a hundred times better than covert or half-suppressed discord like this. And so it is in dealing with the young in all matters that concern the relations between the sexes. Parental sincerity is like opening the windows and admitting fresh air into the house. Parental insincerity is like closing the windows and pulling down the blinds. Then, as every schoolboy and many a schoolgirl knows, the air within the darkened chamber—not only the air that feeds the lungs, but also the air that feeds the thoughts—soon becomes charged with poison.[1]

But in the interests both of the children and of the community Eugenics goes further still. It insists that, so far as possible, the marrying parties should come of sound and healthy stocks. It holds that what (among other things) distinguishes man from the lower animals is that he is a responsible being to whom have been made known those physiological truths which enable him to elevate his kind. Without elevation—degeneracy and death. For the world never stands still. More nations have perished by internal decay than by defeat in open war.

One half of Eugenic teaching is, accordingly, concerned with the production of the fit; the other half with the elimination of

[1] In Austria the Courts grant divorce to Protestants, and in Sweden and Switzerland to the population at large, for incompatibility amounting to insuperable aversion, after there has been separation for a time and attempts at reconciliation have failed.

the unfit. By fitness or unfitness are here meant the presence or absence of that amount of health, intelligence, and aptitude for moral training which goes to make up civic worth and usefulness. These two halves are complementary to each other, since selection implies rejection. The first half is called Positive or Constructive Eugenics, and its earliest exponent was Sir Francis Galton in his *Hereditary Genius* (1869) and *Natural Inheritance* (1889). It justifies its name by teaching one generation to be at once the architect and the builder of the next, using the best available materials. The second half is called Negative or Restrictive Eugenics. It teaches the restriction, or restraint, of marriage whenever and wherever the materials to hand are so inferior that they ought not to be used at all.

It follows from these definitions that, according to Eugenics, marriage and divorce come under the same moral law. Just as there are marriages which, in the interests of the race, ought not to take place, so there are marriages (examples will be given presently) which, having taken place, ought, in the interests of the race, to be dissolved. The doctrine that, once it has been solemnised by the Church, marriage is indissoluble, appears to the Eugenist to be, even on biblical principles, irreligious because inimical to the welfare of humanity, since man ' having been made in the image of God,' humanity is of all Divine institutions by far the best and the highest.

The present is not the occasion for presenting even a bare outline of the biological and biometrical researches on which Eugenics rests. Those who would master this knowledge should study the writings of Francis Galton, August Weismann, J. A. Thomson, R. H. Lock, Karl Pearson, Archdall Reid, Alfred Ploetz, and others. I do not say that all these authorities are agreed. They are not. But there is enough agreement between them to establish this proposition—that insanity, feebleminded-ness, syphilis, tuberculosis, and many other diseases (including eye-defects) are inherited in the same way and to the same extent as are stature, ability, and eye-colour. Direct transmission from parent to child in the sense in which a letter is transmitted through the post there, of course, is not, for disease, whether mental or bodily, is not a material thing. It is a process which runs its course in some part of the human frame. Tuberculosis and syphilis offer as good an illustration as we could desire. Both are due to specific microbes, but the microbes themselves are not transmitted, for the simple reason that it is the germ-cell that carries the heritable factors, and the microbe cannot form part of the organisation of a germ-cell. What is inherited in each case is, as Thomson points out, a predisposition to caseous degeneration

of tissues and a vulnerability to the very kind of microbe which first invaded the parent, should such microbe at a critical moment attack the child or the full-grown man. This degeneration or vulnerability may not manifest itself till late in life, or until the second or third generation, the prior generation having been passed over.

In the above enumeration of heritable 'defects' I have purposely left out 'habitual drunkenness' or 'alcoholism,' about which a controversy has for some months past been going on in the *Times* and elsewhere. Let us see how that controversy stands. I will begin by citing the testimony of Dr. Sullivan, a high medical authority, who has written a treatise on 'Alcoholism.' He tells us that in many defective nervous developments of humanity parental alcoholism exercises a causal influence on offspring. In epilepsy such influence has, he says, been noted by one careful observer in 21 per cent. of the cases, by another in 28 per cent., by a third in 20.2 per cent. In idiocy it has been traced to the father in 471 cases, to the mother in 84 cases, and to both parents in 65 cases out of 1000. In 150 idiots and imbeciles whose family history was investigated by a well-known mental pathologist, Dr. Tredgold, it was found present in 46.5 per cent. of the cases, usually in association with insanity or other neuropathic conditions. In prostitutes it has been found in 82 per cent., and in juvenile criminals of weak intellect in 42 per cent. Has this record of facts been displaced by the now famous 'Memoir' lately issued from the Galton Laboratory and based on the examination of certain children attending elementary schools in Edinburgh and Manchester? I do not think it has. One would not expect traces of the 'alcohol taint' to be discoverable in a child of tender years; in fact, its non-appearance in such children proves nothing. What we want to know, and what the Memoir, limited as it was in its scope, does not tell us, is whether the tendency to excessive drinking is more strongly manifested in *adult life* when the parent was a drunkard than when the parent was not a drunkard.

Let me put the problem, as I have done once before, in a slightly different form. Given a man or woman of intemperate habit, what will be the effect on the possible children if he or she marries? Is there any risk of a predisposition to drink being communicated to the next generation? Answer: There is such a risk, and the risk is proportional to the degree in which alcoholic excess has become an indispensable factor of the daily life of the parent. For alcohol may by its continued use work like a poison in the system even when it is not a poison to start with. If the alcohol has been allowed to penetrate so deeply as to affect the

germ cells as well as the somatic cells of the parent, then it is almost certain that the children will be affected also. There will be transmitted to them a constitutional weakness which will sooner or later express itself in some form of degeneracy, although in what particular form we may be unable to predict.

The Eugenic position with regard to all the above defects is (I repeat) that when before marriage any of these defects is known to be present in either of the parties, the marriage ought not to take place, and that if it has taken place and the wife is not past child-bearing it ought to be dissoluble at the instance of the untainted, unblemished party. Hence, too, it follows that a husband or wife who is divorced on any of the above grounds should be debarred from marrying again, otherwise the mischief, instead of being extinguished (so far as it can be extinguished by law), might break out afresh in a new quarter.

It will be observed that I say the marriage should be dissoluble, not that the parties should be entitled to a judicial separation only—and for this plain reason. It is monstrously unfair that a healthy, and perhaps young, woman—and the same, *mutatis mutandis*, holds good of a man—should be condemned—it may be for life—to involuntary celibacy for having ill-selected her partner or (as often happens) for her partner having been ill-selected for her.

Here, however, a distinction must be made between different strata of society, between what are called 'the classes' and what are called 'the masses.' Under the Act of 1895 (referred to already) power is given to stipendiary and other magistrates to make an order for separation against deserting or brutal husbands. These orders appear to me to stand on a different footing from orders for judicial separation pronounced in the Divorce Court. A wife cannot apply for a magisterial separation order unless she is living apart from her husband, and her main object usually is to obtain maintenance for herself and her young children out of her husband's weekly wages. She does not in most cases wish for a divorce in order to be able to marry again. Of matrimony, indeed, she has already had too much. But here, too, she ought to have the option after, say, twelve months of separation, to convert her protection order into an order for divorce. She may have an opportunity of making a fresh start in life by a worthy marriage, and, if she desires to be free, why (except on the sacramental theory) is she to be held bound when all the three purposes of marriage have, in her case, been frustrated? It is, I know, said that the husband, at all events, should remain bound as a punishment for his misconduct, and that the innocent wife cannot therefore be freed. But surely this is a worthless argument, for

there can be no greater desecration of marriage than to insist on its continuance merely to penalise the offending partner.

For the realisation of their general ideas, for the achievement of their general purpose, Eugenists do not at the present moment make appeal to the Legislature. They rely on the growth of public opinion—the oracle without whose favourable word no parliamentarian ventures nowadays to stir.

Let me proceed to give a few instances gathered from my own experience of the advance made by public opinion during recent times.

1. Some thirty years ago a young lady of my acquaintance was asked in marriage by a man of ample means and good position in his county. Unfortunately, although apparently quite sane at the time of his proposal, he had, owing to brain trouble for which he was in no way answerable, been more than once in a lunatic asylum. When this sinister fact became known to the girl's family they insisted that no engagement should be entered into until medical specialists had been consulted. This was done, and the specialist opinion was that the marriage of the man would 'in all human probability effect his complete cure.' The opposition was thereupon withdrawn. The marriage took place, and of it several children were born. The medical forecast, however, did not come true. The man, who was now both a husband and a father, continued to be subject to his old mental disturbances, and had now and again to be put under restraint. I abstain from filling in the details of this sombre picture. I merely ask whether there is to-day a single brain-specialist in the United Kingdom who would counsel or countenance such a marriage, and, if he did, whether a single relative would accept and act on his opinion?

2. In the same decade another lady known to me married an officer in the Army or Navy (it does not matter which), who after the marriage retired from the Service and 'went into business.' Later on he developed the drink habit, and along with it (as frequently follows) the habit of marital unfaithfulness. At last his mind became so affected by his indulgences that he had to be taken away from his home; his wife, with her young children, returning to her father. After about five years of separation the doctor in charge pronounced the husband to be 'completely cured.' The husband then proposed to his wife's father to come back to his family and to resume his former position. The father, as he was bound to do, laid the letter before his daughter. Her answer was a point-blank refusal conveyed in these precise words: 'I have no difficulty in forgiving him his many infidelities, but I

will never forgive him for having given to my children a lunatic for a father.' The 'county' soon got hold of the news, and was unanimous in its disapproval, if not in its condemnation, of the wife, some persons not hesitating to declare that she was 'no Christian woman.' If this sad history could repeat itself to-day, would, in any county in England, the same verdict be delivered?

3. In or about the year 1885, a curate in the East-end of London—a perfect stranger to me—called at my chambers in Lincoln's Inn to ask my non-professional advice. He said he was much troubled by certain aspects of life as lived in his parish, more especially by the sufferings of wives who were bringing into the world children (not always sound and healthy ones) for whom, whether sound or unsound, it was hard to find either room or food. He proceeded to show me a pamphlet he had written, which furnished these poor women with simple, straightforward counsel to help them in their difficulties. But he felt—and I agreed—that before distributing the pamphlet in his parish he ought to submit it to his Bishop (Dr. Temple). This he subsequently did, and Dr. Temple a few days later requested him to call. Dr. Temple, who had contributed to the famous volume *Essays and Reviews*, which made such a stir in the 'sixties of the last century, did not, as I understood, personally object to the contents of the pamphlet. But he did object, officially, to its circulation in his diocese. In the result, my 'client,' disheartened, threw over the Bishop, the pamphlet, and his curacy, and emigrated to Australia. Would Dr. Temple, if he were now living, take the same view of his duty? I venture greatly to doubt it. For was not his article in *Essays and Reviews* entitled 'The Education of the World,' and did it not speak out as follows?

> This power, whereby the present ever gathers into itself the results of the past, transforms the human race into a colossal man. . . . The successive generations of men are days in this man's life. The discoveries and inventions which characterise the different epochs of the world's history are his works. The creeds and doctrines, the opinions and principles of the successive ages are his thoughts. He grows in knowledge, in self-control, in visible size, just as we do. And his education is in the same way, and for the same reason, precisely similar to ours.

Here we have the law of human progress expressed in a familiar figure. Here (in embryo) is the law—and the gospel—of Eugenics. And this 'unorthodox' essayist of 1860, then Headmaster of Rugby School, became, in 1896, Archbishop of Canterbury, Primate of all England.

4. In the spring of last year a distinguished Bampton Lecturer, holding an important benefice in the West-end of London, which

he has since exchanged for a higher dignity, wrote the following striking passage :

> Eugenics merely extends a principle to which the Church is already committed, the principle that material environment is a factor in spiritual welfare. This is the meaning of the rapid growth of Public School and University Settlements in the poorer parts of our great cities, and of the complicated organisation of clubs and societies which now forms so important a part of its Church life in town parishes, and drew from an Anglican layman the half serious reproach that the clergy are ' leaving the Word of God to serve billiard tables.' And the same principle underlies the whole of the philanthropic effort, so closely and so honourably connected with Christian religion, for the care of the helpless and suffering. Hospitals, orphan homes, institutions for the care of the feeble-minded, and all the many agencies for the relief and alleviation of poverty and infirmity, obtain an amount of support from Christians, as such, which plainly testifies that the Church is willing and anxious to do everything in its power for the battle of life and for the Kingdom of Heaven, which to the Christian are two ways of expressing the same thing. But science, which is simply the trained and co-ordinated observation of facts, teaches us that pre-natal conditions are in a large proportion of cases as important as post-natal, and it follows that the duty is to prevent the causes rather than to alleviate the results of physical and intellectual degeneracy.

The curate and the Church dignitary, as will be noticed, were travelling on the same road and towards the same goal, but were passing different milestones, the curate, in his burning zeal, running ahead of the other. Different, too, were their respective appreciations of what they were about. The curate (like M. Jourdain and his prose) was talking Eugenics without knowing it to the costermonger class ; the Church dignitary knew that he was talking Eugenics, and talking it to a cultured class, for the quoted passage was part of an address he delivered before ' The Eugenics Education Society ' in Caxton Hall, Westminster.

And now let me shortly sum up this paper :

(*a*) Marriage—according to Eugenics—a privileged, yet terminable, contract, a contract of supreme moral, spiritual and social value, not an indissoluble bond.

(*b*) Restrictions on marriage to be based, not on decrees of General Councils of the Church, but on known laws of health and human progress. These laws, once ascertained, to be as binding on the conscience as the decalogue.

(*c*) Marriage not to be entered on unless there are present soundness of body, saneness of mind, and unity of spirit. These conditions fulfilled, marriage takes on a sacramental quality ; without them, incalculable misery may ensue.

(*d*) The mission of Eugenics—the education of public opinion on the great question of the relations between the sexes.

(*e*) Public opinion once fully and rightly formed, the required legislation will follow automatically, unchecked by futile party friction or by wearisome debate.

MONTAGUE CRACKANTHORPE.

This paper is not to be taken as embodying the views of the Council of the Society named above (of which the writer is President), no member of that Council having, for lack of opportunity, been consulted upon it.—M. C.