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THE JEWISH LAW OF DIVORCE

The Jewish Law of Divorce. By DAVID WERNER AMRAM, M.A., LL.B. 224 pp. (Philadelphia, 1896.)

I AM glad to find in this treatise by an American Jewish lawyer the Jewish law of divorce discussed in a legal and scientific spirit. Men who are not lawyers always seem to approach the question of divorce from an impassioned and sentimental standpoint, and are therefore prone to do injustice to one system or another. I know men whose opinion is worth much upon other subjects speak of the Jewish law of divorce as something purely oriental and horrid to the more refined feelings of Englishmen. This little treatise by Mr. Amram will be a cure for much prejudice and ignorance.

Our views of marriage will necessarily influence our views of divorce. If marriage is a sacrament, then it should be indissoluble. Such is the teaching of the Roman Catholic Church, and such is the law of Italy at the present day, where marriage can be dissolved by death only. Since the Reformation the tendency in Protestant countries has always been to recognize the validity of divorce. In Prussia *mutual aversion* is regarded as a proper ground for dissolving the marriage tie. I do not say that marriage should be regarded simply as a contract, like all other contracts, voidable at the simple will of the parties; but as the object of marriage should be the happiness of the parties, including the children, it seems to me that the contract view of marriage, safeguarded by the appeal to the religious sentiments of the contracting parties, is the truer view, and the one which is likely to become more and more general in Europe. I know that it is often said that if divorce is forbidden, husband and wife are more likely to bear with the inevitable, and give and take. This may be so, but the argument does not seem to me to have the support of experience. I do not think that there is any evidence to prove that marriages are happier or morality higher in Italy than in Germany.

I think that the Jewish law of divorce, not as it is laid down in the simple command in Deuteronomy, but as it is developed by the Talmud and later Rabbis, is the expression of the true *via media* in this thorny question. According to the Pentateuch the husband could divorce his wife without ceremony, without the presence of a public official, without witnesses; and the wife was absolutely powerless. If she were injured, no redress was possible for her; her consent was not asked. Those Jews who flout Rabbinism cannot

do better than study Mr. Amram's book on the law of divorce. Law often implies ethics. Perhaps it always does, except in questions of mere procedure, and it will be found that the ethical legal concepts of the Rabbis are actually higher in this matter than those which are contained in the Pentateuch. We need not wonder at this. A living law never stands still, never becomes crystallized; and Rabbinism was a sincere attempt to preserve the Jewish system as a living system.

Mr. Amram's book is not a code or a digest, but in its fifteen chapters it gives a sympathetic account of the Jewish law, and an account which is true as far as it goes. The origin of the Kethubah is very clearly stated, and its importance demonstrated. The author shows how under the Herods the Roman law exercised its influence, and how it became the custom for some time for women to divorce their husbands, and thus explains the answer of Jesus in Mark x: "If a woman shall put away her husband, and be married to another, she committeth adultery."

It is often the custom to deride legal fictions. I feel a kindness towards them. They are signs, not of falsehood or of self-deception, but of an earnest desire for conservative progress. By means of a legal fiction it was possible in Jewish law to force a husband to consent to divorce his wife when his wife was able morally to lay claim to a divorce. In Mr. Amram's fifth chapter the question of an enforced divorce as consistent with consent is well treated. I may also refer to the author's remarks on the decree of Rabbenu Gershom of Mainz, and to his excellent summary of the rules of procedure in divorce taken from the *Schulchan Aruch*. These rules, though they seem trivial to the thoughtless, were intended to prevent the Get from being given hastily and without the authority of responsible officials. As a frontispiece there is a copy of the Get in the formula given by Maimonides in his *Yad Hachazakah*.

The present English law of divorce is a marked improvement upon the old state of things, when marriage could be dissolved only by a private act of Parliament preceded by a separation *a mensa et thoro* in the ecclesiastical courts, and a successful action for crim. con. in the common law-courts. But I do not think that a mark of an English-Jewish patriot is the regarding of 20 & 21 Vict. c. 85 as the highest height of inspired wisdom, and the Talmudical treatise of Gittin as the deepest depth of absurd folly. The English law halts between conflicting opinions. It cannot make up its mind as to whether divorce is penal or contractual, and the English law, backed though it is by public opinion, which gives the par-amour the right to marry the guilty wife, seems to me morally

lower than Jewish law, which is also continental law, and generally also the law of Scotland. Something should be done by our Rabbinical authorities to meet the difficulty of a husband divorced by the civil law refusing to give the Get to his former wife. This is no fault of the Jewish law, but the difficulty arises from our own want of jurisdiction.

Putting this aside, it does not seem advisable to abolish the Get, and it is logical that the Synagogue, which insists upon marriage between Jews being performed in accordance with Jewish rites, should also insist upon the divorce being performed in accordance with the same rites. The book of Mr. Amram will be useful, by its clearness and impartiality, in throwing light upon a difficult question. That it should have been written in America is a proof of a much stronger conservative spirit in American Judaism than we generally gave it credit for.

L. M. SIMMONS.

DR. MALTER ON AL-GAZZÂLÎ.

Die Abhandlung des Abû Hâmîd Al-Gazzâlî: Antworten auf Fragen die an ihn gerichtet wurden, von DR. HEINRICH MALTER. Frankfurt a. M.: J. Kauffmann. 1896.

THERE is no more interesting personage in the history of Arabic, or, more exactly, of Moslem, thought, than Al-Gazzâlî, who gained the names of Hagġat ul-islâm (Proof of Islam), Zain ad-din (Ornament of religion). He was born in the Khorassan in the year 1058, and died in 1111. He was director of the Nizamiyya College at Bagdad. He gave up his chair to make the pilgrimage to Mecca, and then taught at Damascus, at Jerusalem, and at Alexandria. He retired to Tus, his birthplace, and became in the end a member of the mystic sect of the Sufites, and composed there his celebrated works, the aim of which was to prove that Islam was superior to all other religions, to all systems of philosophy.

Even before the Abbasids had ascended the throne at Bagdad, and the Caliph Al-Mamoun had put forth efforts to propagate the science of Greece amongst the Arabs, Moslems had begun to think on the problems of theology. But it was from the rise of the Motazzilites at Basra that attempts were made to reconcile philosophy, especially the philosophy of Aristotle, with the truths of Islam. The names of Al-Kendi, Al-Farabi, and Avicenna at once occur to us. Al-Gazzâlî, however, was not a reconciler of Islam and philosophy. His aim was