A SURVEY OF DIVORCE

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A Meeting of the Medico-Legal Society was held at the Medical Society Hall, East Melbourne, on June 12, 1935. Dr. Mark Gardner was in the chair, and Mr. L. E. B. Stretton delivered an address, "A Survey of Divorce."

Mr. Stretton said: The various bodies of legal doctrine which have been adopted by the several groups of people inhabiting the world differ markedly in many respects, the one from the other. And when one examines the widely different sets of circumstances under which the national entities of the world live, one states a truism in asserting that there is no place for one general code of conduct for all mankind. It is manifestly unsound to say of any law governing any part or activity of communal life, "This is our law, our custom; there can be no other; all others are bad." One must look at the society which embraces us and, taking an account of the desires and fears of its people, say, "What is best for us? What will bring the maximum of ease to the majority with the minimum of discomfort to the minority?" Settled dogma, whether religious or social, is a drag upon the development and realization of the greatest good if it be not in keeping with informed, and therefore moderate, opinion of the time.

As far as the sexual relationship created by marriage is concerned, the foregoing generalization is appropriate. Rules of matrimonial conduct differ widely in some communities from those observed in others; while the march of time demands that, in the one society, the rules must change to accommodate the growing years. Some bygone civilizations were governed by matrimonial codes which might well shock a modern Western mind—some by rules very much akin to ours. These ancient, and in many cases now departed codes of conduct were determined, as our own

code has been, by various considerations, the chief of which were religious, economic and military. And according to the diversity of the considerations which obtained as between the several communities during the time of the growth of their several codes, so did those several codes differ from one another in many of their essential qualities. In fact one suggests that there are very few spheres of social relationships where greater differences are to be found than in that of the sexual and matrimonial. Polygamy, polyandry, monogamy, abstinence in part, celibacy, homo-sexuality, incest—all have played their recognized parts in societies which persisted and prospered during hundreds of years. And did the heavens fall? Was the national conscience smitten by a sense of sin? Or was it not, rather, that in the circumstances peculiar to each society these relationships were recognized as being fit and proper in the light of the needs of the state—in short, expedient.

Kipling has said:

> "Still the world is wondrous large—seven seas from marge to marge—
> And it holds a vast of various kinds of man;
> And the wildest dreams of Kew are the facts of Khatmandu,
> And the crimes of Clapham chaste in Martaban."

The practices to which I have just referred and which received that recognition of the law which raises a practice to the status of a legal institution, were, for the greater part, of economic origin. It is clear that throughout the ages, in many countries at various times, many priesthoods have countenanced and adopted their people's customs which were born originally of social expediency. Many of the institutions raised upon sexual relationships, and which I shortly ago mentioned, were adopted by the ghostly fathers of the faraway past in their anxiety to uphold that which was both in the best interest of and acceptable by their people. And so occurred the evolution from something that rested upon an economic and to that extent rational foundation to something the subject of a religious tenet, soon to

become mystical and static, soon to lose the capacity to change with the changes of human need. The growing plant, rooted in reason, became petrified in the still waters of religious dogmatism. There, in the origin and evolution of the economic and religious views of the incidents of matrimony, was born the seed of conflict which to-day persists in our law of divorce.

The "economic" matrimonial law grew out of the recognition of social expediency. It recognized some form of sexual expression or enjoyment, regulated according to the material conditions of the state. Polygamy grew with the need of the nation for warriors or labourers and was permitted and recognized. Polyandry and homo-sexuality arose and were permitted in states which had few resources wherewith to support their people. The "religious" code, on the other hand, was essentially mystical, and to a great extent restrictive of sexual freedom. Its restrictive prohibitions arose from the fact that men lived in a spirit-peopled world, where each hill and stream and tree was the home of some ghostly occupant. Heaven was very close above and hell was just below. And the idea of propitiation of these other-world folk, some benign, some malign, took hold of the minds of men, bred of the fears that ruled them. It was necessary to placate the gods: to do this it was necessary to make sacrifices—to sacrifice chattels, or, if the votary was a poor man, to sacrifice some of his pleasure. However poor in worldy goods a man might be, then, as now, there was still the pleasure of sex. So, by sacrifice of this pleasure, the meanest might acquire virtue. From such sacrifices, approved and required by the priesthood, arose the sexual taboo; the taboo was absorbed into formal religion; there we have the origin of that favour with which, in our state, the Church regards the monogamous marriage, abstinence in part, celibacy, each to some extent demanding some degree of sacrifice and its concomitant propitiation.

In the history of British marriage and divorce we have the "economic" and "religious" ideas grown into active

forces and manifesting themselves in the following manner —the "religious" views of marriage imposes a condition of continence, arising out of the "propitiation" idea, and declares the marriage to be no mere contract, but a mystical sacrament and indissoluble; the "economic" conception of marriage treats the relationship as one of social expediency and as having various contractual characteristics, as affecting status and property, and as being dissoluble.

British feeling for the middle course, a racial attribute glorified by journalists as the "genius for compromise," as applied to the making of matrimonial law has resulted in a hybrid institution begotten of these two incompatible parents. To establish the validity of this averment it is necessary to define marriage as a legal concept and to examine cursorily the history of the matrimonial jurisdiction of the courts of law.

Marriage, says the law, is that relationship created by the voluntary union of a man and a woman for their joint lives, unless avoided or dissolved earlier, to the exclusion of all others; a definition which has for centuries been accepted by the courts in their matrimonial jurisdiction.

Looking at the history of this jurisdiction it is convenient and sufficient to commence at a point about the middle of the twelfth century. At that time we find it recognized that the Church has exclusive jurisdiction over marriage and divorce, it having at last succeeded in ousting the King's Court which had enjoyed some jurisdiction, the extent of which is not very clear. We find, also, the dignitaries of the Church tiring of the personal exercise of their powers in this field and ceding their place to a growing body of ecclesiastical lawyers. There were, at that time, the Ecclesiastical Courts of the Provinces of Canterbury and York, the provinces being divided into dioceses, each with its diocesan court, and all of them being invested with the matrimonial jurisdicton. The diocesan courts were courts of first instance (that is to say, courts where the suppliant spouse first made his plaint) and were known as the Consistory Courts. From these a right of appeal lay to the

appropriate provincial court, thence, until the right was abolished during the reign of Henry VIII, to the See of Rome. Later ultimate appeals lay to the Court of Delegates and still later, commencing in the reign of William IV, to the Judicial Committee of the Privy Council. The law administered was the law of the Church.

The principles upon which the Ecclesiastical Courts acted were, in some essentials, very different from those by which our courts are guided to-day. In the Ecclesiastical Courts there was the greatest difficulty in getting a complete severance of the marriage tie in the form of a divorce *a vinculo matrimonii*, where the marriage had been validly contracted. Before the Reformation the veneration of marriage as a sacrament made the complete divorce, where marriage had been validly contracted, impossible without recourse to the Pope, who was always reluctant to effect a complete severance of the bond. Nowadays, an overwhelming majority of divorces are complete divorces *a vinculo matrimonii*.

It was always possible in the Ecclesiastical Courts to obtain the divorce *a mensa et thoro*, that is the casting out from bed and board. This was the forerunner of our judicial separation. By it, the spouses were separated but were not free to re-marry, their marriage bond being left inviolate. It was the concrete result of the general religious doctrine that marriage, being a sacrament, was indissoluble. It was not a divorce as we know it now or such as was, prior to the Reformation, granted by the Pope, because it did not dissolve the marriage. And so, for many years in England, the Church, by its Courts, inexorably held people, mismated and chafing, to the involuntary acceptance of a mystical ideal.

From the seventeenth century it became the practice to petition Parliament by private bill where the complete divorce *a vinculo matrimonii* was desired. After 1798, the basis upon which the relief was granted by Parliament was a decree *a mensa et thoro* (the judicial separation) already pronounced in an Ecclesiastical Court, together with a

verdict for damages against the adulterer recovered in an action for "criminal conversation" as it was called. The religious or moral view was strongly in evidence, as is shown by this requirement of proof of a successful punitive foray in the courts against the meddler. The morality of the day was further safeguarded by the requirement that the petitioner was obliged to attend the bar of the House there to give assurance that there had been no connivance or collusion—those two bugbears of petitioners and their advisers of the present time—and that he had not conduced to his wife's adultery by withdrawing his marital protection from her. Adultery was the only ground upon which a divorce bill could be presented to Parliament and ordinarily relief was granted to husbands only. There are four recorded cases in which Parliament granted divorce to the wife, it having been shown that the husband had committed adultery in circumstances considered to be an enormity and an aggravation of his offence. There, too, arose the idea of provision for the erring and divorced wife, for an official of the House of Commons had cast upon him in his capacity of "The Ladies' Friend" the duty of seeing that some moderate provision was made for her so that she should not be left destitute. In those days this was a minor incident of divorce. The times have changed.

In 1857, following upon the findings of a Royal Commission appointed to inquire into the law relating to matrimonial offences, the *Matrimonial Causes Act of 1857* was passed. The Act created a new court—a civil court—to administer the law of marriage and divorce. Failing as it did to give full effect to the views of the Commission, the Act nevertheless effected striking changes. It preserved in the form of the judicial separation the old divorce *a mensa et thoro*. The grounds for divorce *a mensa et thoro* had been adultery and cruelty. To these the Act added that of desertion for two years or more. Further it provided for decree, by the new court, of divorce *a vinculo matimonii*, the complete divorce, which was to be granted on the same grounds as had been recognized by Parliament; namely,

adultery on the part of a wife and, in the case of an offending husband, adultery coupled with such aggravation as incest, bigamy, rape, sodomy, bestiality, cruelty or desertion.

Connivance, condonation and collusion were made absolute bars to the granting of a decree, while discretionary bars, that is to say, bars which might be raised against divorce in the discretion of the court upon a survey of the material circumstances of each case, were also incorporated. These were petitioners' own adultery, delay, cruelty, desertion or conduct conducing to the adultery of the offending spouse. All of these are in fact in our divorce laws in Victoria, having been first introduced by our Act of 1861.

In Victoria we have the result of the compromise, or conflict, between the sacramental and contractual views of the matrimonial relationship. Our Marriage Act preserves the old divorce *a mensa et thoro* in the form of the judicial separation. It is the recognition in this new world of the ancient religious ideal of the indissolubility of the marriage tie, of the sacramental and mysticized conception of some thing which the vast majority of people would prefer to rationalize. From the point of view of the mental and moral health of our people it can serve no good purpose. It separates but does not free the parties. It places them under grave social and physical disadvantages. It is the putting into effect by the law of a "dog in the manger" doctrine, the unwanted bone being the deposed spouse—a doctrine repugnant to humanitarian considerations and one which, in its unhappy effects, one knows has been a frequent cause of danger to moral, mental and physical well-being. The Courts are notoriously reluctant to make this decree of judicial separation, and the law itself, whether by design or accident, places a successful petitioning wife under the practical disadvantage of not being able to obtain security over her husband's property for the payment of any order for alimony which may be made in her favour. No one would wish to deny to persons who hold the "sacrament" idea of marriage appropriate relief consistent with their religious convictions; but the deplorable aspect of the

judicial separation is that it allows one spouse to force upon his or her partner the unpleasant consequences of the injured spouse's religious belief even where the offending spouse does not share such a belief and has never been required to do so either before or during the course of the married life. Further, the delinquent partner is not consulted as to the method of discontinuing the state of cohabitation. The judicial separation places in the hand of the aggrieved and vengeful person a cruel weapon; and he or she, though holding no religious belief, can invoke this means of holding imprisoned another human being for whom the petitioning partner has no affection, respect or manner of use whatever. It is an instrument placed by the law in the hands of persons in many cases ignorant, unthinking, insensitive and base, wherewith the life of some other person may be ruined. The law does not allow all and sundry to carry weapons of offence; but its respect for an irrational belief born in a world which was virtually universally illiterate leads it to allow every person who enters the portals of matrimony to arm with a weapon capable of doing harm at least equal to that which may be done by the pistol or bludgeon of the practitioner of the grosser forms of crime.

Another instance of the persistence of the religious view of marriage is provided by the fact that adultery, still a primary ground, has since a very early date been a ground of divorce, either *a mensa et thoro* or *a vinculo matrimonii* according to the period of which one speaks. The earliest scriptural admonitions concerning woman described her as an entirely undesirable element in a godly world. Such writings, whose teachings were the basis of English divorce laws for many years and to a great extent still are, record the history of woman's degradation. She was treated, a man was enjoined to treat her, as a chattel of the male. The references to be found concerning her are gross and insulting. In effect, the faithful were told that, if they could not find surcease from sexual torment, they should take to them a woman. It is better to marry than to burn,

we are still told upon certain occasions. Having taken the woman, the male was enjoined to refrain from anything but the barest possible minimum of physical commerce with her. He was, if he lay with her, to do so only for the purpose of procreation. It was sinful that he should seek pleasure in his wife's embrace. And if she, breaking the rule of continence, were to tarry with another, she had sinned against the law of self-abnegation and had assisted at the infringement of her husband's proprietary right in her, and she was to be cast out—a line of reasoning somewhat akin to that of a certain politician who objected to the running of trains on the Sabbath on the mixed ground that such an activity was sinful, *per se*, and anyway could not be made to pay! The possessive attitude of the male was given the fullest protection. The seeds were sown which were to become a torment to mankind. The foreshadowing of the existence of all the unfortunate, self-tortured *Soames Forsytes* of the world lay, one suggests, in such early teachings. The medical members perhaps can tell us whether the possessive impulses of married people are implanted in them by nature or whether they have been acquired under such early influences as those to which I have referred.

Divorce on the ground of adultery on the part of the husband appears to have arisen partly as a punishment for his lack of conformity with the religious duty of propitiation or sacrifice by self-abnegation; partly as a deterrent against invasion of the proprietary right of another man in the delinquent female, whether the female was the injured man's wife or daughter. For the position of woman, whether wife or daughter, until comparatively recent times has been one of utter subjugation to the male. The phrase "giving in marriage" had a literal significance not perhaps realized in the present world of near-equality of the sexes.

Upon any logical ground it is difficult to understand why adultery should be cause for divorce. The fact that it is might be supported by the argument that while men's and women's possessive impulses toward their spouses are as

strong as they now are, it is an expedient method of keeping the King's peace; or it may be that it is desirable that someone should be obviously liable to support offspring; one thing is certain—the punishment for adultery is out of all proportion in its severity, to the gravity of the offence. In the case of the great majority of people, to be found guilty of adultery is to face a real risk of social and material ruin. In the case of a member of either of our professions, calamity is inevitable, rehabilitation almost impossible. The fact that to many younger people the conviction for this class of irregular behaviour is of no great importance and is not considered disgraceful is an indication of a changing world. It is a change which may shock many, while it may console those few who would like to live a life regulated by reason among people who cannot accept as good that which their reason rejects as bad.

The contractual theory of marriage, it is suggested, coinsides with humanitarian ideals. That this theory finds a place in our present law is evidenced by the inclusion of such grounds for divorce as desertion, habitual drunkenness, attempt to murder, assault with intent to do grievous bodily harm, cruelly beating and lunacy. But there is still the disparity of treatment between the sexes in the case of adultery; one act of adultery by the wife is ground for divorce; the husband, speaking generally, must be proved to be guilty of a repeated act. Whether the reason for this distinction is the supposed existence of a stronger sex impulse in the male I know not. The doctors, no doubt, will be able to give us some enlightenment.

Even where a delinquent spouse has a matrimonial offence proved against him or her, it does not necessarily follow that the injured spouse will be granted a divorce. The law, in its infinite mercy and loving kindness, has raised certain bars to the dissolving of a bond perhaps urgently prayed for by both husband and wife. These legal barriers are, as I have already said, known as absolute and discretionary bars respectively. The absolute bars are those which, despite the enormity in the eyes of the law of the matri-

monial offence committed by one party, debar the injured spouse from obtaining the relief of divorce. They are not constituted by conduct which would give a right of divorce to the other spouse.

The first of these which I mention is condonation. Condonation may be defined as "that form of forgiveness which amounts to a blotting out of the offence as if it had not occurred and the reinstatement of the offending party to the position which he or she formerly occupied." It is always a conditional forgiveness which may be forfeited by further matrimonial misbehaviour. With such a provision one can hardly quarrel.

The next absolute bar is connivance. Shortly defined, it is the consenting by one party to the commission of adultery by the other. Although the petitioning spouse may be spotless as far as any conduct amounting to a ground for divorce is concerned, if he consents, expressly or tacitly, to the commission of adultery by the other party, he is absolutely debarred from relief. This is the survival of an ecclesiastical rule and may have interesting results in practice. If a man takes what might be thought by many to be the noble view that his partner is not his possession, that he has no proprietary right in her, that she ought to be free to do as she wishes with her mind or body, and, so thinking, consents to her acceptance of the embraces of another, and does so consent from a sense of respect for his partner's right to an individual existence, the court will not and cannot allow the parties to be divorced. A person of sufficiently idealistic temperament to think in the manner which I have suggested may feel that, despite his continued affection for his vagrant partner, such partner would welcome her freedom. He consents to, or stands by and permits, her "misconduct" and decides to liberate her. He cannot; the ecclesiastical rule arises and he is told that his wicked conduct has disentitled him to divorce. And so the law, the repository of stern morality, condemns at least two people, by now no doubt estranged, to live almost inevitably what it deems to be an immoral life. (The speaker here

referred in some detail to Mr. A. P. Herbert's *Holy Deadlock.*)

The third of the absolute bars is collusion. There is no precise definition of the term, which has from time to time been somewhat vaguely and variously defined by judicial pronouncements. Very widely put it may be stated as the condition created "where the parties act in concert with each other as to the initiation or conduct of a suit with intent to impose upon the court." It has been said with that ingenuous trust in their fellow-men so often exhibited by members of British judiciaries that "proof of concert even as to matters which are true renders it impossible to be sure that the truth has come out and to that extent the court is imposed upon." No matter how genuine the ground for divorce, how sincere and compelling the desire of the parties' liberation, if there is collusion or, as the last quotation shows, the mere suspicion of lack of frankness, the divorce must be refused. Can such a position be justified? Would it not be better in the interests of society, in the interests of the law which survives only by virtue of the respect which the governed bear for it, in the interests of the particular victims of its working, that some form of divorce by consent of the interested parties should be allowed. Banished then would be the miserable shifts to which honourable people are now put, the trickery and perjury of the divorce courts would be greatly reduced and the respect of the people for the administration of the law would be strengthened. The law relating to collusion is also a survival of ecclesiastical practice.

We pass from the absolute bars to a necessarily short consideration of the discretionary bars. Wherever there arises what is *prima facie* a discretionary bar, it is the duty of the court to examine the matrimonial circumstances surrounding the case and to decide whether it will bar the divorce or not bar it. The court has to use its discretion, having due regard to the welfare of the parties and considerations of matrimonial morality. The only fixed rule is that there is no rigid rule. It may be said, in general

terms, that a petitioner must come into court with clean hands and if he fails to do so he may be debarred from relief.

The first discretionary bar which I will consider with you is that which arises on proof of petitioner's adultery. Here the court's discretion is brought to bear upon the matter and it is bound to remember that the authorities state that the exercise of the discretion in favour of an offending petitioner must be cautiously used. The theory is that the benefits receivable at the hands of the court are not to be given to those guilty of this form of matrimonial misconduct. The rule purports to rest upon the foundation of public morality and the duty of the courts to impose a high standard of matrimonial obligation. In the earlier cases the discretion was used somewhat ruthlessly against petitioners. But the modern tendency is to regard each case in the light of its peculiar circumstances and to bear in mind that ideas of morality vary from time to time and place to place. Where the whole of the circumstances palliate or render pardonable the petitioner's lapse, the court as a rule will exercise its discretion in favour of the petitioner. One can imagine a person of cosmopolitan mind deriving great amusement and sardonic satisfaction from the smugness of some of these tenets of the law. But for the present they are real and bring neither amusement nor satisfaction to those who find themselves within its web. If one may discard the mystical ideals of ancient days and regard the matter as contractual in character, and if one remembers that the institution has in a general sense become so far contractual as to entitle one party to his release from the union upon a breach by the other, then surely one would think that breach by both parties constituted by adultery on the part of each ought to call more strongly still for divorce. But no! The law in its wisdom says, "You have both broken your promises of fidelity; you have both failed in your duty of propitiation by sacrifice; you are both by now probably repugnant to each other. That being so, by all standards of reason the bond that held you has been rent

asunder by your impious hands. But we, the law, will forge new chains to bind you still together. You will have a direct and powerful incentive to commit further adultery, as long as you are tied together and no reasonable man can suppose that you will refrain from doing so. This being the case, for the sake of *public morality* we will leave you in that position of permanent temptation. And may some other power have mercy on your souls, for we have none." This is a result of the over-emphasis of the religious or moral view and survives from the ecclesiastical practice.

The next discretionary bar is that of wilful neglect or misconduct, which has conduced to the adultery of the defendant spouse. The rule is that a husband who has exposed his wife to temptation in the form of the addresses of other men should not be allowed to cast her aside after she has yielded. The rule is of very doubtful value in these days of comparative enlightenment. Like several other matters which I have mentioned, it arises from the past when woman no doubt was the weaker vessel and, it was considered, had to be saved from the inherent weakness of her sex and when the Crusades gave a fillip to the locksmith's trade; it has to do with much that is no longer appropriate. It is a survival of the ecclesiastical practice based on the doctrine of possession and control of a woman by a man and of a woman's abysmal inferiority to him whom she and he now both recognize as her mate.

Still another barrier—that of delay—may confront the hapless petitioner. Here again the law obtrudes the "moral" element, for, if the petitioner, by his delay, shows himself to be "insincere" or "insensible to the wrong he has suffered," the court may refuse the decree. What if he has taken a rational stand, has delayed out of consideration of the effect of divorce on others, has suffered no sense of having been wronged? Should not he and his presumably already departed spouse be liberated?

And now we come to the bar which may be founded upon petitioner's cruelty. Here, you say, at last the law has shown that it has a heart to beat for its people in their

sorrows; here is at least one marriage law which embodies a great and human truth, whatever the inherent weakness of that truth may be, and which permits of a *tu quoque* reply by a victim of cruelty. Hear then the law itself: "Cruelty must always tend to weaken affection, which is of itself a strong safeguard of conjugal fidelity and if it drives the wife from the home and exposes her to the temptations consequent upon an isolated position, it can hardly in any case fail to be regarded as a cause conducive to her fall." Unfortunately, one cannot indicate exclamation marks in a spoken address. Again, in this case, the law, like so many apparently charming people one has met, becomes distressingly moral just when one had expected it to become human. The rule is, in its essence, of ecclesiastical origin. It is right, one suggests, but for a wrong reason.

The last discretionary bar to which I refer is that which may be raised by desertion by petitioner. In this case, too, the contract having been broken by both parties the law may say, as it has done upon occasion, "Your marriage will not be dissolved, deserting petitioner, but you will be granted that measure of relief constituted by judicial separation; and may you be blessed in that condition of suspended animation in which you will thereby be left." Happily, while such a position is possible of creation to-day, one has not heard of such a case during recent years.

It is hoped that in a great deal of what I have said the theories of religious and contractual character respectively have been made clear. It is suggested that the law of divorce whereunder we have our present matrimonial being exerts a detrimental influence upon the people. People will not obey a law, whatever its sanctions, which is repugnant to the outlook derived by them from the conditions under which they live or which, for any reason valid in their view, is unacceptable to them.

There can be little doubt that the institution of marriage bears heavily upon a great many people. The cause of this, it is suggested, is twofold. On the one hand is the law which fails to adapt itself to the standards set up by circumstances

unpredictable when our matrimonial law ceased to grow; on the other hand there is the grave ignorance on the part of people most vitally affected of even an elementary knowledge of matters pertaining to their own and their partners' sex. It is in the latter aspect of the problem that a society such as this could achieve much to soften the asperities of the law as it affects these people, both by means of public education and of the use of opportunities given to many of us in the daily course of our practices. The all-too-familiar case of sexual maladajustment, curable by self-help but suffered in ignorance, presents itself to the mind. Its manifestations are many; a number of them recur with frequency, in our experience. To choose at random, there is the common failure of marriage caused by the view of the unawakened woman, uneducated in sex, that sexual intercourse is disgusting. Sex, in her mind, is mistily interwoven with impropriety. She does not know that her ideas of propriety are not of divine birth, but have been nurtured in her by centuries of woman's bowing to the economic blast and clutching to herself her one great asset, virginity, in the knowledge that if it were lost untimely she would be left unprovided for; or, if she should squander her precious property of chastity after provision had been made for her by a husband, she would risk being cast forth homeless into a hard world. These unrealized considerations, economic in origin, have created in her mind an inhibition against physical intercourse; certain religious views have been implanted in her, and sex has become "disgusting." There is also the common case of the dissatisfaction of a normal woman, and its consequent unhappiness, caused by the "impetuosity" of the husband in the act of coition. There is the pathetic case of maladjustment where one partner makes excessive physical demands upon the other. There is, too, the case which reaches the court or the consulting room because of the forced abstention from physical commerce by one healthy spouse because of some form of psychological impediment in the other: reaching the court by petition against the thwarted party on the ground of

adultery, unnatural offence or desertion: or reaching the consulting room as a "nerve" case indirectly caused, in the case of one who prefers not to seek the natural but extra-marital means of relief, by some such substitute as the indulgence in auto-erotic manipulation—a practice, we are told, harmless in itself if resorted to in moderation, but harmful in the extreme if accompanied by a consciousness of "sin." There are, again, the cases of intellectual mis-mating and the very common and numerous types of failure which fall under the too-vague and certainly unscientific heading of temperamental incompatibility.

In these cases which I have so lightly touched upon there lies a wide and inviting field for the medical practitioner: a field, which at present is, if one is correctly informed, a dark continent to the medical and the legal profession alike.

Education, such as some our medical members are capable of giving, would do much to ameliorate the life of many an unhappily married person; would do even more to prevent catastrophe if imparted to those who in the normal course of living will enter upon matrimony.

Where does the subject of sex stand in the thoughts of most of us—even such of us as are members of this society? At the very seat of learning it is still a subject of furtive jest; and the origin of us all is something of a shameful fact. It is strange that the mysticism with which religion has invested the subject should have converted the abiding miracle of reproduction of our kind into a source of humour for the tap-room and the music-hall and laid upon the members of our professions as upon the greater number of people, intelligent or otherwise, the taboo which enjoins upon us a becoming silence. Would it not be better if, for instance, the medical profession were to engage in the teaching of the rational use of contraceptives or if both of our professions were to advocate the legalizing of abortion where good cause for such were shown. How much better if in many cases the lawyer could persuade the separating couple to consult their doctor, rather than to petition the court to sunder a bond rendered unbearable by ignorance.

With legislation such as I have suggested and with a wider knowledge of the governance and direction of man's strongest impulse, much could be done to rid us of cases of psychological impotence and their allied border-line cases, by removing from both male and female mind the mental obstacles to intercourse caused by the fear of inability to support offspring or of the pangs and terrors of childbirth —a fear created in the male by the possible suffering to be endured by the object of his affection and in the female by perhaps a former distressing experience or by the lack of any experience.

Amongst the non-sexual abuses caused in our social life by the impossibility of obtaining divorce upon rational grounds is the course of trickery into which many lawyers and their clients are forced in their endeavours to circumvent a law which is regarded by them as archaic. A very experienced King's Counsel once remarked to me that if ever a really decent and honourable lawyer were to suffer the expunging of his name from the roll of practitioners, the cause would be the too strong enlistment of his sympathy for some divorce client. There is, too, the disrespect for the law bred in the minds of the people who chafe under its outmoded canons and who, when they come before the court, perhaps imagine they discern a conscious blindness on the part of humane judges, and leave the solemn precincts suspecting that the court counsel and client have been engaged in what I understand is commonly referred to as a "ramp." With this is bound up the inevitable lessening in the minds of all concerned of the importance of the sanctity of the oath. And the whole vulgar escapade, as many an undefended suit may be described, is carried out in the presence of, frequently with the assistance of, that undesirable class of professional witness, the private inquiry agent. Nor can there be very great doubt that the courts themselves in many hard cases act with a complaisance not to be encountered in any other jurisdiction. If we think that the law is of no great importance and that our courts ought not to retain our respect, these matters are of mere passing

interest. But if we feel that the rule of law must be paramount and that our judges are to be kept high in our estimation, as indeed they now stand, these facts assume the nature of distressing truths of which we would do well to rid ourselves.

The law of marriage and divorce will not be altered until public opinion emerges from its state of blind antagonism or apathy and becomes an informed and militant agent armed with the weapons of knowledge and reason. Doctors and lawyers can do much to further the cause of government by humane and rational rules of conduct. But I fear that as the lawyer hates change, so the doctor shuns adventure. If that is true, it does appear that the two professions best equipped to attack the matter will be lacking in their duty.

I suspect that many of you may feel hostility towards the opinions I have given. Some will say, "If divorce is to be made easier, what of the children of the marriage?" I have no medical knowledge, and know little of psychology. But I have the temerity to assert with confidence that the impressionable and sensitive mind of any child will fare better in the placid area of the affection of one parent than in the arena of matrimonial conflict into which any home is converted when parents become antipathetic to one another.

Reverting to my main theme, I feel that the cause of the unpopularity of our divorce law lies in the perpetuation within it of much of the ancient ecclesiastical law which is no longer applicable to our state of civilization, and the bases of whose doctrines our society no longer accepts; and in the consequent comparative difficulty in obtaining dissolution of marriage on grounds which appear to a great number of people to be eminently reasonable. It has been said that marriage is a life sentence. If that is so, it is one of the few sentences known to the law of which there is no remission for good conduct. The bad prisoner who infringes the rules may be liberated from imprisonment. The good prisoner who obeys the rules, however galling, may be there for life.

We must not romanticize marriage but must accept it as

being fundamentally the physical union of a man and a woman. When this fact is recognized and sex is given its proper place in our life, neither determinedly ignored or inordinately exalted, a greater number of men and women will enjoy a greater degree of amity in their matrimonial relationships. The attainment of such a happy state of affairs depends for its effectuation upon just such people as are the members of this Society.