

## Our Contributors.

### THE ASSEMBLY'S REMIT ON MARRIAGE AFFINITY.

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The question remitted for the consideration of Presbyteries is in substance whether it is wrong for a widower to marry a sister of his deceased wife. More formally, it is whether the position laid down in the Westminster Confession, "that a man may not marry any of his wife's kindred nearer in blood than he may of his own," is to be maintained and enforced. More precisely still: no question is raised respecting a wife's mother or daughter; but the reporting committee think so far as collateral kindred are concerned this position is not sufficiently sustained by the authority of Scripture. And they accordingly recommend that church discipline be not exercised in regard to marriage with a wife's sister, wife's aunt and wife's niece.

The expression used in the Report, that the proposition is not sufficiently sustained, may seem rather ambiguous. The evidence may be insufficient to prove the truth of the proposition, or to prove it so clearly as to justify its insertion in the Confession, and its enforcement as a rule of discipline; or to sustain the rule in all its breadth:—The unproved part being that which relates to the collateral kindred. Practically their meaning is clear enough, viz.: that the rule is not so sustained by the authority of Scripture as to require or justify the exercise of discipline in the cases mentioned. Presbyteries are asked to report to next Assembly whether they agree to this opinion or not.

The subject is not a new one, and is not specially attractive, but it is important for the interests of truth and purity that the Returns of Presbyteries be based on an intelligent and candid examination of the question. As a contribution for this end the following points will be submitted:

1. The principle that as regards marriage the kindred of a deceased wife are as closely related to a man as his own, is nowhere taught in Scripture. There is no law or formula, in the Old Testament or New, in the least resembling it. As a formula, therefore, it has no authority. It is a generalization, framed from details found chiefly in the eighteenth chapter of Leviticus. It is not the only generalization that has been framed from the same materials. And on a general view of the subject there is scarcely ground enough to give it even plausibility. Connections by blood and marriage, singly or combined, are of four kinds. A man might propose to marry A. his own kinswoman; B. his wife's kinswoman; C. his own kinsman's widow; or D. his wife's kinsman's widow. Processes of analogical reasoning from one of these classes of relation to another can be dealt with afterwards; but in the outset we must recognize the existence of these four classes of relationships. Are they all placed on the same footing, as regards the prohibition of marriage? Under A., besides the direct line of descent, we have in the collateral line, first degree, sister, and second degree, aunt. Under C., besides the direct line, we have in the collateral line, first degree, brother, and second degree, uncle. Under B., besides the direct line, we have in the collateral line only first degree, sister, and that not of a deceased but of a living wife. Under D. we have nothing. Without entering on any debatable question of interpretation as regards the details, it is evident at a glance that the four classes of relationships are not treated alike. A. and C. harmonize; but the range of prohibition under B. is very much contracted, and under D. there is no prohibition at all. Yet here we have the maxim that A. and B. are alike!

II. As to direct proof, there is none. To wife's aunt and niece there is no allusion. The only passage referring to wife's sister is Lev. xviii. 18, where it is forbidden to marry a wife's sister in the wife's lifetime, as Jacob did. This law is for the most part rendered superfluous by the suppression of polygamy. The only case to which it can now be applied is where a wife is divorced, but still living. The reason assigned for the prohibition is twofold—(1) generally the vexation of being rivalled or rather superseded, in her husband's affections, by a younger sister. There is not too much genuine love in the world. To the ordinary discomfort (for the wife) of polygamy it was a very serious aggravation that the bond of natural affection should be broken, and sweet sisterly

love turned into bitterness. (2) Specially the shock to her sense of decency. It was revolting to that modesty in relation to one another, in which children of the same family are reared, that two sisters should be brought together sexually through alternate intercourse with the same husband. Then, to guard against evasion of this difficulty by divorcing the elder sister, it is added, *in her life*, or as long as she lives. The prohibition ends there—as do the reasons assigned for it. If it is unlawful to marry the sister of a deceased wife, the law must be sought elsewhere.

III. The proof mainly relied on is *indirect*—an argument from analogy. A man stands related to his brother's wife in the same way as a woman to her sister's husband. If the relation is too close to admit of marriage in the one case, it must be so also in the other. This argument will be found, on close examination to proceed on three assumptions, viz.: 1. That in the estimation of the ancient Hebrews a brother's wife and a wife's sister are equally near relations. 2. That the Mosaic law prohibited marriage of a deceased brother's wife. 3. That the reasons for enacting this law, with its inferential extension, to the wife's sister, are so far unchanged that it ought to be enforced in Christian communities and by the Christian church. All these three positions are open to attack.

1. Are a brother's wife and a wife's sister equally near relations, or rather, are they so accounted by the ancient Hebrews? The answer depends on what we mean by near, in relation to a law of incest. The relations between two brothers are the same as that between two sisters. And the other link is that of marriage in both cases. But the person who proposes to enter into a sacred marriage is a man in the one case, and a woman in the other. Were the powers and privileges in regard to marriage of a Hebrew woman the same as those of a man? The possession of a wife did not debar the husband from taking another. The wife who took another husband would have been put to death as an adulteress. And the husband could terminate the conjugal relation by putting away his wife; but the wife had no power to put away her husband. She was his property rather than his equal. She had her recognized rights, but they were far from being identical with his. It is conceivable, then, that a widow might be forbidden to console herself for the loss of her husband by taking his brother in his place, and yet a widower left free to enter into an analogous relation if he chose. Had it been so, it would only have been another instance of the inequality of the sexes under an oriental form of civilization.

But it will be insisted that the present question is one not of power or privilege, but as to the comparative nearness of two relations. Let us look, then, more closely at this point. The nearness which throws up a barrier in the way of marriage is of two kinds: one physical or physiological, the other social or moral. The physical element is consanguinity. The social element is the intimacy subsisting between persons brought up in the same household. On this second ground of prohibition hear Dr. Charles Hodge, "When persons are so nearly related to each other as to justify their living together as one family, they should be sacred one to the other. If this were not the case, evil could hardly fail to occur, when young people grow up in the familiarity of domestic life. The slightest inspection of the details of the law as laid down in the eighteenth chapter of Leviticus, shows that this principle underlies many of its specifications." A curious illustration of the close connection between kinship and co-residence in the same family is afforded by the use of the adjective *near* in Lev. xxi. 2, 3. A priest is not to defile himself for the dead, except for his kin that is *near* to him. There kindred of the first degree are specified, and the list ends with his maiden sister, who is *near* to him, who has never been married. The nearness is that of kin in the one sense; of uninterrupted co-residence in the other. If his sister had been married she was no longer a member of the same household; and the effect of her transfer to another family was such that she was no longer ranked with his *near* of kin. If she died, he could not so much as come into the tent, to have a farewell look at her corpse. With this distinction between near and remote, in the case of a priest's sister before our minds, we shall be prepared to give an intelligent answer to the question whether in the apprehension of an ancient Hebrew a brother's wife and a wife's sister were equally near. A man and his brother's wife belonged to the same family.

A wife's sister, as a rule, had to be sought in a different family. For the Hebrews were still nomads when the law was given, and cohered in patriarchal groups, as nomads usually do. When a young man took a wife he brought her to his father's camp; she and her children were an accession to the strength of the group. And the settlement in Canaan disturbed this organization of society as little as possible. For each *father's house* had its own entailed estate, and there was little in the way of trade or manufactures to induce a man to forsake his birthplace. It is quite obvious then, that in the sense in which a priest's maiden sister was nearer to him than a married sister, a man's brother's wife was nearer to him than his wife's sister. And the question of co-residence in the same family touches so vitally the very *raison d'être* of a law of incest that it would be nothing wonderful if marriage were forbidden in the case of the nearer relation and permitted in the case of the more remote.

2. Did the Mosaic law prohibit the marriage of a deceased brother's wife? It is commonly supposed that this is the meaning of Lev. xviii. 16. I believe the supposition is incorrect. The general drift of the chapter is to prohibit sexual intercourse with persons to whom one can easily have familiar access as members of the same family. A *living* brother's wife comes under this category. It is objected that a special prohibition was unnecessary, as all such offences are covered by the seventh commandment. It is the violation of the husband's conjugal rights, however, that is principally contemplated in the prohibition of adultery. Should the husband be *willing* to share these rights, say with a favourite brother, an oriental would ask, what then? There are oriental communities existing at the present day in which the normal constitution of the domestic circle is for all the brothers of a family to have one wife in common. And there are reasons for believing that polyandry existed among the Aramean race in very early times. The levirate law has the air of what ethnologists would call a *survival* from it. A more literal survival we find still subsisting in the time of the later prophets, when a man and his father kept the same concubine. Practices of this kind may have been common among surrounding tribes, both in the wilderness and in Canaan. Their explicit prohibition, therefore, was not at all superfluous. Further, a man who coveted his brother's wife might contrive to have her divorced, and thus evade the seventh commandment.

There are definite reasons for holding that *deceased* brother's wife is not referred to in the verse. (1) The reasons assigned for the prohibition implies that the brother is alive. "It is thy brother's nakedness!" The indecency is like that of Ham in exposing his father's nakedness. The brother's ownership of his wife's person ended with his death—or at all events, in case of posthumous offspring, nine months thereafter. If it were not so, it would be unlawful for the widow to marry any man. (2) In certain circumstances, defined in Deut. xxv. 5, it was a positive duty to marry a brother's widow. The levirate law is commonly spoken of as an exception to the general law of incest; but it is not presented in that light in any passage of Scripture. It is not alluded to in Lev. xviii. 16; and the law of incest is not alluded to in Deut. xxv. 5. The Book of Deuteronomy was written forty years after the preceding books. In its main scope it is not a correcting or defining appendix to them, but a popular outline of the legislation they contain. It is obviously meant to be intelligible by readers who may never have seen the other books; as on the other hand Leviticus was meant to be intelligible without the aid of a book written forty years after. In short the first and the second laws stand related to each other, mainly, as code and abstract. If the marriage of a brother's widow was in some cases incestuous and in others not merely permissible but obligatory, the conditions on which the difference between incest and duty depended should have been specified both in the fuller legislation of Leviticus and in the summary of Deuteronomy. But it never occurs to the writer in Leviticus that there is an important exception to this law, nor to the writer in Deuteronomy that the levirate custom infringed on a general law of incest. The solution of this mystery is simply that the two things are not related to each other as rule and exception. The one does not trench on the other at all. The law in Leviticus has nothing to do with marrying a widow, childless or otherwise. The sanction in Deuteronomy of an ancient custom, defines the conditions