THEOLOGICAL QUARTERLY.

VOL. VII. JANUARY 1903. No. 1.

CHRISTIAN ARCHAEOLOGY.

INTRODUCTION.

Archaeology is a special department of history. But the word *archaeology* is not immediately derived from ἡ ἀρχή, *the beginning*, but from τὰ ἀρχαῖα, *primitive things*, that which was peculiar to or characteristic of early days. Christian archaeology is not simply the history of early Christianity, but a topical exhibition or presentation of the institutions of the Christian church and the practices therewith connected as they appear to the student of primitive Christianity.[1] Such institutions are the *churches* as constituted in local congregations, the *ministry*, *public worship*, *public benevolence*, *church discipline*, *missions*, *fellowship and co-operation among the churches*. Other subjects, as *preaching*, *baptism*, *the eucharist*, *Bible reading*, *prayer*, *sacred song*, *ordination*, *Christian burial*, *Christian education*, *marriage and the domestic relations*, *social relations*, *property*, are special topics, which come under their respective general heads. All these institutions and the observances, practices, and customs connected therewith, may also be considered from a doctrinal point of view. But Archaeology deals with them as historical subjects, not pointing out what they should be,

1) We have never been able to see sufficient reason why Christian Archaeology should restrict itself to a presentation of the history of Christian cult or public worship.

word and doctrine as ministers of the church. It is hardly a bold generalization when we assume that this was probably the practice throughout the primitive church, that the apostles and other early ministers of the church were also the theological instructors of such as should be fitted for the ministry, and that the early Christian parsonages were probably the theological seminaries of primitive Christianity.

(*To be continued.*) A. G.

MARRIAGE AND DIVORCE.

Introduction.

The doctrine of Marriage and Divorce, in theology, is a chapter in Christian ethics. What we know and teach concerning this subject as theologians, we know from and teach according to holy Scripture. Secular jurisprudence deals with Marriage as a civil status determined by the law of the place where this status is assumed, or by the law of the domicile where the parties united in this status dwell, or by the law of the forum before which its validity is to be established, or by one and another or all of these together. Where the secular laws and the moral law of marriage coincide, the coincidence is only of the *materiale*, or of that which is enjoined or prohibited, owing to the fact that the secular laws have been at all times and among all nations largely shaped according to the *materiale* of the moral law, enjoining or prohibiting, as to the outward act, what the moral law enjoins or prohibits. As to their *formale*, the law of God and the laws of states must never be confounded or identified. The moral law is divine, its every transgression is under all circumstances sin.[1] The laws of states are human, and offenses against them as such are crimes or

1) 1 John 3, 4.

misdemeanors. The law of God is always supreme, as God is the supreme Lawgiver, and where the divine law and human laws conflict, the former must prevail.[1] Where the laws of the state enjoin or prohibit what the moral law neither enjoins nor prohibits, there is no conflict between the two, and we are bound to obey the laws of the state, rendering unto Caesar the things which are Caesar's.[2] But where the secular law enjoins what God in his law prohibits, or prohibits what the moral law enjoins, we are bound to conform ourselves, our acts and conduct, to the law of God and, if necessary, suffer the consequences at the hands of civil government or go where civil laws are such that we may render unto Caesar the things which are Caesar's without denying unto God the things that are God's.

All this applies also to the laws of Marriage and Divorce. Christians are bound to obey both the law of God and the laws of the state where there is no conflict between the two. Thus, where the law of the state prohibits marriage between first cousins, there is no conflict between such law and the law of God, which neither enjoins nor forbids such marriage, and we must submit to the law of the state and abstain from such marriage while we are under such law. Again, the law of God which prohibits marriage with a woman not free from a former husband according to divine law, though she may be free according to human law, is not in conflict with the secular law inasmuch as the latter neither enjoins nor prohibits such marriage, and we are bound to conform to the divine law and abstain from such marriage. But when the state has pronounced a man and a woman husband and wife who cannot be lawfully joined in wedlock according to the moral law, the divine law must prevail and a separation should be demanded *in foro ecclesiae*, though the separation of one party against the will of the other be deemed an unlawful

1) Acts 5, 29.

2) Matt. 22, 21; cf. Rom. 13, 1. Tit. 3, 1. 1 Pet. 2, 13. 14.

act, desertion, according to the secular law. Or when the state has made drunkenness or cruelty a cause of divorce, while the moral law prohibits divorce for these causes, the divine prohibition must prevail in the church and before the Christian conscience.

It is of the utmost importance that these distinctions should be kept in view. They should be earnestly inculcated upon the Christian people by pastors and teachers. In matrimonial troubles, Christian men and women often seek the advice of the lawyer where they should come to their pastor. Of course, legal counsel is sometimes necessary, especially where the cause of action lies between a Christian and an ungodly spouse and relief must be sought in secular courts. But even when recourse to the police power of the state seems unavoidable, Christians should first see their way clear in the light of which the psalmist says, *Thy word is a lamp unto my feet, and a light unto my path*,[1] and should, therefore, first seek the advice of those whom God has given them as spiritual advisers, also in matters of marriage and divorce. For marriage is or should be to a Christian, first of all, a divine institution, governed by the divine law, and only secondarily a civil status regulated by the law of the state. If this were carefully and conscientiously heeded by Christian people, many distressing complications in matrimonial affairs, and unspeakable troubles accruing therefrom to the parties concerned and to pastors and congregations, would be avoided. The pastor's advice should be sought in good time, before decisive steps have been taken, engagements or separations accomplished. Very frequently, perhaps in most cases, the minister hears of the mistakes that have been made, the sins that have been committed, at a time when it has become a matter of extreme difficulty to retrace the unjustifiable steps that have been taken, where with timely warning and guidance all might have been well and properly

1) Ps. 119, 105.

adjusted. Here also and preeminently an ounce of prevention is better than a pound of cure. In some of the German churches it was customary to read from the pulpit on the second Sunday after Epiphany of each year the prohibited degrees and other impediments of marriage, and the introduction of this practice in our churches deserves to be urgently recommended. In this respect, also, the pastor should watch for the souls of his parishioners,[1] with a view of exercising a wholesome prophylaxis. With the reader's permission, I would here offer an example from my own experience to show the expediency of such precaution. A wife, the mother of several children, had died shortly after having given birth to another child, and at the funeral I observed that a sister of the deceased had taken charge of affairs in the bereaved household. I also learned that the young woman had declared her willingness to stay and keep house for her brother-in-law. Seeing what the probable outcome of this arrangement would be, I was at once determined to put a speedy stop to what all the relatives looked upon as a most satisfactory movement. On that very evening I took the widower's father and mother into my confidence, called their attention to what was in all probability under way, the union of their son with his deceased wife's sister, led them to understand the will of God, and induced them to frustrate the course which things had begun to take by offering their son a temporary home for himself and his children under their roof and persuading him to accept their offer without delay. That the young woman and her parents were ill pleased when our plan was carried out was only additional proof of its expediency, and to this day the son, whom God has long since blessed with an excellent second wife, gratefully acknowledges how he was put out of harm's way even before he realized the danger to which he was exposed. Of course, these are delicate cases and must be touched with careful hands; but it is natural, and experi-

1) Hebr. 13, 17.

ence teaches, that people are far more accessible to counsel and argument before they have committed themselves to wrongs, especially in matrimonial affairs, than after things have taken definite shape. But considering that these things are matters of conscience and go far in determining the happiness or misery of those directly and indirectly concerned, pastoral advice should certainly be far more frequently and timely solicited and offered than it generally is, and pastors should keep themselves well informed as to the theology of marriage and divorce.

Again, inasmuch as ministers of religion act under the laws of the state when they solemnize marriages, they should also keep themselves familiar with these laws as far as they constitute the *jus loci* for the solemnization and determine the legality and validity of marriage as a civil status governed by the laws of the state. As every State legislature may enact new marriage laws or modify those in force, it is not sufficient to know what the latest edition of the Revised Statutes may say on the subject of marriage, but all the Session Acts published since the publication of the Revised Statutes must also be inspected. Removal into another State imposes upon the minister the task of acquainting himself with a new set of marriage laws from the compiled Statutes and the Session Acts, which he will find in any lawyer's library, or in the court house or the clerk's office of his county. If ignorance of the law is nowhere an excuse for offending against the law, and the first demand of the law is that it should be known by those who are under the law, ignorance of the law is least of all excusable in those who perform public functions by authority of the law. While, then, I shall not enter into all the details of Marriage legislation as embodied in the Statutes now in force, which may be changed by every legislature, I shall endeavor to set forth what may facilitate a correct understanding of the Statutes and to direct the reader's attention to such points as should be noted with particular care.

I. MARRIAGE.

The word, *Marriage*, is employed in a twofold sense, signifying either the *status*, the state or estate, of those who have been joined in wedlock, or the *act* or series of acts whereby such *status* has been superinduced.

The state of Marriage, or wedlock, is *the joint status of one man and one woman*,[1] *superinduced and sustained by their mutual consent*[2] *to be and remain to each other husband and wife in a lifelong union*[3] *for legitimate sexual intercourse*,[4] *the procreation of children*,[5] *and cohabitation for mutual care and assistance*.[6] This definition of the estate of marriage is true both from a theological point of view, as we look upon Marriage as of divine institution and determined by the moral law, and also as we consider Marriage from a legal standpoint as a civil status created by the state and governed by the law of the state. This coincidence is not to be explained by the assumption that the secular laws of marriage were identical with the moral law as concerning the married state, or, in other words, that marriage as a civil status were and must be determined and regulated by and according to the moral law. For this assumption is false. It is not of the province of the state and of civil government to execute the law of God or to regulate civil affairs according to the moral law. Even the Mosaic political law, though the law of a theocracy, was not the moral law, also as concerning marriage and divorce.[7] But as the *materiale* of the precepts of the moral law has in all ages been the groundwork of civil legislation, so the

1) Gen. 1, 27; 2, 22. 24. Matt. 19, 4—6. Rom. 7, 2. 1 Cor. 7, 39.

2) Gen. 2, 22—24; 24, 58. 1 Cor. 7, 12. 13. Gen. 29, 21. Matt. 1, 18—20.

3) Gen. 2, 24. Rom. 7, 2. 1 Cor. 7, 39. Matt. 19, 3—6.

4) Gen. 2, 24; 4, 1. Matt. 19, 5. 6. Eph. 5, 31. Hebr. 13, 4. 1 Cor. 7, 2—5.

5) Gen. 1, 28; 2, 24; 9, 1. 7.

6) Gen. 2, 18. 20. Eph. 5, 28. 29. 31. 33. 1 Cor. 7, 12. 13. 1 Pet. 3, 7. Col. 3, 19.

7) Deut. 24, 1. 2; cf. Matt. 19, 7—9.

marriage laws of all nations have been more or less based upon the *materiale* of the moral law, determining that sexual intercourse shall be lawful only between husband and wife. I say, more or less. Thus, f. ex., where polygamous marriage was or is sanctioned by law, one of the features of the moral law has been abandoned. Or where concubinage was legitimized, still more of the *materiale* of the moral law was set aside. In our country, under the influence of Christianity, the *materiale* of the divine law of marriage has been carried over into civil legislation to such an extent that the status created by the law of the state is materially the same as that created by divine institution, and the same definition will answer for both. And yet matrimony is, in the eyes of the state, not what the law of God, but what the state makes it; it begins for the state where it is first recognized by the state, not where the moral law would fix the beginning of the status; it terminates, not where it has become extinct according to the law of God, but where the civil status has terminated under the judgment of a civil court or according to the laws of the state. The status, rights, and duties, of husband and wife are, in their civil aspects, not what the law of God has made them, but neither more nor less than the state has determined them to be. Where the state has established marriage so that it includes the union of cousins, such union is marriage, while another state excludes this union and makes it "incestuous and void." Polygamy was not an offense against the state in Utah before it was so stamped by civil legislation, though it had always been prohibited by the law of God, and the law of Illinois stamps the union of cousins a crime though they may live in wedlock according to the marriage law of God.

While, then, the definition of the nuptial state given above is equally true in Christian theology and in American law, it should be distinctly understood that we are here considering marriage as a status of divine institution regulated

by the moral law, and that the secular law will only be referred to by way of comparison as to points of agreement or disagreement. With this understanding we now proceed to an analysis of the definition as defining the divine institution of matrimony.

Marriage a status.

Marriage is, by divine institution, a *status*, state or estate. We read that *the Lord God said, It is not good that the man should be alone: I will make him an help meet for him.*[1] Then he created woman, not another man, male as Adam was, but female.[2] And when God had made the woman, *he brought her unto the man*,[3] and Adam received her, consenting to cleave to her as *his wife* and be one flesh with her.[4] And God blessed them and said unto them, *Be fruitful and multiply.*[5] Thus was the domestic state established in Paradise. Thenceforth they were *the man and his wife;*[6] he was *her husband*,[7] and she was *his wife*,[8] the woman whom God had *given to be with him.*[9] Not for occasional acts of commerce, but for continued and permanent union, a state of union, were they joined together, that no man should put them asunder.[10] Thus it was ordained *from the beginning.*[11] Thus it was also to remain. For of his children and their descendants, who should have fathers and mothers, whom the first couple had not, Adam said: *Therefore shall a man leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh.*[12] Thus of Cain, dwelling in the land of Nod, it is said that he *knew his wife*,[13] not some woman, but the woman who was *his wife*, with whom he lived in a state of wedlock. Thus, also, all the human individuals

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1) Gen. 2, 18. 2) Gen. 1, 27; 2, 7. 21. 22; 5, 1. Matt. 19, 4.
3) Gen. 2, 22. 4) Gen. 2, 23 f. Matt. 19, 5.
5) Gen. 1, 28. 6) Gen. 2, 25; 3, 8. 21.
7) Gen. 3, 6. 16. 8) Gen. 3, 17. 20 f.; 4, 1.
9) Gen. 3, 12. 10) Matt. 19, 6. 11) Matt. 19, 8.
12) Gen. 2, 24. Matt. 19, 5. 13) Gen. 4, 17.

who survived in the ark were married men and women, Noah and his wife, and his three sons, and the three wives of his sons with them.[1] As married people they entered the ark, and as husbands and wives they went forth when the flood was over, perpetuating for the coming generations the institution established in Eden, the state of marriage. The essential difference between this institution and loose sexual relations was recognized at all times and among all nations and stands acknowledged to-day. Even where polygamy is practiced, the difference between wives and concubines is recognized.[2]

The recognition of marriage as a civil *status* is now prevalent also in American law. There was a time when marriage was generally defined as a *contract*. "Marriage is a contract," says Rogers,[3] and Shelford: "Marriage is considered in every country as a contract, and may be defined to be a contract according to the form prescribed by law, by which a man and a woman, capable of entering into such contract, mutually engage with each other to live their whole lives together in the state of union which ought to exist between a husband and his wife."[4] Even Judge Story has said: "I have throughout treated marriage as a contract in the common sense of the word, because this is the light in which it is ordinarily viewed by jurists, domestic as well as foreign."[5] But when Blackstone, whom English and earlier American jurists followed, said: "Our law considers marriage in no other light than as a civil contract,"[6] his emphasis was on "civil;" for he continues: "The *holiness* of the matrimonial state is left entirely to the ecclesiastical law: the temporal courts not having jurisdiction to consider unlawful marriage as a sin, but merely as a civil inconvenience."[7] What he had in mind was the differ-

1) Gen. 7, 13.
2) 1 Kings 11, 3.
3) Ec. Law. tit. Marriage, 595.
4) Marriage and Divorce, 1.
5) Conflict of Laws, § 108 N.
6) Commentaries 1, 433.
7) Ibid.

ence between civil affairs subject to the secular law, and ecclesiastical matters determined by the law of the church. It should also be noted that Blackstone in the same context speaks of the "matrimonial state." But before the definition of marriage as a civil status gained the ground it now holds, courts and judges were more or less inconvenienced by the notion of marriage as a contract. A few dicta quoted by Bishop will exemplify this. Lord Robertson: "Marriage is a contract *sui generis*, and differing in some respects from all other contracts, so that the rules of law which are applicable in expounding and enforcing other contracts may not apply to this."[1] Judge Robertson of Kentucky: "Marriage, though in one sense a contract ... is, nevertheless, *sui generis* and unlike ordinary or commercial contracts is *publici juris*."[2] Commissary Ross: "Marriage is a contract altogether of a peculiar kind; it stands alone, and can be assimilated to no other contract whatever."[3] Judge Ames, breaking away from the old definition, said: "Marriage, in the sense in which it is dealt with by a decree of divorce, is not a contract, but one of the domestic relations."[4] And Bishop says: "To term marriage, therefore, a contract, is as great a practical inconvenience as to call the well-known engine for propelling railroad cars 'a horse,' adding, 'but it differs from other horses in several particulars;' and then to explain the particulars. More convenient would it be to use at once the word locomotive."[5]

It might, perhaps, be said that while the state of marriage is not an act, but a status, the assumption of this status, the act or series of acts whereby it is superinduced, is a contract. But even this will not hold without considerable limitation. Other contracts are those of *do ut des*, *facio ut facias*, *facio ut des*, or *do ut facias*, and the terms of the contract are stipulated by the parties and can be

1) Marriage and Divorce, § 6. 2) Ibid. § 8. 3) Ibid. § 7.
4) Ibid. § 10. 5) Ibid. § 18.

modified, or the whole contract rescinded, by the mutual agreement of the parties to modify or rescind. All this is different in marriage. Here the essential rights and duties of the parties are defined and fixed by law, not by the free will of the parties, nor can they be afterwards modified by the will of the parties; nor can the bond be rescinded by mutual agreement. All that can be consistently said is that marriage and a civil contract have one element in common, which forms, to a certain extent, a point of resemblance between the two, and that is mutual consent, of which more will be said under the proper head.

Marriage a joint status.

There are other civil states than that of marriage. Infancy at law is a civil status determined by the law of the state. The state may make one person an infant at twenty and another person an adult at eighteen years of age. At the common law males and females are infants to the age of twenty-one years; by the statutes of many States females attain their maturity at law on the completion of their eighteenth year, and in some the minority of both males and females terminates by lawful marriage. This status, however, differs from that of marriage in this that a boy of fifteen is an infant by himself, irrespective of other persons, of father or mother, brothers or sisters, and would be an infant even if he were the only person so conditioned at law in the whole political community. Not so with marriage, which is in every case a joint status, in which *two* parties, husband and wife, are partners. There can be no husband without a wife, and no wife without a husband. Wedlock is a common bond which binds both parties. Where and when the one party is bound in marriage, the other party is also bound; and when one party is free, the other also is free, from the marriage bond. When the state of marriage begins, it begins for both parties; and when it terminates, it terminates for both parties. When the woman

is not yet a wife, the man is not yet a husband; and when the man is no longer a husband, the woman is no longer a wife, and *vice versa*. Adam was a man before the woman was created,[1] when *there was not found an help meet for him*.[2] Nor did the creation of woman make him a husband, neither was the first woman created a wife. That God *made a woman* and that he *brought her unto the man*, were two different and distinct acts.[3] If the woman had refused to be brought to the man, or if the man had refused to accept the woman made for him, both would have sinned, setting their will against the will of God; but they would not have sinned, as they afterwards did, as husband and wife.[4] When the twain had become *the man and his wife*,[5] he was *her husband*[6] and she was *his wife*.[7] The woman is bound by the *νόμος τοῦ ἀνδρός*,[8] the law pertaining to the husband, or which regulates the relation of husband and wife, as long as, and no longer than, she has a husband. When the husband dies, she is free, she is no longer a wife.[9] And if the *unbelieving* husband *depart*, desert her, cast away the marriage bond and will be her husband no more, she too *is not under bondage* any more.[10] On the other hand, while one party is bound, both are bound, so that, if the husband marries another woman, he commits adultery, and if the wife marries another man, she commits adultery.[11] The marriage tie which encircles husband and wife is one. There are not two marriages, one, the husband's, the other, the wife's; but there is one marriage common to both and binding them both while it endures. When that tie is broken and when, thus, the marriage is dissolved, it no longer exists, and both parties are free.

This is the doctrine of Scripture. The doctrine of American law is set forth by Bishop as follows:

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1) Gen. 2, 7. 18. 2) Gen. 2, 20. 3) Gen. 2, 22.
4) Gen. 3, 6. 17. 5) Gen. 2, 25; 3, 8. 6) Gen. 3, 6. 16.
7) Gen. 3, 17. 8) Rom. 7, 2. 9) Rom. 7, 2. 3. 1 Cor. 7, 39.
10) 1 Cor. 7, 15. 11) Matt. 5, 32; 19, 9.

"The law, as to marriage, knows only two forms of the status,—that of married persons, and that of unmarried. A man who has a wife, or a woman who has a husband, is married. A person without a husband or wife is not married,—is single. Whether or not such single person once had a husband or wife—was once a married person—is immaterial when the enquiry relates to the present time. If a married man loses his wife, or if a married woman loses her husband, he or she ceases to be a married person. A husband without a wife, or a wife without a husband, is unknown to the law. This is elementary doctrine, of the class of the self-evident, yet it has proved, to some judges, 'glare ice,' upon which they slipped and fell."[1])

And again:

"This comes from the impossibility of there being a wife without a husband or a husband without a wife. A thing impossible cannot be; and what cannot exist at all, cannot exist at law. And no one ever pretended, that, when a husband or wife is dead, the other party remains married. But various courts have slid into the absurd proposition, held in a sort of indirect way, yet never squarely faced and asserted, that, though a divorce *a vinculo* had operated on one of the parties, lawfully freeing him or her from the vinculum of the marriage, and making such party single, the marriage tie may still bind the other; who, for example, cannot marry again, though no special law forbids."[2])

Such special laws exist in several of our States. In a few, as in New York, no libellee convicted of adultery can marry again. In other States, as in Maryland, Virginia, Georgia, Alabama, the court or jury may decree in certain cases whether the guilty party may marry again after divorce. In some States the time within which the guilty party or, as in Minnesota and Kansas, either party shall not marry after divorce, is limited to a certain period, which is

1) Marriage and Divorce, vol. II, § 697. 2) Ibid. vol. I, § 128.

five years in Missouri, three years in Vermont, a shorter time in several other States. But in a case tried under the New York statute, Judge Selden, of the Supreme Court of one of the districts of New York, said: "Husband and wife are correlative terms, so defined by lexicographers; which implies, that, whenever one can be properly applied, there must be a person to whom the corresponding term is applicable. If, therefore, the defendant is no longer the *husband* of his former wife, then she is no longer his *wife*. . . . The restraint of the defendant, as to a second marriage, arises, not out of the marriage contract, or from any continuing obligations to his former wife, but exclusively from the positive prohibition of the statute."[1] A. G.

(To be continued.)

THE HISTORY OF THE ENGLISH BIBLE.

Before us lies a volume of XXXII and 336 pages entitled "*The evolution of the English Bible. A historical sketch of the successive versions from 1382 to 1885. By H. W. Hoare,*" *late of Balliol College, Oxford.* Perhaps the weakest part of this book is its title. For there is no such thing as evolution in history, and the English Bible is not a product of evolution any more than any other historical quantity, Mr. Hoare's book being witness. There are other things in the book that we cannot endorse. But there is so much highly instructive historical information stored between the covers of this volume, that we cannot deny ourselves the pleasure of presenting to the readers of the QUARTERLY a sketch drawn chiefly from this "historical sketch of the successive versions from 1382 to 1885."

As Wycliffe's Bible was really the earliest English Bible, what covers the first 60 pages of Mr. Hoare's book

1) People *v.* Hovey. 5 Barb. 119. Bish. § 700.