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# DIVORCE IN ENGLAND 1700-1857

SYBIL WOLFRAM\*

Before 1700 there was effectively no divorce in England, that is, no means of terminating an existing marriage to allow remarriage during the lifetime of a spouse. The Matrimonial Causes Act of 1857 set up a special court to deal with divorce cases. Between 1700 and 1857 there was a system of divorce by private Act of Parliament.<sup>1</sup>

This paper is a study of the data from these private divorce Acts.<sup>2</sup> There were

\*Fellow of Lady Margaret Hall, Oxford. Aspects of this work were presented in a colloquium at the Department of Social Anthropology, University of Chicago, October 1981, and I am grateful for discussion. Supplementary points not repeated here are contained in S. Wolfram 'Anthropology and Morality' 1982, Vol. XIII, 3. *J. Anthropol. Soc. Oxford* 271ff; 'The Legalisation of Marriage between Step-Relations' Archbishop of Canterbury's Group on Affinity *No Just Cause* (1984) App. VI, 144-8; 'Facts and Theories: Saying and Believing' in Ed. J. Overing *Rationality and Rationales* Association of Social Anthropology Monograph (Tavistock Publications) (1985). I should like to thank the staff of the Oxford Law Library and of the House of Lords Records Office for assistance in the location of divorce Acts and the Huntington Library for use of its facilities. Mr and Mrs Tomiak gave me invaluable aid in going through divorce reports in the nineteenth century *Times*, and I am grateful to the Lit. Hum. Board of Oxford University for financing this. Many people have assisted me in other ways, and I should particularly like to thank Dr B. M. Levick, Mr Charles Stewart, Professor T. E. Downing, Professor L. Dumont, and the Editor, Professor P. S. Atiyah, for helpful criticisms of written drafts. Finally, I must thank Mr S. Anderson for making available to me the typescript of 'Legislative Divorce—Law for the Aristocracy?' in February 1984, prior to its publication in Eds G. Rubin and D. Sugarman *Law, Society and Economy. Essays in Legal History* (1984). Our researches on this long neglected area were until then wholly independent and Mr Anderson's kindness in letting me see his paper has enabled me to add references to his findings. Errors which remain are of course my own.

1 'England' includes Wales and (until 1857) Ireland, but not Scotland. In Ireland divorce continued to be by private Act after 1857: F. Clifford *A History of Private Bill Legislation* (London 1885) Vol. 1, 451 n 3.

2 My data come primarily from the 322 divorce Acts since 1700 which I have found and read—apart from five supposed ones before 1700, only two of which were actual divorces, and of which detailed accounts can be found in various legal works such as J. F. MacQueen *A Practical Treatise on the Appellate Jurisdiction of the House of Lords and Privy Council together with the Practice on Parliamentary Divorce* (London 1842) 551-76; Clifford (1885) op cit, Vol. 1, 387-417, G. Howard *A History of Matrimonial Institutions* (Chicago 1904), reprinted 1964, Vol. 2, 102-05. Divorce Acts were printed privately, if at all, and some appear to exist only in manuscript at the House of Lords Records office.

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