



## ON BENEFICIAL RESTRICTIONS TO LIBERTY OF MARRIAGE.

**T**HE object of this article is to point out how modern scientific doctrines may be expected in the future to affect the personal liberty of individuals in the matter of marriage. Up to the present period of the world's history the social struggles of mankind have been principally directed towards the attainment by the individual of an ever-increasing emancipation from the restraints exercised over him by other members of society. One of the most prominent ideas of Christianity is the personal responsibility of each man for the salvation of his own soul, and, as a consequence, his mental independence from others;—any other idea than that of the complete independence of his bodily frame would not be likely to present itself to the mind until evolutionary doctrines had obtained a considerable prominence. But these modern doctrines go to show that our mental, as well as our bodily structure, is the direct outcome of that of preceding generations, and that we, the living generation, are like the living fringe of the coral reef resting on an extinct basis afforded by our forefathers, and shall in our own turn form a basis for our descendants. We are now beginning to realize that the members of a society form a whole, in which the constituents are but slightly more independent than are the individual cells of an organic being; and indeed, according to the belief of many great physiologists, each cell is to a certain extent a distinct individual, and vast numbers of

such individuals are in fact associated in a colony for the purpose of mutual assistance, and form in the whole a living organism. I have in this article assumed the truth of evolutionary doctrines, and persons who do not accept them will find the force of what I have to say either much weakened, or wholly destroyed.

Mr. Freeman has recently remarked,\* that the temptation which besets our particular society is a temptation to make too little of the commonwealth, to set the interests of the particular member before that of the whole body, and generally to put what is private first and what is public second. The laws of inheritance have now shown us the intimate relationship which subsists between our progenitors, ourselves, and our descendants; it appears, then, likely that we shall hereafter be driven to resist the temptation above referred to, and shall, in the endeavour to promote our descendants' welfare to some extent subordinate the interests of the individual to that of the community, in the initiation of new restrictions to liberty of marriage. It will be objected that the regulation of the daily increasing intricacies of our civilisation does now afford, and will still more in the future afford, sufficient, or even too much, to fully occupy attention, and that the future must ever be allowed to develop itself without attempts on our part to influence it; but in answer to this I may point out that in compulsory education, vaccination, and sanitary matters we are even now making attempts to control the future, and that as our scientific knowledge becomes more extensive, and the consequent power of predicting the future increases, we shall see the wisdom of extending further and further the scope of this class of legislation. Simultaneously with the diffusion of the belief in the truth of the doctrine of heredity, will come the recognition that it is as much a duty to transmit to the rising generation vigorous minds and bodies, as to hand down to them a firmly constituted society and government—to which latter point attention has hitherto been almost exclusively directed.

It is in his own case alone that man ventures to neglect the knowledge he has acquired of the beneficial effects of careful breeding. Dr. Prosper Lucas observes †—

“Malheureusement, l'homme dans le rapprochement sexuel des animaux, même par son intérêt, considère l'avenir et le progrès de la race, tandis que les familles, malgré des intérêts, plus graves et plus sacrés, n'ont en vue, dans le mariage, que le présent immédiat et que l'individu.”

And this neglect appears likely to continue so long as the pernicious idea generally prevails that man alone of all animals is under the

\* “Fortnightly Review,” April 1873.

† “Traité de l'hérédité naturelle du système nerveux.” Baillière, Paris, 1850, p. 914, vol. ii.

personal and direct management of the Deity ; and yet what believer in evolution can doubt that results as surprising might be effected in man, as are now seen in our horses, dogs, and cabbages ? Indeed Mr. Galton's work on "Hereditary Genius," by proving to demonstration the inheritance of mental qualities, seems to indicate that yet more startling results might be attained by turning our attention both to mental and physical qualities, instead of breeding almost exclusively for one group of qualities as in domestic animals. As Mr. Galton puts it,\* ". . . the human race has a large control over its future forms of activity,—far more than any individual has over his own, since the freedom of individuals is narrowly restricted by the cost, in energy, of exercising their wills. Their state may be compared to that of cattle in an open pasture, each tethered closely to a peg by an elastic cord. . . . Now the freedom of human kind, considered as a whole, is far greater than this ; for it can modify its own nature, or, to keep the previous metaphor, it can cause the pegs themselves to be continually shifted. It can advance them from point to point, towards new and better pastures, over wide areas, whose bounds are as yet unknown." Now there are two distinct methods by which we may shift our pegs for the benefit of the race. The first of such methods is by the selection of the best individuals as the progenitors of the succeeding generation, as we do with our domestic animals. In a very curious and interesting article,† Mr. Galton has recently given us his ideas of a scheme, whereby he hopes that this method may be ultimately made applicable to the improvement of our race. It consists in the formation of a quasi-caste of those endowed above the average in mental and physical qualities, and who would by early intermarriage (for to them success in life would be almost assured) diffuse their qualities throughout the nation. Could such a caste be formed, its effect would certainly be enormous, but its formation might perhaps produce results of more doubtful advantage in our other social relations,—what for example would be the consequences of the division of society into groups of *corps d'élite* and refuse ? The doubt, too, arises whether the means proposed for the creation of this caste are adequate to the desired end.

The second and less efficient method is by the prevention of breeding from the inferior members of the race,—a result brought about by one form of "Unconscious Selection"‡ among savages, when they kill off their inferior dogs and other domestic animals to support themselves in times of famine. This is the method which forms my groundwork in the present article, and I for my part feel little doubt that it will be the one which will be adopted, at least at

\* "Hereditary Genius," p. 375.

† Fraser's Mag. for January, 1872.

‡ "Darwin's "Origin of Species," p. 37, 5th edit.":

the beginning. I am desirous of pointing out some of the ways in which our liberty of marriage may be affected by the adoption of this method, and not so much to indicate definite schemes of legislation, as to bring to a focus some of the considerations to be taken in initiating such schemes.

The greatest misfortune of mankind, and that which it appears we ought first to combat, is insanity. I confess that, until I looked into the subject, I was not aware how imminent our peril is, and as probably many of my readers are in a like ignorance, I will give a few quotations from a work of great authority on account both of the ability of its author (Dr. Maudsley), as well as of the care with which he has collected and collated his facts. I refer to "The Physiology and Pathology of Mind." Dr. Maudsley finds from his statistics \* that one person in 500 in England is mad, and adds that, "Theoretical considerations would lead to the expectation of an increased liability to mental disorder with an increase in the complexity of the mental organisation; as there are a greater liability to disease, and the possibility of many more diseases in a complex organism like the human body, where there are many kinds of tissues and an orderly subordination of parts, than in a simple organism with less differentiation of tissue and less complexity of structure; so in the complex mental organisation, with its manifold, special, and complex relations with the external, which a state of civilisation implies, there is plainly the favourable occasion of many derangements. The feverish activity of life, the eager interests, the numerous passions, and the great strain of mental work incident to the multiplied industries and eager competition of an active civilisation, can scarcely fail, one may suppose, to augment the liability to mental disease. . . . There seems, therefore, good reason to believe that, with the progress of mental development through the ages, there is, as is the case with other forms of organic development, a correlative degeneration going on, and that the increase of insanity is a penalty which an increase of our present civilisation necessarily pays." He then, after remarking on the comparative rarity of insanity amongst savages, gives the numbers of insane patients in England and Wales at three recent periods; he observes, however, that only a small proportion of the enormous increase which the numbers show is due to an increase of insanity in the population, but that it principally arises from the prolongation of life in the insane, from the greater care bestowed on them, and from the diminished number of lunatics unregistered as such. † "But when all due allowance has been made for these causes it must be admitted that a steady increase of about 1000 per annum in the insane population of England and Wales for the last seventeen years does seem to point to an

\* P. 229, *op. cit.*

† P. 230.

actual increase in the production of insanity, and even to an increase more than proportionate to an increasing sane population." It is to this conclusion (which has not, however, passed undisputed), that I wish to draw particular attention; for if it is true that insanity is heritable in a high degree,—and on this point some details will be given hereafter,—then it is clear that the increase of insanity proceeds in a geometrical ratio, and not by mere addition. Again, with reference to the proportion of the insane to the rest of the population, Dr. Stark\* has shown that in Scotland one person in 228 is insane, fatuous, deaf and dumb, or blind, and that more than half (6785 out of 11,514) of this proportion is made up by the insane and fatuous.

Dr. Maudsley gives it as the opinion of the most competent judges, that diseases undergo a transformation from generation to generation, that scrofula and phthisis† in one generation lead to insanity and idiocy in the next, and that it is "sufficiently evident that disease of one part of the organism will not only affect the whole sympathetically at the time, but may lead to a more general infirmity in the next generation, to an organic infirmity which shall be determined in its special morbid manifestations according to the external conditions of life." He gives, too, a known series of such transformations, in which drunkenness in the first generation leads to a quasi-mad tendency to drink in the second, to hypochondria in the third, and to idiocy in the fourth. In his work above quoted, Dr. Prosper Lucas also gives many authorities for such transformations; one sees, he says,‡ in the same family, "un enfant maniaque, l'autre épileptique, ou le même individu attaqué, tantôt de l'une et tantôt de l'autre, périr d'apoplexie." Madness, hysteria, epilepsy, convulsions, digestive derangements, spasms, tic, dyspnea, and other diseases are shown to ring the changes among themselves in the various members of a family.§ "Nul doute n'est donc possible, toute affection nerveuse idiopathique du père ou de la mère est susceptible d'offrir, sous l'action immédiate de l'hérédité, toutes les métamorphoses qu'elle peut revêtir indépendamment d'elle." The tendency to commit suicide seems closely allied to insanity, and of this he gives\* many instances; amongst the most striking is the following: ||—"D., fils et neveu de parents suicidés, prend une femme, fille et nièce de parents suicidés. Il se pend, et sa femme épouse, en secondes noces, un mari dont la mère, la tante et le cousin germain se sont tués."

There appears to be considerable difficulty in attaining any precise information as to the extent to which insanity and the allied maladies

\* "Contribution to the Vital Statistics of Scotland," Journ. Statist. Society, vol. xiv., p. 68.

† P. 233.

§ P. 804.

‡ P. 802, vol. ii.

|| P. 781.

are inherited, and there is consequently a great diversity of opinion on this point.\* The proportion is put by some authors, as Moreau (who examined 50 pedigrees) as high as  $\frac{9}{10}$ ths, by others as low as  $\frac{1}{10}$ th; the most careful researches agreeing to fix it not lower than  $\frac{1}{2}$ , if not so high as  $\frac{3}{4}$ . M. Béhic reports† as the result of the examination of 1000 insane patients in France, that out of 264 of the males, 128 inherited the disease from the father, 110 from the mother, and 26 from both parents; and out of 266 of the females, 100 inherited from the father 130 from the mother, and 36 from both parents; he further says (the italics are mine), "*Children born before the outbreak of an attack are less likely to suffer than those born after an attack.*‡" Dr. Lucas § is of opinion that the smallness of the proportion assigned by some authors as due to inheritance, arises from the difficulty of ascertaining the pedigrees of patients, and to the fact that in some cases account has only been taken of inheritance in the direct line; and he gives copious illustrations of the strongly heritable character of the various forms of mental derangement, and of the allied nervous diseases.

The general result to be deduced from these, and from other passages of a similar nature, seems to be that mental diseases are, and might *à priori* be expected to be, on the increase, and that, as I before observed, such increase will proceed by a geometrical ratio (although such ratio may not greatly exceed unity), that the extent to which the disease is inherited is enormous and very alarming, and that other diseases act and react on one another in the production of insanity.

Does it not appear then that we are bound to consider steps for the excision of this canker, and that those races which delay making the endeavour must fall behind in the struggle for life? Let us hope for the good of the world that the Teutonic races will take the lead in the attempt.

The most obvious way to deal with the matter is by introducing new restrictions to the liberty of marriage, and these need not be, in the first instance at least, of an onerous nature:—indeed, as in all other reforms, our only prospect of change within a reasonable time

\* Maudsley, p. 233.

† Maudsley, p. 248.

‡ With respect to other diseases, Dr. Lucas says, at p. 924: "Dans la vérole, on a remarqué que les premiers enfants nés de parents vénériens meurent avant la naissance, ou peu de temps après, et que les derniers survivent, comme si la dyscrasie syphilitique s'usait sur les premiers produits. Dans la phthisie, on a remarqué le contraire; les puînés sont beaucoup plus sujets à périr victimes de ce mal, que les aînés, engendrés avant son développement chez les générateurs. Borden et Baumes, enfin affirment que les scrofuleux, au premier degré, font les enfants plus sains que ceux qui le sont au deuxième ou au troisième."

§ P. 792, *et seq.*, vol. ii.

is, that the first step should be such as not to constitute any great disturbance of the existing system, and one which shall not too greatly shock the prejudices of opponents; it would be hopeless, even if it were desirable, to expect immediately any fundamental change in the marriage relationship. Moreover, by the gradual introduction of change, we guard against those unexpected effects which ever crop up in the working of any new scheme. Fortunately, a start may be made by a reform which is required on the grounds of abstract justice to the individual even more than on those of benefit to the race. If we bear in mind the result of M. Béhic's investigation, viz., that insanity is transmittable to a greater extent after the development of the disease in the parent than whilst it is still latent, we are led almost irresistibly to an enactment that when a divorce is sued for, it shall not be refused merely on the ground of the insanity or idiocy of either party. In order to introduce this change, the legal doctrine, that a person *non compos mentis* is incapable of defending himself, will have to be modified; but it is certainly a fact that in many cases the insane person is *not* incompetent for defence, and in others the fact of incapacity does not in reality weaken the defence,—and surely in all cases our judges may be trusted to point out in the charge to the jury, in what way the incapacity of the party invalidates the evidence. It might also prove necessary to give the court the power of assigning competent legal advisers to the alleged lunatic or idiot. Such a measure as this might prevent the possibility of a catastrophe so frightful as that portrayed in such vivid colours in "Jane Eyre," or of an act of injustice such as it is not improbable has been committed in a recent *cause célèbre*. Moreover, the change could hardly shock the prejudices of anyone.

A next step, and one to my mind as urgently demanded on the grounds of justice as the former, is that insanity or idiocy should of itself form a ground of divorce. The proceedings in the divorce court would in this case be merely formal, and consequent on the finding of a commission in lunacy; as, moreover, no slur would be cast on the character of either party, the divorce proceedings would lose much of their sting, and the patient, should he recover, would suffer in no other respect than does anyone, who is forced by ill-health to retire from any career which has been begun; although, of course, the necessary isolation of the parent from the children would be a peculiarly bitter blow. My first proposed step would most likely have but little direct effect; but it would, I imagine, do much for the diffusion of the belief in inheritance, as being a public recognition of the truth of such doctrines, and as drawing the attention of all towards the subject; the second step, however, might be expected to work a perceptible improvement. Might we not hope, too, that

its introduction would not excite so great an opposition as to be impracticable within a reasonable time ?

Further changes in the same direction may be made by providing that proof of having never suffered from insanity should be a prerequisite to marriage. And one may hope that in the distant future, the parties may further be required to show that their parents or even remoter ancestors and collaterals were likewise untainted ; this, too, is the more important as it has been shown by Dr. Prosper Lucas \* that innate characters are more strongly heritable than those acquired by the individual. The possibility, however, of the introduction of such measures as these is so distant, that it does not seem worth while to consider them further than by pointing them out as goals on the ultimate attainment of which our attention should be turned.

Besides the mental qualities of man, his bodily frame is urgently in want of improvement, and for this end also we need a substitute to replace the weakened influence of Natural Selection. *Mens sana*, moreover, loses much of its power of doing good work, unless placed in *corpore sano*,—so that even neglecting the consideration that by our carelessness we are laying by a heritage of suffering for unborn generations, we can only fully provide for the advancement of the human race by paying attention to physical qualities. There can be no doubt that the health of large numbers in our present highly civilized condition is alarmingly feeble, and that the advance of medical science will, by the preservation of the weak, only aggravate the evil for future generations. The extent to which, in the present age, the weak are placed almost on a par with the strong in the struggle for life has been pointed out in the “Descent of Man.”

There are many diseases which seem to require attention on account of their strong hereditary characters.† The lungs, the digestive canal, the liver, and organs of generation may be the origin of the most various forms of derangement, and give rise to convulsions, hysteria, chorea, and epilepsy ; and all these diseases are hereditary and transformable *inter se*. Gout,‡ scrofula, rheumatism, tuberculous, cancerous, herpetic, and syphilitic diseases are intimately related, and all are strongly heritable. A gouty constitution may develop itself in the form of asthma, dyspepsia, epilepsy, apoplexy, paralysis, madness, and many other diseases. Syphilis § “peut usurper toutes les formes morbides même les plus bizarres.” That consumption runs in families is too notorious to need any remarks on my part. We shall, to a certain extent, in combating insanity and idiocy, combat all these diseases, since, as was before remarked, they

\* P. 895, vol. ii.

† P. 810, vol. ii.

‡ P. Lucas, p. 805, vol. ii.

§ P. 814, vol. ii.



are mostly commutable with mental incapacity; but we can only make a really successful attack by compelling the production, before marriage, of a clean bill of health in the party, and ultimately in his parents and ancestors. Syphilis would have to be included, in case, as is only too likely, medical science and other preventive legislation should fail in depriving it of its hereditary character, or in confining its ravages to small limits.

At the end of his book \* Dr. Lucas gives his opinion as the result of his labours that, in contracting marriage, union should be avoided with persons near akin, with those personally affected with epilepsy, mental incapacity, phthisis, scrofula, &c., as well as with those whose parents, grand-parents, uncles or aunts are so affected; and adds that it is our duty not only to search for persons exempt from these diseases, but those whose personal and family constitution is good, and that, "ce devoir purement moral devrait être selon nous, en certaines circonstances, d'obligation légale."

The ultimate restrictions then to liberty of marriage would be (besides those already in force, less the absurd laws against marriage with a deceased wife's sister or husband's brother), (1) Divorce on the appearance of certain diseases; (2) The passing of a medical examination for this same class of diseases; and (3) The production of an untainted pedigree. The medical examination might in some respects be modelled on that in force in Germany for military service, where a man is not ultimately rejected until he has been refused in three successive years. Could such legislation come into force, coupled with some such scheme as that proposed by Mr. Galton, not only might "a cubit be added to our stature," but the capacity for happiness in the world might be largely augmented, by the destruction of that most potent cause of unhappiness, ill-health; several years might be added to human life, our ability for work and mental power immensely increased, and the coming race might end by becoming as much superior to ourselves in mind and body as the racehorse is superior in form to a shaggy pony.

Another measure very analogous to those of which I have spoken hitherto, would be an enactment that the felony of either party to a marriage should constitute a ground for suing for a divorce. Does it not seem monstrous that a person should be bound for life against his will to one who, having committed a crime, is held apart from communication with society? The tendency to vice, too, seems almost of the nature of a disease, and is without doubt hereditary; thus, by such a measure, not only should we free an individual from a hateful union, but we should be aiding in the formation of a rising generation less tainted with vice than the last.

\* P. 906, vol. ii.

In his "Enigmas of Life," Mr. Greg takes the most sanguine views as to the happy future of the human race in purging itself of the ills to which I refer in this article; but I have endeavoured to show that, according to the opinions of the most competent judges, with respect to insanity, idiocy, and certain other diseases, he is not justified in his hopes, at least if no wholly new influence comes into play, of which we are as yet unable to see any symptoms. As is not unnatural, then, Mr. Greg is of opinion that we shall not submit to any curtailment of our liberty of marriage; he says,\*—"Obviously, no artificial prohibitions or restraints, no laws imposed from above and from without, can restore the principle of 'natural selection' to its due supremacy among the human race. No people in our days would endure the necessary interference and control; and perhaps a result so acquired might not be worth the cost of acquisition. We can only trust to the slow influences of enlightenment and moral susceptibility percolating downwards, and in time permeating all ranks. We can only watch and be careful that any other influences we do set in motion shall be such as, when they work at all, may work in the right direction. At present the prospect is not reassuring. We are progressing fast in many points no doubt, but the progress is not wholly nor always of the right sort nor without a large *per contrà*." Is it not, however, pushing hopefulness to an extreme to expect morality to make so vast a stride as that to which Mr. Greg looks forward? Indeed, I can hardly think it reasonable to expect that a man should voluntarily sacrifice himself;—it would be analogous to expecting a man, who was bent on entering the army, voluntarily restraining himself because he becomes blind of one eye. It does, however, seem to me reasonable, that just as in the case of the army the country protects itself by causing its would-be recruits to pass a medical examination, so that persons of untainted blood, being convinced of the truth of heredity, should protect themselves and their descendants by debarring the tainted from entering the army of married life. Even Mr. Greg appears to contemplate the necessity of coercion when he says,† that the means or at least the prospect of being able to maintain children should be regarded practically as an essential pre-requisite to producing them,—probably under the control of an enlightened public opinion,—possibly as is not unknown in certain continental states, under legal pressure. Surely, then, if we are to prevent the rising generation from lacking maintenance in the future, we are, *a fortiori*, bound to prevent a rising generation from being formed which will be a curse to itself,—a curse the influence of which personal efforts will be powerless to arrest.

\* "Enigmas of Life," p. 118.

† P. 120.

In order to enable us to estimate the probability of mankind enduring such restrictions as those here advocated, it will be well to consider what restrictions men have already endured, and do now endure. It would of course be quite beyond the scope of a single article to enter into a full history of this point, even if my knowledge enabled me to do justice to the theme; I have therefore put together a short account of such restrictions as my reading has brought before my notice, without professing to treat the subject exhaustively.

In his work on "Primitive Marriage," Mr. McLennan has with great ingenuity, reconstructed the steps by which the marriage system has developed itself from a more or less complete promiscuity, and his views are now, as I believe, accepted in the main by the most competent judges. He draws his arguments from a comparison of the various stages of marriage extant amongst barbarous or semi-barbarous nations in all parts of the world, and also from a consideration of the old customs and "survivals" still subsisting amongst civilized races. *Endogamy*, or the custom whereby a man is bound to search his mate out of his own tribe, is traced as the earliest restriction to promiscuity, and seems to have been directly brought about by the struggle for life. The useless mouths of the tribe were to a great extent suppressed by the introduction of female infanticide—a custom which still prevails over a wide area. The men were thus almost *driven* to make raids on neighbouring tribes to carry off the women; the latter were generally in the earlier stages the common property of the men, and private property in a wife was forbidden. The survival of many curious customs, expiatory of the tribe's anger when a man assumed a wife to himself, affords abundant proof of the truth of this view. In early forms of partial civilization the tribe or family formed the unit, and almost all property was held communistically, so that it was almost impossible for a man, however bold or strong, to retain a wife for himself alone. It appears to me, too, that it is easy to see how the taking of a wife from within the tribe would serve as a proof that the man had not taken his share in the warlike exploits of the tribe; and would thus come to be regarded as a crime. Indeed, long after the state of perpetual warfare subsided, and when wives were no longer taken by violence, marriage within the tribe continued to be forbidden; and later the custom, whatever its origin, crystallized into a semi-religious abhorrence to internal marriages.

Existing side by side with this system, we find that of *Endogamy*, in which marriage outside of the tribe is forbidden. This probably took its origin in pride of race; and here external marriages are considered criminal, as tending to deteriorate the breed. Our still existing marriage customs prove the Aryan race to have been originally exogamic. The transition which sometimes takes place

from the exogamic to the endogamic system is one of the most curious and interesting parts of Mr. McLennan's book. I must refer the reader to the fountain-head for an account of how community of women, polyandry, and tribal organisation graduated respectively into exclusive property in the wife, polygamy, and the patriarchal system; I wish here merely to point out the great variety of the restrictions to marriage, and how at various times it has been forbidden to marry within the tribe, and without it; and unlawful for a woman to have but one husband, and lawful for a man to have many wives. One restriction, so curious as to deserve mention, is given by Mr. Spencer,\* viz., where a woman is married during four days in the week, and free the rest of the time.

The prohibitions to consanguineous marriages form another group of the restrictions which may be observed in every known system. Mr. McLennan traces it entirely to exogamy, but Mr. Tylor thinks it due to the observed ill effects of interbreeding.

The following brief account of the restrictions, obtaining in various parts of the world to marriage with kinsmen, is abstracted from Mr. Tylor's "Early History of Mankind," † where the various authorities will be found collected. In the civilized world the prohibition from such marriages stops at that of first cousins. Theoretically the Roman Ecclesiastical Law pronounces marriage unlawful to the seventh degree, and even as far as any relationship can be traced, but practically the restriction is reduced to the ordinary limits by means of dispensations. The Quakers do in reality forbid first-cousin marriages. In India a Brahmin is barred from marriage in the male line indefinitely. In China a man may not marry a woman of the same surname, and of such names there are but several hundreds; and two brothers may not marry two sisters. In Siam the prohibition extends to the seventh degree, although the king may marry his sister or even his daughter. Among the Dyaks first-cousin marriages are prohibited, and a fine imposed on second-cousin marriages; the restriction to marrying a relation is strongly marked in the Malay Peninsula. Among the Ostyaks two persons of the same name may not marry; the Tunguz forbid second cousin marriages, and the Samoeids and Lapps all degrees of consanguineous marriages. In Africa the marriage of cousins is illegal in some tribes; in Madagascar certain ranks, and persons akin to the sixth degree are not permitted to intermarry. Throughout a large district of East Australia the restrictions follow very intricate rules depending on the tribal names of the parties. Kinship by adoption constituted in ancient Rome a partial bar to marriage, and the same thing holds true among the Moslems with respect to foster-kinship. In the Romish Church

\* CONTEMPORARY REVIEW, Dec. 1872, p. 17.

† Pp. 281-9.

sponsorship creates a restriction, which, even among co-sponsors, a dispensation is required to remove. Two members of a Circassian brotherhood, not at all akin, may not marry.

I believe that amongst the Jews it is customary for uncles to marry nieces, and I have been informed by Dr. Farr that a similar custom prevails in the Isle of Wight, notwithstanding that English law does not recognise such unions.

Our present table of prohibitions (with the exception of those against marriage with a deceased wife's sister or husband's brother) seems a *juste milieu* between extreme restraint and extreme laxity; it may perhaps, however, come about that marriages of first-cousins may be ultimately prohibited, should the evil arising from such unions prove as great as is sometimes asserted.

Passing over a great lacuna in my knowledge, I now come to the Teutonic communistic bodies. My information is derived from an interesting pamphlet which has lately appeared at Berlin, by Karl Siegwart.\* In these feudal communistic bodies the right to marry and form a household played a great part as a means of reward and advancement. During the period of "ministerial service," when each man was bound to give all the product of his labour to the commonwealth, restraint to liberty of marriage was the rule, and only those might marry who had reached a certain age or position; not a soul dared marry without permission, and this permission was refused to soldiers, husbandmen, and artizans alike, during their apprenticeship. The households, the number of which was kept almost invariable, were partitioned out amongst the marriageable classes; and the majority had to wait for the deaths of their predecessors in office. Even the artizans in the free towns had to wait until they could buy the business of a deceased master, or marry his widow or daughter; and in the latter case, although the business was not at first strictly heritable, only if there were no son in waiting. Even in the lowest classes no one might marry until a household was at liberty for him. A great part of these institutions seem to have remained in almost full operation down to the Reformation. And even subsequently, breaches of these marriage customs seem to have been punished with frightful severity. The transgressor was thrown naked into a hole full of thorns, impaled, or buried alive; assaults on women were punished with death. The mother of an illegitimate child was exposed in the pillory, and either executed or graciously condemned to imprisonment; if the child was not yet born, she either committed suicide or was drowned by her relations, and the seducer caught in the act was castrated. Prostitution was not merely tolerated, but was secretly promoted as a check to over-population, as in Japan at the present day. Liberty to marry in these com-

\* Pp. 20—22 of "Der Communisten Staat," 3te Ausgabe. Berlin, 1873.

munities was in fact used as the highest reward for good service, and breach of the custom punished in the harshest manner.

As far as I know, all modern restrictive legislation has been entirely directed to the prevention of pauperisation. Thus in Switzerland a scheme was proposed and debated in the Legislature of the Canton of Thurgau, of which (as well as of what actually obtains in the Canton of St. Gall) Mr. Laing\* gives the following account:—“The first article of their (the Thurgovian) proposed law prohibits the marriage of males who live by public charity; the second requires that to obtain permission to marry, a certificate from the overseers of the poor must be produced of the industry and love of labour and of the good conduct of the parties, and that, besides clothes, they are worth 700 francs French, or about 30*l.* sterling. The third article of this extraordinary law in a free state makes the marriage admissible without the proof of this 700 francs of value in moveable property, if the parties have furniture free of debt, and pay the poor-tax of 1 per mille upon fixed property. Their legislation had sense enough to reject this absurd proposition in 1833. The canton of St. Gall, however, actually has imposed a tax on marriages; and to make it popular the amount goes to the poor fund. It fails because, according to Sir F. d’Ivernois, it is too low, being 46 francs, about 71 francs French, or 3*l.* sterling; and because it is not graduated according to the ages of the parties, so as to prevent early marriages.” Mr. Laing further states that in Germany commissaries have actually been appointed by some governments (Bavaria among others), who are vested with the power to refuse permission to marry to those whom they judge not able to support a family. They have a veto on marriages.

In Saxony an extraordinary facility of divorce exists.† “A separation of a husband and wife after three, four, or six weeks’ marriage is nothing rare or strange.” Marriage seems almost to amount to a temporary arrangement. In a village near the Kochel, out of sixteen marriages, after one year “only six of the contracting parties were still living together.” Mutual dislike is a ground for divorce (as is also the case according to the Prussian Landrecht and in Baden), and divorces have even been granted on account of drunkenness, staying out at night, ill-smelling breath, groundless complaining, and drunkenness of the father-in-law.!!‡ Sometimes, however, a fresh marriage is forbidden to the parties for four or five years. In Hungary, too, the same great facility of divorce obtains.

\* “Notes of a Traveller,” p. 341.

† “Transylvania, its Products and its People.” Chas. Boner. P. 483, *et seq.*

‡ P. 501.

Marriages between Catholics and Protestants are not acknowledged in Brazil, and a priest has even been known to celebrate a marriage between parties, one of whom he knew to have been previously married to a Protestant.\*

The examples which I have here thrown together are, I think, sufficient to show how great a diversity of marriage customs has at various times prevailed, and still prevails, amongst civilized nations. Does not this serve as an answer to those objectors who would say,—“We shall never submit to having our marriage laws more restricted”? For when one can point out so great a diversity of restrictions, many of which are no longer maintained for any good reason, it is surely absurd to say that nothing new will be endured, even though it may be founded on the best of reasons. Our state of civilization has so diminished the force of Natural Selection, that we cannot much longer afford to neglect some process of artificial selection, to replace the method which nature has been carrying on from the beginning, and that nation which has first the courage to adopt some such plan, must undoubtedly gain on others in the vigour of its members in mind and body.

To those who are inclined to regard all designs of improvement for the human being of the future as chimerical, I cannot do better than quote Mr. Spencer's words,† that there are now in existence “various germs of things which will in the future develop in ways no one imagines, and take shares in profound transformations of society and of its members—transformations that are hopeless as immediate results, but certain as ultimate results.” The germ in this case is the growing belief in the truth of heredity. There is no doubt that for a time such legislation, as here proposed, would be resisted, just as, in defiance of English law, marriages are now contracted with the sisters of deceased wives, and men refuse to vaccinate their children; but in course of time, as the knowledge of heredity percolates more and more from the educated to the uneducated, such legislation will probably be acknowledged as well founded, and will be universally acquiesced in.

The prospect of the institution of such schemes is certainly not immediate, and a man would be sanguine to expect to live to see them in operation; but, as is well known, the first stage in all reforms is that of discussion and diffusion of opinion, and as hitherto the possibility of improving the marriage relationship has been barely mooted, I have thought I might perhaps do some service by directing attention to the subject.

GEORGE DARWIN.

\* “Work of the Christian Church at Home and Abroad.” Strahan & Co., 1863: quoted in the *Spectator*, April 17, 1873.

† “Study of Sociology,” *CONTEMPORARY REVIEW*, Dec. 1872, p. 9.