

MISCELLANIES,

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ESSAYS, TRACTS OR ADDRESSES

POLITICAL AND SOCIAL.

Francis Newman BY

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MARRIAGE LAWS.

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MANY reasons concur, making it not expedient only but highly important, that the topic of marriage should be treated fundamentally before popular audiences and in popular books. The teachers of religion, by dealing with it only dogmatically, briefly, and allusively, throw away the vast influence, which, if wisely informed, they might beneficially exercise: and already it is manifest that with a formidable fraction of society they have lost all moral authority. Nor only so: but parents seldom feel themselves strong enough in knowledge to converse freely with their children and give them *reasons* for established restrictions. Young persons pick up opinions on the whole question rather from their companions and friends whose age is slightly in advance of their own, than from their parents or from any maturer and more fully furnished minds. That libertinism of the most demoralizing character flourishes in London, in Paris, and in New York, cannot be a secret; nor that it is confined to no grade of society. But alas, the chief cities do but impress the imagination more, by the scale of the evil: how much it is really less in smaller assemblages of mankind, is hard to say. One thing only is clear; that the theoretic morality both of the law of the land and of the Christian religion is systematically set at nought by masses of men too numerous to punish and too intelligent to despise; to whom no public argument is addressed; whom no pulpit denunciations affect or reach. And, what makes the evil more untractable, at the back of the offenders lies, as a force in reserve, a theory which they often imagine to justify them; a theory upheld by earnest persons of both sexes, hitherto wholly guiltless of transgression against the received moralities. Concerning opinion in France, Italy, and Germany, we shall not attempt to speak. It concerns us more, that among people who talk English and have Protestant Christianity for the basis of their moral culture, on both sides of the Atlantic, a theory has arisen concerning "free love," which,

however variously applied, in every case would supersede marriage. Meanwhile polygamy has burst out, not among the Mormons only, but among the ruder Americans who are in contact with polygamic Indians; and still more preposterous customs are in some sects practised in the name of religion. Evidently it is on American soil that the battle of old and new morality will most actively be fought; [but in the time of transition the most sacred virtues are not safe here, unless the whole question is opened to discussion and everything overstrained or unjust in existing institutions be removed. For undoubtedly nothing so insures a violent and pernicious overthrow, as the pertinacious maintenance of error, and the consecration of injustice.

It may be a dozen years since a young couple were married in the United States, who forthwith put into all the papers a protest against the tyranny of marriage. (We respect them too much to give the name here; we see it often foremost in philanthropic and virtuous work.) In the advertisement the husband disowned his right to expect "obedience" from his wife; and they jointly declared, that marriage was a thing between themselves and God, with which society and the law had nothing whatever to do. [Such is the fundamental idea of "free love;" which with some will be matrimonial faithfulness, and with others wild caprice. It assumes that marriage, like friendship, is an affair essentially private, with which it is impertinent and offensive for the State or social opinion to interfere. The assumption is either a truth or a falsehood: until its falsehood is proved, we cannot take the first step in argument beyond; and when such a view is upheld in simple sincerity, by persons who have persuaded themselves that it would deliver us from the prevalent deplorable unchastity, they certainly have a right to expect a frank acceptance of their challenge. We trust that our readers need not fear in this article anything that can justly offend their taste. The most critical of the topics which we need to treat, are such as ought to be deliberately sifted by every prudent maiden.

While two persons live together as married, but without children, nothing appears of which the State must necessarily take cognizance. But unless such a condition of things were exceptional, human society would soon die out; and law must of course be framed on the assumption that offspring will be the result of unions. The instant that children are born, a duty of protection falls upon the State. Our morality has long ago passed

beyond the barbaric principle that children belong to the parents only and not to the community also. No one now claims that the parent shall be free to expose them to wild beasts, or starve them by cold or famine. Thus the State at once appears as a guardian in the background, ready to act, if necessary. We may add, this function of the State (which none will now deny) instantly opens a new topic; the right to treat as an offence any premeditated destruction of infant life *about to be*. Whether it be expedient to exercise such a right, is quite another question. But the very mention of the claim suffices to show, how delicate and difficult is the argument which would here draw the line between private independence and public interference. But that is not all, nor what is here most to the point. The State is further called to make up its mind, what are the respective rights of the two parents over the children, since it may happen and does happen that they quarrel on the matter. Who is the mother of a child, is generally a notorious and unquestioned fact: if it be quite unknown who is the father, the law has no choice but to acknowledge in the mother exclusively all the rights which parents ought to possess over children. Now if to do this in all cases were right, everything would apparently be simplified. The State might then pass the father by altogether, and ask no questions about marriage-vows or their permanence, about faithfulness or unfaithfulness. It might act as if the mother were the sole parent, and no absolute necessity would appear for legislation concerning marriages. In some parts of the world there probably have been communities, in which this practice was established; issuing in the doctrine that the mother was the head of the family, however public and solemn the marriage tie. It is not uninteresting to consider the conditions under which alone that course of legislation can become plausible.

Some thirty years ago the American missionaries in one of the tropical Pacific islands were much distressed how to deal with one of its native marriage customs. It was an established principle with young women to take a husband *on probation* for a year. If in the course of that period he was found to be a desirable partner, the woman kept him for a permanence; but if ill temper and other evil qualities, which had been suppressed during courtship, showed themselves, she discarded him. To be left with an infant on her hands was to her no hardship at all. The exuberance of nature supplied nutriment on terms so easy, that to feed a family involved no anxiety and no painful effort. The scantiest

clothing sufficed, and for children was perhaps thought superfluous : of course all such cares as education, and as the putting forward of children into professions or trades, were unheard of. In this state of things the young women, who had been received under Christian instruction, much resented the injunction of the missionaries that they would all at once tie themselves for life to an unproved husband ; and felt the demand to be a hardship and injustice. They urged that while a man is a mere suitor, he is not in his normal state (if we may translate their simple words by our philosophic phrase), and it was very hard for a young woman who at all responded to his suit, to judge of him ; but after his first hot passion had consumed itself, his true character came out, and she found whether she was likely to be happy with him. Why should she not get rid of him, if he showed himself to be a tyrant or a log ? And was it not better for men themselves to learn, that if they wished to keep a wife, they must deserve to have a wife ?—We think it impossible for any one to fail to see, that such arguments come from those who profoundly believe marriage to be a moral relation, and in so far take a nobler view of it than do many Europeans, who (as we once heard a German professor avow) suppose it to be merely a legal mode of indulging sensual appetite. No one can confound the reasonings of these Pacific islanders with the sophistries of libertines. The woman speaks as one, who makes a generous gift to a man, and claims to fix by prudential considerations the limits of her own generosity ; who receives nothing in return but his love, and feels it hard indeed, if she is to be cheated of that, and to become his slave, merely because she has been affectionate. We may reply, that her reasonings overlook some of the elements of the question ; and so they do, in our very different circumstances and different needs. But her arguments are good, as far as they go ; and even in our English world they are rather outweighed by other considerations, than open to any refutation in themselves.

We think it thus appears, that if mankind lived in the islands of the blessed ; if life were not a struggle ; if the providing for children had no anxieties ; if men in marrying undertook no grave responsibilities ; if women in marrying gave everything, and undertook certainly some labour in prospect,—that of child-bearing and childrearing ;—then it would not be at all unreasonable in the State to decide concerning all children what they everywhere of necessity decide concerning those whose father is

unknown; that is, to pronounce that the children belong to the mother alone: on which follows a total ignoring of the father. The question would then certainly be open, whether the State should trouble itself at all with questions of marriage. But to follow out such argument is useless; for this condition of physical ease is precisely that, under which the higher qualities of man are not called out. It is a condition possible only under very exceptional regions of the earth, and there only for a while. Being on the one hand exceptional, and on the other inconsistent with the attainment of those virtues which spring out of steady industry and severe training, it cannot give us a measure for the normal morality of mankind. Peculiarly in England and in Northern Europe is the contrast to that state of things immense. Our women, even when unmarried, earn a livelihood only by constant labour, often ill remunerated. Suffering in childbirth is generally severe, always weakening, and the support of a husband is gravely needed. To feed a family without his toil, is always an unfair, generally a cruel, infliction on the mother: and the higher they are in society, the greater is the expense of education, and the greater the efforts needed to start children advantageously in life. No one can expect a father to undergo the necessary toils and endless sacrifices thus imposed, and yet claim no rights over the children: and no mothers, no women in prospect of marriage, would be so unreasonable as to demand the exclusive right. It is upon this that the interference of the State in marriages primarily becomes inevitable.

In fact, this public sanction of marriage has always been recognised, in the survey of the past, as the first step in the passage out of barbarism into civilisation; but reserving the topics therein implied, let us first dwell on the points which enforce the interference of the State. Suppose that to happen which does happen,—that two parents quarrel concerning the education and control of children; or, what comes to the same thing, suppose one or other parent to be dead, and the guardian who represents the deceased to quarrel with the surviving parent. If the persons at variance go so far as to use violence, one or other carrying off the children by force, the State cannot be neutral without sanctioning anarchy; without virtually saying, "Fight it out; and let the conqueror keep his prize." If appealed to, the State is bound to decide between them. It may either say: "The mother, and the mother only has rights over the children" (and we have already seen how grave are the objections to this); or it may say

(as English law says): "The mother has absolutely no right as against the father;" or it may attempt some compromise. But if men expect to have any rights as fathers guaranteed to them by the State, they must publicly register their position as husbands, and take on themselves fathers' duties by some formal official act; and this is virtually a marriage. Experience has taught the State, that to secure the validity of wills, it is highly important to insist on certain small and easy formalities, especially as regards two witnesses; and to furnish formal words to express accurately what it is that the witnesses attest. Experience also long ago taught the necessity of formal words to constitute a marriage,—or a divorce, in nations which have allowed freedom of divorce. The framing of formal words, with such other precautions as are needed to insure publicity and avoid fraud, is neither more nor less than the passing of a marriage law by the State. If any persons are willing to go the whole length of sacrificing and denying a father's rights and a father's duties, and throwing all upon the mother; then they can, without being illogical, deny to the State all interference in marriages. Short of this extreme (which in Europe no one could advocate without irrational fanaticism, and not one man or one woman in fifty thousand would approve), it becomes inevitable for the State to desire to know by public register what man each woman looks upon as father of her children, present or prospective, and what woman's children each man avows and claims as his own: since without such register there is no guarantee of publicity, and a tedious inconvenient expensive legal inquiry may on each occasion be needful to ascertain who is the legally responsible father of certain children. Such inquiries do happen now, when a child is born out of wedlock, and the mother cannot support it: but they are on many accounts very undesirable.

It is one thing to maintain (as we do) that every union of man and woman should be a public fact, registered under conditions approved by the State; and it is quite another assertion (which we do not make) that the law of marriage in any particular State is what it ought to be. Many (as it seems to us) on discerning justice in the public law, have leapt to the conclusion that it is better to discard the State entirely. We might judge differently of this conduct, according to the exigency of the case; but we should in no case be able to censure as immoral those who so acted, if, like the old Quakers, they anxiously gave publicity to their unions, and left nothing obscure as to their morally binding

nature. The first Quakers frankly and formally defied the law. They would not go to church to be married, but the kinsfolk and friends of bride and bridegroom assembled, all of whom were at once moral and legal witnesses of the transaction; suitable papers were drawn out, register was (we presume) made in the family Bibles, and the moral relation of the parties was thus as sharply determined as by any legal marriage. The nation in general regarded those early Quakers as fanatics, but we have never read a word that can suggest that any one looked on their marriages as an immoral and impure state of life, or for a moment confounded it with libertinism. Nor do we believe that (even without the intervention of a religious sect) if any man and woman who have overstepped the Christian pale were to call their friends together, and say that they solemnly purpose to live in permanent and faithful conjugal union, but because of some injustice which they feel in the public law, they cannot submit to the legal form of marriage; nevertheless, they call their friends to witness that they take on themselves all rightful responsibilities both towards one another and towards any children whom they may hereafter have; if, we say, they displayed a formal document, and asked witnesses to subscribe it; and after this advertised the transaction in the newspapers;—then, however much some or many of us might deplore their erroneous judgment, we cannot believe that any one would think the wife personally degraded, and shrink from her companionship. Nay, it may safely be predicted, that if such conduct became frequent, Parliament would soon do what it did in the parallel case of Quakers and Jews,—legalise the marriages. But it is widely different, if instead of publicity and frank rebellion, secrecy and obscurity be practised. If, after a stealthy courtship, a couple suddenly elope; if after a while they turn up as ostensibly man and wife;* then, though they may remain together faithfully, and bring up children virtuously, they may indeed at length live down their dishonour and command respect, yet it cannot be denied that they *did* dishonour themselves: for they made it extremely difficult for others to understand their position and know how to behave to them. Nay, who of us could yet tell, but that such a husband may six months hence cast off an innocent wife, because he is more attracted by some new object? Private friends who know him well, may feel sure that this is morally impossible: but if he has

* This glances at Mr G. H. Lewes and Miss Evans [George Eliot].—1889.

done no public act which avows his relationship and confesses his responsibility, he gives to the public no means to distinguish him from a libertine, and refuses to the mother of his children her rightful public recognition. Who can tell that her relation to him is fundamentally different from that of an opera-dancer to a friend whose protection lasts for the season? Externally and formally the union is as fragile in the one case as in the other: not so, if a man (though, through some conscientious or urgent motive, rejecting strict legality) pledge his honour publicly before those whose esteem he most desires. We press this matter earnestly; because we think that the public is often assailed as *bigoted* and *prudish*, where it is not. The matrons of England, equally with statesmen, keenly resent underhand, obscure, clandestine relations between the sexes; but know thoroughly how to respect honest frankness, even when in its defiance of law it may seem to them somewhat fanatical. But if women are to receive justice, or any portion of it, and if children are to be cared for, we must be severe against clandestine unions.

Persons warmly philanthropic, looking with grief and indignation at the state of despised women, who seem to become in Christendom more wretched, more abandoned, more hopeless of recovery than anywhere else,—sometimes sincerely attribute all the evil to the severity with which female unchastity is abhorred. We have heard an excellent man declare, that the throne of chastity with us is erected on a flooring of human skulls as truly as the throne of Dahomey. Such good people sincerely believe, what many novelists enforce, that English women who are conventionally called virtuous are guilty of much sanctimonious pride and hardness of heart; moreover, that the girls who fall into evil courses are in large proportion recoverable, if only we were willing to accept them on the same footing as their unblamable sisters. Although it is a digression, yet it may be not unimportant in this stage of the argument to protest that the true state of the case is here fundamentally mistaken. In every class there are some hard-hearted persons, and more who from ignorance or thoughtlessness act as if they were hard-hearted. But it is not from pedantry, in women called virtuous, that our terrible difficulties arise. It is, from the enormous chasm which divides a life of profligate idleness from the continuous toil of a servant or shop-attendant, who is scarcely allowed a will of her own for any half-hour of the day. A girl who has once learnt the fatal secret, how easily she may earn fine dresses, food, and indolence,

will seldom again endure that incessant industry and self-denial, without which women cannot earn wages in England. The prevalent indolence and want of skill in such girls, and their still more unendurable propensity to talk over to other servants the profligate adventures of which they represent themselves the injured heroines, are the real impediments to their re-employment. A mistress who tries to bring them into her family or establishment, is apt to discover that she must take *all* her servants from that same class; as the others cannot endure their fellowship and perpetual company, even if (what is probably the exception) they show themselves skilful and industrious. [We may add, that the reason why unchastity in women is more severely reprov'd than in men, is, because a woman can earn money by it, the man does but spend on it; hence with the former it is a means and mode of life, a fixed and self-propagating evil; with the latter it is self-destructive. To wink at the libertinism of men is bad enough, no doubt; but to establish as not utterly disreputable to women *that* vice which is a trade,—would involve a total subversion of every form of morality. Scoundrelism in money and in politics is sure to go hand in hand with licentiousness, as in the old Paganisms. Nay, Sir James Mackintosh has written, that an age of cruelty follows straight upon an age of licentiousness.

For all these reasons, and not from any straining after power, or intrusive folly, every government moderately enlightened *must* desire, however liberal, to establish firm marriage laws. In passing the bill called the Dissenters' Marriage Act, there can be no question that our Parliament intended to show the widest liberality, and to cut away all reason or pretence for aversion to the legal ceremony on the part of those whose intentions were mutually honourable. Registration is in reality the essence of the marriage: it is not even in form a religious ceremony. Religious persons may superadd their own ceremony, and it does not vitiate the legal act; while Pagans or Atheists can equally obtain the legal sanction. But the legislators did not understand that, on the one hand, from the excessive power which English law gives to a husband, and on the other hand, from our very severe limitations of divorce, persons might be found to rebel not against the *ceremony*, but against the *state* of English marriage as in itself full of injustice: and unquestionably there is here still a formidable controversy to be met.

The difficulty has come up, with ludicrous frankness, among

the simple-minded negroes recently set free in the Southern States of the American Union. During slavery their marriages were not legal. The masters did not choose to debar themselves from the right of separating couples at pleasure: nor, with their theory that "slaves were chattels," on a par with "asses or nutmegs," was it possible for them to endure the idea that a male slave had any *rights* in a woman slave, or either parent in the children. But since freedom has been proclaimed, the school teachers from the North have taken pains to induce the freed men and women to consecrate their unions by a legal marriage. No resistance was made at first; perhaps they were proud of the ceremony as a new distinction. But now that the women have learned what rights are hereby given to the men, they are increasingly unwilling to marry; and (what takes Englishmen aback) it is the men who are eager to make their unions legal. Both sexes urge the same fact, but with opposite purpose. The man says: "Do make Chloe marry me; because she won't obey me else." The woman pleads: "I won't marry Sambo, for he will then be able to take my wages from me and bid me make him my massa; and if he beats me, I shall not be able to go away from him; and he will be able to keep my children from me; and if he becomes a drunkard, like Joe, I shall not be able to get rid of him. I don't want a massa at all; I only want a husband." It will be observed, that to a certain extent these women are situated like those above spoken of in tropical islands; that is to say, the women trust their ability to feed themselves and their children by their own work, and regard the power which English law gives to a husband as excessive and tyrannical. At a public meeting of the American Anti-Slavery Society last year, several well-known philanthropic ladies distinctly took the side of the negro women, declaring that the marriage law must be altered, the husband must be equalized with the wife, or the submission of the woman to legal marriage could not be expected. In fact, this topic has an importance far beyond what at first appears; for it is at the bottom of the formidable movement towards "free love," which (if we may believe report) gains strength in the United States with educated females, far beyond the limits of the few sects which openly profess it. In England we have no superfluity of rich and lovely land, no facility of physical independence, no aptitude for religious fanaticism (at least in the classes likely to defy public opinion): hence no one is likely to found on this soil religious communities, with marriage customs

scandalous to their neighbours. But if among English Americans who live in faithful union it should become a reputable practice, *on the ground of rightful and necessary freedom*, to disuse every ceremony which can legalize marriage; that is a principle which is sure to be contagious in England with those classes which most sympathize with freedom and with young America; and if once the mass of our artizans, who have already broken with Christianity, break with the principle of legal marriage, State and Church will labour in vain to recover them. A theory will become fact, which obliterates the visible lines of right and wrong, and so confounds the pure and enthusiastic with the selfish sensualist or mercenary jilt, as to threaten very grave results.

The history of marriage among the ancient Romans instructively lays out before us, in cause and effect, the course into which we of the Anglo-Saxon races have entered; and if we do not mistake, gives instruction highly profitable, at once to the conservative intellect which dreads to break down the old legal dogmas, and to the fervent radicalism which believes freedom to be the mother of purity. The Roman (apparently the Sabine) law allowed to the husband and father still greater powers than does the English law; so great, that at an early period the plebeians, who were chiefly Latin, refused to give their daughters into legitimate marriage. Marriage was *inferred* by Roman law, even without any marriage ceremony, from the mere fact of a woman living with a man for a full year as ostensibly his wife. But (as we read) expressly in order to evade this inference, the noble Roman wife used systematically to leave her husband's house for three days in the year. Thus she never came "into the hand of her husband," as the Latins phrased it. Only a few patrician families retained the old form of sacred marriage, without which their children were not eligible to hold certain patrician pontificates. Evidently in law nearly the whole nation were bastards; which of course involved no disgrace, when it was all but universal: nor did any one, till nearly the end of the republic, imagine how suddenly the floodgates of licentiousness would be opened. It is a satisfaction to know that for several centuries very little mischief arose from so universal a defiance of law. The marvel is, that the people should not have changed the law, when it was so universally judged to be bad and intolerable. We must suppose, that the Romans, like the English, asked only, whether the system "worked well;" and finding no inconvenience

from the systematic evasion of law, were contented to leave things alone. Moreover it must never be forgotten, that there was *nothing clandestine* in their marriages, but they were entered into with the heartiest interest by the families on each side. Formal marriage contracts with arrangements of dowry were made out. The husband had the use of his wife's money, but never became possessor of it. A wife not without private fortune and protected by her whole clan (for the families were organized into clans) had a better moral position than our law gives her; for, in case of gross misconduct on his part, she could leave him at once. It is true, she then left her children in his power; but so she does with us: and this is often the overwhelming cause, for which a mother submits to a life of misery from a bad husband. The Roman law also gave a weight to the tribunals of kinsfolk, to which we are total strangers. Therefore on the whole their illegal marriages have a rough likeness to the marriages of the early Quakers. Nevertheless, Gibbon (certainly no bigot) in a few emphatic words, tells the results of this freedom, in the later development of things (ch. 44):

When the Roman matrons became the equal and voluntary companions of their lords, a new jurisprudence (?) was introduced—that marriage, like other partnerships, might be dissolved by the abdication of one of the associates. In three centuries of prosperity and corruption, this principle was enlarged to frequent practice and pernicious abuse. Passion, interest, or caprice suggested daily motives for the dissolution of marriage. A word, a sign, a message, a letter, the mandate of a freedman, declared the separation. The most tender of human connections was degraded to a transient society of profit or pleasure. According to the various conditions of life, both sexes felt the disgrace and injury. . . . *A specious theory is confuted by this free and perfect experiment, which demonstrates that the liberty of divorce does not contribute to happiness and virtue.*

It is a favourite notion with some fervent spirits, that the world is very young, our experience very small, our dogmatic morality premature and therefore preposterous; and that a large freedom of new "experiments" in marriage, or no marriage, is a prerequisite to any healthy and stable condition. Thus, in our present stage (it seems), the highest morality consists, in society declining to censure individuals, and repenting of its conceit and bigotry. Let it be recognized, that in all relations between the sexes, each man and woman is justified by *good intentions*; and, as long as they *think* they are doing right, let no one censure

them. (We are not quoting any one writer, but the substance of what we hear urged, in comments upon certain writers.) The truth, herein mixed with the error, makes it plausible. Most true is it, that the world is young and in a vast number of departments is inexperienced; but equally true is it, that in domestic and popular morality the world is old; and its earliest wisdom is still by far the most valuable. Peculiarly in the cardinal matter on which all human communities depend for existence,—the family relation,—we have an abundant stock of experience: yet even here we admit, and maintain, that through the lamentable obstinacy of conservatism,—which has either refused all change or perhaps strained the bow till it broke,—we have far *less* ample experience than we ought to have. If the laws of marriage (in which we include the law of divorce and the rights of husbands and fathers) are too severe, a time comes at which submission is flatly refused. Enforcement of the law against deliberate and (let us say) fanatical offenders is impossible, if profligate offenders go unpunished; and, unhappily, profligacy has never ceased to stain many of the kinsfolk of nobles and legislators. Thus profligates and pure-minded rebels are in effect a mutual defence, and the law becomes helpless. A great majority among us, from habit, from political conservatism, or from religious belief, are averse to any tampering (as they call it) with the laws of marriage: but the aspect of the world and the course of events give warning of a great break-down, perhaps with consequences peculiarly disastrous in our present career, if changes are not made of a grave and decisive kind, yet such as to uphold all the main principles on which the sanctity of marriage depends.

Peculiarly disastrous, we say, in our present career. These words may first require to be explained. The English race has become pre-eminently *migratory*. Our enterprize, which has traversed the seas and planted colonies; our active internal trade and constant migration ever increasing, separate even the members of one family, and that in early life; much more does it totally break up the moral influence of cousins and clanship and neighbourhood. This is no place to discuss worthily, *why* it was that the illegal marriages of the Latin race turned out so full of immorality, after having been harmless for several centuries. As partial causes, we must certainly count, 1. the demoralization from civil war; 2. the packing of the Senate by Sulla with political partizans, unscrupulous men, often sanguinary, avaricious, and profligate; 3. as a necessary concomitant, his overthrow of the

ensor's power, which never again became vigorous under the republic. But the enormous destruction of the aristocratic families (which did not become complete until the defeat of Brutus and Cassius), was perhaps the finally decisive blow; this broke up both the organization of clans and the family influences which had protected the sanctity of marriage with all the upper classes. Under Augustus, we know that among the remaining nobility the unwillingness to have children—when they could not inherit the freedom into which the father had been born—was too stubborn for the emperor to overcome. We ought rather to look below the nobility, to see the causes really at work. The newly risen men, those enriched by trade, by jobberies, by spoil, by office, by farming the taxes or other state possessions,—came from many parts, and were seldom in any relation to old families, much less clans, of powerful social influence. When the few aristocracy prevalently disdained marriage, and their example was much rather bad than good to the commonalty, the marriages of this commonalty had no longer any support at all; resting neither on law nor on family opinion. They became really affairs between the two persons alone. If a Bruttian or an Etruscan, who had made a fortune in Rome as a builder or merchant, chose to take a wife to-day, and divorce her next month from some whim; what was there to restrain him, or make him ashamed? The law could not touch him, if he had not detained her money: her kinsfolk he could afford to despise: the new aristocracy and officials would not refuse him business on any such ground; and as for his own kinsfolk,—perhaps he did not count on ever seeing them again. In this migratory state of population the influences of *collateral families* is all but annihilated; and therefore it is, that the loss of legal sanction to marriage becomes more than ever felt. Such perhaps was the main immediate cause of that demoralization which has made imperial Rome detestable even to memory beyond anything which modern Christendom has yet displayed. Yet are we not ourselves, if not on the verge, yet within sight, of the same frightful abyss? It is not necessary to speak of Paris, the most fascinating city in Europe, and to ask, what moral influence can thence be diffused to sanctify the union of man and woman. It suffices to cast the eye on London, and on the English peerage; to reflect on notorious facts, which assure us, that of our "upper ten thousand" too many are implicated in Parisian licentiousness, to allow any vigorous legislation against it. Forsooth, their "free love" from the very first deliberately intends to abandon

the loved object, as an inconvenience and an obstacle to ambition. No effective moral restraint can come from the example and social influence of an aristocracy, which without a struggle has allowed such a system to grow up for the convenience of its younger kinsfolk. Nor can social restraint on selfish libertinism come from collateral family influence, where the members of families scatter and migrate, as with us. What then is to happen, if law be totally renounced even by the virtuous? Can it be reasonably and soberly thought, that practical licentiousness will not immensely increase when even *they* set aside all restraint of law? It avails not to reply, that "human nature will make a few blunders, and come right *at last*." That topic was as true, as valuable, and as much to the purpose, in the reigns of Augustus and Nero, as now; but it did not suffice to work off the impurities of Rome. The urgent doubt is, through how many blunders, through how much misery, through how much degradation and ruin, will men have to pass, before the time called "*at last*" comes. In Rome, it came only by foreign conquest, and by a total break-up of society. Those who thus reason about "freedom," shut their eyes to the moral influences and moral duties of the State; perhaps, dogmatically deny its moral duties, and here are diametrically at variance both with the theory and with the practice alike of every known civilized State and of every English Parliament. Suppose for a moment that this theory of freedom were acted on, even without the very mischievous addition of *secrecy*; and that (the law remaining as it is) persons of the highest virtue declined to legalize their marriages: what must be expected to follow? It is worth while to trace the inevitable consequences.

When persons of high goodness and purity live in conjugal union illegally, but faithfully, and display practically that they are a law to themselves, and need no restraint of law; moral honour is given to this state of freedom. Numbers beside enter it, with less noble principles and lower self-control. Those who took up the new position with something of the martyr spirit, knew that they were a mark for aspersion, and had some aid in the high-strung tone which conscious self-sacrifice gives to the defiant enthusiast. Those who follow, when the public odium is past, have no such secondary bracing: and the majority of men have not hitherto risen above law, but prevalently interpret duty from law. It is notorious, that the mercantile class do not feel against various swindlings, nor the political class against briberies and other malpractices, any grave and consistent reprobation,

until the law stigmatizes them as *criminal*; and if we look but a little way back and ask, what our fathers thought of the slave trade, and of lotteries, we shall see, how valuable is the aid of law to sustain national sentiment. So soon as marriage is free from legal control, divorce becomes possible at the will of either party; and if once illegal unions become prevalent and thereby respectable, numberless cases will soon occur, in a migratory nation, in which no family influence can act against arbitrary divorce. With a great majority of the married, even those who have no high principles, divorce will not be desired. Fondness for the common offspring, mere habituation, the inconvenience of losing a wife's portion, the difficulty of a new courtship, the chance of being rejected in it if the divorce have seemed arbitrary;—will keep most couples together. But if only one of a thousand married homes were broken up every year by a causeless and unjustifiable divorce, it would be a formidable addition to all our moral difficulties. And in two or three generations the progress would be downhill: for the facility of divorce would lead to greater facility of experimental marriage. As old Simo in Terence represents,—there can be no great harm if a young man, where it seems convenient, marry a lady whom he does not love:

Nempe incommoditas denique huc omnis redit,—
Si eveniat (quod Di prohibeant!) *discessio*.

That is: "You need not be afraid to take her. If you find you do not like her, you will *only* have to give her up." Parents never make bad marriages for their children now on such a computation: it would be a pure addition to existing evil. And the hundred divorces of this year might become a thousand five years hence, because the stigma upon a wanton use of the power would be weakened perpetually by the frequency of use.

But consider more closely, what the power of arbitrary divorce, unchecked even by the opinion of kinsfolk, means. It means, that a man shall be able to get rid of one woman, because he is more attracted by another. Now this temptation is the more subtle and dangerous, expressly because it is not necessarily or principally addressed to the sensual part of our nature. Especially if a man marry when young, before his own character is fully developed, it is unlikely that the choice of his youth will be the partner whom he would have chosen in his manhood. He may have been unduly attracted by a beauty which does not last,

or he may find his wife's mind to be incapable of moving on with his own. In the very proportion of his capacity, versatility and late expanding powers, it may become impossible for one woman to satisfy his mental desires. At present such a case is more easily borne, because a married man is able to have close and tender friendships with any number of women; in fact, the more numerous they are, the less danger there is of jealousy. This is now one of the marked privileges of marriage: it gives to a man not only one wife, but many sisters; and the mental attraction between the sexes is great and signal. The advantage would be largely lost, if he could divorce his wife at pleasure. Close friendship with other women would no longer be honourable, or free from suspicion. A wife's jealousy would almost necessarily be incurred, and unhappiness thence arise. Thus the power of arbitrary divorce would lessen the freedom of the married and the happiness of the married state. Out of such unhappiness divorces would arise; and again, the more frequent divorce, the more rife must jealousies become, and the greater the slavery of marriage. The evil, like a snowball, grows as it rolls on. Already a part of this mischief shows itself in Prussia, from the too great facility of the divorce courts. A single example will explain what things are even now possible. A married lady, mother of several children, living in entire harmony with her husband, an amiable easy gentleman, hears at church an enthusiastic young preacher, and is enraptured by his eloquence. On her return home she tells her husband, how thoroughly the preacher's words have come to her heart; and that she is quite persuaded it would conduce to her spiritual perfection to be married to him; and if she can get *his* consent, she hopes that her *husband* will not oppose a divorce. What amount of urgency sufficed to disgust the husband into agreement is not a public fact. No man can like to feel that he is keeping a wife against her will, and to be reproached with hindering her spiritual improvement. That the husband did consent, and that the court thereupon did without further inquiry sanction the divorce, is a public fact; also, that the preacher made no difficulty about accepting the enthusiastic lady, with her dowry and her children. We have since heard, but from one informant only, that, after many years of union, the preacher in turn sought and gained divorce from his wife, and that she is now gone back—into the bosom of her first husband!

An unlimited power of divorce necessarily draws after it the possibility of marrying with the premeditated intention of termin-

ating the union after a limited time. This touches the point, which of all is most cardinal. The sanctity of marriage is not necessarily invaded by its not being in the result a union for life; but unless, when the union is formed, it is intended and fully expected to be a life-union, its sanctity receives a fatal wound. Not to reprobate and detest such pretended marriages, is to justify the sensualism of every libertine. Else, why may not a young student marry a girl of low birth for a few years, knowing that he will be ashamed of such a partner for a permanence; and divorce her, as soon as ambition and the hope of a better match prompts? If such conduct be not reprobated, will not the girl on her part be justified in extorting the utmost of money which she can, in order to support her possible children? And if such a mode of getting a livelihood be respectable, while it is vastly easier than the industry of maidens who refuse to sell their persons; we shall not be far off from the state of the Lydians and Etruscans, among whom every good-looking young woman, without reproach, earned a dowry for her more permanent marriage by gratifying any number of successive lovers until the requisite sum was made up. No persons of high and pure mind can ever intend not to reprobate, not to detest, not to express disgust, at "temporary unions," *intended* to be temporary from the first: but if unlimited divorce is to be permitted, and is not to be resented, we lose all right to reprove any union which covers itself by the mere word "marriage." For though we may be clearly convinced, that it is intended to be temporary, we have never a right to assert it, while the parties keep their own counsel.

Among the Persians, the principle of "temporary unions" has been organized into religion, and the ceremonial is performed by the Mohammedan priests. Merchants, who come from a distant city,—suppose to Ispahân,—often reside there for two or three months, while waiting for goods. Finding it rather tedious, they beguile the time by marrying a wife for a number of months specified in the marriage contract. The process is straightforward and business-like. The merchant calls on the priest, and tells what he wants. The priest examines his book, and finds therein registered the names of women who are willing, for a consideration, to enter into temporary marriage; and ascertains how many of them are disengaged. What further is done we do not know, but, we believe, he assembles them veiled, and lets the merchant pick out one: however, it ends with his drawing out a

regular marriage certificate,* and pocketing his fee. An estimable Scotch military officer, who had for some years the charge of the Persian arsenal at Tabreez, under the treaty of the East India Company with the King of Persia, assured the writer of these lines that he had seen and read such marriage contracts, and could testify as eye-witness that *a single day* was not too short a duration of marriage to receive the priest's blessing and licence! Of course those who first authorized this wonderful system, had no foresight of the monstrosity into which it would run. They must have believed that they would lessen existing evil, and act *against* the loathsome system of prostitution. But when once the fatal idea is admitted that a union which is intended to last some time shorter than life is marriage at all, and deserves honourable recognition; instead of curing the evil which exists, it does but degrade and pollute the ministers of the new system.

It is upon this point that a stand must firmly be made, or we are swamped in the pool of dissoluteness. A sincere intention, a fervent desire, a full belief, that the union is to be and shall be perpetual, is essential to any true and honourable love, to any true and honourable marriage. In order to uphold marriage as a social institution, the power of divorce must not rest with the parties themselves, but with some judge, or some court (perhaps of kinsfolk) presided over by a public officer; and rightly to prescribe beforehand the grounds and conditions of divorce, is a critical duty for the legislator. In the opening of this discussion, it was shown that the necessity of deciding what rights over children, and what duties towards children, each parent had, in itself necessitated State interference in the matter of marriage. We now add, that care for the public morality is, if not a more urgent, yet on the whole a far more important and wide-reaching argument. It is needless to occupy these pages by replying to that extreme theory, which forbids the State to care for the public virtue. We do not yet believe that its advocates would themselves justify the legalizing of lotteries, betting-houses, and gambling-tables. But it suffices to point out the astonishing vigour, quickness, and unanimity, with which the late Lord Campbell's bill against impure pictures was carried through both Houses; although it authorized and commanded the officer to intrude forcibly into houses in search of them, in a manner quite un-English. This shows how profound, how vehement, how

* Nearly thus the proceeding is described by Morier in *Hajji Baba in Ispahan*.

unanimous is the conviction in the English Parliament, that corruption of this sort is a formidable evil, which must be summarily put down, even by despotic measures, and that the theory which denies to the State the right and duty of caring for the public virtue is without any support whatever in the legislature.

Truly Parliament is painfully sensible of the evil of a criminal class of children cast on the world either without ostensible parents or with parents who can only corrupt them; and is fully aware that loose marriages, and frequent divorces, would rapidly multiply this dangerous population. When the legislature becomes more alive to its duty, it will study more deeply the causes of the deplorable evil which exists. It does not really need peculiar sharpness of sight to understand the causes; only, an unwillingness to adopt the cure is apt to blind men's eyes. But such a doctrine as free love or unlimited right of divorce would leave our most disgusting evils as they are, and heap upon us a vast new load of evil.

Thus far our argument has been on the whole Conservative. It has seemed necessary to show that the theory which would throw off the State is a baneful delusion. But now, we must turn earnestly to remind Conservatives how powerless the State becomes, from the day that any considerable portion of the people fanatically defy and refuse its marriage laws; and that the impotence of the State becomes worst, precisely against that combination which now is to be feared;—a combination of the old enemy, profligate vice, with the new enemy who confronts us in the near future, virtuously intended fanaticism. From this point, therefore, our argument is in favour of judicious Reform, as alone truly Conservative. In so far as the existing law is unjust, it must be promptly changed—1. as to divorce, 2. as to the extravagant rights given to husbands.

As to divorce, it is well to deal at once, and frankly, with “the religious argument,” as it is called. It rests upon one solitary passage in the gospels, which is quite misinterpreted; and when that one passage is rightly understood, it becomes clear that no word is found in the Christian scriptures prejudging the question of divorce. As we read in St Matthew (xix. 3) the Pharisees asked Jesus, “Is it lawful for a man to put away his wife for every cause?”—as “Moses in the law” distinctly allowed. Observe; the question is not, under what circumstances a court of law may pronounce a divorce: that topic is not even touched: but whether a husband may under all circumstances use the liberty

given him by Moses, of taking the decision *into his own hand*. The decision reported is: "Certainly not; but for one grave offence only." Now, that reply in no way touches this argument; for, in common with all Christendom, we refuse to the husband jurisdiction *even* in that extreme case. The reply of Jesus did but put a moral limitation on the *Jewish* husband's legal power. It in no respect dealt with the general question of divorce by a public court of law. Hence, upon Christian grounds, it has no place whatever in this argument.

But if there are Christians who have some mental incapacity to accept an interpretation which is not habitual; if, resolutely sticking to the traditional view of this passage, they insist on imposing that view as a law upon everybody; it is proper to remind them of the consequences reasonably to be expected, unless indeed they are happily outvoted. They are aware, that Queen Victoria's subjects are not all Christians. Many are Jews; many are Mohammedans, very many are Hindoos, some are Chinese, not to speak of mere barbarians: moreover an increasing fraction of Englishmen revere Christianity only so far as they find it to be moral and reasonable; and this class of Englishmen can but be driven into a refusal to co-operate with the law, if a formula which they disown is allowed to make the law unjust. Parliament has long conceded to Jews freedom for their own marriages: neither the Dissenters of the United Kingdom, nor the tens of thousands who profess no allegiance to Christianity, will endure to have their marriages controlled by High Church Traditionalism. In so critical a domestic interest the law must be based on broad arguments of human morality, not on the sectarian interpretation of a text. In no other way can the State avert that total neglect of its marriage ceremony, which would be a great national calamity. Germany and America have led the way in remodelling the law, and England will not long endure the present state of things, if it be defended *only* by Ecclesiasticism.

Assuming then that divorce, not at a husband's will, but by the decision of an unbiassed and competent court, is a question clearly open; it is impossible to avoid pronouncing the English law to be still very unjust in its limitations, although it has been sensibly relaxed of late. It is evident from the course of legislation, both in Protestant Germany and in the United States, that so soon as men come to the question with open eyes, they find many more causes of divorce than we have ever admitted:

namely, not only adultery and cruelty, keeping a wife in terror of her life, or trying to poison a husband; but any other gross conduct which ruins the moral purposes of marriage. Habitual drunkenness is among us one of the most urgent evils, which ought to be a ground of divorce. The drunkard not only cannot protect his wife, cannot duly feed, clothe, and care for his family, but keeps her in constant misery and frequent uncertainty of life. Wife-beating is a daily offence, wife-murder at least a weekly crime, as a direct result of drunkenness. Divorce in an extreme case might be enforced even without a wife's petition, for the sake of children, as well as wife. In some States of the American Union the drunkard is further treated as an insane man; and with much reason. Next, a man who is convicted of crime and punished by a long and distant imprisonment ought *ipso facto* to forfeit all rights to both wife and children, to none of whom he can perform his duties. It is cruel in the extreme to a woman to take away her husband for seven or fourteen years, suspend his power like a sword over her head, and then allow him to come back after long estrangement, probably depraved by intimate association with worse criminals; to usurp her property and her person, and claim the children as his own. A third obvious case of rightful divorce is that of obstinate desertion. But as no dogmatism is here intended, further details are needless: it suffices to insist that the whole question needs to be freely thrown open to discussion, as it is in other Protestant countries; and such relaxations of the law introduced, as impartial reason, unbiassed by ecclesiasticism, may suggest.

So long as divorce is confined to those cases in which it leaves a deep moral stigma on *one* or *other* of the married persons, the difficulty of the topic is what it is in itself; but it is not aggravated by the danger of opening a door to licentiousness. This danger becomes urgent, if divorce be granted under circumstances which leave no stain on either party, and therefore put no moral difficulty in the way of a reputable second marriage: for any unwise laxity may (as we have seen in Prussia) lead to very licentious caprice. On first consideration it may seem that when neither party can be deeply stigmatised, divorce ought to be impossible; yet the reasons against such severity are very powerful, and seem to be unanswerable. First, in Protestants who insist that a nun's vows ought not to be binding when she repents of them and sees them to have been unwise, it is monstrous to press the mere fact of the "marriage vow" as

an insuperable difficulty : more especially when it has been taken under parental pressure, and at a minor age. Indeed, while marriages of minors (especially of women in minority) are not forbidden, the mere fact of having been a minor is almost enough to give a woman a right to cancel the vow. The difference of a woman's knowledge and prudence at eighteen and at twenty-one is generally very great. Next, when a married couple are decidedly unhappy, separation (so far as the law is concerned) is always possible for them ; but separation is not only a poor consolation and insufficient substitute for divorce, but even peculiarly lays them open to dangerous sympathy. And if the law prescribe, that while innocent they may not be divorced, but when guilty they may, it gives a frightful premium on guilt ; a guilt to which the conscience may reconcile itself, by the plea that the law will have it so. This argument urgently demands a reply. Thirdly, although there is danger in allowing such divorces, it is not a danger which admits of no precaution. Hungary, though a Catholic country, yet, being peculiarly free from bigotry, has here innovated boldly, and perhaps very sagaciously. If a young couple are unhappy, and desire to be divorced, they address a joint petition to the court ; or one alone perhaps can thus petition. The court appoints two or more mediators, generally from the kinsfolk, to hear the complaints, to give advice, and try to reconcile them. Reconciliation is often thus effected. But if failure be reported, the court replies, that they must repeat the application for divorce after three years, and then it shall be granted. If the quarrel is very severe, they probably separate, and obtain the divorce at the expiration of the period. The delay infallibly prevents any from seeking divorce in order to take a more acceptable partner ; for no one can hope that another will wait three years for such a reversion. It may even seem that two years would suffice. When the aversion is so decided on both sides, that no one expects reconciliation, we suppose that no social impropriety is felt in beginning a new courtship before the three years is spent. But Hungarians say, that in the great majority of cases the young people are reconciled by their friends long before the time is complete, and do not come to the court again. Of course, when there are children, the evil of divorce is far greater ; but so also is the chance of reconciliation greater. If instead of stagnating obstinately in a " non possumus " policy, our legislators would grapple with the difficulty as frankly as the Catholic Hungarians, good sense would discover reasonable solutions.

In every case for divorce, in which the causes are not in themselves public facts (such as drunkenness and crime), the tribunals which have to investigate details ought to be private, and either partially or wholly composed of kinsfolk and near friends of the parties. In this matter our publicity is outrageous. Our total ignoring of kinsfolk, whether to reconcile, to report, or to judge, is astonishing. We resolutely drag into daylight all sorts of offensive and pestilential matter, and expose to public ridicule weaknesses which ought to be sheltered in privacy by domestic tenderness. It is hardly too strong to say, that our whole law and practice on this subject are *barbarous*. What can be said to palliate the monstrosity, that if a young woman be cruelly seduced, the seducer can have no punishment but a fine, imposed at the expense of a suit from her father for pretended loss of her service during pregnancy? The father must dishonour his daughter in court, exposing her to public cross-examination by an impudent counsel, in order to get the verdict and the fine? Is this the way to save a young woman's modesty in the future?

2. The second point needing reform is, the extravagant power given by our law to a husband. Especially: first, the husband's seizure of a wife's property is totally unjust, and all the arguments for it baseless. Secondly, the exclusive right attributed to him over the children is unjust and pernicious. Thirdly, his rights over his wife's person are extreme and monstrous.

It is pretended by lawyers, that, in justice to creditors, it is *necessary* that a wife's property be vested in the husband and therefore liable to his debts. After they have thus stripped the wife of everything, they next make the husband liable for *her* debts. From beginning to end, the pretended necessity is false. No difficulty is or ever was found by creditors, from that which happens every day, viz. that three sisters keep school together; or any two ladies, or a brother and sister, keep house in common with (perhaps) several children under their charge. Who ever said, or dreamed, that to save the butcher, the baker, the grocer, the milliner or the jeweller from loss, it is necessary or desirable, or could be endured, that as soon as two persons keep house together, one of the two shall forfeit his whole property to the other, and that other shall be responsible for the debts of the former? If a widower, left with children, put his sister or his eldest daughter at the head of his establishment, and the lady order silk dresses or jewels for herself,—or provisions for the house,—do tradesmen grumble because the lady has a right of

private property, and is not "under coverture," as lawyers phrase it? Does the jeweller think it hard, that he cannot judge by the exterior of the house whether the lady is likely to be able to pay? Rather, we suppose, he is aware, that *no* mere exterior is any guarantee. The more a man spends on his house, the less is left for tradesmen; and many a one who makes display is a bad paymaster. Prudent tradesmen have their own ways of judging concerning the future by the past; and, even when past payments have been satisfactory, yet, if an unusual order be given, they pause before risking to obey it. Some are so prudent, as to sell for ready money only; and this may prove the true security against nine-tenths of our mercantile calamities. But to claim that a woman shall forfeit her property *simply because* she keeps house in common with a man, is mere audacious impudence.

It is the more impudent, and the more ridiculous, because it is most notorious that by the existing law and practice tradesmen have none of the defence which is pretended. When a wife has *much* property, it is never permitted to come into a husband's power or to be answerable for his debts, but is vested in trustees, who deal out to her the yearly income only. A man totally indigent may marry a wealthy wife; he may live in a splendid freehold house, belonging to her trustees; he may have the appearance of a wealthy man, because he spends year by year every shilling of her large income; and then, if one year, after earning the reputation of paying well, he run up high bills and be a thousand pounds in debt, the creditors will find that there is nothing but the clothes on his back of which they can lay hold. Even the furniture, books, and fixtures of the house may be the property of the wife's trustees, who are also the house-owners. In fact, the husband's legal position may be that of a man *lodging* in a *ready furnished* house. So shamelessly false is this argument.

Evidently, it is a mere after-thought, made up to prop an ecclesiastical fiction, which the mediæval law adopted; as though a married woman's personalty were in some mystical sense absorbed and "covered" by that of her husband. Bit by bit of this fiction the law has yielded up, so that the grossest inconsistency with it is now found; yet the phraseology and theory of "coverture" remain, and the fabric of trusteeship (which ought to be optional) is made necessary by it. If a woman possessing property dare to marry without settling it on trustees, and her husband prove to be either a bad or an imprudent man, no

wisdom, no energy, no prudence or frugality on her part, can save her from utter ruin. By tormenting her into refusing to live with him, he simply carries off her money, and defies her. To the demand of a maintenance he has a ready reply: "Come back and live with me: *I do not want you to go away.*" By this he can stop all legal action, and abandon her to absolute destitution,—and as a fact such things do go on;—while, on purpose to drive her from his house, he may kiss his servant girls before her face, and talk impudently to them. Yet, unless she can bring legal proof of adultery,—often impossible,—and furnish money for bringing up witnesses, and go through a disgusting process; the law gives her no redress. It first gratuitously strips her of her property; then bids her recover a fraction of it, if she can, by an expensive legal process and by stigmatising another woman.

So likewise when a wife has no property amassed, but is diligent and clever, a husband can remain idle himself, take away from her the wages which she earns, keep her on poor food and in shabby attire, half starve the children and deprive them of education, while he spends her earnings on luxuries for himself, such as gin and tobacco. A Turkish *cadi* would quickly deliver a wife from a husband who was a mere idle bloodsucker upon her, or neglected duly to support her.

And for what is the English wife exposed to all these cruelties? Solely to uphold an absurd fiction, to which England is specially attached. Even Austrian law knows nothing of 'coverture.' When the estates of Hungarian exiles were confiscated after the war of 1849, the Austrian judges systematically pronounced that the property of their wives was inviolable; and that wherever it had been seized, this was from inadvertence, and was unlawful. A Hungarian woman forfeits no rights of independent property by marrying: she remains mistress of all that was her own. Yet English law does not know that, as to its fundamental theory concerning a wife's legal status, it is deplorably behind the Continent; nay, behind the Mohammedans. Mr Hepworth Dixon, in his book on *New America* (ii. p. 65) commenting on this topic, says:

A Persian, a Turkish bride, being married to a man of her own rank and creed, retains in the new household her separate existence as her father's child. A New England bride, on being married to a man of her own rank and creed, becomes lost in him. A Turkish wife is an independent and responsible person, with the same faculty of receiving and devising property which she held in her spinster days. What is

hers, is not her lord's. She may sue her debtor, without the concurrence of her nearest friend. She may receive a pension, sign a bond, execute a trust. Compared against her Asiatic sister, what a helpless being an American [married] lady seems!

From the private information of Americans, who declare that they state what they know, and that they have in vain tried to convince and dissuade ladies, who have adopted the theory of free love; we are constrained to believe that already in some cities in the North, nay, in accomplished and pure-hearted circles, free from any perturbations of religious fanaticism, the essential *injustice* of the marriage laws is driving women to a defiance of them; and this, though our law of divorce is already beneficially relaxed in many, perhaps most, of the States. A high-minded lady is pleased at the advances of a lover, and consents to become his, *provided* the marriage be wholly illegal! because (says she) "I have no idea of any union but that of equality. If you love me, you cannot wish to make me your inferior, or to exact a promise of obedience, or to get exclusive rights over children; and much less, to take my property¹ as yours, except in the same sense in which I take your property as mine; or to make me essentially dependent, and unable to protect myself. The rights given to *unmarried* women by the law are few enough: it is indeed very unjust to them also: but such as my rights now are, I mean to keep them. I will have nothing to do with a marriage which sacrifices them. Our union must be between our two selves and God; and we shall love one another all the better, because we do not let any one else interpose." When we learn from the last census, that the United States contain nearly 730,000 more men than women, it is pretty clear that women who are worth having are sure to be able to prescribe to lovers the conditions on which they will accept them; and if this state of sentiment spread, the marriage law will go out of use in precisely the most spirited and most intellectual part of American society. Nor can anything be reasonably expected to secure us from the evil but a decisive change of the marriage law.

We do not need reforms in detail—bit by bit—fragments of justice—so that in fifty years' time English-women may nearly reach the point at which the women of Hungary and of Turkey now are. We need a single, short, sweeping enactment, that,

¹ Notwithstanding what we have quoted from Mr Hepworth Dixon, we are assured that in *some* New England states a wife retains her private property as completely as a sister.

notwithstanding anything to the contrary in past statutes, no woman henceforth shall by marriage change her legal status or lose any part of her rights over property. Marriage settlements will then give to husband or wife whatever rights are thought reasonable by the contracting parties.

Fashion has still tyrannical power, not over women only, but even over men. When the great "beard-movement" commenced, it was ludicrous to see how many men wished to join it, but did not dare, for fear of being singular. For more than two years there was suspense, and it almost seemed to be a failure, through the strong opposition of influential persons at the head of great establishments: then in one half-year the new idea suddenly triumphed; and huge beards, huge mustachios became quite a national feature in all the cities. So too may it be in the matter of marriage. If ever that come about (which we heartily deprecate, and desire to avert by the establishment of justice), but, if ever Englishwomen *do* rebel against the marriage law, it may begin with some martyr-spirited heroine, perhaps some accomplished and graceful lady; who will no more quail from male or female reproof, than Dr Mary Walker or Dr Elizabeth Blackwell; and just when men begin to think it is all nonsense and moonshine, they may find women of the working classes by the hundred and the thousand following the example,—sheltering themselves from reproof by their own numbers. It is to obviate this result, that we implore all true and genuine Conservatives not to delay and use half measures, but to do justice to the sex in good time. He who tries to uphold injustice is the true and efficient revolutionist, while he thinks he is Conservative.

But, not only in regard to *property*, also in regard to *children*, the law is unjust to women. The mother has to undergo much in bringing a child to maturity; next the agony of childbirth, the exhaustion of suckling, the countless cares of tending and watching, by night and by day. The child becomes the darling of her heart, the image of her dreams, a great centre of her thoughts and hopes; and after all her toils, the law permits a husband to take the child permanently out of her sight, and (if he choose) to put it under the charge of an enemy, perhaps under that of a rival, his concubine, who will fill its mind with falsehoods and teach it to hate and despise its mother. Such things are not possibilities merely and dreams; they are stern realities; and the law gives her no redress. All who are in middle life remember what happened, when a prime minister was prosecuted

for adultery. The facts are so public, that it avails not to suppress names. Lord Melbourne, an elderly gentleman of [high accomplishments, was fond of the company of a very] intelligent lady, the Hon. Mrs Norton, young enough perhaps to be his daughter. Mr Norton became jealous, having been worked upon (as some said) by Tory politicians; an explanation which received plausibility from the indecent and inhuman triumph of certain Tory journals, as soon as it was announced that Mr Norton had called the prime minister into court as an adulterer. The jury acquitted Lord Melbourne. Was not then Mrs Norton's reputation left unstained? Not wholly. For the hostile counsel had inveighed maliciously on certain ambiguous facts, which ought to have been explained and were not. Mrs Norton asked leave to explain them, and was not permitted, *because she was not a party to the suit!* It was a question (forsooth) between the two men only: *she had no business with it!* Mr Norton, having tried to fix on his wife this dreadful stigma, and failed, did not love her the more for it, and apparently hated her. Having ejected her from his house, he refused to allow her to see her children. She pleaded for leave to see them *only once in six months, and in the presence of a person appointed by her husband;* this was refused her. She brought the question into court, but in vain: her husband's inexorable refusal was pronounced legal. The matter was treated in the House of Lords,—and no wonder, since the prime minister and a lady with the title Honourable were concerned,—and an eccentric legal peer* of vast powers and experience expatiated on the injustice with which Mrs Norton was treated. But after a vehement speech all on that side, he wound up by saying, that our law is so consistently and monstrously unjust to women, that it is not worth while to give a fraction of justice in one particular case: he therefore gave his voice *against* her. We claim that men with a better heart than that peer will do to women the justice about which he prated.

In the matter of children, when the quarrel of parents is severe, some compromise is evidently needed. In no two cases would the same compromise be the best. Sometimes the mother might have the control until the age of fourteen, and the father after that age: but the compromise should in each case be settled, under the guidance of general principles, by an impartial court. A divorce which stigmatised one parent would ordinarily withdraw the children from that parent's control; as, when

* Lord Brougham, ex-Chancellor, once known as Henry Brougham.

drunkenness or felony occasioned divorce. It does not belong to these pages to define what ought to be enacted, but to protest against the extreme and obvious injustice of the existing law. Since the Divorce Court has been established, such an injustice as refusing, to a lady whose reputation was at stake, leave to explain what was obscure (we believe) would not be allowed: but English law has much yet to do, before it can pretend that this injustice is a thing of past days.

It is not necessary here fully to open, what is meant by saying that "a man's claims over his wife's person (now justified by the law) are extreme and monstrous." It suffices to press, that our judges still maintain, that a man has a right to lock his wife up, if he fears she will run away from him; and that, at no distant time, judges pronounced that he might chastise her *moderately* with a *moderately* thick stick. Recent judges have overruled this, without any new legislation. Such things give a painful idea of the uncertainty, as well as injustice of our law. Until the marriage laws are made more just, it is morally impossible to carry out legal severity against those who set them at naught, even when the result is profligacy most pernicious and most dangerous to the State. As our rugged climate and the toil needed to supply our more elaborate wants of body and mind, put a vast chasm between our condition and that of the Polynesian savages; so the frightful pestilence, which in *our* constitutions is generated by profligacy, becomes an additional and overwhelming necessity for State interference against moral corruptions. The topic can here be only alluded to, not dilated on. But inasmuch as no pestilence will confine itself to that class of the community in whose filth or vice it springs up; neither will this pestilence, if allowed to be unchecked, spare the innocent, but will spread its miseries further and wider still. The necessity of checking such a flood of evil is a new argument for divesting honourable marriage of every gratuitous burden and every injustice.