

A HISTORY OF DIVORCE

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1712

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By

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TO VIEW
AIRFOOTAGE

PREFACE

SO far as I am aware, there is no book in the English language which gives a concise and simple account of the history of divorce, and there is no modern problem in which the historical and comparative study of law and opinion is so essential for those who administer or make the laws, and all those who wish to have an adequate knowledge of the subject in its modern bearings. The extraordinary diversity of laws and opinions which exists in modern countries of the same degree of civilisation, often professing the same religion, when seen in the light of history is found to have certain common elements which show that substantially the same forces have been at work in their evolution. The object of this book is to explain, as briefly and simply as I can, how this diversity came about, to endeavour to deduce from the facts of history the tendencies of thought and legislation, and to ascertain the principles which, according to the teaching of history, ought to be applied to modern legislation on the subject.

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“It is mostly in periods of turmoil, strife and confusion,” says William Morris, “that people care much about history,” and it cannot be denied that the present is a time of unrest and dissatisfaction with many institutions dating from bygone days which profoundly affect the welfare of mankind.

“History of this undefined and international cast, which shows the same wave beating upon many shores, is difficult,” as the late Lord Acton said, but the fact that the wave is the same in substance, though different in form and volume in different generations and countries, renders the difficulty not insuperable. It will be found that that wave, as applied to the history of divorce, is composed of almost equal parts of liberty on the one hand and dogma on the other, as represented by the principles of the Roman and the Ecclesiastical or Canon laws respectively. In other words, the history of divorce is not the least important, and is certainly one of the most typical chapters of the “History of Freedom,” and its land-marks are those of that history.

It need hardly be said that this book does not claim to be a complete history of the subject, especially as it has been written, for the most part, thousands of miles away from

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the great libraries and historical repositories of Europe. Such a history, covering the period of this book, the whole of civilisation from the beginning of Christianity to our own time, would have required not twelve short chapters, but as many long volumes, and, according to modern methods, at least as many persons to write it. The maxim of Erasmus—"Read first the best books on the subject which you have in hand"—may, however, be borne in mind. I have therefore sought for principles and tendencies rather than a mass of detail, and the reader who is more fortunately placed will be able to obtain additional illustrations and details from his own reading. It has been my aim to seek the original sources in the texts of the laws themselves, which reflect the aspirations of those who made them and the state of mind of those who were expected to obey them, and in the leading authorities of the different centuries and countries under review. I have also tried to show how the various intellectual, moral and religious movements affected law and opinion on the subject, and for this purpose I have made full use of the most authoritative general histories. A book like the present, which deals with what Lord Acton aptly called "the remunerative but perilous region where religion and politics con-

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flict," could not have been written without estimating, and in some measure criticising, the operation of the various religious beliefs on the theory and practice of divorce. Such beliefs have been treated throughout, not on their theological merits, but solely as historical forces, and wherever dogma has been made into law it has been treated as law.

The principles of legislation which are enunciated in this book appear to me to be clearly deducible from the authorities which have been accessible to me, and I have as far as possible allowed those authorities—many of them for the first time—to speak for themselves in the plain and simple language of our own day. This little book will, it is hoped, serve as an introduction to those who wish to study the subject in greater detail or in relation to any particular country, and it will not have been written in vain if it is the means of encouraging a spirit of greater sympathy and tolerance towards those—especially women, who have had little or no voice in the making of the laws—who are, often through no fault of their own, made to suffer for the well-meant but often misguided laws and opinions of our ancestors.

I should like to take this opportunity of thanking all those who have been kind enough