

# MARRIAGE WITH RELATIVES

PROHIBITED DEGREES  
OF KINDRED AND AFFINITY

## A CHARGE

TO THE CLERGY AND LAITY OF THE DIOCESE OF VERMONT

BY

THE RT. REV. A. C. A. HALL, D.D.

DELIVERED AT THE ANNUAL CONVENTION, 1901  
WITH NOTES AND APPENDICES

NEW YORK  
LONGMANS, GREEN, AND CO.  
LONDON AND BOMBAY

1901

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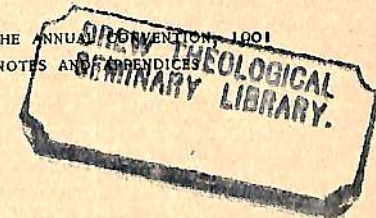
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Press of J. J. Little & Co.  
Astor Place, New York

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## A CHARGE, &c.

*My Brethren of the Clergy and of the Laity :*

Two great questions concerning Marriage, than which questions few can be reckoned of more importance, are forced upon the attention of the Church at the present time by proposed amendments to our existing canon on the subject of Marriage. The first question is, Whether, according to the law of God and the teaching of our Lord Jesus Christ, Marriage, when once rightly contracted, is ever, under any circumstances, dissoluble. The second question is, Within what degrees of existing relationship Marriage may, according to God's law, be lawfully contracted. The first question was treated with some fulness in my primary Charge, delivered in 1896, and reprinted with some additional matter in 1898. The second question I propose to discuss now; calling your attention, at any rate, to the subject, and suggesting some principles which must be kept in mind in connection therewith.

Neither question, I must remind you, is purely speculative. Both frequently come before us, in a practical form, with reference to concrete cases, and challenge an answer. The Church is failing in her duty if she does not teach and guide her members in a matter of such grave importance. To bind and loose, declaring by legislative enactment what is allowable and what forbidden, is one of the functions committed to the Christian Society by our Lord.\* "The priest's lips," we are told, "should keep

\* St. Matt. xviii. 18.



knowledge, and the people should seek the law at his mouth." \* A higher obligation of this kind rests on the society of which the individual clergyman is a representative. To our shame it must be said that our people have practically been left without authoritative guidance on this matter by the Episcopal Church. In England the Table of Prohibited Degrees (of which more will be said hereafter) is printed at the end of the Prayer-book, and is ordered to be exhibited in every parish church. If a part of our inheritance from the Mother Church, it has not been enforced nor republished among us, nor has any other been put forth in its stead. Under these circumstances an attempt to supply the need would naturally be welcomed. But the teaching given must be such as will commend itself to reasonable men as based upon authority, as grounded on principle, and as being consistent and logical.

## II.

We instinctively regard with repugnance unions of the nature of marriage between persons closely related.

The relationships of parent and child, of brother and sister, and of others who stand to one another in a sort of parental and filial or fraternal relation, we feel to be of such a nature that they cannot fitly have the marriage relation superimposed upon them.† This instinctive feeling is sanctioned and reinforced by Divine revelation. As we see in the case of the heathen, instincts of this sort may die out or become very vague;

\* Malachi, ii. 7.

† See Smith's Dictionary of the Bible, II. 245. Art. "Marriage": "There is a difference in kind between the affection that binds the members of a family together, and that which lies at the bottom of the matrimonial bond, and the amalgamation of these affections cannot take place without a serious shock to one or the other of the two; hence the desirability of drawing a distinct line between the provinces of each, by stating definitely where the matrimonial affection may legitimately take root."

in any case, they are in danger of being overborne by the force of passion.\*

Accordingly, to the Jewish nation, the people of His older covenant, Almighty God gave direct commands forbidding unions in marriage of persons near of kin such as were common among the nations around. The ground of these prohibitions was doubtless twofold, physiological and moral. (1) With regard to the first ground, there is abundant evidence that where, owing to bad laws, or to social isolation, or to other motives, intermarriages have been frequent in one and the same family, the tendency of such marriages is to produce some hereditary taint, whether in the way of a bodily defect, or of mental eccentricity amounting at times to idiocy.† (2) There was also a moral or social object in such prohibitions, to preserve the purity of family life and freedom of intercourse therein, by the exclusion of the thought of any marriage relation.‡

## III.

God's law on this subject given to the Jews is contained chiefly in three passages of the Pentateuch, Leviticus xviii. and xx.

\* "Though the teachings of Nature and Revelation are found to be frequently in harmony, yet it cannot be denied that there are unions, confessedly disallowed by Scripture, which would not naturally be repugnant to a people living in ignorance of what God had revealed. . . . To go back to antiquity the Egyptians and Persians had no scruple in sanctioning marriage between brothers and sisters, and even such legislators as Solon and Lycurgus interposed no barrier to a man's union with his half-sister. In her best state, however, Nature has been found strict in prohibiting consanguineous marriages."

The teaching of Scripture forbids us to limit the restriction to relationships of consanguinity, by placing certain relationships of affinity within its circle of prohibition. (Luckock's *History of Marriage*, pp. 245, 246.)

† See Harper, *Peace through the Truth*, II. p. 579; Lecky, *Democracy and Liberty*, II p. 180.

‡ See Abp. Temple, quoted in Appendix A.



and Deuteronomy xxvii. These enactments are not a part of the ceremonial or of the civil law of the Jews, but belong to the moral law, which is of permanent obligation, being expanded and perfected in the Christian law.\* That the prohibitions were not intended for the Jews alone is clear from the words which precede and follow them in Levit. xviii.: "After the doings of the land of Egypt, wherein ye dwelt, shall ye not do: and after the doings of the land of Canaan, whither I bring you, shall ye not do: neither shall ye walk in their statutes" (v. 3). "Defile not ye yourselves in any of these things: for in all these the nations are defiled which I cast out from before you: and the land is defiled: therefore I do visit the iniquity thereof upon it, and the land vomiteth out her inhabitants" (vv. 24, 25).

Moral wrongs are evidently here referred to, practices that in themselves were evil for all men everywhere and at all times;† while the distinct reference to the "abominations" practised by the heathen peoples among whom the Jews had dwelt and were now dwelling, prepares us to find not an exhaustive list of marriages that are forbidden by God, but rather the mention of

\* Art. VII. of the Articles of Religion. It is not intended that the Levitical Law is binding upon Christians by virtue of its promulgation to the Jews; but that the laws of the Christian Church cannot come short of this expression of God's mind in a matter moral and not ceremonial, especially when Gentile nations were condemned for transgressions of these regulations.

It is assumed by Bishop Sanderson among points "which ought to be taken as certain and granted among Christians, viz.: That no part of the Law delivered by Moses to the Jews doth bind Christians under the Gospel, as by virtue of that delivery: no, not the Ten Commandments themselves, but least of all the Fourth, which all confess to be, at least, in some part Ceremonial." "The Case of the Sabbath," Works of Robert Sanderson (Jacobson), vol. V., p. 10. So, at length, Jeremy Taylor, *Ductor Dubitantium*, Bk. II., ch. ii.

† "Prohibitions which were binding on the very heathen, and that under pain of annihilation, must be no less binding on ourselves." Watkins, *Holy Matrimony*, p. 638.

such unions of a character displeasing to Him as might be special temptations to the Jews on account of the customs of their heathen neighbours. That the catalogue of marriages here forbidden is not an exhaustive list of unlawful unions is shown by the omission of a daughter and a grandmother from the relations whom a man may not marry, while step-daughter and granddaughter are mentioned.\* From the principles which are seen to underlie the prohibitions here given the Christian Church has learned the mind of God and framed her marriage law accordingly.†

Two rules of interpretation (the reasonableness of which will be generally recognised) have been applied to the prohibitions specified in the Levitical code, in accordance with which the principles that underlie the prohibitions are made clear, along with the application of these principles to analogous cases.

(1) In the Levitical code, the cases are always stated from the man's side; what is specifically forbidden in the case of a man is inferentially forbidden in the converse case of a woman. For instance, since a man may not marry his aunt (vv. 12, 13), neither may a woman marry her uncle (which, of course, means that a man may not marry his niece.)‡

\* The Jews always understood the law as covering more than the specified cases, though different schools among their later expositors adopted different extended rules.

† See Bishop Jewel, Letter XXVIII. in his Works, published by the Parker Society: "We must needs think that God in that chapter [Levit. xviii.] hath specially and namely forbidden certain degrees; not as leaving all marriage lawful which had not there been expressly forbidden, but that thereby, as by unfallible precedents, we might be able to rule the rest." The whole letter is given in Appendix B.

‡ In the former case there would be a reversal of relationships: the man who as nephew owes reverence and a certain subordination to his parent's sister becomes as husband her superior in the family. In the latter case the uncle stands in a sort of parental relationship to the child of his brother or his sister.



It has, indeed, been argued\* in opposition to this rule that a woman is taken into her husband's family (becomes one flesh with him) in a way in which a man is not taken into his wife's family (becomes one flesh with her).

There may have been, and probably was, some discrimination of this kind between the sexes among the Jews, as among other nations of old time.† Where polygamy was customary or allowed, this would be natural. But the Christian religion wherein woman has been raised to a position of personal equality with man, requires the equal application of the marriage law to both sexes. And in our social arrangements, based on the Christian conception of personal and social life, there is no difference between the wife's relation to her husband's family and the man's relation to his wife's family, save that the members of the latter are regarded as having a claim on the husband's protection.

This, then, is the first rule for the development of the Levitical code and its application to ourselves: Marriages similar to those which are expressly forbidden to a man are by parity of reasoning forbidden to a woman.

(2) The second great rule is that Affinity is equivalent to Consanguinity, so that, to quote the Westminster Confession,‡ "The man may not marry any of his wife's kindred nearer in blood than he may of his own, and the woman may not marry of her husband's kindred nearer in blood than she may of her own." More cases of Affinity (of relationship, that is, by marriage) are specified among the prohibitions in Levit. xviii. than of Consanguinity;

\*E.g., by the late Rev. George Zabriskie Gray, D.D., in his *Husband and Wife*. The contention that according to Holy Scripture the wife becomes one flesh with her husband, but not the husband with his wife, seems to be absolutely refuted by 1 Cor. vi. 16.

†Levit. xviii. 12-14, seems to recognise this, where marriage with a full aunt on either side, a father's or a mother's sister, is forbidden, but in the case of an aunt by marriage, the prohibition is only specified on the father's side.

‡Ch. xxiv., sec. iv. See Appendix F, p. 35.

for instance, it is laid down that a man may not marry his mother-in-law, his daughter-in-law, or sister-in-law (his brother's wife); neither may he marry his step-mother, or his step-daughter or step-granddaughter, nor his aunt by marriage (his father's brother's wife). This principle that the husband and wife being made one flesh\* whoever is of kin to the one is of kin to the other, excludes marriage with a deceased wife's sister, which is also forbidden under the first rule, as being the converse case on the woman's side (marrying her sister's widower) to that which is specifically prohibited, the marriage of a man with his brother's widow. (Verse 16, comp. xx. 21.)

The Christian Church has understood the prohibitions specified in the Levitical code as representative cases, all illustrating the general law which forbids marriages between persons near of kin (Levit. xviii. 6).† On this supposition and by the application of the two rules given above, the generally received law of the Christian Church has forbidden the marriage of persons related to one another within three degrees of consanguinity or affinity; or, in other words, between those who are only removed from one another by three steps, counted up to and down from a common ancestor.‡ A nephew and his aunt (whose marriage is forbidden in Levit. xviii. 12-14) stand in this proximity to one another; there is no prohibition of marriage in the Levitical code between persons more distantly related than this. Accordingly this has

\*Gen. ii. 24, expressly sanctioned by our Lord, St. Mark x. 7, 8.

†Some eminent authorities (as the elder Lightfoot) consider that incestuous marriages such as were allowed among the heathen are referred to under the term "fornication" in the decree of the Council at Jerusalem, Acts xv. 20. The same word, in Greek as well as in English, is used of the crime of the incestuous Corinthian, which was an abomination that St. Paul says not even the heathen would tolerate, 1 Cor. v. 1.

See Meyer on Acts xv. 20, and *Church Quarterly Review*, January, 1883, pp. 407, 408.

‡On the different methods of reckoning "degrees" see Appendix C.



been taken by the Church as the limit within which marriages are forbidden, and beyond which they are allowed.\*

At different times and in different parts of the Church this limit has been extended to include more distant relationships; but as there is no Scriptural warrant for any further extension of prohibited degrees, so there has been no general consent beyond this point.

The Eastern Church between the seventh and tenth centuries extended her prohibition to all marriages within the seventh degree, and this is now the Eastern rule. The Latin Church carried the prohibition even further, to the seventh generation; but in 1215 at the Lateran Council under Innocent III. the prohibited degrees were reduced to the fourth degree according to the new canonical reckoning. During the same period various kinds of spiritual relationships, as between sponsors and Godchildren, had been

\* All marriages between persons one of whom is lineally descended from the other are almost universally held to be incestuous. They are only prohibited by the words of the Levitical law in the second degree, probably because the marriage of persons more distantly related to one another in actual descent was not contemplated as a possible or probable temptation; e.g., a man and his great-grandchild. First cousins are related by collateral consanguinity in the fourth degree. St. Augustine of Hippo in the fifth century admitted that marriages between first cousins were not forbidden by the Divine law, while the general feeling of his time was against them, and he approved a recent prohibition of such marriages by the civil law of the Roman Empire.

St. Augustine dwells on the social advantage of marriages between persons of different and unconnected families, thus multiplying relationships and spreading the bonds of charity. *De Civitate Dei*, xv. 16.

By the time of Gregory the Great (A.D. 600), the civil law forbidding the marriage of first consins had been repealed; but Gregory in his instructions to Augustine of Canterbury condemned such unions as falling under the general prohibition of the sacred law, forbidding marriages between those near of kin. *Epp.* lib. xi., ind. iv., num. 64. Translated in *Post-Nicene Fathers*, vol. XIII., pp. 74, sqq. The variations of the Roman civil law on this subject are noted by Watkins, p. 670.

added.\* These and all other prohibitions that did not fall within the principles of the Levitical code, as already explained, the Church of England threw off at the Reformation, grounding her Table of Prohibited Degrees, within which a person may not marry, upon Holy Scripture and the consent of antiquity. This Table, put forth by Archbishop Parker in 1563, and reënacted in the 99th Canon of 1603, gives (let me repeat once more) the prohibitions of the Mosaic code with such additions, and such only, as the principles of that code require.†

#### IV.

Objections are frequently urged against a particular application of these principles, in the prohibition of marriage with a deceased wife's sister. It will be well to notice briefly the chief arguments which are used.

1. It is said that this prohibition is not required by, and may even be regarded as inconsistent with, Levit. xviii. 18, "Thou shalt not take a woman to her sister, to be a rival unto her, . . . beside the other in her life time." This text is of very uncertain interpretation. It is unnecessary to discuss its exact meaning here. It seems to have reference to polygamy, and to be intended to guard against a particular aggravation of that evil, such as Jews might think sanctioned by the example of the patriarch Jacob.‡ It will be noticed that I have in no way rested the prohibition upon this verse, but upon the general principle laid down in verse 6.

\* The idea of spiritual relationship was probably suggested by the relationships by virtue of adoption, which were recognised by the Roman law and regarded as impediments to marriage. When in the case of adult Baptism the Godparent had much to do with the preparation of the catechumen for the sacrament, as well as attending at the Font, it was natural that a desire should be felt to protect this intimate spiritual relation from associations of a different character.

† For the English Table of Prohibited Degrees see Appendix D.

‡ See St. Basil's Letter, p. 16, and Appendix E.



2. It is further urged that marriages between persons related by Affinity, as brother-in-law and sister-in-law, cannot be essentially wrong, because under certain circumstances a union of this kind was provided for in the Mosaic law, in the enactment that if a man died childless, the deceased husband's brother should marry the widow and raise up seed unto his brother.\* This Levirate law (or law of the brother-in-law) will be recognised as a permitted exception under specified conditions to the general rule forbidding marriage between those near of kin (Levit. xviii. 6), and specifically between persons related in this particular degree of kinship (xviii. 16, xx. 21). It seems, like several other provisions of the Mosaic law, to be of the nature of a concession, and at the same time a restriction on existing customs, allowing under peculiar circumstances what was generally forbidden, and restricting to specified conditions what had been a wider custom, in the same way that polygamy and divorce were restrained, while for the time allowed "because of the hardness of men's hearts."† No argument for Christian practice can be drawn from this exceptional provision in the Mosaic law.‡

3. The same may be said when Jewish custom is pleaded in support of the laxer interpretation of the Levitical code, as if its prohibitions were limited to the cases actually specified, and

\* Deut. xxv. 5-10.

† St. Matt. xix. 8.

‡ See Smith's Dictionary of the Bible, vol. II., p. 241, B., Art. "Marriage": "The Mosaic law aimed at mitigating rather than removing evils which were inseparable from the state of society in that day." Compare Professor Goldwin Smith in a pamphlet published at the beginning of our Civil War entitled, *Does the Bible sanction Slavery?* "The [Mosaic] code of laws takes the rude institutions of a primitive nation, including slavery, as they stand, not changing society by a miracle; but it reforms them, it mitigates them, and lays on them restrictions tending to their gradual abolition."

In Hastings's Dictionary of the Bible, vol. III., pp. 269, 270, Art. "Marriage," reasons are given for holding that the provision for taking a brother's widow was a survival of a custom of polyandrous marriage, where the brothers of a family had the wife in common.

consequently a woman were free to marry her deceased sister's husband, though a man might not marry his deceased brother's wife. Much was tolerated in the older and temporary dispensation which is unlawful for Christians, who are called by our Lord and enabled by His Spirit to realise the true standard of domestic as of personal purity.

4. The argument in favour of allowing marriage with a deceased wife's sister, based on the supposed practical advantages of such an arrangement, seems to me entirely fallacious. What so natural, it is asked, as for an aunt to care for and play a mother's part to her sister's children in whom she will have a peculiar interest? The argument fails to consider that this arrangement, in itself most natural and desirable, will in many cases be rendered impracticable, if the wife's sister is regarded as her possible successor. She can more readily be the guardian of her sister's children when she can stand in no other relation to them or to their father. To permit a man to marry his wife's sister is to abolish her privileged position as his sister-in-law.

The recognition of relationships of Affinity within which marriage is forbidden is seen by this instance to be no mere arbitrary or technical theory; but to have a distinctly practical bearing on the purity and the intimacy of intercourse between members of a family.\*

\* See Appendix A. It will be understood that no change of the civil law is here contended for; but only that the Christian Society should be clear in its mind and utterance as to the marriage unions which it can solemnize or sanction.

The distinction between the civil law and the law of God is well drawn out in *An Essay on the question of The Lawfulness of Marriage with the Sister of a Deceased Wife*, by the Rev. W. J. Seabury (1868). "The law of God obliges the consciences of men to obey human laws, but human laws do not profess to exempt the consciences of men from obedience to the Divine law. They very often, however, as in the matter of marriage, permit actions which the Divine law forbids; but the Divine law remains in force all the same; the civil law cannot touch it, and does not profess to touch it." p. ix.



The maintenance of this safeguard depends on the recognition of the principles on which the prohibitions are based. Exceptions cannot be allowed which violate these principles; if allowed, they will not stand alone.

## V.

It is for this reason that the Church has jealously enforced the marriage law. The attitude of the early Christian Church at the time of the great Councils, with regard to these matters, may be gathered from a letter of St. Basil, Archbishop of Cæsarea in Cappadocia, in the middle of the fourth century. Writing to Diodorus (perhaps but not certainly Bishop of Tarsus) upon the subject of marriage with a wife's sister, Basil speaks of it as something to be shuddered at. He begins his argument thus: "First of all we have to allege that which is of the greatest weight in such matters—the custom established among us; which is equivalent to a law, inasmuch as such ordinances have been handed down to us by holy men: and the custom is, if a person, at any time, mastered by an impure passion, shall have fallen into a lawless union with two sisters, neither to account this a marriage, nor to receive such at all into the body of the Church, before that they are separated from one another; so that even if we had nothing else to say, custom had sufficed, as a safeguard of what is right."

Basil goes on to argue the point in connection with Levit. xviii., taking one by one most of the positions maintained in this charge.\*

\* It has been urged, by Father Harper, in his criticism of Dr. Pusey's use of this Epistle, that St. Basil is only to be regarded as expressing his own opinion and the custom of his diocese. He conjectures that Diodorus may have given permission for such a marriage in his adjoining diocese. The whole tone of St. Basil's epistle seems to be opposed to such a supposition, as are the contemporary enactments of councils in various parts of Christendom.

St. Basil's letter is given in full in Appendix E.

In accordance with the teaching of this great representative Bishop we find marriages of a man with two sisters, with his step-daughter, and of a woman with two brothers, condemned as incestuous, and the parties subjected to varying penalties, by councils in different parts of Christendom of even earlier date—Eliberis (in Spain) 306–324, and Neo-Cæsarea (in Asia Minor) 315, while later the Council of Orleans (511) treated as equally unlawful marriage with a brother's widow and with a wife's sister.\*

It has been said that from the sixth century other marriages (of more distant relations or of spiritual kin) were gradually added to those covered by the Levitical code; and from these prohibitions of the ecclesiastical law dispensations were granted in the Western Church. But the first undisputed instance of any dispensation for a marriage within the Levitical degrees is not

\* At first some laxity with regard to marriage with a deceased wife's sister was probably tolerated. For in the eighteenth of the Apostolical Canons (belonging probably to the third century) it is decreed that no one who has married two sisters should be admitted to any, even the lowest, rank in the ministry. This would seem to imply that such a marriage was not absolutely forbidden to a Christian layman.

"The Roman law allowed such unions: the Jewish practice allowed them no less: and the Christian Church had as yet formed no table of prohibited degrees, or passed any resolution on the subject. A natural shrinking led to the exclusion of all persons who had contracted such unions from any share in the conduct of Divine service, but there probably the restrictions of the earliest ages came to an end. In the ordinary development of discipline the recurrence of cases, which, while they had not been expressly prohibited, still shocked the Christian spirit, would lead to inquiry, to united deliberation, to authoritative decision: and this would seem to be what actually occurred."—Watkins, *Holy Matrimony*, p. 684.

On the other hand, it should be remembered that canons do not ordinarily initiate a rule. They are generally enacted with a view to enforce an existing custom, when its violation calls for fresh action on the part of the Church.



until 1500.\* In that year, Pope Alexander VI. (Borgia) allowed Emmanuel, king of Portugal, to marry his deceased wife's sister, both being daughters of Ferdinand, king of Spain, another of whose daughters was Katharine of Aragon, who was allowed by Julius II. (1503) to marry successively two brothers, Prince Arthur and King Henry VIII. of England. Alexander VI. also gave a dispensation to Ferdinand II. of Sicily to marry his aunt by blood.

\* It has been claimed that Pope Martin V. in 1418 granted a similar dispensation. But this claim seems to be based on a misunderstanding of a really different case. Thomassinus (*Vetus et nova ecclesia disciplina*, pars II., lib. iii, cap. 28, sec. 10) and Rainaldus (the continuator of Baronius' *Annals sub Anno* 1418), who give the case as one of permission to marry a deceased wife's sister, wrote long afterwards; Rainaldus, the earlier, whom Thomassinus quotes, nearly two centuries later; while Antoninus, Archbishop of Florence, who was a contemporary of Martin V., states it to have been a question of a man being allowed to continue in marriage with a woman, whose sister he had previously seduced. The internal probabilities of the case seem to be all on the side of Antoninus's version, with the exception of the fact that Rainaldus cites in full what professes to be the actual decree taken from the archives of the Vatican. This decree, however, which examination shows some ground for suspecting, was unknown both to Antoninus at the time, and to Cardinal Turrecremata, who, twenty years after the event, was specially deputed by Martin's successor, Pope Eugenius IV., to investigate an application from the Dauphin (afterwards Louis XI.) for permission to marry his deceased wife's sister. Turrecremata gave his opinion that such a dispensation was beyond the Pope's power.

The question of Martin's dispensation having been keenly debated in our own time, as by Father Harper, in his criticism of Dr. Pusey (*Peace through the Truth*, II., p. 409), and in the *Guardian* newspaper (1882, II., p. 1773; 1883, I., pp. 246, 281, 317, 348, 386), the passage from Antoninus (for which I am indebted to the Rev. Dr. A. G. Mortimer) is given in full in Appendix G. The quotation is important as showing the ground taken in the fifteenth century with regard to dispensation by one high in office and reputation. It will be seen, moreover, that, according to Antoninus, the Pope did not claim to grant a dispensation to contract a marriage, nor did he ever sanction the union, but decided, after consultation with theologians, that under the circumstances it was better not to cause the scandal of a divorce, which would make public the past secret sin.

Following these and similar evil precedents, perhaps compelled thereby, the Council of Trent, in 1563, claimed for the Church a power of dispensation "in some of the Levitical degrees," making the whole question one of ecclesiastical discipline.\* Consequently the later Roman Church has allowed, with different degrees of reserve, (in affinity) marriage with a deceased wife's sister, a brother's widow, and (in blood) marriage with a niece and with an aunt.

The English Church went back, as has been said, in this matter as in others, to the rule of Scripture and the Primitive Church, at once abrogating additions made to the Divine law and denying any power in the Church to subtract therefrom.

Whatever may be the actual canonical obligation in the Protestant Episcopal Church of the English Table of Prohibited Degrees,†

\* The decision of the Council of Trent (session xxiv., Canon 3) is very guarded. It anathematizes those who hold that *only* the degrees of Consanguinity and Affinity mentioned in Leviticus can hinder marriage, and that the Church cannot dispense in *some* of these. "Si quis dixerit, eos tantum consanguinitatis et affinitatis gradus, qui Levitico exprimuntur, posse impedire matrimonium contrahendum, et dirimere contractum; nec posse ecclesiam in nonnullis illorum dispensare, aut constituere ut plures impediant et dirimant; anathema sit."

† In 1808 the House of Bishops (only two members, however, being present, Bishop White and Bishop Claggett), in reply to a message from the House of Clerical and Lay Deputies in regard to the Table of Degrees of the Church of England, said that

"They consider the Table as now obligatory on the Church, and as what will remain so, unless there should hereafter appear cause to alter it without departing from the Word of God, or endangering the peace and good order of this Church."

It is worth noting that this judgment was prefaced by the words "Agreeably to the sentiment entertained by them in relation to the whole ecclesiastical system," and followed by a recommendation that the subject should be considered and acted on at a future Convention on account of the extreme importance of the matter, and the comparatively small representation in either House at that Convention. (Bishop Perry's Reprint of Journals of the General Convention, vol. I., p. 355.)



its appeal (for both negative and positive purposes) to Scripture and Antiquity is our professed pattern and rule.

A very grave responsibility would be involved in setting up another standard in such a matter, especially in view of the close relations between different churches of the Anglican Communion

Subsequently a long report was drafted by a Committee of the House of Bishops (with Bishop White as chairman), which recommended the promulgation of the English Table as "received and established in this Church," with the proviso in reference to marriage with a wife's sister or a brother's wife that, "although the Church disapproves of such marriages, because of temptations to sin in the allowance of them," and therefore expressly forbids any clergyman to celebrate such a marriage, yet these marriages, if entered into, should not be a cause for repelling from Holy Communion. This report does not seem to have been presented. *Life of Bishop White*, by Bird Wilson, Appendix III., p. 343.

Whatever hindrances there may be in the way of enforcing discipline, and whatever consideration may be shown to persons who have in the past become entangled in forbidden marriages, the proposal openly to declare that the Church cannot bless a marriage, but that the persons contracting it may be received to her highest privileges, seems utterly illogical. If a marriage is lawful, though perhaps undesirable, the Church cannot refuse to bless it; if unlawful, she cannot welcome to the Communion persons unlawfully joined together.

In recent times a Joint Commission presented to the General Convention of 1880, a report on "Marriage with Relatives," recommending the passing by both Houses of the declaration of the House of Bishops in 1808, quoted above; a minority report objected to the prohibition of marriage with a deceased wife's sister. (Journal, 1880, Appendix XII.) The matter was deferred from Convention to Convention, another lengthy report of a Joint Commission being presented in 1886, with the recommendation of an amended canon "Of Marriage and Divorce," of which one clause declared, "Marriage is prohibited by the Word of God, and by this Church, within the degrees of consanguinity and affinity specified in Levit. xviii. 6-18." (Journal, 1886, Appendix XIII.)

This wording seems to have been agreed to as a compromise (absolutely unworkable in practice) between those who hold that the Levitical code gave an exhaustive list of prohibited marriages, and those who contend that the cases specified are illustrative, and that all others which fall within the same degrees must be likewise forbidden.

in England, Scotland, Ireland, the British Colonies, and the United States of America, and in view of their common missionary enterprises, for instance, in Japan.\*

In our own country there is special need for us to bear a consistent witness to the Christian law, showing withal its reasonableness—owing to the varying enactments of the civil law in different States, and in the absence of definite standards on the subject among the Protestant bodies generally.†

Two chief purposes have induced me to discuss this matter.

(1) With regard to ecclesiastical legislation, I would beg of all concerned to weigh well the importance of the subject, and the great danger of ill-considered canonical enactments which might commit our Church to a lax standard.

(2) Knowing how many marriages of at least questionable character are entered upon in ignorance, I would (as I am bounden) do what is in my power to bring before those for whom I am responsible the general teaching of the Christian Church

The canon proposed for consideration at the approaching General Convention by the Committee of the House of Deputies, to which the whole subject of legislation concerning marriage was referred, in its wording limits prohibited marriages to the cases actually specified in Leviticus. To show the untenable character of this position is one object of the present publication.

\* Among the recommendations to which "the attention of the various Synods and other governing bodies in the several Churches" was invited in the official letter of the "Lambeth Conference" of 1878, is the following: "That steps should be taken by each branch of the Church, according to its own discretion, to maintain the sanctity of marriage, agreeably to the principles set forth in the Word of God, as the Church of Christ hath hitherto received the same."—Davidson's *Lambeth Conferences*, p. 185.

† See Appendix F.

However we may deplore the system of dispensations granted by the Roman Catholic Church, it is to be remembered (1) that these are professedly granted only "for grave reasons," and (2) that the possibility of dispensation in particular cases points to the existence and authority of the general law.



concerning impediments to marriages arising from existing relationships.

The Prayer Book bids the minister, at the solemnization of every marriage, warn the parties that "if any persons are joined together otherwise than as God's Word doth allow, their marriage is not lawful." Marriage, remember, is not a single *act*, which if wrong, can be repented of; it is a union which if unlawfully contracted involves, unless it be dissolved, a continuous sinful relation.

Surely, then, we are under a distinct moral obligation to instruct our people beforehand as to what is God's revealed will concerning this matter.

"How can we sufficiently express the happiness of that marriage which the Church commends, which the eucharistic oblation confirms, and the benediction seals, which angels report, and the heavenly Father ratifies?" \*

\*Tertullian, *Ad uxorem*, ii. 9.

## APPENDIX A

ARCHBISHOP TEMPLE ON THE PROTECTION GIVEN TO FAMILY  
LIFE BY THE PROHIBITION OF MARRIAGE BETWEEN PERSONS  
NEARLY RELATED TO ONE ANOTHER. See p. 7

"We are taught in the New Testament as plainly as we are taught anything, that in the old law we are to look, not indeed for immediate and precise directions about our conduct, but for the principles and the spirit which are to govern our conduct; and that when we consult those old directions we are to ask ourselves, 'What is the spirit in which these are written, and how do they bear upon us?' What, then, do I find is the very fundamental idea, as I may say, of these prohibitions of marriages? It seems to me unmistakable that the purpose and object of them has always been to protect the purity of the family. It is, as a mere matter of fact, quite certain that there is nothing which so surely protects the purity of the domestic circle as the impossibility of marriage within it. The impossibility of marriage with a sister by blood is a real bar which constantly, in cases of temptation, protects the family from impurity, and anything which would interfere with the prohibition of marriages of consanguinity would very seriously affect the purity of the home and the morality of all Christian people. And it seems to me, further, that any marriage prohibition on the ground of consanguinity is a prohibition of marriages of affinity on precisely the same grounds. It is intended to throw over the wife's family precisely the same shield as is thrown over the man's own family: that just as there is put a bar against even a possibility of connection between the members of one family, so, too, there shall be the same bar to prohibit all connection between a man and the members of his wife's family. And it is impossible to confine this question to what is to happen after the wife is dead. Whilst she is still alive shall it be possible that a man shall be allowed to entertain those feelings towards her sisters which would possibly end in marriage afterwards? And if the marriage is allowed, such feelings, such temptations, such natural impulses from the flesh, are absolutely impossible to prevent, and I know of no way in which



they can be so constantly restrained as by the law of the Church as it now stands. And, of course, this is only a particular instance that is proposed. It is proposed to relax the law in one particular case, but we all know that in matters of this sort changes always come by degrees. There are very many men who will advocate this marriage, who would be shocked at the idea of a man marrying his step-daughter—you would feel at once that if such a thing were allowed you would put a terrible temptation in the way of a man whose step-daughter lived with him. There would be no horror in his mind to protect him against allowing improper feelings to grow up within him if he could look forward at some future time to gratify those feelings; and clearly this step-daughter, who, because of his marriage with her mother, is almost necessarily under his charge, and is necessarily brought into close familiarity with him, is robbed of a natural protection. This is strong enough at present to make the great majority of us feel that there would be something horrible in allowing marriage between first a woman and then the daughter of that woman. But if you begin by altering the law in the particular proposed, how long will this horror last? You may depend upon it that the moment you allow an alteration of this kind a large number of like alterations will follow. People would have no principle to guide them at all; and inasmuch as it would become a mere question of expediency, it would be felt that we have no right to press it upon one another."

Address of Archbishop Temple when Bishop of Exeter at the Exeter Diocesan Conference, October, 1882, in a discussion of the proposed bill to legalize marriage with a deceased wife's sister.—*Guardian*, vol. XXXVII., part II., p. 1531.

## APPENDIX B

BISHOP JEWEL ON THE PROHIBITIONS IN LEVITICUS XVIII., SHEWING THAT THE LIST THERE GIVEN IS NOT INTENDED TO BE EXHAUSTIVE. See p. 9

"Whereas ye desire to understand my poor advice touching certain words in the eighteenth chapter of Leviticus, by which words you think it not unlawful for a man to marry successively his own wife's sister, I would ye had rather taken in hand some other matter to defend. For it is not the best way, in my judgment, neither in these troublesome and doubtful times to call more matters in doubt without just cause, nor in this intemperance and license of life to open any gate to the breach of laws. I reckon the

words of Leviticus, whereon you ground, are these: *Uxorem et sororem suam ad lacesendam eam ne ducas, ut relegas turpitudinem ejus, illa adhuc vivente*. Which words I know have been diversely construed by divers men, and in some men's judgments seem to sound of your side. Pellican, Paulus Phagius, and Lyra, with certain others, think such marriage to be lawful; and that God forbade the having of two sisters in matrimony at one time, both of them being together on live; and that, for the spiteful and continual contention and jealousy which must needs grow between them, as appeared in the example of Jacob with his two wives, Rachel and Leah. And therefore some think the Jews continue such marriages among them, as lawful, until this day.

All these things hitherto make on your side; and the same would not greatly mislike me, saving that I find the judgments of the best-learned men now living, and the continual practice of all ages, and in manner very public honesty, to the contrary. There be otherwise women enough to have choice of, so that no man can justly say that necessity drave him to marry her, whom, in our manner of speech, he sometime called sister.

The practice of former times appeareth by the canons; where as it is decreed that only *carnalis copula cum puella septem annorum dirimit matrimonium cum ejus puellae sorore postea secutum*. But I know you make small stay upon the canons, and sooner rest yourself upon these words in the text, *illa adhuc vivente*. And thereof thus you ground your reason: a man may not marry his wife's sister, while she is on live; *ergo*, he may marry her after she is dead.

This reason a *negativis* is very weak, and maketh no more proof in logic than this doth; *corvus non est reversus ad arcam, donec exsiccatae essent aquae; ergo*, he is returned again, after the waters are dried up. Or, *Joseph non cognovit eam, donec peperisset filium suum primogenitum; ergo*, Joseph knew her after she was delivered of her first-begotten child; or such other like.

Yet will you say, although this manner of reason be weak, and the words make little for you, yet this far the reason is good enough; for these words make not against you. Which thing notwithstanding I might grant, yet will not this reason follow of the other side: there are no express words in the Levitical law, whereby I am forbidden to marry my wife's sister; *ergo*, by the Levitical law such marriage is to be accounted lawful. For, notwithstanding the statute in that case make relation unto the eighteenth chapter of Leviticus as unto a place whereunto the degrees of consanguinity and affinity are touched most at large; yet you must remember that certain degrees are there left out untouched; within which, nevertheless, it was



never thought lawful for man to marry. For example, there is nothing provided there by express words, but that a man may marry his own grandmother, or his grandfather's second wife, or the wife of his uncle by the mother's side. No, there is no express prohibition in all this chapter but that a man may marry his own daughter. Yet will no man say that any of these degrees may join together in lawful marriage.

Wherefore we must needs think that God in that chapter hath specially and namely forbidden certain degrees; not as leaving all marriage lawful which he had not there expressly forbidden, but that thereby, as by unfallible precedents, we might be able to rule the rest. As when God saith, No man shall marry his mother, we understand that under the name of mother is contained both the grandmother, and the grandfather's wife, and that such marriage is forbidden. And, when God commandeth that no man shall marry the wife of his uncle by the father's side, we doubt not but in the same is included the wife of the uncle by the mother's side. Thus you see God himself would have us to expound one degree by another.

So likewise in this case, albeit I be not forbidden by plain words to marry my wife's sister, yet am I forbidden to do so by other words, which by exposition are plain enough. For, when God commandeth me I shall not marry my brother's wife, it followeth directly by the same that he forbiddeth me to marry my wife's sister. For between one man and two sisters and one woman and two brothers is like analogy and proportion; which, in my judgment, in this case and other such like ought to be taken for a rule. And therefore the rabbins of the Jews have expressly forbidden divers degrees by this rule, which God by plain words forbade not.

And this is one part of the tyranny of the bishop of Rome, that he will take upon him to rule God's commandments at his pleasure, and by his dispensation to make that lawful in one man for the time, which God hath plainly forbidden as unlawful in all men for ever. He hath dispensed with a man to marry his own brother's wife, as you know. He hath dispensed with the brother to marry his own natural sister, as you shall find in *Summa Angelica*, in these words *Papa*.\* And what marvel? He would be omnipotent, and saith he may dispense *contra jus divinum*, as you may see 16. q. 1. *Quicumque*; in glossa.

\* This seems to be a mistake, but one in which Jewel was misled by the Roman canonist Angelo di Clivasio, who in his *Summa* reports Antoninus, Archbishop of Florence, as saying that Pope Martin V. had, as he had been informed, "accorded a dispensation to a man who had married his own sister," *qui acceperat germanam suam in uxorem*. Antoninus is misquoted by Angelo, as will be seen from his words given in Appendix G. The

But thus, by the way, you have my mind touching your demand, and I doubt not but, all things considered, the same mind will be your mind."

Letter XXVIII. (1561) in the Works of Bishop Jewel, part iv., Parker Society.

## APPENDIX C

### ON THE METHOD OF COUNTING DEGREES OF RELATIONSHIP AND ON OTHER TECHNICAL TERMS. See p. 11

"*Consanguinity* is the relation which subsists between two persons who within certain limits are descended from a common ancestor.

*Lineal consanguinity* is the relation which subsists between two persons, one of whom is descended from the other;" e.g., parents and children, grandparents and grandchildren.

"*Collateral consanguinity* is the relation which subsists between two persons who are descended from common ancestors, but not one from the other;" e.g., brothers and sisters who have common ancestors in their father and mother; first cousins who have common ancestors in their grandfather and grandmother.

"*Affinity* grows out of marriage, and exists between each of a married pair and those who are related to the other by consanguinity. It is lineal or collateral, according to the nature of that consanguinity;" e.g., a child is connected with its step-mother by lineal affinity; a man is related by collateral affinity to his wife's sister, and by lineal to her mother or her daughter.—Hugh Davey Evans, *The Christian Doctrine of Marriage*, p. 307.

It should be noted that Affinity is distinctly limited. The husband becomes related to all his wife's relations, as a member of her family, and the wife to her husband's, as a member of his family; but there is no fusion of the two families; the relations of the husband do not become allied with the relations of the wife. Hence there is no bar to two brothers marrying two sisters.

case (1) was not of an own sister, but of a wife's sister, nor (2) was the dispensation to marry a wife's sister, but to continue in marriage with a wife whose sister the man had previously seduced. The sentence from Angelo is given, both in the original Latin and in an English translation, by Father Harper, without apparently the discovery that Angelo was calumniating the Pope.—*Peace through the Truth*, II. p. 420.



So with regard to Consanguinity, this does not bar unless one of the parties is descended from the father or mother of the other. This limitation excludes the marriage of uncle and niece, for the niece is descended from the uncle's father, but it allows the marriage of cousins, for neither is descended from the father or the mother of the other. Their nearest point of contact is in the grandparents. See Watkins, p. 648.

A *degree* is a step. "The term *gradus*, or degree, is always understood to comprehend all those who stand in the same proximity, all that are upon the same platform, and resting on the same level with one another."

Badeley's speech (in which he refers to Blackstone's Commentaries, vol. II., p. 203) in Pusey's *Marriage with a Deceased Wife's Sister*, p. 83.

There are two ways of reckoning the degrees or steps in relationship: (1) The method of the Civil or Roman law; (2) the method of the Ecclesiastical or Canon law.

"In the direct line of ascent and descent the Civilians and the Canonists are agreed, counting so many degrees as there are generations, or as there are persons exclusive of the forefather. Thus, Abraham, Isaac, Jacob, Dinah,—Dinah is in the third degree from Abraham, being the third person besides Abraham, or in the third generation from Abraham exclusively." (Morgan's *Law of Marriage, Adultery, and Divorce*, vol. I., p. 258.)

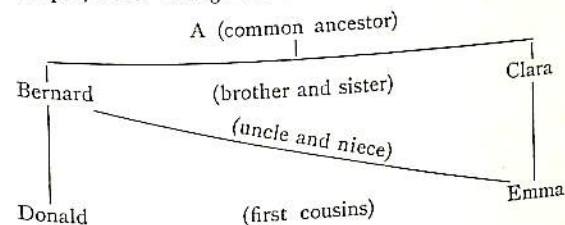
(1) In ascertaining the degrees of collateral consanguinity the Civilians count the degrees or steps from one of the two persons, whose relationship is to be defined, back to the common ancestor, and then down to the other. Thus a brother and sister are related in the second degree, for each is removed one step from the father. An uncle and niece are related in the third degree, for there is one step from the uncle to his father (the niece's grandfather, and common ancestor), and two steps from him to the niece. First cousins are related in the fourth degree, there being two steps up to the common ancestor, and two down to the other cousin.

(2) According to the later method the Canonists count the steps from the common ancestor down to the more remote of the two descendants, whose relationship is to be ascertained, and the number of steps determines the degree in which they are related. The principle of this rule seems to be that a man is related to all the descendants of his ancestor in the same degree in which he is related to the ancestor himself. It will be seen that, according to this method of calculation, a degree is practically equivalent to a generation. Brothers and sisters are related in the first degree; first cousins (grandchildren) in the second degree, second cousins (great grandchildren) in the third, and so forth.

An uncle and niece are related in the second degree, for that is the generation from the common ancestor to which the niece, the more remote descendant, belongs.

The earlier method of the Civil law is the simpler, and is that on which the English Table is based. The Eastern Church follows the same method, while the Latin Church reckons according to the method of the Canon law. Degrees of Affinity are counted in precisely the same way as those of Consanguinity, the husband or wife taking the place of the wife or husband.

See Evans, *Christian Doctrine of Marriage*, ch. xiv., "of the doctrine of incest." I have freely adopted Dr. Evans's words in this Appendix, as giving the clearest statement of the different modes of calculation that I know. See also Harper, *Peace through the Truth*, II., Appendix B.



## APPENDIX D

### THE ENGLISH TABLE OF PROHIBITED DEGREES. See p. 13

By three changes, not affecting any of the prohibitions contained therein, the English Table may be more simply stated:

1. We begin with the fundamental relations: filial (A), parental (B), and fraternal (C), and advancing from these to those which are derived therefrom (D or A1, E or B1, F or AC, and G or BC).
2. The relationships are translated into more commonly used and more easily recognised terms; e.g., son's wife is rendered daughter-in-law, father's brother's wife is equivalent to aunt by marriage.
3. In this way it is possible to group under one designation a number of cases which all belong to the same relationship; e.g., aunt includes both father's sister and mother's sister; while aunt by marriage covers father's brother's wife, mother's brother's wife, wife's father's sister, and wife's mother's sister.

By these means the 60 cases of the English Table (30 on each side) can be stated under 36 relationships (18 on each side).



A man may not marry his

|           |                                |           |                          |   |
|-----------|--------------------------------|-----------|--------------------------|---|
| D<br>(A1) | 1. Grandmother                 | A         | 1. Mother                | L |
|           | 2. Grandfather's wife          |           | 2. Step-mother           | L |
|           | 3. Wife's grandmother          |           | 3. Mother-in-law         |   |
| F<br>(AC) | 4. Father's sister             | B         | 4. Daughter              | ? |
|           | 5. Mother's sister             |           | 5. Step-daughter         | L |
|           | 6. Father's brother's wife     |           | 6. Daughter-in-law       | L |
|           | 7. Mother's brother's wife     | C         | 7. Sister                | L |
|           | 8. Wife's father's sister      |           | 8. Sister-in-law         | L |
|           | 9. Wife's mother's sister      |           |                          |   |
| A         | 10. Mother                     | D<br>(A1) | 9. Grandmother           | } |
|           | 11. Step-mother                |           | 10. Step-grandmother     |   |
|           | 12. Wife's mother              |           | 11. Grandmother-in-law   |   |
| B         | 13. Daughter                   | E<br>(B1) | 12. Granddaughter        | L |
|           | 14. Wife's daughter            |           | 13. Step-granddaughter   | L |
|           | 15. Son's wife                 |           | 14. Granddaughter-in-law |   |
| C         | 16. Sister                     | F<br>(AC) | 15. Aunt                 | L |
|           | 17. Wife's sister              |           | 16. Aunt by marriage     | L |
|           | 18. Brother's wife             |           |                          |   |
| E<br>(B1) | 19. Son's daughter             | G<br>(BC) | 17. Niece                | } |
|           | 20. Daughter's daughter        |           | 18. Niece by marriage    |   |
|           | 21. Son's son's wife           |           |                          |   |
|           | 22. Daughter's son's wife      |           |                          |   |
|           | 23. Wife's son's daughter      |           |                          |   |
| G<br>(BC) | 24. Wife's daughter's daughter |           |                          |   |
|           | 25. Brother's daughter         |           |                          |   |
|           | 26. Sister's daughter          |           |                          |   |
|           | 27. Brother's son's wife       |           |                          |   |
|           | 28. Sister's son's wife        |           |                          |   |
|           | 29. Wife's brother's daughter  |           |                          |   |
|           | 30. Wife's sister's daughter   |           |                          |   |

L denotes that the relation so marked is among the Levitical prohibitions. The question whether marriage with a daughter is specifically forbidden, depends on the disputed translation of Levit., xviii. 17. It probably was not considered necessary to specify this prohibition.

\* Grandparents, which are not mentioned, correspond with grandchildren, who are specified among the Levitical prohibitions.

† In like manner nieces correspond with aunts, and are therefore forbidden for marriage by implication.

It is unnecessary to print the corresponding Table of relations whom a Woman may not marry. In both the longer and the shorter form it exactly corresponds with the Table of marriages prohibited to the Man: class A corresponding with class B, and B with A, C being the same in either case, D corresponding with E and E with D, F with G and G with F.

In both Tables, the longer and the shorter, relations of the half blood are considered the same as of the full blood, *e.g.*, a half sister as a whole sister. The specification of the half sister in Levit. xviii. 11 would be natural where polygamy was prevalent.

## APPENDIX E

### ST. BASIL'S LETTER TO DIODORUS. *See p. 16*

1. I have received the letter \* which has reached me under the name of Diodorus, but in what it contains creditable to any one rather than to Diodorus. Some ingenious person seems to have assumed your name, with the intention of getting credit with his hearers. It appears that he was asked by some one if it was lawful to contract marriage with his deceased wife's sister: and, instead of shuddering at such a question, he heard it unmoved, and quite boldly and bravely supported the unseemly desire. Had I his letter by me I would have sent it you, and you would have been able to defend both yourself and the truth. But the person who showed it me took it away again, and carried it about as a kind of trophy of triumph against me who had forbidden it from the beginning, declaring that he had permission in writing. Now I have written to you that I may attack that spurious document with double strength, and leave it no force whereby it may injure its readers.

2. First of all I have to urge, what is of most importance in such matters, our own custom, which has the force of law, because the rules have been handed down to us by holy men. It is as follows: If any one, overcome by impurity, falls into unlawful intercourse with two sisters, this is not to be looked upon as marriage, nor are they to be admitted at all into the Church until they have separated from one another. Wherefore, although it were possible to say nothing further, the custom would be quite enough to safeguard what is right. But, since the writer of the letter has endeavoured

\* *Better*, a letter bearing the signature of D.



oured to introduce this mischief into our practice by a false argument, I am under the necessity of not omitting the aid of reasoning; although in matters which are perfectly plain every man's instinctive sentiment is stronger than argument.

3. It is written, he says, in Leviticus, "Neither shalt thou take a wife to her sister, to vex her, to uncover her nakedness, beside the other *in her life time*."\* From this it is plain, he argues, that it is lawful to take her when the wife is dead. To this my first answer shall be, that whatever the law says, it says to those who are under the law; otherwise we shall be subject to circumcision, the sabbath, abstinence from meats. For we certainly must not, when we find anything which falls in with our pleasures, subject ourselves to the yoke of slavery to the law; and then, if anything in the law seems hard, have recourse to the freedom which is in Christ. We have been asked if it is written that one may be taken to wife after her sister. Let us say what is safe and true, that it is not written. But to deduce by sequence of argument what is passed over in silence is the part of a legislator, not of one who quotes the articles of the law. Indeed, on these terms, any one who likes will be at liberty to take the sister, even in the life time of the wife. The same sophism fits in in this case also. It is written, he says, "Thou shalt not take a wife to vex her:" so that, apart from vexation, there is no prohibition to take her. The man who wants to indulge his desire will maintain that the relationship of sisters is such that they cannot vex one another.† Take away the reason given for the prohibition to live with both, and what is there to prevent a man's taking both sisters? This is not written, we shall say. Neither is the former distinctly stated. The deduction from the argument allows liberty in both cases. But a solution of the difficulty might be found by going a little back to what is behind the enactment. It appears that the legislator does not include every kind of sin, but particularly prohibits those of the Egyptians, from among whom Israel had gone forth, and of the Canaanites among whom they were going. The words are as follows, "After the doings of the land of Egypt, wherein ye dwelt, shall ye not do; and after the doings of the land of Canaan, whither I bring you, shall ye not do: neither shall ye walk in their ordinances."‡ It is probable that this kind of sin was not practised at that time among the Gentiles. Under these circumstances the lawgiver was, it may be supposed, under no necessity of guarding against

\* Lev. xviii. 18.

† Better, that the disposition of the sisters is free from jealousy.

‡ Lev. xviii. 3.

it; the unwritten custom sufficed to condemn the crime. How then is it that while forbidding the greater he was silent about the less? Because the example of the patriarch seemed injurious to many who indulged their flesh so far as to live with sisters in their life time. What ought to be my course? To quote the Scriptures, or to work out what they leave unsaid? In these laws it is not written that a father and son ought not to have the same concubine, but, in the prophet, it is thought deserving of the most extreme condemnation, "A man and his father," it is said, "will go in unto the same maid."\* And how many other forms of unclean lust have been found out in the devils' school, while divine scripture is silent about them, not choosing to befoul its dignity with the names of filthy things and condemning their uncleanness in general terms! As the apostle Paul says, "Fornication and all uncleanness . . . let it not be once named among you as becometh saints,"† thus including the unspeakable doings of both males and females under the name of uncleanness. It follows that silence certainly does not give license to voluptuaries.

4. I, however, maintain that this point has not been left in silence, but that the lawgiver has made a distinct prohibition. The words, "None of you shall approach to any one that is near of kin to him, to uncover their nakedness,"‡ embraces also this form of kinship, for what could be more akin to a man than his own wife, or, rather, than his own flesh? "For they are no more twain, but one flesh."§ So, through the wife, the sister is made akin to the husband. For as he shall not take his wife's mother, nor yet his wife's daughter, so he may not take his wife's sister, because he may not take his own sister. And, on the other hand, it will not be lawful for the wife to be joined with the husband's kin, for the rights of relationship hold good on both sides. But, for my part, to every one who is thinking about marriage I testify that "the fashion of this world passeth away,"|| and the time is short: "it remaineth that both they that have wives be as though they had none."¶ If he improperly quotes the charge, "Increase and multiply,"\*\* I laugh at him for not discerning the signs of the times.†† Second marriage is a remedy against fornication, not a means of lasciviousness. "If they cannot contain," it is said, "let them marry;"‡‡ but if they marry, they must not break the law.

5. But they whose souls are blinded by dishonourable lust do not regard even nature, which from old time distinguished the names of the family.

\* Amos ii. 7. † Eph. v. 3. ‡ Lev. xviii. 6. § St. Matt. xix. 6.

|| I Cor. vii. 31. ¶ I Cor. vii. 29. \*\* Gen. i. 28.

†† Better, the times when different commands were given.

‡‡ I Cor. vii. 9.



For under what relationship will those who contract these unions name their sons? Will they call them brothers or cousins of one another? For, on account of the confusion, both names will apply. O man, do not make the aunt the little one's step-mother; do not arm with implacable jealousy her who ought to cherish them with a mother's love. It is only step-mothers who extend their hatred even beyond death; other enemies make a truce with the dead; step-mothers begin their hatred after death. The sum of what I say is this: If any one wants to contract a lawful marriage, the whole world is open to him; if he is only impelled by lust, let him be the more restricted, "that he may know how to possess his vessel in sanctification and honour, not in the lust of concupiscence."\* I should like to say more, but the limits of my letter leave me no further room. I pray that my exhortation may prove stronger than lust, or at least that this pollution may not be found in my own province. Where it has been ventured on there let it abide.

Ep. clx. Benedictine edition of St. Basil's works, tom. III., p. 249. The translation here given is taken from *The Nicene and Post-Nicene Fathers*, 2d series, vol. VIII., pp. 212 sq.

## APPENDIX F

### CIVIL ENACTMENTS. See p. 21

On this subject reference may be made to *Marriage and Divorce in the United States*, by the Rev. Duncan Convers (Phila., Lippincott Co., 1889), ch. iv., "Who may not marry."

All the States have certain "prohibited degrees" within which their citizens are not to marry.

But (I.) the courts hold different theories as to the character of marriages contracted in contravention of these laws—

- (a) as being in themselves null and void without any action of a court;
- (b) or as being voidable by decree of a court, should its action be invoked.

Moreover (II.) the degrees of relationship within which marriage is prohibited vary in different States. What may be innocent in New York (e.g., marriage with a step-daughter) is wrong in Vermont, and what Vermont allows some other State forbids (e.g., New Hampshire the marriage of first cousins).

\* 1 Thess. iv. 4.

Far more startling variations might be given, but these are chosen from neighbouring States, and are sufficient to shew how dangerous (one might say impossible) is the line taken by some religious persons that no rule beyond that of the State should be adopted or enforced by a religious society.

The sentence of the Westminster Confession already quoted (p. 10) has been stricken out (in 1887) by the Presbyterian Church in the United States of America, while it is still taught that "Marriage ought not to be within the degrees of consanguinity or affinity forbidden by the Word; nor can such incestuous marriage ever be made lawful by any law of man or consent of parties, so as those persons may live together as man and wife." The intent of this change was declared to be "to remove any obstacle which may have existed to the marrying of the deceased wife's sister." The effect of the change, it would seem, must be to allow any marriage that is not *specifically* forbidden in Holy Scripture.

In New England, where the great majority of religious societies (whether Congregational, Unitarian, Universalist, or Baptist) are organised on the Independent or Congregational system, it is impossible to have any common law binding the different churches (of one denomination). There could not, as I understand, be more than a voluntary agreement on the part of ministers not to perform marriages which violated whatever standard might be adopted by them.

So far as I have been able to learn the Methodists have no rule on the subject.

It will be well to give in full the Vermont Civil Statutes on the subject. These (it will be seen) contain prohibitions beyond those *specified* in Leviticus, and beyond therefore those contained in the canon proposed by the Committee of the House of Deputies in their report (1901).

## CHAPTER 130

### MARRIAGE

Sec. 2628. No man shall marry his mother, grandmother, stepmother, daughter, granddaughter, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, sister, brother's daughter, sister's daughter, father's sister, or mother's sister.

Sec. 2629. No woman shall marry her father, grandfather, son, grandson, step-father, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother, brother's son, sister's son, father's brother, or mother's brother.



Sec. 2630. In the cases mentioned in the two preceding sections, if the relationship is founded on a marriage, the prohibition shall remain in force, notwithstanding the dissolution of the marriage by death or divorce, unless the divorce is for a cause which shows the marriage to have been originally unlawful or void.

## APPENDIX G

ANTONINUS, ARCHBISHOP OF FLORENCE, ON THE ALLEGED DISPENSATION GRANTED BY POPE MARTIN V. See p. 18

Summa Major

Beati Antonini.

Pars Tertia

De Matrimonio

Titulus I. de statu conjugatorum.

Capitulum XI. De Affinitate

Undecimum Impedimentum.

§ 1. Ultimo notandum

de Dispensatione.

Opus impressum per Magistrum Johannem Cleyn, 1516.

§ 1. Ultimo notandum de dispensatione Papæ prohibita circa hoc. Circa quod dicit idem Petrus de Palude quod in primo gradu affinitatis ascendentium et descendendum, sicut et consanguinitatis, Papa dispensare non potest, quia est contra jus divinum et naturale, quia uxoris parentum exhibemus reverentiam sicut parentibus nostris. Item et in linea transversali, in primo gradu prohibetur matrimonium consanguinitatis et affinitatis jure Divino. Unde nec Papa dispensare potest, quia etiam quodammodo est contra naturam, ut scilicet quis contrahat cum germana sua, v. uxore germani sui, eo mortuo. Unde etiam ante legem Mosaicam, multiplicato genere humano ante diluvium vel post, creditur se abstinuisse a sororibus et ab uxoris fratrum, nisi ad suscitandum semen fratris præmortui, sicut et tempore legis, sicut patet e Thamar et filiis Judæ. Nec obstat de uxoris Abraham et Isaac quas vocaverunt sorores, quia scilicet fuerunt consanguineæ, vel consobrinæ, sicut et Loth, qui filius fuit fratris Abraham, dictus est frater ipsius. Nec etiam posset dispensare Papa in uxore fratris mortui sine liberis; quia licet olim liceret, tantum dispensative licebat, quæ dispensatio fiebat jure Divino, non ab homine. Nam jure

Divino communiter abstinerebatur ab uxore fratris sicut a sorore, sed in casu illo permittebatur. Unde sicut Papa non posset dispensare in pluralitate uxorum, quamvis olim esset licita, quia licita erat ex Dei dispensatione, prohibita jure communi, sic nec in proposito. Item nec in secundo gradu transversalis superioris, ut cum amita et matertera: quia lege Divina prohibitum. Hæc Pe (trus). Ex his adverte diligenter, quod cum affinitas contrahatur ita per fornicationem sicut per actum conjugalem: ille, qui cognovit aliquam mulierem fornicarie, non potest contrahere cum filia ejus, vel germana ejus. Sicut nec posset contrahere matrimonium cum filia uxoris suæ ex alio viro: nec cum sorore ejus, ea mortua. Et secundum Pe (trum) Papa in hoc dispensare non potest; qui tamen casus sæpe pervenit ad audientiam confessorum.

Reperitur tamen Papa Martinus V. dispensasse cum quodam, qui contraxerat et consummaverat matrimonium cum quadam ejus germana, quam cognoverat fornicarie, cum magna tamen difficultate, et quia res erat occulta, nec ille erat aptus ad religionem, vel ad remota eundem; unde scandalum ex divortio, si factum fuisset, sequendum erat. Prius ordinavit plures Theologos et Canonistas super hac re habere collationem: utrum ipse posset in hoc dispensare? Nec convenerunt in conclusionem; sed aliqui dixerunt quod poterat, alii contrarium affirmaverunt. Et quia tenendum est certum, et dimittendum incertum, secundum Aug. (De Pe., dist. VII. Si quis.) Et instar sacrilegii est disputare de potestate principis, præcipue Papæ (XVII., q. H §) committitur etc. nemini: ubi dicit Nicolaus Papa: "Nemini est de Sedis Apostolicæ judicio judicare, aut illius sententiam retractare permissum; videlicet propter Romanæ Ecclesiæ primatum, Christi munere Beato Petro collatum." Ubi dicit glossa: "Nemini, si qui sit inferior Papa." Nam ipsemet Papa, vel successor ejus, potest sententiam suam, vel alterius Papæ, prædecessoris, retractare (ut xxxv. q. 9, sententiam). Exemplum patet; quia, quod prius determinatum fuerat per Ecclesiam, seu consanguinitatem et affinitatem durare usque ad septimum gradum, ut notant Isidorus Breg. et Alex. (xxxv. q. 5. Ad sedem Breg. ix.) retractavit et determinavit non durare nisi usque ad quartum gradum. (Ex. de Consang. et Affini. Non debet.) Et sic hodie servatur quantum ad contrahendum matrimonium.

Ideo nulli consulendum est, sed omnino prohibendum, procurare dispensationem, etiam a Papa, contrahendi cum tali, cujus scilicet matrem vel germanam quam carnaliter cognovit; sed si post contractum, et multo magis consummatum tale matrimonium, obtinuit dispensationem remanendi cum illa: dimittendum est negotium judicio Dei, nec condemnandum.



## By the Bishop of Vermont

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