THEOLOGICAL QUARTERLY.

VOL. V. JULY 1901. No. 3.

Doctrinal Theology.

VOCATION.

Man, in his fallen state, is alienated from God and the life of God,[1] ἄθεος ἐν τῷ κόσμῳ.[2] *All we like sheep have gone astray; we have turned away every one to his own way.*[3] Nor is there in natural man a desire or willingness to return to God, to enter into union and communion with him. *The carnal mind is enmity against God.*[4] But *God loved the world;*[5] he longed for union and communion with fallen man; and in order to reestablish the bond of union which had been severed by sin, *God was in Christ, reconciling the world unto himself.*[6] And not only has God prepared salvation for all men, but he also sends forth the call: *All things are ready; come to the marriage;*[7] *Come; for all things are now ready.*[8] To the wayward children who go astray, famishing in the desert, he extends the call: *Ho, every one that thirsteth, come ye to the waters, and he that hath no money; come ye, buy, and eat; yea, come, buy wine and milk without money and without price.*[9] *Come unto me, all ye that labor and are heavy laden, and I will give you rest.*[10]

1) Eph. 4, 18. 2) Eph. 2, 12. 3) Is. 53, 6.
4) Rom. 8, 7. 5) John 3, 16. 6) 2 Cor. 5, 19.
7) Matt. 22, 4. 8) Luke 14, 17. 9) Is. 55, 1.
10) Matt. 11, 28.

Practical Theology.

FEDERAL LEGISLATION ON MARRIAGE AND DIVORCE.

For years we have encountered opinions in favor of national legislation on marriage and divorce with a view of doing away with the multitude of marriage laws now in force and of establishing a more satisfactory uniform law throughout the States of the Union. We do not deny that such uniform legislation would afford certain advantages as compared with the present state of things whereby a pastor's removal from one State to another puts him under the necessity of familiarizing himself with another set of statutes, the full import of which may be unknown even to lawyers whom he may consult, and even the full text of which may not be found in the latest edition of the Revised Statutes, but partly in the more recent Session Acts. Yet we find from all that we have seen that this clamor for Federal legislation on marriage and divorce is likewise bound up with a lack of familiarity with legal affairs, even with the fundamentals of civil legislation in the United States. These advocates of Federal marriage legislation are ignorant or unmindful of the very principles upon which marriage legislation in this country is based, viz., that each State in the Union is sovereign in its internal affairs, that the right of each State to regulate its own domestic policy implies the right to determine the civil status of its citizens and to establish the *jus loci* governing the contracts made within its territory, and that marriage is a civil status superinduced by a contract entered into by the contracting parties under the *jus loci*. In all these respects, the courts of one State consider all other States and all Territories directly under Federal jurisdiction as foreign territory, to which they must not push their jurisdiction. Nor does any State permit any

extraterritorial legislation to infringe upon its own undisputed right of determining the civil status or domestic or social conditions of persons domiciled within its territory. This holds good also with regard to artificial persons, or corporations. Each State creates its own corporations according to its own laws, and it is only by what is termed the comity of states or nations that the corporations of one State are recognized by every other State as far as the laws of the State exercising such comity will permit. It is on a similar policy that the maxim that marriage valid where contracted is valid everywhere is based, and no State, by following this maxim, waives its legal right of determining the status of its citizens. Thus, also, actions concerning the status of marriage as such are not considered proceedings *in personam*, but proceedings *in rem*, and this *res* being a thing fixed within the State, it comes under the jurisdiction of that State, and under no other. The Federal government, also, may obtain a certain jurisdiction in such matters only by virtue of the "full faith and credit" clause of the United States Constitution, saying, Art. IV, § 1, "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof." But here, too, the basis of such acts etc. is the law of the particular State, and the U. S. Statutes at Large say: "The said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given them in every court within the United States as they have by law or usage in the courts of the State from whence the said records are or shall be taken." This clause, then, is so far from denying, that it rather confirms, the principle that each State primarily fixes the civil relations of the citizens domiciled within its territory.

There are still other considerations which would render uniform Federal legislation on marriage and divorce for the

States of the Union, even if at all feasible, extremely difficult and, in the outcome, unsatisfactory. The social conditions prevailing in the various States and Territories are by no means the same. Laws appropriate for the older, more densely settled States, with a more stable and law-abiding population, would be less adapted to and enforceable in new, more sparsely settled States with a more fluctuating, migratory population embodying a stronger unruly element. Hence, f. ex., desertion, to constitute a cause of judicial divorce, must in such old States as Massachusetts, Maine, Vermont, New Jersey, Ohio, be continued for three years, while in California, Nevada, Colorado, Washington, Idaho, Montana, Wyoming, the time was set at one year, and in Arizona at 6 months. To avoid putting dead letter law on the statute book, the Federal legislature, in framing a uniform marriage law for all the States, would probably be inclined to enact statutes lax enough to be enforceable everywhere. Thus the advocates of what they would expect to be better legislation would find that instead of a gain they would score a loss. Or if, which is hardly probable, stricter and more severe legislation should prevail than social conditions in parts of the South and West would justify, unconquered defiance of unduly severe marriage laws in those parts would leave the domestic relations practically under less satisfactory regulation and would foster a spirit of lawlessness to the detriment of society.

What we have said in brief on the subject would furnish the groundwork for a long treatise, but will suffice to point out some of the chief reasons why whatever might and should be done toward better legislation on marriage and divorce must, under the prevailing circumstances, be done by State legislation. Besides, important as the enactment of appropriate laws undoubtedly is, much also depends upon the proper administration of existing laws and upon faithful compliance with these laws by those whom they concern.

A. G.