

## **Preface to the PDF Version, December 2012**

The following dissertation has been compared to the original as submitted for approval by the field committee and my advisor and is believed to be an exact copy. The pagination, beginnings and ends of pages, and footnotes on each page agrees with the original so that any citation of this dissertation will agree with the original. When updating the file to the more current word processor version, a few oddities occurred that have been manually corrected to provide consistency of pagination. One problem encountered involved the tables included in the dissertation.

When I went to find the files for the several tables in the dissertation in my floppy disk archives, they could not be found. The reason why the PDF file is such a large one is because I had to scan them from the original document and insert them in the PDF as images. I apologize for the fuzziness of the tables, but I believe all of them are legible.

As with any thesis or dissertation there are aspects of the vocabulary, presentation, and argument that I would do differently if I was writing it today and there are details and facts that could use adjusting. However, I believe my rendition of the history of the sentence in question in the *Westminster Confession* is a good one and the points raised in the conclusion could use some additional thought regarding the revision of confessional standards.

This dissertation has been provided in PDF form to make it accessible to those who might be interested in it for scholarly endeavors, historical research, ecclesiastical debates, or simple curiosity raised by the subject of near kin marriages, but please note that it is my registered copyrighted property.

The Author

## **The History of a Confessional Sentence**

The Events Leading up to the

Inclusion of the Affinity Sentence in the *Westminster Confession of Faith*, Chapter 24,  
Section 4, and the Judicial History Contributing to its Removal in the American  
Presbyterian Church

“The man may not marry any of his wife’s kindred, nearer in blood, than he may of his  
own; nor, the woman, of her husband’s kindred, nearer in blood, than of her own.”

by

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### **In Appreciation to ...**

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## Abstract

“The History of a Confessional Sentence: The Events Leading up to the Inclusion of the Affinity Sentence in the *Westminster Confession of Faith*, Chapter 24, Section 4, and the Judicial History Contributing to its Removal in the American Presbyterian Church.”

Waugh, Barry G. Westminster Theological Seminary, 2002. 310 pp.

This study examines the history of the Westminster Assembly’s statement in its *Confession of Faith* that reads: “The man may not marry any of his wife’s kindred, nearer in blood than he may of his own; nor the woman of her husband’s kindred, nearer in blood than of her own.” The American Presbyterian history of this sentence includes 150 years of adjudication that led to its removal late in the nineteenth century.

This dissertation shows that the American Presbyterian Church removed the sentence despite having repeatedly affirmed the legitimacy of its “in blood” interpretive principle in numerous affinity marriage cases including the marriage of a man to his deceased wife’s sister. Further, though this excision ended the occurrence of near-kin judicial cases at the General Assembly, it neither eliminated all confessional justification for prohibiting these marriages, nor did it resolve the contested issue of discipline. The revision left Presbyterians with an incomplete near-kin marriage paragraph that could still be interpreted to prohibit a wife’s sister marriage as well as expand the number of prohibited unions beyond those forbidden by the unedited paragraph.

The purpose is accomplished with five chapters. Chapter one covers the “Great Matter” of Henry VIII—his marriage to his brother’s widow—through roughly the end of the Elizabethan era. The second chapter emphasizes the views of the Puritans and their composition of the sentence at the Westminster Assembly. Chapter three traces the history of near-kin issues in American Presbyterianism through about 1830. Chapter four

gives a detailed look at a wife's sister marriage involving a minister. The last chapter ends the antebellum era and covers the events leading to the removal of the sentence from the northern and southern Presbyterian editions. The conclusion affirms the thesis and considers the significance of the historical events for contemporary Presbyterians.

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## Conventions

### **Abbreviations**

*BRPR - Biblical Repertory and Princeton Review*

*PTSEM - Princeton Theological Seminary*

*PHSP - Presbyterian Historical Society, Philadelphia, PA (Northern Records)*

*PHSM - Presbyterian Historical Society, Montreat, NC (Southern Records)*

### **Terminology**

The *Westminster Confession*, 24:4, will be divided and designated as follows:

*Marriage ought not to be within the degrees of Consanguinity or Affinity forbidden in the Word;* will be the “first sentence.” *Nor can such incestuous marriages ever be made lawful by any Law of man or consent of Parties, so as those persons may live together as man and wife;* shall be called the “second sentence,” or the “discipline sentence.” *The man may not marry any of his wives kindred, nearer in blood, than he may of his own; nor, the woman, of her husband’s kindred, nearer in blood, than of her own* shall most often be the “affinity sentence,” but in some cases it will be the “third sentence.”

Two additional terms should be remembered. The *first* is “reciprocal application,” “reciprocally,” or “reciprocity,” which means that a relationship applied to the man in the law is applied likewise to the woman. For example, Lev 18:16 prohibits a man’s marriage to his deceased brother’s wife, so reciprocally applied to the woman it prohibits marriage to her deceased sister’s husband; the reciprocal of brother is sister, and of wife is husband. The *second* term is “inverted,” “inversion,” or “inverting,” which means that when a man is prohibited his brother’s widow in Lev 18:16, looking at it from the woman’s perspective she is prohibited her deceased husband’s brother. The two terms applied to the same verse yield different prohibitions (most of the time). The man’s prohibition of his deceased wife’s sister is the inversion of the woman’s prohibition of her deceased sister’s husband.

General Assembly and other judicatory minutes should be assumed Old School in the 1837 to 1869 period unless designated New School.

## Introduction

The Westminster Assembly addressed the prohibition of marriages of affinity in its *Confession of Faith* at the end of chapter twenty-four, section four, with the following sentence: “The man may not marry any of his wife’s kindred nearer in blood than he may of his own; nor the woman of her husband’s kindred nearer in blood than of her own.” The Presbyterian Church in the American Colonies subscribed to the *Westminster Confession* by means of the Adopting Act in 1729. Before the Adopting Act, the Presbyterians used the *Confession* for unofficial doctrinal direction, and the New England Congregationalists used a modified form of the *Confession* as a constitutional document. As the Presbyterian Church grew, through the colonial period and well into the nineteenth century, several cases involving marriages within the degrees prohibited by the affinity sentence came before the Presbyterian courts. At the present time, the affinity sentence has been removed from some denominational versions of the *Westminster Confession*, while other versions have restricted its use, and yet others have applied authoritative statements from their lesser constitutional standards to interpret its teaching.

The thesis of this dissertation shows that the American Presbyterian Church removed the affinity sentence from the *Westminster Confession* despite having repeatedly affirmed the legitimacy of its “in blood” interpretive principle in numerous affinity marriage cases including those involving a man’s marriage to his deceased wife’s sister. Further, though this excision ended the occurrence of near-kin judicial cases at the General Assembly, it neither eliminated all confessional justification for prohibiting these marriages, nor did it solve the contested issue of appropriate discipline. In fact, the

excision left Presbyterians with an incomplete near-kin marriage paragraph that could still be interpreted to prohibit a wife's sister marriage as well as expand the number of near-kin prohibitions beyond the number prohibited by the original, unedited consanguinity and affinity paragraph.

The thesis develops through five chapters of discussion and analysis. Each chapter examines theological books, pamphlets, and ecclesiastical records to obtain the views on near-kin issues pertinent to the era delimited by the chapter title. The first chapter provides Protestant Reformation background material that covers the events from the "Great Matter" of Henry VIII and his marriage to his deceased brother's wife, through the early teaching of the Church of England, and ends with the later years of the Elizabethan era. The second chapter overlaps the first and provides further background material by presenting the views of both the Elizabethan and Westminster Assembly Puritans as well as the inclusion of the affinity sentence in the *Confession*. The emphasis of the third chapter is the history of near-kin issues in the American Presbyterian Church from its earliest years up to the end of the nineteenth-century's third decade. The most extensive chapter, the fourth, gives a detailed look at the minutes of the Presbyterian Church's judicatories, near-kin publications, and other primary sources relevant to the affine marriage of the Rev. Archibald McQueen to his deceased wife's sister. The final chapter wraps up the antebellum period, examines a series of articles in the *Southern Presbyterian Review*, and rehearses the events leading to the removal of the affinity sentence from both the northern and southern Presbyterian editions of the *Confession*. The analysis will end with a conclusion that considers the import of the affinity

sentence's removal and its implications for those who presently subscribe to the *Westminster Confession*.

The case for the thesis presented in the following chapters will also touch upon some associated issues including—which is more important for determining what marriages are incestuous, the Bible or the *Confession*; disagreement over whether incestuous unions must be separated; and whether or not a ministerial candidate taking an exception to the affinity sentence was an acceptable practice for those subscribing to the *Westminster Confession* and its associated standards. Near-kin marriage is the only antebellum issue in the Presbyterian Church that can claim such an extensive General Assembly level judicial history. The events related to near-kin issues provide insight into the history of a confessional sentence from its early Protestant genetic origins, through its conception and birth, into its turbulent and contested life, to its death at the ecclesiastical block of excision.

As the analysis unfolds, the most often cited portion of biblical text is the eighteenth chapter of Leviticus. The use of this Old Testament law book for establishing near-kin prohibitions prompts the question, “How does one interpret the delimited prohibitions?” Is Leviticus 18:6-18 to be interpreted strictly, specifically, and literally, or is there freedom to interpret the man’s prohibited relations as also reciprocally prohibited to the woman? Further, is the specific list of prohibitions complete, or are kin of other degrees also forbidden? Finally, are the rules of Lev 18 moral laws applicable in the New Testament era, or did their authority extend only to the Old Testament Hebrews? These few questions show that issues of consanguinity and affinity are complex, and

where there is complexity, there is often confusion. This writer hopes the following excursion through the history of a confessional sentence will not only show the complexity of the issues, but at the same time give Presbyterians guidance and assistance applicable to the contemporary ecclesiastical situation.

## **Chapter 1 - Henry VIII and the Protestant Reformation**

*You shall not uncover the nakedness of your brother's wife; it is your brother's nakedness.*

*If there is a man who takes his brother's wife, it is abhorrent; he has uncovered his brother's nakedness. They shall be childless.*

Leviticus 18:16 and 20:21 (NASV)

*Chamberlain:* “*It seems the marriage with his brother's wife has crept too near his conscience.*”

*Suffolk:* “*No; his conscience has crept too near another lady.*”

Shakespeare, *Henry VIII*, Act 2, Scene 2

### **The Marriage and Divorce of Henry VIII and Catherine of Aragon**

One of the most famous cases of near-kin<sup>1</sup> marriage in history eventually ended in an equally renowned separation of Henry VIII from his first wife, Catherine of Aragon. Following the death of prince Arthur, Henry VII arranged a marriage between Catherine of Aragon, Arthur's widow, and young prince Henry. The proposed union was within the prohibited degrees since Henry would be marrying his deceased brother's widow. Pope Julius granted a bull allowing Henry VIII and Catherine to marry in June of 1509. As the years passed, it became clear to Henry that Catherine was not going to bear the male heir he so greatly desired, so he sought a way to end the marriage.

As Henry looked for ways to divorce Catherine, he contended that his marriage was sonless because he was cursed with the barrenness promised in Lev 20:21 to those who married their deceased brother's wife. In 1527, the Cambridge Hebraist, Robert Wakefield, told the monarch that the Hebrew of Leviticus said more precisely that the

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<sup>1</sup> “Near-kin” is used to describe kin relations that may or may not be prohibited marriage. It is a general and encompassing term for marriages of consanguinity and affinity.

punishment would be the death of *sons* and not children in general. Henry's concern was not unfounded since Catherine's five conceptions delivered two miscarriages, two sons who both died within a few weeks of birth and Princess Mary.<sup>2</sup> One can see how the King would have been impressed by the relevancy of Wakefield's exegesis.

The complexities of exegesis and application of the Levitical near-kin prohibitions are exemplified in Henry's approach to Rome. As Henry presented his case he based his appeal for separation from Catherine on two factors: first, he contended that the union of a man with his brother's wife was contrary to the law of God, and second, he argued that Julius II's dispensation was invalid.<sup>3</sup> Both of these points of contention showed Protestant sympathies, because the first appealed directly to the law of God over against its interpretation and application by Julius, while the second contested papal infallibility. Henry's questioning the honesty of Julius's interpretation of the law and implying that he erred did not constitute the wisest course of action for challenging a papal bull.

As Henry pursued the divorce, his confrontational method led to increased papal opposition that involved the application of canon law and Levitical interpretation to his near-kin union.<sup>4</sup> J. J. Scarisbrick's analysis has shown that Henry would have been wise

<sup>2</sup> Diarmaid MacCulloch, *Thomas Cranmer: A Life* (New Haven: Yale University Press, 1996), 42.

<sup>3</sup> J. J. Scarisbrick, *Henry VIII* (London: Eyre & Spottiswood, 1968), 163-197, contends with Henry's view and examines canon law, papal precedent, and Henry's case for the divorce.

<sup>4</sup> For an extensive analysis of the ins and outs of canon law with regard to Henry's marriage, see: Howard August Kuhns, "The History of the Marriage of Henry VIII to Catherine of Aragon from Catherine's First Marriage to Prince Arthur to the Fall of Cardinal Wolsey" (Ph.D. diss., Georgetown University, 1959); the author consistently used "invalid" and "illicit" to describe Henry's marriage—an "illicit" marriage is not necessarily an "invalid" one.

to take another route to the dissolution of his marriage than the one chosen. Scarisbrick's complex analysis illustrates the detailed complexity of dealing with near-kin marriages. He shows that Catherine's repeated contention that her marriage to Arthur was not consummated could have worked in the King's favor. Henry himself had said she came to him a virgin—though later, as he developed his case for divorce, he said he had been joking. As Scarisbrick turned to the Catherine and Arthur marriage he pointed out that even though the union was not consummated, it would have been quite something else to establish the legal certainty of non-consummation.

An avenue of pursuit related to the non-consummation issue had come from the prolific quill of Thomas Aquinas. Thomas had contended that affinity was not only established through marital consummation, but also through the cohabitation of the two parties, their binding marriage vows, and the sanction of the church.<sup>5</sup> Thus, Henry was related to Catherine by affinity even though Arthur and Catherine did not consummate the union. Henry's connubial relation to Catherine was invalid due to the impediment of *public honesty* (i.e. to maintain the good name of the married couple) established by

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<sup>5</sup> Scarisbrick, *Henry VIII*, 190. Aquinas' comment is: "Just as a betrothal has not the conditions of a perfect marriage, but is a preparation for marriage, so betrothal causes not affinity as marriage does, but something like affinity. This is called *the justice of public honesty*, which is an impediment to marriage even as affinity and consanguinity are, and according to the same degrees, and is defined thus: *The justice of public honesty is a relationship arising out of betrothal, and derives its force from ecclesiastical institution by reason of its honesty.*" *St. Thomas Aquinas Summa Theologica*, 5 vols. (New York: Benziger Brothers, 1948; reprint, Westminster: Christian Classics, 1981), 5:2753, supplemental question 55, 4<sup>th</sup> article; all of this question deals with affinity issues and covers over eight pages.

Catherine's contract with Arthur, and by error or misjudgment, apparently not dispensed by Julius' bull.<sup>6</sup> Thus, public honesty was the chink-in-the-armor that Henry needed.<sup>7</sup>

The Aquinas perspective would have played right into Henry's hands and likely led to the divorce from Catherine, but according to Scarisbrick, Henry failed to grasp its significance when Wolsey presented it to him because Henry stubbornly held to his "discovery" of the Lev 20:21 prohibition and its curse of barrenness. Wolsey had to follow the will of Henry, but his perception of the inadequacy of Julius's bull to deal with the public honesty issue may have accomplished the monarch's desire and England might have remained Roman Catholic.<sup>8</sup> Near-kin issues very often lead to a complexity that can be dizzying; Henry's marriage to his deceased brother's wife was no exception. The complexities of the marriage issues led to the Tudor monarch's well known canvassing of the universities to obtain opinions regarding his marital situation.

Diarmaid MacCulloch has surmised that the decision to canvass the universities regarding the ending of Henry's marriage to Catherine of Aragon came about August 2, 1529. Stephen Gardiner and Edward Fox explained to Archbishop Cranmer that an impasse existed between England and Rome concerning the dissolution of Henry's union. Cranmer suggested turning from the ecclesiastical route with the papacy to a different road by soliciting the opinions of university theologians regarding the marriage.<sup>9</sup> This canvassing was possibly, concluded MacCulloch, "the single most lucrative source of

<sup>6</sup> Scarisbrick, *Henry VIII*, 187; See also: Bedouelle, "The Consultations," 23-24.

<sup>7</sup> Scarisbrick, *Henry VIII*, 189.

<sup>8</sup> Ibid., 183-195.

<sup>9</sup> MacCulloch, *Cranmer*, 45-46; J. Ridley, *Thomas Cranmer* (Oxford: Clarendon Press, 1962), 25-26.

consultancy fees for academics during the whole sixteenth-century.”<sup>10</sup> This may not be an overstatement since one study of the “Great Matter” lists twenty-three universities and at least 160 scholars responding to Henry’s request for opinions.<sup>11</sup> Henry’s first marriage became a popular subject of theological debate and foreshadowed the polemics that would often accompany near-kin marriages in the years to come.<sup>12</sup>

Henry’s own involvement in the propaganda regarding the ending of his near-kin marriage is seen in his publication of the *Censurae*, which was later published in English as *The Determinations*.<sup>13</sup> These tracts supported Henry’s case for a divorce and provided the public with the near-kin opinions of academia. The Universities of Paris (law and divinity), Bourges, Bologna, Padua, Anjou, Toulouse, and Orleans, all condemned the marriage as against the laws of God and of nature, and they argued that the Pope’s bull allowing the marriage was a case of his overstepping his authority.<sup>14</sup> Cranmer’s solicitation of the academic opinions had become a key means to continue the propaganda in favor of the invalidity of Henry’s marriage and further his quest for a

<sup>10</sup> MacCulloch, *Cranmer*, 41.

<sup>11</sup> Guy Bedouelle et Patrick Le Gal, *Le “Divorce” Du Roi Henry VIII, Etudes et Documents* (Genève: Librairie Droz S.A., 1987). The universities were counted from pages 469-70, “Les Universités et le “divorce,” and the scholars were counted from their short biographies constituting pages 309-437, which is titled, “Répertoire bibliographique.” Pages 445-453 has a detailed chronology of the events regarding Henry VIII and the divorce. Some chapters are dedicated to giving the views of some of the more prominent universities and scholars.

<sup>12</sup> See: Virginia Murphy, “The Literature and Propaganda of Henry VIII’s First Divorce,” in Diarmaid MacCulloch, ed., *The Reign of Henry VIII: Politics, Policy and Piety* (New York: St. Martin’s Press, 1995), 135-158, for a study of this tract war with an emphasis on Bishop of Rochester John Fisher’s contributions. Murphy contended that Henry’s efforts towards divorce were coherently guided and directed by Henry and that he commissioned the group of scholars that supported his view (136).

<sup>13</sup> Edward Surtz and Virginia Murphy, eds, forward John Guy, *The Divorce Tracts of Henry VIII* (Angers: Moreana, 1988), provides the texts of both the Latin and English.

<sup>14</sup> Ibid., 2-27.

divorce. The academics favoring condemnation of Henry's marriage show a division in Roman Catholicism that reflected the uncertainties of interpreting near-kin prohibitions.

The opinion war which was taking place can be seen in greater detail by considering one of the agents responsible for soliciting opinions—Simon Grynaeus (1493-1541) who was a Swabian and a former monk. Grynaeus had entered the Reformation foray through the influence of Luther, but he eventually grew impatient with what he saw as Luther's conservative and slow approach to ecclesiastical change. He moved to Basel, came under the influence of Oecolampadius, and began teaching at the University of Basel where he remained until his death. The former monk visited England in 1531 where he befriended several on both sides of Reformation issues.

When Grynaeus returned to Basel in June he had been given the task of gathering opinions on Henry's affine marriage from the theologians of Switzerland, Wittenberg, and Strassburg.<sup>15</sup> In a letter to Henry VIII, in the fall of 1531, Grynaeus summarized the views thus far received. The Swabian saw two perspectives on the issue. The first concluded that Henry's marriage to Catherine was "unlawful" and "it cannot be valid by any prescription of time" and divorce was allowed. The second view admitted the unlawfulness of the near-kin union, but believed it should be permitted to continue if the marriage could be used righteously and the couple involved had "such strength and firmness of conscience" to continue in their unadvisable union. Then Grynaeus drew the conclusion that both these views saw the marriage as condemned by nature, the "general consent of nations," and Leviticus. But there was another issue and that was whether

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<sup>15</sup> Bedouelle, *Le "Divorce,"* 289-290; MacCulloch, *Cranmer*, 60-62.

“Christian liberty” could be “so extended” that those in such a union could continue to live together “with a safe conscience.”<sup>16</sup>

Both the perspectives presented in Gynaeus’s report to Henry allowed for the divorce, and both established the legitimacy of the divorce because his union to his deceased brother’s wife was *at least* reprehensible to nature, society, the Levitical law, and conscience. Thus, Gynaeus’s summary of the thought of his continental region supported the invalidity of Henry’s union, but it did not require divorce in all cases.

All of this wrangling with Rome and its canon law, as well as canvassing the universities and academics, came to naught, because after several years of conflict between Henry and Rome the matter was to be solved through another means. Thomas Cranmer provided the annulment Rome refused to grant when on May 23, 1533 he announced his judgment that the near-kin marriage of Henry VIII to Catherine had been illicit and invalid from its beginning and therefore must be dissolved. Henry had already married Anne Boleyn secretly in January of 1533, she was crowned queen in May, and Elizabeth was born to her in September. Henry’s quest for a male heir led him into the labyrinthine workings of consanguinity and affinity as he sought to justify his separation from Catherine, but when all was said and done, he obtained the divorce by renouncing papal authority and establishing the Church of England.

In summary, though near-kin marriage may appear irrelevant at the beginning of the twenty-first century, it was the cause of the Tudor throne’s break with Rome and produced heated theological debate. At least some of the complexity was due to differing

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<sup>16</sup> Gynaeus to King Henry VIII, September 10, 1531, *Original Letters Relative to the English Reformation*, ed. Hastings Robinson, Parker Society series (Cambridge: University Press, 1847; reprint, London: Johnson Reprint Co., 1968), 2:555-56.

methods for interpreting Mosaic legislation. Henry's marriage to his deceased brother's wife was not an esoteric peripheral matter; the union addressed issues central to the Reformation including papal authority and *sola Scriptura*. The furor over Henry's connubial union to his brother's widow foreshadowed the repeated conundrums that would occur due to near-kin marriages in succeeding generations of ecclesiastical history. Henry's "Great Matter" left its mark on the English and they would continue to face difficulties over near-kin unions, which in the case of the marriage of a man to his deceased wife's sister would not be resolved until the early twentieth century. Despite differing views regarding the legitimacy of Henry's marriage to Catherine, the union was broken on the basis of its being contrary to Lev 18:16 and both illicit and invalid. The perplexities of near-kin marriage would cross the Atlantic as the English, Scots, and Scots-Irish settled the colonies. Henry VIII is viewed with some degree of infamy today due to his abuse of power and his multiple marriages and this is at least partially due to the way he handled his marriage to his deceased brother's widow.

### **Reformation Era Views**

In order to understand the near-kin views in the first half of the sixteenth century, the perspectives of some of the Reformers will be examined. A representative sample of the continental theologians will include: Martin Luther from Wittenberg, John Calvin the Genevan, Strassburg's Martin Bucer, and Zwingli's successor at Zurich, Heinrich Bullinger.

#### **Wittenberg - Martin Luther (1483-1546)**

The former Augustinian monk discussed marriages of consanguinity and affinity as he contended for three sacraments against Catholicism's seven in *The Babylonian*

*Captivity of the Church.* As he expounded Scripture passages pertinent to marriage as an important institution ordained by God, he guarded himself from the accusation that he had a low view of marriage.<sup>17</sup> The monk emphasized that Matt 19:6 affirmed the indissolubility of the marital bond and he condemned Rome's propensity for annulment, dissolution, and other practices which broke connubial unions.<sup>18</sup>

Luther saw the papal "impediments derived from affinity" as accretions to biblical teaching.<sup>19</sup> Luther took a conservative approach to Lev 18 and saw its prohibitions extending only to the first degree of affinity (i.e. parents and children of the spouse were prohibited), and to the second of consanguinity (i.e. one's own nephews/nieces, uncles/aunts were prohibited, but first cousins could marry each other). Leviticus did not prohibit marriage to a niece, a relation that Luther saw as in the second degree, and he contended that this was an exception to his rules.<sup>20</sup> Luther's teaching on marriage and near-kin issues was driven by his high view of the marital bond. He expressed his view in the following:

<sup>17</sup> Luther's view on marriage as a sacrament changed rather quickly. Luther's *A Sermon on the Estate of Marriage*, 1519, in *Works*, pages 44:7-14, shows him holding, rather firmly, to marriage as a sacrament.

<sup>18</sup> Luther, *Babylonian Captivity*, in *Works*, 36:98; Luther quotes Matt 19:6 twice in this average sized paragraph.

<sup>19</sup> An example of spiritual affinity would be the relationship of godfather established at a child's baptism.

<sup>20</sup> Luther, *Babylonian Captivity*, in *Works*, 36:99. Figure 1 in *Encyclopedia of Marriage and the Family*, vol. 2, David Levinson, ed. (New York: Macmillan Library Reference, 1995), 385, shows nephews and nieces in the third degree—there is one degree from the party in question to his parents, then another degree from the common parents to the brothers and sisters, and then the third degree to the siblings' children. However, this is not the way Luther counted the degrees. Luther counted the degrees not by going to the common ancestor, but by taking a step in relationship from the person under consideration to any next of kin. For example, Luther described a man's marriage to his niece as in the second degree—one degree from the man to his sibling and one degree from the sibling to the child.

For marriage itself, being a divine institution, is incomparably superior to any laws, so that marriage should not be annulled for the sake of the law, rather the laws should be broken for the sake of marriage.<sup>21</sup>

The “laws [that] should be broken” are the laws of men, and particularly what Luther saw as the unscriptural canons of Rome.<sup>22</sup>

Though Rome deemed marriage a sacrament, Luther contended that papal policies actually depreciated the goodness of marriage.<sup>23</sup> The Augustinian reformer’s view was distinctively Protestant in that the validity and goodness of the marriage bond most often overruled any aspects of the union that might be viewed as illicit. For Luther, it seemed that Rome did as much as possible to limit marriage, whether through the excessive extension of prohibited degrees of affinity or through its flexibility and willingness to end marriages for sometimes trivial reasons. Luther saw Rome’s policies as consistent with what he understood as a depreciated understanding of the goodness of marriage.

A few years later, the Wittenberg monk addressed near-kin issues again in his short tract specifically addressed to marriages of consanguinity and affinity.<sup>24</sup> In the two years since *The Babylonian Captivity* he added a few other near-kin relations to the prohibited list. The list of forbidden consanguineous unions included: father, mother, stepmother, sister, stepsister, son’s daughter, father’s sister, and mother’s sister. The condemned affine unions involved: the father’s brother’s wife, son’s wife, brother’s wife, stepdaughter, the child of a stepson or stepdaughter, and the wife’s sister while the

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<sup>21</sup> Luther, *Babylonian Captivity*, in *Works*, 36:99.

<sup>22</sup> Ibid., 36:105.

<sup>23</sup> For Luther’s view on the goodness of marriage in his later years see, “Sermon at Marriage of Sigismund von Lindenau, 1545,” in *Works*, 51:357-367, where he exposites Heb 13:4, “Let marriage be held in honor among all, and let the marriage bed be undefiled; for God will judge the immoral and adulterous.”

<sup>24</sup> Luther, *The Persons Related by Consanguinity and Affinity Who are Forbidden to Marry According to the Scriptures*, *Leviticus 18*, in *Works*, 45:7-9.

wife is still alive (Lev 18:18). Luther found twelve relations forbidden specifically to the man. The prohibition of the “father” and “the child of a stepson or stepdaughter” were both additions to the list given in *Babylonian Captivity*; the first applied to the woman while the second pertained to both genders. Though his view would later change, he said “I may marry the sister of my deceased wife or fiancée, as well as the widow of my deceased brother, as was commanded in the law, Matthew 22[:24].”

The reformed Augustinian saw the marriages of widows and widowers to the siblings of their deceased spouses as justified by the levirate marriage of Deut 25:5; levirate marriage was directed specifically to the man and his brother’s widow, so Luther applied reciprocity of relations to the woman’s marriage with her deceased sister’s husband.<sup>25</sup> At this point Luther saw the deceased wife’s sister marriage as legitimate and even commanded by Scripture; he accepted levirate marriage as a valid contemporary practice that was not limited to the Old Testament Hebrews. Luther’s analysis was reiterated in his tract *The Estate of Marriage*, which was published in mid to late August.<sup>26</sup> Through 1522, Luther held to the acceptability of a man’s marriage to his deceased brother’s wife and to his deceased wife’s sister.

Deuteronomy became a subject of study for Luther in the period between 1523 and 1525 and his discussion of the levirate marriage law in Deut 25:5 failed to address the tension between this verse’s instruction to marry a deceased brother’s wife and Lev 18:16’s prohibition of the same union. He saw two reasons for levirate marriage: the first, to provide descendants to perpetuate the family name, and the second, to help the

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<sup>25</sup> Ibid., 45:8.

<sup>26</sup> Luther, *The Estate of Marriage*, in *Works*, 45:17-49; this dating is dependent on the analysis presented in Walther I. Brandt’s Introduction to *The Estate*, 15. See pages 22-23 for Luther’s expression of the prohibited degrees in *The Estate*.

widow by providing for her economic needs.<sup>27</sup> The Augustinian did not see levirate marriage as a practice unique to Old Testament Israel but rather as a continuing responsibility to be assumed by the living brother.

In 1529, Luther published his order of service for ministers to follow when performing wedding ceremonies. He saw the uniting of a couple in marriage as primarily a civil responsibility, but he believed that when the church was called to bless a union, it must do so. Ministers needed guidance to perform weddings and the first step Luther mentioned was a pronouncement of the banns expressed in the words, “And should any one have anything to say against it, let him speak in time or afterward hold his peace.”<sup>28</sup> This time for public response gave people the opportunity to express any perceived impediments of affinity or consanguinity. The reservations expressed were then analyzed as to whether they could block the proposed nuptial. The Augustinian’s conservative approach to the prohibitions of Lev 18 did not preclude his incorporation of the banns in the wedding service. Impediments, whether near-kin or any other, were just that, *impediments* to the marital union and should not be disregarded, though at this point he viewed the deceased brother’s wife and deceased wife’s sister marriages as acceptable.

As the Protestant Reformation spread, it was confronted with practical issues within the new congregations requiring specific application of biblical truths. The

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<sup>27</sup> Luther, *Lectures on Deuteronomy*, in *Works*, 9:248.

<sup>28</sup> Luther, *The Order of Marriage for Common Pastors*, in *Works*, 53:110. Note the similarity of this English rendition of Luther to the form in the Church of England’s *The Book of Common Prayer* (New York: Henry Holt, 1992), 308, which reads, “Therefore if any man can shew any just cause, why they may not lawfully be joined together, let him now speak, or else hereafter for ever hold his peace.” One edition of the Presbyterian Church’s *Book of Common Worship* (Philadelphia: Published for the Office of the General Assembly, 1946), 183, reads, “if there be any here present who knows any just cause why they may not lawfully be joined in marriage, I require him now to make it known, or ever after to hold his peace.”

abandonment of Rome and its canon law left a void in terms of the solemnization of marriage. A wedding was often no more than the man saying, in the presence of a priest, “I take thee to my wife,” and the woman responding similarly to the man. This ceremony was followed by conjugal cohabitation. Luther sought to improve the Lutheran understanding of marriage as he addressed marriage, once again, in 1530 in his *On Marriage Matters*.<sup>29</sup> Towards the end of the treatise, Luther discussed near-kin issues. His thought had been modified further by this time because his “advice would be to leave this up to the temporal laws; or if, according to the canon law, one wishes to consider the third and fourth degree as prohibited also, let it be so.”<sup>30</sup> The circle of prohibited degrees was expanding. Luther gave an example:

[If] one may not take his brother’s or sister’s daughter in marriage, yet if it had happened ... then one should let this marriage stand and not dissolve it, as the imperial laws in such a case also permit and advise. For although it is a marriage entered into in disobedience of the temporal law, nonetheless, because it has now been consummated and is not contrary to God’s word, and the wife would lose her honor and become worthless, it is to remain a marriage out of mercy and to prevent greater calamity.<sup>31</sup>

Luther again contended that the validity of the marital bond is greater than the illicit nature of the union—this is a key point in Luther’s thought concerning marriage. In the *Babylonian Captivity*, Luther despised divorce because it broke what God had joined, and he rebuked the papacy for its willingness to annul and dissolve marriages. Once again, the monk expressed his high regard for the connubial bond; the validity of the marital union is greater than the questionably illicit near-kin relations who married.

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<sup>29</sup> Luther, *On Marriage Matters*, 46:261-320.

<sup>30</sup> Ibid., 46:315.

<sup>31</sup> Ibid., 46:315-16.

The last item to be considered is a letter written by Luther, Justus Jonas, and Philip Melanchthon to the Zwickau pastor Leonhard Beyer concerning marriage to a deceased wife's sister and dated January 18, 1535. The letter is significant because it shows a change in the Wittenberg monk's thinking. Luther had come to believe that when a man married a woman he established a relationship with her siblings that was similar to his own relationship with his consanguineous brothers and sisters. Thus, a man's marriage to his deceased wife's sister would then be akin to a man marrying his own blood sister, and the letter contends that no man would marry his sister. This interpretation of affinity means that any relation prohibited a man or woman due to consanguinity would also be prohibited their spouse by affinity; according to Leviticus a man cannot marry his mother, so due to the man and woman's flesh becoming one in marriage he cannot marry his wife's mother because she is as his own consanguine mother.<sup>32</sup>

In summary, Martin Luther came to view a man's marriage to his wife's sister as wrong because his views regarding near-kin marriages developed over the years. The view he finally adopted based its prohibition of this marriage on the man and woman's unique one flesh union constituted by the connubial bond. The wife's sister became as the husband's own consanguine sister and marriage to a sister is clearly forbidden. This interpretation of the marital union would reoccur in the ensuing centuries of ecclesiastical history and would often be used to prohibit marriage to a deceased wife's sister as well as other near-kin unions. This is not reciprocity or inversion, but it expresses the

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<sup>32</sup> D. Martin Luthers Werke: *Kritische Gesamtausgabe, Briefwechsel*, vol. 7 (Weimar: Hermann Böhlau Nachfolger, 1937), 152-153. The interpretive principle expressed here by Luther will be seen as the basis for the *Westminster Confession*'s affinity sentence.

perspective that the one flesh bond of marriage makes the consanguine relations of one spouse to be affine relations to the other spouse.

### **Geneva - John Calvin (1509-1564)**

Calvin discussed the Levitical near-kin prohibitions in his exposition of the seventh commandment.<sup>33</sup> After commenting on the incestuous propensity of near eastern cultures, he observed that the Egyptian has “no abhorrence against marrying his uterine sister, nor a paternal or maternal uncle or niece,” which led him to conclude that, “they were so dead to shame that they were carried away by their lusts to trample upon all the laws of nature.” This deadness to the laws of nature, said Calvin, necessitated God’s inclusion of specific incest prohibitions in the law so Israel would not enter incestuous relationships like the Canaanites; what was naturally repulsive required the specification of forbidden degrees in Mosaic legislation.<sup>34</sup>

The general repulsiveness felt toward near-kin unions within the conscience is specifically defined and delimited in the Mosaic law. Calvin added that these laws are not limited to marriage alone but include any “connections out of wedlock [i.e. fornication]” as well.<sup>35</sup> Near-kin prohibitions were not annulled by Christ’s coming and are still authoritative:

In short, the prohibition of incest here set forth, is by no means of the number of those laws which are commonly abrogated according to the circumstances of time and place, since it flows from the fountain of nature itself, and is founded on the general principle of all laws, which is perpetual and inviolable. Certainly God declares that the custom which had prevailed amongst the heathen was

<sup>33</sup> *The Institutes of the Christian Religion* (1559; reprint, Philadelphia: Westminster Press, 1977), 2:1448, limits discussion to a polemical comment on the problem of Rome’s policies that extended prohibited degrees beyond those specified by Scripture.

<sup>34</sup> John Calvin, *Calvin’s Commentaries*, vol. 3, *Harmony of Exodus, Leviticus, Numbers, and Deuteronomy* (Grand Rapids: Baker Book House, 1993), 98.

<sup>35</sup> *Ibid.*, 99.

displeasing to Him; and why is this, but because nature itself repudiates and abhors filthiness, although approved of by the consent (*suffragiis*) of men.<sup>36</sup>

What the voice of nature whispers in the ears of all people is resoundingly and authoritatively defined by Leviticus. The Leviticus listing was given to Israel to set them apart from other nations and the relations prohibited are “absolute pollutions.” These laws are not “political” (i.e. civil) limited to Moses and the Hebrews, but define “the purity of nature.”<sup>37</sup> Biblical law defines the “purity of nature.” Calvin continued noting that if the Levitical laws were for the use of a particular people, or were for a particular era, or were in any other way circumstantial, they could be dispensed with, but since Lev 18 expresses “the perpetual decency of nature … not even a dispensation of them would be permissible.”<sup>38</sup> The Genevan added that Paul reproved the incest of a stepson with his father’s wife saying that this union “is not so much as named among the Gentiles” (1 Cor 5:1), and in that sense, the Gentiles followed Leviticus through the voice of nature.<sup>39</sup>

Calvin enumerated the specific prohibited relations of Lev 18 and observed that “the uncle … is not here forbidden to marry his niece; but, since the nephew is interdicted from marrying his … aunt, the mutual relation of the inferior to the superior degree must prevail.”<sup>40</sup> Calvin obtained the prohibition of a man marrying his niece by using both reciprocity and inversion; Leviticus prohibits a nephew marrying his aunt, then it is reciprocally inferred that the niece cannot marry her uncle, and inversely the uncle cannot marry the niece.

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<sup>36</sup> Ibid., 100.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid., 101.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid., 102.

Concerning marriage of first cousins, Calvin believed their union to each other, though not prohibited by Leviticus, could lead to “scandal lest too unbridled a liberty should expose the Gospel to much reproach.” He then appealed to Paul’s teaching that even things lawful should be abstained from when they are not expedient (1 Cor 10:23).<sup>41</sup> The Genevan was sensitive to the finger pointing that may occur in some societies when first cousins marry; he taught a limited, contextualized flexibility in the application of near-kin prohibitions that are not specifically forbidden in Scripture. His concern was that the principle of Christian liberty not be applied in an insensitive manner.

Calvin then moved to Lev 18:16 and an interesting perspective on its prohibition of a man marrying his brother’s widow and how it relates to Deut 25:5 and levirate marriage. He saw marriage to the brother’s widow as absolutely prohibited by Lev 18:16, and he viewed the use of “brother” in Deut 25:5 in a more general sense. For Calvin, a “brother” is any near kinsman, excluding the deceased husband’s brother, who could raise up seed. Deut 25:5 is not an exception to Lev 18:16 but is instead an entirely different issue having nothing to do with consanguinity and affinity. A near-kinsman’s marriage to a widow is merciful because it raises seed for the widow and her deceased husband.<sup>42</sup> The examples of Er, Onan, and Shelah, the sons of Judah, two of whom married Tamar do not refute the view, contended Calvin, but instead they show Judah’s sin in allowing two brothers to marry the same woman.<sup>43</sup> In his conclusion to this

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<sup>41</sup> Ibid., 105.

<sup>42</sup> Ibid., 103-4; he said the same thing on pages 177-79 as he expounded Deut 25:5.

<sup>43</sup> Calvin, *Commentaries*, 3:104.

particular point he said, “I still hold it unquestionable, that, by the Law of Moses marriage with the widow of an own-brother is forbidden.”<sup>44</sup>

With respect to the marriage of a man to his wife’s sister, Calvin posited that it was wrong to interpret Lev 18:18 as merely a prohibition against a man marrying his wife’s sister while the wife lived. According to this view, Lev 18:18 would simply prohibit polygamy involving two or more sisters and marriage to a deceased wife’s sister would be acceptable. Calvin contended with this view because he believed the interpretation of “sister” in Lev 18:18 and “brother” in Deut 25:5 was dependent on the context of their uses; he did not restrict their meanings merely to female siblings, as is reflected in the following:<sup>45</sup>

The name of sister is not, therefore, restricted, I think, to actual sisters, but other relations are included in it, whose marriages would not otherwise have been incestuous. In a word, it is not incest which is condemned, so much as the cruelty of a husband, if he chose to contract a further [polygamous] marriage with the near kinswoman of his wife. Nor can we come to any other conclusion from the words of Moses; for if the turpitude of a brother is uncovered when his brother marries his widow, no less is the turpitude of a sister uncovered when her sister marries her husband after her decease.<sup>46</sup>

Calvin took a perspective on Lev 18:18 similar to his interpretation of Deut 25:5 where he saw “brother” as a general term for any near kinsman *excluding* a male sibling; in Lev 18:18 he saw “sister” interpreted as any near kinswoman *including* the uterine sister. Lev 18:18 condemns polygamous marriage to any kin, including the sister of a wife, because such a polygamous union would cause psychological cruelty, and as Lev 18:18 puts it,

<sup>44</sup> Ibid.

<sup>45</sup> See: David L. Puckett’s *John Calvin’s Exegesis of the Old Testament*, Columbia Series in Reformed Theology (Louisville: Westminster John Knox Press, 1995), for a helpful study of Calvin’s Old Testament hermeneutic and the importance of context for his method.

<sup>46</sup> Calvin, *Commentaries*, 3:105.

“vex” the first wife. For Calvin, Lev 18:18 is concerned with *mercy* because it psychologically protects a wife, but Lev 18:16 is concerned with *incest* and prohibits both a man’s marriage to his brother’s wife and reciprocally to his wife’s sister.<sup>47</sup>

In summary, John Calvin developed his perspective on near-kin issues by interpreting the Bible with an eye to the biblical texts’ context and the non-contradictory nature of Scripture. If, posits Calvin, a man is prohibited his brother’s widow in Lev 18:16, then he cannot be told to marry his brother’s widow in Deut 25:5. Scripture cannot contradict itself. Therefore, “brother” in the two passages must have different meanings that are determined by their context. Along the same lines, “sister” in Lev 18:18 must be a more general term for any near-kin including the wife’s sister, because any polygamous relationship constituted with near-kin would be cruel to the first wife. Calvin saw marriage to a deceased sister’s husband as prohibited by the reciprocal application of the prohibition against a man’s marriage to his brother’s wife found in Lev 18:16; what is shameful for the deceased brother must likewise be shameful for the deceased sister. The shame felt by all races concerning near-kin marriages is due to the natural revulsion to these unions implanted in the mind by God.

### **Strassburg - Martin Bucer (1491-1551)**

Martin Bucer, mentor of John Calvin, went to England at the invitation of Archbishop Thomas Cranmer in April of 1549, and in the fall of that year he was appointed professor of divinity at Cambridge University. Bucer was encouraged by his English friends to write *De Regno Christi* as a theological guide for English Protestants. When *De Regno* was completed in 1550, Bucer gave it to Edward VI in hopes that he

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<sup>47</sup> Ibid.

would follow its instructions and rule England as a vassal king under Christ's reign.<sup>48</sup>

Book two of *De Regno* listed fourteen laws that Edward was advised to apply in England for directing the nation. The seventh law deals with the regulation and sanctification of marriage and contains, by far, the greatest amount of instruction on any of the topics addressed by the fourteen laws.<sup>49</sup> Bucer opened his analysis declaring marriage a *res politica* and placed responsibility for its proper regulation on the monarchy. It is within this discussion that the chapter dedicated to near-kin marriages is found.<sup>50</sup>

Bucer exhorted the young king to establish, first of all, which persons should be allowed to unite in marriage. After summarizing the prohibitions of the law of God, the practices of Roman emperors, and the extended prohibited degrees of the papacy, Bucer encouraged Edward to "follow the laws of God and the examples of the holy patriarchs" and avoid what men have "invented" regarding near-kin marriage.<sup>51</sup> The patriarchal examples included by Bucer are: Abraham's marriage to his half-sister Sarah (Gen 20:12); Isaac's marriage with Rebekah (his cousin's daughter) in order to avoid marrying a Canaanite woman (Gen 24:4,15,40,48,67); and Jacob's union with two of his cousins, Leah and Rachael (Gen 29:10,23,30). Bucer advised Edward that even though the Christian church was not bound by the civil and ceremonial law of Moses it would be best if he followed "the laws of God and the examples of the holy patriarchs praised in Holy Scriptures, rather than what men have later invented and observed in this matter."<sup>52</sup>

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<sup>48</sup> Martin Bucer, *De Regno Christi*, ed. Wilhelm Pauck (1557; reprint, in *Melanchthon and Bucer*, The Library of Christian Classics. Philadelphia: The Westminster Press, 1969), 158,159.

<sup>49</sup> Of the 61 chapters in Book 2, some 33 chapters (15-47) pertain to marriage issues.

<sup>50</sup> Bucer, *De Regno*, book 2, chapter 17, 317-320.

<sup>51</sup> Bucer, *De Regno*, 317-19.

<sup>52</sup> Ibid., 319.

The Mosaic prohibitions would be a better law in England than any kinship restrictions that the boy king could devise on his own.<sup>53</sup>

In summary, Martin Bucer saw the near-kin laws of Lev 18 as the best guidelines for establishing legitimate connubial unions, though this recommendation was not due to the conviction that its degrees of consanguinity and affinity were moral law. His comments concerning the non-binding nature of the civil and ceremonial laws imply that he viewed the Levitical prohibited degrees as fitting in one, the other, or both of these Christ-filled categories of law. Further, his pointing to the patriarchs' near-kin unions as examples shows a flexibility of interpretation and application not seen in either Martin Luther or John Calvin. For Bucer, the specific relationships given in Lev 18 are to be avoided, but he qualified this by noting that it is better to marry near-kin than to marry a nonbeliever. Neither reciprocal nor inverted application of the specifically named prohibited degrees is encouraged. The Strasburg Martin did not address the marriage of a man to his deceased wife's sister in *De Regno Christi*.

### **Zurich - Heinrich Bullinger (1504-1575)**

The final Reformation school considered is represented by Heinrich Bullinger's *Der Christliche Eestand*, which was published in an English translation by Myles Coverdale as *The Christen State of Matrimonye*.<sup>54</sup> The purpose of Bullinger's exposition

<sup>53</sup> Ibid.

<sup>54</sup> Heinrich Bullinger, trans. by Myles Coverdale, *The Christen State of Matrimonye* (n.p. 1541; reprint, Amsterdam: Theatrum Orbis Terrarum, Ltd., 1974). Heinrich Bullinger, *Der Christlich Eestand* ([Zürich: Christoffel Froschouer], 1540), no pagination. See also: *The Decades of Henry Bullinger, Minister of the Church of Zurich, The First and Second Decades*, Parker Society Series (Cambridge: The University Press, 1849), 403, where he warns against marrying "by alliance of blood and nighness of affinity." John Ab Ulmus, in a letter to Heinrich Bullinger dated April 30, 1550 and written from Oxford, noted that he was about to finish up a translation of Bullinger's "book on the

of near-kin law was to provide direction and counsel for the “common simple man.”<sup>55</sup> True to the Reformation’s *sola Scriptura*, and foreshadowing the spirit of Puritan casuistry, Bullinger turned his readers to the final counselor in all disputes of life and doctrine.<sup>56</sup> Bullinger’s perspective on marriage coincided with his view of the covenant. Marriage, like a covenant, is a grace given by God that requires a response and as the couple lives a good married life it shows gratitude for the grace of marriage. Good marriage is a covenantal blessing.<sup>57</sup>

The Zurich father’s presentation of near-kin issues took a turn from that of Luther, Calvin, and Bucer because he included in his presentation two styles of tables, each with two gender specific columns intended to simplify understanding of the prohibited degrees.<sup>58</sup> The use of tables for clarification may have been stimulated by near-kin marriages he encountered during his service as president of the Zurich Marriage Court.<sup>59</sup>

The purpose of the first style of table was to provide guidance for the common people by giving a prospective couple tables for determining whether the union was prohibited or acceptable. Coverdale’s translation is seen next to Bullinger’s German for

“holy marriage of Christians” into Latin and that he was going to give a copy to a friend’s teenage daughter, as in, *Original Letters Relative to the English Reformation*, ed. Hastings Robinson, Parker Society Series (Cambridge: The University Press, 1847; reprint, London: Johnson Reprint Co., 1968), 2:406.

<sup>55</sup> Bullinger, *The Christen State of Matrimonye*, xx.

<sup>56</sup> Charles W. Pfeiffer, “Heinrich Bullinger and Marriage” (Ph. D. diss., St. Louis University, 1981), says of Bullinger’s marriage perspective that *Der Christliche Eestand* was more concerned about practical marriage problems than marriage theory (p. 47).

<sup>57</sup> Pfeiffer, “Heinrich Bullinger,” 98, 104.

<sup>58</sup> Pfeiffer, “Heinrich Bullinger and Marriage,” 25, considers *Der Christliche Eestand* Bullinger’s most important work on marriage, but Pfeiffer dedicated only eight lines of text to explaining Bullinger’s views on near-kin marriage, 122. *Eestand* has 21 of 223 pages which discuss consanguinity and affinity. Despite the short treatment of near-kin issues, Pfeiffer’s dissertation is a helpful analysis of Bullinger’s views on marriage and the covenant.

<sup>59</sup> Pfeiffer, “Heinrich Bullinger,” 26.

the man in Table 1 and the woman in Table 2. The first style presents the prohibitions specifically listed in Lev 18:6-18, 20:17,19-21, and Deut 27:20,22,23 along with others discerned by reciprocity and inversion. The first style of table was developed for utility and simplicity in hopes of directing the consciences of the man and woman seeking marriage.

Table 3 shows the first style of table for both the man and the woman with the pertinent Scripture passages inserted in parentheses. Each of the prohibitions from God's law for the man is also applied reciprocally to the woman to obtain her prohibition. That is, the man is prohibited his mother, so the woman is prohibited her father; the man is forbidden his father's brother's wife, so the woman cannot marry her father's sister's husband; a man must not wed his wife's son's daughter, thus the woman cannot unite with her husband's daughter's son.

Eight of the twenty-four prohibitions in the man's column of Table 3 are not specifically taken from the Mosaic law and they are a man's marriage to his: daughter, grandmother, brother's daughter, sister's daughter, wife's brother's daughter, wife's sister's daughter, wife's sister, and grandfather's wife. These prohibitions were obtained through a complex methodology. For example, a man must not marry his daughter because *reciprocally* applying the Lev 18:7 rubric against a man's marrying his mother (1) to the woman blocks her marriage to her father (A), then by *inverting* the prohibition of the woman's marriage to her father it is found that the man can't marry his daughter (2). Another example will help to clarify this methodology. Marriage of a man to his father's sister or mother's sister (10 and 11) is specifically forbidden by Lev 18:12,13 and 20:19. Reciprocally the woman is forbidden her mother's brother and her father's brother

Table 1 - A Comparison of Bullinger's German and Coverdale's Translation for the First Style of Table for the Man  
 (For all tables [ ] indicate the translation preferred to Coverdale's)

Die erst tafel gadt off den mann oder knaben.

The first table goeth upon the man.

Mü ter.	Mother.
Tochter.	Daughter.
Stüffmutter.	Mother-in-law. [Step-mother]
Stüffföchter.	Daughter-in-law. [Step-daughter]
Schwester von eim teil allein	Half-sister.
Schwester von vatter unn mü ter.	Whole sister.
Suns tochter.	Son's daughter.
Tochter tochter.	Daughter's daughter.
Groß mü ter.	Grandmother.
Vatters schwester.	Father's sister.
Mü ter schwester.	Mother's sister.
Brü ders tochter.	Brother's daughter.
Schwester tochter.	Sister's daughter.
Vatters Brü ders wyb.	Father's brother's wife.
Mü ter Brü ders wyb.	Mother's brother's wife.
Wybs Brü der tochter.	Wife's brother's daughter.
Wybs schwester tochter.	Wife's sister's daughter.
Suns wyb.	Son's wife.
Schwiger.	Wife's mother.
Brü ders wyb.	Brother's wife.
Wybs schwester.	Wife's sister.
Wybs suns tochter.	Wife's son's daughter.
Wybs tochter tochter.	Wife's daughter's daughter.
Groß vatters wyb.	Grandfather's wife.
	[total=24 relationships]

Heinrich Bullinger, *Der Christlich Eestand*, ([Zürich: Christoffel Froschouer], 1540), no pagination, microfilm.

Heinrich Bullinger, trans. by Myles Coverdale, *The Christen State of Matrimonye* (n.p. 1541), leaf 15.

**Table 2 - Heinrich Bullinger's First Style of Table as in *The Christen State of Matrimonye* for the Woman**  
**Die Under tafel gadt off das wyb oder off die tochter.**      **The second table goeth upon the woman.**

Vatter.	Father.
Sun.	Son.
Stüffvatter.	Father-in-law. [Step-father]*
Stüffsun.	Son-in-law. [Step-son]
Brü der von einem teil allein.	Half-brother.
Brü der von vatter um mū ter.	Whole brother.
Suns sun.	Son's son.
Tochter sun.	Daughter's son.
Groß vatter.	Grandfather.
Vatters Brü der.	Father's brother.
Mü ter Brü der.	Mother's brother.
Brü ders sun.	Brother's son.
Schwester sun.	Sister's son.
Vatters schwester mann.	Father's sister's husband.
Mü ter schwester mann.	Mother's sister's husband.
Manns Brü ders sun.	Husband's brother's son.
Manns Schwester sun.	Husband's sister's son.
Tochter mann.	Daughter's husband.
Schwäber.	Husband's father.
Schwester mann.	Sister's husband.
Manns Brü der.	Husband's brother.
Manns suns sun.	Husband's son's son.
Manns tochter sun.	Husband's daughter's son.
Groß mü ter mann.	Grandmother's husband.
[total=24 relationships]	

Bullinger, *Der Christlich Eestand*, ([Zürich: Christoffel Froschauer], 1540), no pagination, microfilm.

\*Some English saw step-father and father-in-law as synonyms early in 16<sup>th</sup> century. See: *OED* "stepfather."

Table 3 - Heinrich Bullinger's First Style of Table for the Man and Woman as Translated by Coverdale

**The first table goeth upon the man.**

1	Mother. (Lev 18:7)	A Father. Reciprocated (Rec.), 1
2	Daughter. Inversion (Inv.), A	B Son. Rec., 2
3	Mother-in-law. [Step-mother] (Lev 18:8; Dt 27:20)	C Father-in-law. [Step-father] Rec., 3
4	Daughter-in-law. [Step-daughter] (Lev 18:17)	D Son-in-Law. [Step-son] Rec., 4
5	Half-sister. (Lev 18:9, 20:17; Deut 27:22)	E Half-brother. Rec., 5
6	Whole sister. (Lev 18:11, 20:17; Deut 27:22)	F Whole brother. Rec., 6
7	Son's daughter. (Lev 18:10)	G Son's son. Rec., 8
8	Daughter's daughter. (Lev 18:10)	H Daughter's son. Rec., 7
9	Grandmother. Inv., G and/or H	I Grandfather. Rec., 9
10	Father's sister. (Lev 18:12, 20:19)	J Father's brother. Rec., 11
11	Mother's sister. (Lev 18:13, 20:19)	K Mother's brother. Rec., 10
12	Brother's daughter. Inv., J	L Brother's son. Rec., 13
13	Sister's daughter. Inv., K	M Sister's son. Rec., 12
14	Father's brother's wife. (Lev 18:14, 18:20)	N Father's sister's husband. Rec., 15
15	Mother's brother's wife. (Lev 20:20)	O Mother's sister's husband. Rec., 14
16	Wife's brother's daughter. Inv., N	P Husband's brother's son. Rec., 17
17	Wife's sister's daughter. Inv., O	Q Husband's sister's son. Rec., 16
18	Son's wife. (Lev 18:15)	R Daughter's husband. Rec., 18
19	Wife's mother. (Deut 27:22)	S Husband's father. Rec., 19
20	Brother's wife. (Lev 18:16)	T Sister's husband. Rec., 20
21	Wife's sister. Inv., T	U Husband's brother. Rec., 21
22	Wife's son's daughter. (Lev 18:17)	V Husband's son's son. Rec., 23
23	Wife's daughter's daughter. (Lev 18:17)	W Husband's daughter's son. Rec., 22
24	Grandfather's wife. Inv., V	X Grandmother's husband. Rec., 24

(J and K). So, a man is restricted from marrying his brother's daughter and sister's daughter (12 and 13) by inverting the woman's prohibitions against union with her father's brother and mother's brother (J and K). The case of a man marrying his wife's sister is found at 21. This prohibition is based on the inversion of the woman's prohibition against marrying her sister's husband (T) which itself reciprocates the Lev 18:16 law against a man marrying his brother's wife (20). The point of this dizzying analysis is that all the prohibitions in the first style of table for the man come either directly from Mosaic legislation or by inverting some of the prohibitions achieved for the woman through reciprocity.

Bullinger saw Lev 18:18 as prohibiting polygamy for both genders because the specific rubric against a man's marriage to two sisters at the same time is reciprocally applied to the woman's marrying two brothers. The qualifying words, "while she is yet alive," were seen to coordinate well with the levirate marriage of Deut 25:5. The levirate marriage law stipulated that the woman could marry a second brother after the first died leaving her childless. Bullinger also applied this law reciprocally to the woman so that she had the obligation to marry the husband of her deceased sister.<sup>60</sup> This extension of the principle of reciprocity to levirate marriage shows the extent of Bullinger's commitment to his interpretive method, but he also believed that levirate marriage was no longer applicable to the people of God because its time and purpose ended with Christ's coming.<sup>61</sup>

The second style of table (see Table 4) presents the reasoning for the listing given in the first style and is more complex and difficult to follow. The second style is

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<sup>60</sup> Bullinger, *The Christen State of Matrimonye*, xii-xiii.

<sup>61</sup> Ibid.

complicated by the use of alphanumeric codes to signify certain aspects of the tables. The lower case roman numerals simply show the order, while the letter “A” indicates particular prohibitions expressed literally in Lev 18, the “B” shows the forbidden degrees that can be inferred from the literal statements in “A,” and “C” signifies that the relationship stated has been previously listed.<sup>62</sup> In the case of “B” the First Table, i, line 4 states, “A woman may not marry her father-in-law.” This relationship is based on applying to the woman the relationship prohibited the man in the preceding line. An example of the use of “C” is found in the First Table, xii, line 1, where, “A man may not marry his wife’s sister,” is reciprocated in the Second Table, xii, line 1 by, “A woman may not marry her sister’s husband.” This is a repeated prohibition because the Zurichian’s analysis in the second style presents a complex and intricate analysis of the text of Lev 18. Bullinger used the second style of table as a worksheet for developing and justifying the prohibitions listed in the first style.

Since the Old Testament laws of Leviticus 18 are presented by Bullinger for guidance, then it follows that he would believe these precepts to be still authoritative for the church. The continued use of the Levitical law for the New Testament believer is affirmed in the following:

Therefore helpeth not the objection that certain men make out of Moses, as though Moses’ law were clean abrogated and taken away from the Christian. Nurture, shamefastness, and honesty, is excepted from no man. ... But against equity, against comeliness, against honesty and virtue, did God ever grant us any freedom, and the same law took he never away. Wherefore let no man regard those, which under the title of Christian liberty, would start away from all honest laws unto all voluptuousness of the flesh.<sup>63</sup>

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<sup>62</sup> Ibid., xv.

<sup>63</sup> Ibid., xix-xx.

Table 4 - Heinrich Bullinger's Second Style of Table for the Man and Woman Combined as Translated by Coverdale

The First Table			The Second Table		
i A	A man may not marry his own mother.	i	A woman may not marry her own son.	C	C
A	A woman may not marry her own father.		A man may not marry his daughter-in-law.		
A	A man may not marry his mother-in-law.		A woman may not marry her son-in-law.		
B	A woman may not marry her father-in-law.	ii	A woman may not marry her son-in-law.		
	A man may not marry his half-sister.		A man may not marry his daughter-in-law.		
ii A	A man may not marry his son's daughter.	iii	If thou turn two degrees on the tother side thou findest even the fore said two.		
B	A woman may not marry her half-brother.		A woman may not marry her grandfather.		
iii A	A man may not marry her son's son.	iv	A man may not marry his grandmother.		
B	A woman may not marry her daughter's daughter.		If thou turn those two degrees on the tother side, thou findest the foresaid two.	C	C
iv A	A man may not marry his daughter's son.	v	A woman may not marry her brother's son.		
B	A woman may not marry her daughter, of father and mother.		A man may not marry his brother's daughter.		
v A	A man may not marry his sister, of father and mother.	vi	A woman may not marry her brother's son.		
B	A woman may not marry her brother.		A man may not marry his sister's son.		
vi A	A man may not marry his father's sister.	vii	A woman may not marry her sister's son.		
B	A woman may not marry her father's brother.		A man may not marry his sister's daughter.		
vii A	A man may not marry his mother's sister.	viii	A woman may not marry her husband's brother's son.		
B	A woman may not marry her mother's brother.		A woman may not marry her husband's sister's son.		
viii A	A man may not marry his father's brother's wife.	[?]	A man may not marry his wife's brother's daughter.		
B	A man may not marry his mother's brother's wife.		A man may not marry his wife's sister's daughter.		
B	A woman may not marry her father's sister's husband.	ix	A woman may not marry her husband's father.		
[?]	A woman may not marry her mother's sister's husband.	x	A man may not marry his wife's mother.		
ix A	A man may not marry his son's wife.		A woman may not marry her husband's brother.		
B	A woman may not marry her daughter's husband.		A man may not marry his wife's sister.		
x B	A man may not marry his brother's wife.				
A	A woman may not marry her sister's husband.				
C	A man may not marry his wife's daughter.				
C	A woman may not marry her husband's son.				
xi A	A man may not marry his wife's son's daughter.	xii	A woman may not marry her mother's husband.	C	C
B	A woman may not marry her husband's son's son.		A man may not marry his father's wife.		
A	A man may not marry his wife's daughter's daughter.		A woman may not marry her grandmother's husband.		
B	A woman may not marry her husband's daughter's son.		A man may not marry his grandfather's wife.		
xii C	A man may not marry his wife's sister.	C	A woman may not marry her sister's husband.	C	C
C	A woman may not marry her brother's wife.		A man may not marry his brother's wife.		

Not only are the laws of Moses valid for the Christian as principles of righteousness, but Bullinger goes on to consider that nature and the conscience of man also prohibit marriages of consanguinity and affinity. Bullinger observed that it is naturally shameful for those who know nothing of the law of God to join in such marriages.<sup>64</sup> This natural shame was exemplified for Bullinger by Paul's chastisement of the Corinthians for their having a man in their congregation who, contrary to nature, had married his father's wife (1 Cor 5:1). Paul did not condemn the marriage by turning to Moses' law against it in Lev 18:8, but instead he turned to nature and judged the marriage to be incestuous because not even the Gentiles practiced such a union.

In summary, Heinrich Bullinger's two chapters concerning near-kin marriages add the use of tables to the historical background of the *Westminster Confession's* affinity sentence. The facility of use achieved through tables simplified application of near-kin rubrics to impending marriages. The table's prohibitions were achieved through specific use of God's law, reciprocal application, and inversion of those relations reciprocally achieved. Bullinger saw the marriage of a man to his deceased brother's wife as prohibited on the basis of Lev 18:16 and he applied this law reciprocally to the woman as prohibiting her marriage to her deceased sister's husband. The forbidden consanguineous and affine marriages in the tables present an expanding circle of prohibited marriages.

### **Summary of Reformation Era Views**

The four views presented in the proceeding analyses differ respecting near-kin marriages. Luther changed his mind concerning the number of prohibited degrees and came to view marriage to a deceased wife's sister as wrong. He saw the marriage as

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<sup>64</sup> Ibid., xviii.

wrong because when the husband and wife marry they are one flesh, and this union brings the wife's sister into a sister-like relationship with the husband. Calvin interpreted marriage to a deceased wife's sister as wrong by reciprocally applying Lev 18:16 to the woman. Martin Bucer's view tended to follow the prohibitions specifically delimited in Lev 18, though he viewed them as authoritative for the theocracy and not the church. He was concerned that a near-kin prohibition not inhibit a marital union between related Christians when they lived in a culture where their only other choice would be a non-believer. For Bucer, it was better to marry a relative than to marry one who was not a Christian. Finally, Bullinger's chief contributions to continental near-kin issues were his tables of forbidden degrees that he compiled to aid Christians with consciences sensitive to incestuous marriage. Bullinger saw marriage to a deceased brother's wife and to a deceased wife's sister as contrary to the law of God. These four pillars of the continental and English Reformation had four different views regarding the interpretation and application of near-kin prohibitions, but three of the four, Bucer being the exception, were agreed that marriage to a brother's wife was prohibited by Lev 18:16 and the prohibition against marrying a deceased wife's sister was achieved through different approaches. Despite different methodologies, three of the four theologians came to the same conclusion and condemned a man's marriage to his deceased wife's sister.

### **The Church of England and Near-Kin Marriages**

The succession of marriages by Henry VIII contributed to the development of the Church of England's legislation concerning marriages of consanguinity and affinity. Thomas Cranmer, who had produced the documentation that ended Henry's marriage to Catherine, continued to deal with marriage issues for the Church of England. Thomas

Cranmer was the first Anglican Archbishop and his Visitation Articles of 1547 addressed near-kin unions. The Articles instructed visiting bishops to ask, “Whether you know any to be married within the degrees prohibited by the laws of God.”<sup>65</sup>

Cranmer’s practices were continued in 1550 when Nicholas Ridley—who was consecrated bishop of Rochester in 1547 and bishop of London in 1550—listed in his visitation questions an inquiry as to whether the “banns [were] thrice first asked three several holy-days or Sundays openly in the church at service time.”<sup>66</sup> The stipulation of three Sundays before the wedding gave people the opportunity to express any potential impediments to their ecclesiastical authorities. As the reign of Henry VIII drew to a close and young Edward began his truncated rule, the prohibition of near-kin unions was a part of the disciplinary aspects of clerical visitation in the Church of England.

Following the bloody attempts of Mary Tudor to return England to Roman Catholicism, the Elizabethan Church produced the 1559 edition of the *Book of Common Prayer*, which continued the near-kin teaching of the 1549 and 1552 editions. “The Form of Solemnization of Matrimony” included the prohibition of marriages of consanguinity and affinity.<sup>67</sup> The order for a proper marriage ceremony called for the banns to be pronounced in both the prospective bride and groom’s parishes three Sundays before the

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<sup>65</sup> Edward Caldwell, *Documentary Annals of the Reformed Church of England*, 2 vols. (Oxford: Oxford University Press, 1844), 1:58.

<sup>66</sup> Ibid., 1:91.

<sup>67</sup> Joseph Ketley, ed., *The Two Liturgies, A.D. 1549, and A.D. 1552; with Other Documents Set Forth by Authority in the Reign of King Edward VI*, Vol. 14, Parker Society Series (Cambridge: Cambridge University Press, 1844; reprint, Johnson Reprint Corporation, 1968): 127-134, 1549 ed.; 302-310, 1552 ed.

approaching nuptial.<sup>68</sup> Ministers were instructed to begin the ceremony by asking the congregation, “Therefore if any man can show any just cause, why they may not lawfully be joined together, let him now speak: or else hereafter for ever hold his peace.”<sup>69</sup> After the question to the congregation, the minister was to turn to the couple and instruct them:

I require and charge you (as you will answer at the dreadful day of judgment, when the secrets of all hearts shall be disclosed) that if either of you do know any impediment why ye may not be lawfully joined together in Matrimony, that ye confess it. For be ye well assured, that so many as be coupled together otherwise than God’s word doth allow, are not joined together by God, neither is their Matrimony lawful.<sup>70</sup>

The congregation’s responsibility for policing the propriety of impending connubial unions was in addition to the primary duty born by the prospective couple. The couple took their vows of marriage before the Church of England, but more importantly, they affirmed their vows in the presence of God. Any improper relationship between the couple, whether due to a previous marriage, a near-kin relationship, or any other banned issue, could postpone or prohibit a marital union, arrest a wedding in process if objections were raised, or lead to the dissolution of the marriage if an impediment surfaced at a later date.<sup>71</sup> There were several reasons why a couple could be prohibited from marrying and one of these was the impediment due to consanguinity and affinity.

### **The Marriages of Henry Neville (c1525-1563)**

The occurrence of near-kin marriages in England is illustrated by the case of the fifth Earl of Westmoreland, Henry Neville, who married his deceased wife’s sister.

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<sup>68</sup> William Keating Clay, ed., *Liturgical Services, Liturgies and Occasional Forms of Prayer Set Forth in the Reign of Queen Elizabeth*, Vol. 12, Parker Society Series (1847; reprint, New York: Johnson Reprint Corporation, 1968), 217-24.

<sup>69</sup> Ibid., 218.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

Neville was married three times: first, to Lady Jane Manners; second, to Jane Cholmeley; and third, to Jane Cholmeley's sister, the widow Margaret Gascoigne.<sup>72</sup> He defended his third marriage in a letter to William Cecil stating that Leviticus did not explicitly prohibit marrying his wife's sister and he believed he had done nothing but what was allowed by God's law. Neville based his case on the enumerated prohibitions of Lev 18 and denied the reciprocal application of the man's prohibition in verse 16 to the woman. Despite his defense, the Earl and his wife were prosecuted by the York consistory. Archbishop Young, following the directive of William Cecil, dissolved the union between the Earl and his deceased wife's sister. The Earl appealed and the queen appointed a commission headed by Archbishop Parker to hear the appeal sometime between 1560 and 1563.<sup>73</sup> The resolution of the case may have occurred with the death of Henry Neville in 1563.<sup>74</sup>

Levitical condemnation of near-kin marriages found application in England's state church due to the historical occurrence of the prohibited unions; the rubrics of Lev 18 were as pertinent in the sixteenth century as in Moses' era.

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<sup>72</sup> "Neville, Henry," in *Dictionary of National Biography*, 14:278-79.

<sup>73</sup> This account of Neville's case is presented in: Eric Josef Carlson, *Marriage and the English Reformation*, (Cambridge, Mass: Blackwell Publishers, 1994), 90.

<sup>74</sup> *Dictionary of National Biography*, 14:279. Parker received a letter dated November 9, 1559 from the Lords of the Council that mentions the Earl of Westmoreland, Henry Neville. Neville and some other commissioners were responsible for seeing that the oath of supremacy was taken. Two men, Dr. Carter and Dr. Seggswick, refused to take the oath before Neville and the other commissioners; the two had to appear before the Lords of the Council. The two refused to take the oath before the Lords and were transported to Parker. Neville would soon face the Archbishop himself for his near-kin marriage. See letter: Lords of the Council to Parker, November 9, 1559, *Correspondence of Matthew Parker, D.D. Archbishop of Canterbury: Comprising Letters Written by and to him, from A.D. 1535, to his Death, A.D. 1575*, ed. John Bruce and Thomas T. Perowne, Parker Society Series (Cambridge: Cambridge University Press, 1853; Reprint, Johnson Reprint Corporation 1968), 105-106.

### **Matthew Parker, Archbishop of Canterbury, 1559-1575**

Matthew Parker's ministry as the Archbishop of the Church of England established the foundation for Anglican practices during the Elizabethan era. He was educated at Corpus Christi College, Cambridge, where he became a fellow in 1527. He was involved in the reformation circle at Cambridge through the influence of Thomas Bilney and he became chaplain to Anne Boleyn in 1535. John Jewel, in a letter to Peter Martyr Vermigli,<sup>75</sup> described Parker as a friend "marked out for" the Archbishopric of Canterbury.<sup>76</sup> In 1561, Matthew Parker continued the practice of his predecessors by regulating near-kin marriages and imposing discipline upon those married within the prohibited degrees. Any marriage contracted within the "Levitical degrees" was to be dissolved and this included those "who have married two sisters, one after another."<sup>77</sup> Parker continued the visitation practices of his predecessors and enforced the prohibition of near-kin marriages.

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<sup>75</sup> Vermigli discussed near-kin issues in his *Most Fruitful and Learned Commentaries of Doctor Peter Martir Vermil Florentine, Professor of Divinitie in the Universitie of Tygure, with a Very Profitable Tract of the Matter and Places. Wherein is also added & contained two most ample Tables, ... of the matter, as of the wordes: wyth an Index of the places in the holy scripture* [commentary on Judges though the title page does not say this] (London: John Day, Dwelling over Aldersgate, [1564]), 19b, 20b, 22b, 23, 223. Vermigli believed the kin listed in Leviticus were not the only prohibited degrees. The listed relations delimit the bounds of the prohibitions and other kin within the bounds could also be inferred as prohibited. The deceased wife's sister marriage is wrong because a man's wife's sister is as his own sister.

<sup>76</sup> Jewel to Peter Martyr, London, [May 1559], *The Zurich Letters Comprising the Correspondence of Several English Bishops and Others, with Some of the Helvetian Reformers, During the Early Part of the Reign of Queen Elizabeth*, ed. Hastings Robinson, Parker Society Series, (Cambridge: University Press, 1842; London: Johnson Reprint Company, 1968), 23; unfortunately this is an undated letter, but Robinson has placed it between letters dated May 1559.

<sup>77</sup> Caldwell, *Documentary Annals*, vol. 1, 301.

The historical record is further enhanced by two additional near-kin marriages that were disciplined during Archbishop Parker's ministry. The first marriage came to Parker's attention in November of 1561 and involved a man who married two sisters successively. This deceased wife's sister union was brought to Parker's attention by Bishop Jewel of Salisbury who had learned of it from "some learned man" who was seeking advice. The "learned man" surmised that marriage to a wife's sister was wrong, according to Lev 18:18, only so long as the wife lived. Jewel saw things differently. The Bishop turned for his support not to Lev 18:18 and its prohibition of "taking a wife to her sister," but to Lev 18:16 and its condemnation of a man marrying his deceased brother's wife. Jewel's view has been summarized:

... that God would have us to expound one degree by another. And though we are not forbid by plain words to marry our wives' sister, yet we are forbidden by other words; which by exposition are plain enough. For when God shall command me, that I shall not marry my brother's wife, it follows directly, that he forbids 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.<sup>78</sup>

This quote is illuminating because it shows the writer's perception that marriage to a deceased wife's sister was not literally condemned by Leviticus, and therefore, its error had to be determined on the basis of the reciprocal application of the prohibition of a man's marriage to his brother's wife. This reciprocity seemed to follow logically because marital unions prohibited the man must also be prohibited the woman.

The second case is sketchy and incomplete but it provides a vignette of a near-kin marriage and its disciplinary consequences. The marriage occurred in 1562 and involved Thomas Standish. Adjudication bypassed the consistory and went directly to the High

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<sup>78</sup> John Strype, ed., *The Life and Acts of Matthew Parker*, 1:222; Letter from Jewel to Parker, November 1561, John Strype, ed., *The Life and Acts of Matthew Parker*, 3:55-58.

Commission. The decision was that Standish and his wife must separate. Standish fought the decision for some ten years, but the battle was for naught since he was eventually imprisoned in York Castle.<sup>79</sup>

These two cases show that near-kin marriages occurred and that the Church of England was concerned to prohibit and discipline these unions because it believed the Word of God condemned the marriages as incestuous.

### **Parker's Table of Prohibited Degrees**

Matthew Parker continued his publication of directions and prohibitions regarding marriage when in 1563 he distributed *An Admonition To All Such As Shall Intend Hereafter To Enter The State Of Matrimony, Godly And Agreeable To Laws*. This document instituted the table of prohibited degrees that became the Anglican Church's authoritative standard for determining the legitimacy of marriages into the twentieth-century.<sup>80</sup> E. J. Carlson has observed that despite Henrician statutes against marriages of consanguinity and affinity there was still a lack of clarity regarding the proper limits, so "it fell to Archbishop Parker to disperse the fog" with his table, but John Strype believed the motive for the table was "the lawless and incestuous marriages that ... had much prevailed."<sup>81</sup> The *Admonition* affirmed the marriage table framed unofficially by Parker in 1560, which was not published with specific authority until 1563.<sup>82</sup>

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<sup>79</sup> Carlson, *Marriage and the English Reformation*, 90.

<sup>80</sup> Caldwell, *Documentary Annals*, 1:316.

<sup>81</sup> Carlson, *Marriage and the English Reformation*, 93; Strype, *The Life and Acts of Matthew Parker*, 1:174.

<sup>82</sup> This is Caldwell's conclusion (*Documentary Annals*, 1:316) based on his reading of Strype's presentation in: *Annals of the Reformation and Establishment of Religion, and Other Various Occurrences in the Church of England, During Queen Elizabeth's Happy Reign: Together with an Appendix of Original Papers of State, Records, and Letters*, vol. 1, part 1 (Oxford: The Clarendon Press, 1824), 332.

The *Admonition* established the importance of biblical marriage and ended with the table of prohibited degrees to be posted in every parish. During visitation, the ecclesiastical hierarchy certified that the articles were posted and properly applied.<sup>83</sup> The table applied the degrees specifically prohibited the named spouse in Lev 18 reciprocally to the unnamed spouse (see Table 5).<sup>84</sup> The prohibition of a man's marriage to his deceased wife's sister was obtained by reciprocal application to the woman of the Lev 18:16 prohibition of a man's marriage to his brother's widow (Table 5, line 18).<sup>85</sup> Archbishop Parker dispersed the "fog" of consanguinity and affinity by publishing a visual, tabular, listing of the prohibited degrees.

Another near-kin issue of interest involved the marriage of first cousins. Some Protestants had prohibited this union and Roman canon law had condemned these marriages as well. However, an examination of Parker's table shows that siblings' children were not prohibited marriage to each other. The legitimacy of this union was affirmed in 1567 when, according to Edmund Grindal, Bishop of London, the English civil government wrote into law that marriages of sibling's children were "declared lawful."<sup>86</sup> Parker's table specified the prohibited unions for the Church of England and excluded some that had been forbidden in the past.

During June of 1563, a letter from John Jewel, Bishop of Salisbury, was sent to Archbishop Parker informing him that a man named Chafin was appealing the judgments

<sup>83</sup> Caldwell, *Documentary Annals*, 1:316-20.

<sup>84</sup> The full table is written in four columns with the prohibitions to each gender being expressed in both Latin and English. Each of the prohibitions is also described as being either a consanguineous or an affine relationship. Table 5 has been limited to the two English columns for clarity and ease of use.

<sup>85</sup> Caldwell, *Documentary Annals*, 1:317.

<sup>86</sup> Grindal to Bullinger, London, August 29, 1567, *Zurich Letters*, ed. Hastings, 201.

**Table 5 - Matthew Parker's List of Prohibited Degrees**

<b>A man may not marry his</b>	<b>A woman may not marry her</b>
1 Grandmother.	1 Grandfather.
2 Grandfath. wife.	2 Grandm. husb.
3 Wife's grandmother.	3 Hus. granfath.
4 Father's sister.	4 Father's broth.
5 Mother's sister.	5 Mother's broth.
6 Fath. Bro. wife.	6 Fath. sist. husb.
7 Moth. bro. wife.	7 Moth. sist. hus.
8 Wife's fath. sis.	8 Husb. fath. bro.
9 Wife's mo. sist.	9 Husb. moth. bro.
10 Mother.	10 Father.
11 Stepmother.	11 Stepfather.
12 Wife's mother.	12 Husb. father.
13 Daughter.	13 Son.
14 Wife's daugh.	14 Husband's son.
15 Son's wife.	15 Daughter's hus.
16 Sister.	16 Brother.
17 Wife's sister.	17 Husb. broth.
18 Brother's wife.	18 Sister's husb.
19 Son's daughter.	19 Son's son.
20 Daughter's dau.	20 Daughter's son.
21 Son's son's wife.	21 Son's daug. hus.
22 Daughter's son's wife.	22 Daughter's dau. husb.
23 Wife's son's dau.	23 Husb. son's son.
24 Wif. daug. dau.	24 Husb. daug. son.
25 Broth. daught.	25 Brother's son.
26 Sister's daught.	26 Sister's son.
27 Bro. son's wife.	27 Bro. daug. husb.
28 Sist. son's wife.	28 Sist. daug. hus.
29 Wife's brother's daughter.	29 Husb. brother's son.
30 Wife's sist. dau.	30 Husb. sist. son.

Edward Cardwell, ed., *Documentary Annals of the Reformed Church of England from 1546 - 1716* (Oxford: Oxford University Press, 1844), 1:320. There are two columns in the original under the heading "A man may not marry his," one Latin and one English, likewise for the woman. Note that the abbreviated forms are Parker's.

(1) Coverdale's version 1 <sup>st</sup> Style, 1 <sup>st</sup> Table <sup>1</sup>		(2) Coverdale's Reordered to Parker's Order	(3) Parker's List
1	Mother.	9	Grandmother.
2	Daughter.	24	Grandfather's wife.
3	Mother-in-law. [Step-mother] <sup>2</sup>	Missing	Wife's grandmother.
4	Daughter-in-law. [Step-daughter]	10	Father's sister.
5	Half-sister.	11	Mother's sister.
6	Whole sister.	14	Father's brother's wife.
7	Son's daughter.	15	Mother's brother's wife.
8	Daughter's daughter.	Missing	Wife's fath. sis.
9	Grandmother.	Missing	Wife's mo. sist.
10	Father's sister.	1	Mother
11	Mother's sister.	[3]	Step-mother
12	Brother's daughter.	19	Wife's mother.
13	Sister's daughter.	2	Daughter.
14	Father's brother's wife.	[4]	Step-daughter
15	Mother's brother's wife.	18	Son's wife.
16	Wife's brother's daughter.	6	Whole sister & 5 Half-sister. <sup>3</sup>
17	Wife's sister's daughter.	21	Wife's sister.
18	Son's wife.	20	Brother's wife.
19	Wife's mother.	7	Son's daughter.
20	Brother's wife.	8	Daughter's daughter.
21	Wife's sister.	Missing	Wife's son's wife.
22	Wife's son's daughter.	22	Daughter's son's wife.
23	Wife's daughter's daughter.	23	Wife's son's dau.
24	Grandfather's wife.	23	Wife's daughter's daughter.
		12	Brother's daughter.
		13	Sister's daughter.
		Missing	Broth. daught.
		16	Sister's daughter.
		17	Bro. son's wife.
		28	Sist. son's wife.
		29	Wife's brother's daughter.
		30	Wife's sist. dau.

<sup>1</sup> Arabic numbers added to distinguish order in col. 2.<sup>2</sup> The relations in brackets better reflect the meaning of the German. If this were not true then Bullinger's 3 would be repeated by 19 and 4 by 18.<sup>3</sup> Assuming Parker's "16 Sister" represents both full and half blood

against him given by both Parker and Jewel because he had married his deceased wife's sister. Jewel expressed to Parker, in apparent exasperation, that he "would they would decree it were lawful to marry two sisters, so should the world be out of doubt. As now it is past away in a mockery."<sup>87</sup> These unions continued to occur despite the Church of England's repeated warnings regarding affine marriage.

Matthew Parker expanded ecclesiastical marriage law and reissued his table of prohibited degrees in 1569 along with additional prohibitions against polygamy, pre-contracts, marriage without the banns being asked, married couples who "slanderously" lived apart, and any that have not been married in a church.<sup>88</sup> The continued connubial legislation was indicative of not only near-kin problems but also a general depreciation of the importance and goodness of marriage.

The Archbishop's continued efforts to prohibit near-kin unions took a more personal turn in the case of Gerard Danet who had married his consanguine sister. Parker had been pastorally involved with the couple for several years and his continued concern was expressed in a letter to Sir William Cecil:

I am at this day occupied with all the wits I have, to persuade Gerard Danet and his sister-german, that their contracting for man and wife, and having had two children betwixt them, and she now great with the third, that it is sin to be repented of. ... Before God, I know not what to do with them, and how to deal. I would I had your counsel. ... I have spent a whole afternoon with the sister, but all in vain. They have continued this ten or twelve years. Six years ago I thought

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<sup>87</sup> Jewel to Parker, June 16, 1563, *Correspondence of Matthew Parker, D. D. Archbishop of Canterbury*, ed. John Bruce and Thomas Perowne, Parker Society Series (Cambridge: The University Press, 1853; reprint, London: Johnson Reprint Co., 1968), 176-77.

<sup>88</sup> Caldwell, *Documentary Annals*, 1:361; Note that it was important for the Church of England that marriages be performed in a church, which contrasts with views such as Luther's early perspective which did not view a church marriage as important.

I had won the brother in secret communication from his lewdness, and so he promised me, but it falleth out otherwise. I marvel of their mother.<sup>89</sup>

The couple had been married for over a decade and Archbishop Parker called them to repent. Danet had been exhorted by Parker to turn from his “lewdness,” but he and his sister continued their consanguineous sibling marriage.<sup>90</sup> Marriages of consanguinity and affinity were not condemned because of arbitrary humanly composed laws, but because clerics were concerned that the marriages violated the law of God and were detrimental to the spiritual welfare of the parties involved.

A second suspected case arose in 1569 at Cambridge involving Dr. Fulke of St. John’s College who was accused of being involved in an incestuous marriage. The case caused an uproar at the university and he resigned his fellowship. Because of the accusations against Fulke, Parker opposed his appointment as Master of St. John’s college.<sup>91</sup> As it turned out, the charges were unjust and Dr. Fulke was cleared of the charges by the bishop of Ely.<sup>92</sup>

Through 1569, Matthew Parker’s bishopric enforced the application of its interpretation of the Mosaic prohibitions on its parishioners. A man’s marriage to the sister of his deceased wife was both illicit and invalid on the basis of a reciprocal application of Lev 18:16 to the deceased wife’s sister.

<sup>89</sup> Parker to Cecil, August 9, [1569], *Correspondence of Matthew Parker*, ed. Bruce and Perowne, Parker Society Series (Cambridge: Cambridge University Press, 1853; Reprint, Johnson Reprint Corporation 1968), 353-54. The use of “german” here could mean having the same parents (full brother and sister), or having a common parent (half brother and sister). Strype takes it as “both having the same mother” in *The Life and Acts of Matthew Parker*, 1:556.

<sup>90</sup> Bruce and Perowne, *Correspondence of Matthew Parker*, 353-54.

<sup>91</sup> Parker may have been too ready to jump on the band-wagon of those pointing the finger at Fulke. Fulke was a Puritan and Parker was not getting along with the Puritans.

<sup>92</sup> John Strype, *The Life and Acts of Matthew Parker*, 1:555, 556; “Fulke, William,” in vol. VII, *Dictionary of National Biography*.

### Parker's Table and the Influence of Bullinger's Tables

Parker's listing of the prohibited degrees in a table echoes the teaching expressed by Heinrich Bullinger's tables given in *Der Christlich Eestand*. Table 6 presents Parker's table paralleled with Coverdale's translation of Bullinger's first style of table applied to the man. The Archbishop's terminology nearly duplicates Coverdale's *Christen Matrimonye*, which for the most part, is a literal translation of Bullinger's work (see Tables 1 & 2).<sup>93</sup> The similarities between Bullinger and Parker's renditions become clearer when specific relations are examined. For example, Parker's number 23, on the man's side in Table 6, describes the "Wife's son's dau." as a prohibited union. This relationship could have been listed by Parker as *stepson's daughter* or *daughter of wife's son* or *wife's granddaughter*, but the Archbishop chose the literal English rendition of Bullinger's German. The man's forbidden relation 22, "Daughter's son's wife," could be expressed as *grandson's wife* or *daughter's daughter-in-law*. Again, Parker chose the words of Coverdale's translation of Bullinger. Number 29 mentions the "Wife's brother's daughter" who could also be described as *niece*, *daughter of wife's brother*, or *brother-in-law's daughter*. If Archbishop Parker were drafting his table independent of Bullinger's table, then his list would most likely vary its designations of relationships more than it does.

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<sup>93</sup> The reason for comparing both the German and English to Parker's list is due to the unanswered question concerning Matthew Parker's knowledge of German. He was not one of those who fled to the continent under Mary's reign and his knowledge of German would be questionable. One English cleric, Bishop Richard Cox, told Bullinger in a letter that he was mistaken if he thought Cox knew German. Cox goes on to say that he had "a very slight knowledge of that language." Richard Cox to Heinrich Bullinger, Ely, July 29, 1574, *Zurich Letters*, ed. Hastings, 308.

In the comparison in Table 6 there are seven relations in Parker's list which are not presented by Heinrich Bullinger: the "Wife's grandmother"(Parker's 3), which extends the affinity relation one degree ascending; the "Wife's fath. sis."(8) and "Wife's mo. sist."(9), which both extend the prohibitions one degree descending from the wife's grandparents to the parents' sibling collateral line; the "Son's son's wife"(21) and "Daughter's son's wife"(22) lengthen the prohibitions one degree in the descending line from the children and prohibit affine unions; and Parker's prohibitions of the "Bro. son's wife"(27) and the "Sist. son's wife"(28) forbid affine marriage one additional degree descending in the sibling collateral line. If Bullinger's "Half-sister"(5) is included with "Whole sister"(6), based on both relations being sisters, then all twenty-four of his prohibited relations find a correlation in Parker's list. Parker could have conceived of his table independently of Bullinger's tabulations, but these textual similarities between the two authors' tables seem more than coincidental.

There are other factors that yield additional weight to the balance and tip the scales in favor of Parker's use of Bullinger's table. The popularity of the Zurichian's *Der Christlich Eestand* in England is testified to by H. J. Selderhuis's accounting of "four known German-language and ten English-language editions."<sup>94</sup> The sympathetic relationship between the Church of England and Heinrich Bullinger can be seen in Matthew Parker's use of Bullinger's publications<sup>95</sup> and Bullinger's support of Parker in

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<sup>94</sup> H. J. Selderhuis, trans. John Vriend and Lyle D. Bierma, *Marriage and Divorce in the Thought of Martin Bucer*, Sixteenth Century Essays and Studies, vol. 48 (Kirksville: Thomas Jefferson University Press, 1999), 44 n. 56; originally published as *Huwelijk en Echtscheidung bij Martin Bucer* (Leiden: Uitgeverij J.J. Groen en Zoon BV).

<sup>95</sup> Strype, *The Life and Acts of Matthew Parker*, 2:78.

the vestment controversy with the Puritans.<sup>96</sup> Another link between Parker and Bullinger is Myles Coverdale who translated Bullinger's *Der Christlich Eestand* into English. The relationship between Coverdale and Parker is exemplified by Coverdale's vote for Parker as Archbishop of Canterbury and his inclusion as one of the four bishops presiding over Parker's consecration.<sup>97</sup> These factors contribute to show Parker's sympathy for Zurich-based teaching as well as his friendship with Bullinger's translator, Myles Coverdale. The similarities between Parker's and Bullinger's tables point to Archbishop Parker's use of the tables of *Der Christlich Eestand* as translated by Myles Coverdale.

### **The Church of England after Matthew Parker**

At the end of Matthew Parker's term as Archbishop of Canterbury he was succeeded by Edmund Grindal (1576-1583) and then John Whitgift (1583-1604). Whitgift's Visitation Articles of 1585 continued the practice of enforcing Parker's table of prohibited degrees through ecclesiastical visitation by the Church of England's hierarchy. Whitgift issued fifteen articles to be used when parishes were visited for ecclesiastical assessment. Article ten reads as follows:

Whether have any married within the forbidden degrees, consanguinity or affinity; any separated in that respect, do keep company still together; any lawfully married, which offensively live asunder, or which have married elsewhere; any man which has two wives, or woman two husbands; are there in your parish any incestuous, adulterous, or incontinent persons; any common drunkards, ribalds, swearers, slanderers, uncharitable, sorcerers, charmers, usurers, or vehemently suspected of these or any of them?<sup>98</sup>

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<sup>96</sup> For example, Bullinger's perspective on vestments is seen in Strype's, *The Life and Acts of Matthew Parker*, 1:456-57.

<sup>97</sup> When Elizabeth I was proceeding to the election of Parker there was some resistance from the bishops sympathetic to Rome. The first letters seeking votes went to those sympathetic to Parker's election including, "Coverdale, sometime bishop of Exeter." Strype, *The Life and Acts of Matthew Parker*, 1:107,114.

<sup>98</sup> Caldwell, *Documentary Annals*, 2:27.

Though the table was not expressly mentioned, marriages within the forbidden degrees of consanguinity and affinity were viewed as violations of God's law. The visitation article links near-kin marriage with other marital errors which would be dealt with severely; just as adulterers, drunkards, slanderers, and others were to be sought out and disciplined, so also near-kin marriages were to be ferreted out and dealt with.<sup>99</sup>

Parker's list continued as the standard by which near-kin marriages were measured into the seventeenth century. In 1605, Archbishop Richard Bancroft's (1604-1610) seventy-six articles of ecclesiastical visitation addressed the issue of prohibited marriages by requiring the continued posting of Parker's table.<sup>100</sup> Bancroft's articles made specific mention of Parker's table and required its posting in a public place:

Whether have any in your parish been married within the prohibited degrees, forbidden by the law of God, and expressed in a certain table published by authority, in *anno* 1563. If yea, then you shall present their names? And whether have you the said table publicly set up in your church and fastened to some convenient place there?<sup>101</sup>

It had been forty-two years since the first edition of Archbishop Parker's tabular listing of the degrees of consanguinity and affinity but the table continued to be the authoritative listing for the Church of England. The posting of the prohibited degrees left both clergy and parishioner without excuse regarding their knowledge of the error of near-kin marriage.<sup>102</sup>

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<sup>99</sup> Ibid.

<sup>100</sup> G. E. Duffield, "Bancroft, Richard," in *New International Dictionary of the Christian Church*, ed. J. D. Douglas (Grand Rapids: Zondervan, 1974, 1978), 98-99; Kenneth Fincham, ed., *Visitation Articles and Injunctions of the Early Stuart Church*, Church of England Record Society (Woodbridge: The Boydell Press, 1994), 1:12.

<sup>101</sup> Fincham, *Visitation Articles*, 1:12; italics added.

<sup>102</sup> Of course, this is assuming that the people could read the table. The literacy level of this era is a disputed issue.

The tradition of reissuing Parker's list was continued by George Abbot (1611-1633). Article two of his 1616 edition of the Articles of Visitation enumerated the furnishings, books, and documents that each parish church should have, which included "a table set of the degrees wherein by law men are prohibited to marry."<sup>103</sup> William Laud's (1633-1645) Metropolitical Articles for Lincoln Diocese of 1634 required ecclesiastical visitors to ask whether any within the parish "have married within the degrees by law prohibited."<sup>104</sup>

John Strype, writing in the early eighteenth century, notes that in his day Parker's table was still "hanging up in all parish churches."<sup>105</sup> The continued use of the table extends at least until 1986 when Alan Macfarlane observed:

Basically, with one small exception, the rules concerning which kin one may or may not marry are the same in England today as they were in 1540. The exception is that in 1907 it became legal to marry a deceased wife's sister.<sup>106</sup> Otherwise there have been no changes from a situation which allows marriage of all but very close relatives.<sup>107</sup>

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<sup>103</sup> Caldwell, *Documentary Annals*, 2:169.

<sup>104</sup> Kenneth Fincham, *Visitation Articles*, 2:93.

<sup>105</sup> Strype, *The Life and Acts of Matthew Parker*, 1:174.

<sup>106</sup> The history of deceased wife's sister marriages in England could fill the pages of another dissertation. The English debate may have been more heated than the American.

<sup>107</sup> Macfarlane, *Marriage and Love in England: Modes of Reproduction 1300-1840* (Oxford: Basil Blackwell, 1986), 246-47. Macfarlane's conclusion is affirmed by the 1940 Archbishop's Commission's report, *Kindred And Affinity As Impediments To Marriage* (London: Society for Promoting Christian Knowledge). The Commission studied near-kin marriages and cited previous Commissions which studied the issue as well. In 1847 a Royal Commission, concerning civil legislation, was appointed specifically to study the case of marriage with a deceased wife's sister and how it related to, "Statute 5 and 6 William IV (Lord Lyndhurst's Act), which made such marriages null and void from the beginning instead of being, as previously, voidable"(p. 7). Their conclusion was that this statute had been ineffectual and the Commission doubted whether any prohibition, "could be effectual," and that such marriages are going to occur when the circumstances dictate. Further, the commission said that the law had not governed such marriages nor did they believe the law could, "effectually govern them" (p.7). The Commission notes evidence from Dr. Pusey which he later published as, *Marriage with a Deceased Wife's Sister* (N.p.: Parker, 1849). Another study noted by

The removal of the deceased wife's sister prohibition from Parker's list was not achieved without a long and difficult battle often paralleling the near-kin adjudications which took place in the American Presbyterian Church.<sup>108</sup>

In summary, Matthew Parker's table gave parishioners authoritative information for assessing the validity of proposed marriages so they could object to any wrongful proposed unions during the banns or at the last minute as the ceremony began. From Thomas Cranmer, to Matthew Parker, through the eighteenth and nineteenth centuries, and into the twentieth, prohibitions against deceased wife's sister unions in particular, and consanguineous and affine marriages in general, were part of the standards of the Church of England and the prohibited degrees were expressed in tables.<sup>109</sup> The step from

the 1940 Commission was *The Report of the Joint Committees of the Convocations of Canterbury and York on "The Church and Marriage,"* 1935. This study was presented to the Convocation of all four Houses and they resolved, each on successive occasions between 1935 and 1937, that the Table of Kindred and Affinity be revised (p. 7-8). It would appear that the Archbishop's 1940 Commission was appointed in response to the 1935 *Report of the Joint Committee.* In chapter XVII, pages 82-85, of the 1940 Archbishop's Commission's report the commissioners summarize their conclusions as: First, near-kin marriages are wrong because of "Widespread instinctive abhorrence of certain unions between a man and a woman. This may be attributed to moral intuitions." Secondly, sociology dictates near-kin marriages are indecent. Thirdly, is concern for the biological health of the offspring. Fourthly, "All marriages should be prohibited between blood relations who are more nearly related than first cousins." Under "Dispensation" the Commission says, "We recommend that Parker's Table should be revised for the Church of England, and that in England there should be no dispensation from the Table as revised." The Commission summarized their findings on Leviticus by saying, "We regard two of the prohibitions in Leviticus—those against marriage with a brother's widow and with a father's brother's widow—as relative to the social organization of the Hebrews. These are the only two prohibitions of the Mosaic Law which we do not think still binding."

<sup>108</sup> See the Bibliography, under United Kingdom Publications, for a list of deceased wife's sister books and tracts.

<sup>109</sup> Már Jónsson has noted with respect to discipline for near-kin marriages that, "The most extreme example was a criminal law passed in Denmark in 1637. Every marriage thought to be explicitly or implicitly forbidden in Leviticus 18, which meant every

Bullinger's first style of table to Parker's listing showed an increase in the number of prohibited relations beyond the specifics of Mosaic Law.

### **Summary of Chapter One**

The efforts of the four continental fathers considered above exemplify the necessary labors by Protestants to rebuild doctrine on a *sola Scriptura* foundation. Three of the four Reformation scholars agreed that marriage to a deceased wife's sister is incestuous, while Martin Bucer did not mention the marriage in his *De Regno Christi*. Though there was agreement concerning the prohibition, they did not agree on the reasoning as to *why* it was prohibited; they agreed on the end but not the means to that end. Calvin and Bullinger's belief in the continued authority of the moral law as expressed in the Levitical near-kin prohibitions led them to enforce the prohibited degrees. Luther's growing and changing view developed from a minimum of prohibitions to a more encompassing perspective. All four of the continental pillars were working to understand what the Bible required and their efforts contributed to the continued understanding of near-kin prohibitions in the Church of England.

Thomas Cranmer's early efforts to prohibit near-kin unions in the infant Church of England were stymied by a lack of clarity regarding the specific degrees prohibited, and this uncertainty carried over into Matthew Parker's term as Archbishop leading him to publish his table. One of the principal influences on the Elizabethan church came

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relation within first-cousins, was subject to execution. The law listed eighty women and as many men, a far cry from the twelve, thirteen, fourteen or fifteen found in a literal reading of the words of God." Jónsson cites: Vilhelm A. Secher, ed., *Forordninger, recesser og andre kongelige breve Danmarks lovgivning vedkommende 1588-1660* (Copenhagen: 1887-1918), 4:697f, 5:254-59. Már Jónsson, "Incest and the Word of God: Early Sixteenth Century Protestant Disputes," *Archiv für Reformationsgeschichte* 85 (1994), 117-18.

through Heinrich Bullinger's many letters to English clerics over the course of his long life. The distribution of the Zurich pastor's works in England impressed upon the Church of England a Zurichian imprint. Included in the issues influenced by Zurich was Matthew Parker's table of prohibited degrees of marriage that relied on the presentation of near-kin prohibitions in Bullinger's tabulation in *Der Christlich Eestand*. The Church of England ecclesiastical issues most often associated with Bullinger, such as *adiaphora*, vestments, and the monarch's role as head of the church, can be supplemented by his teaching on consanguineous and affine marriages.

Marriages of consanguinity and affinity were neither insignificant nor rare occurrences in England in the sixteenth and seventeenth centuries. The English were sincerely concerned about these marriages and they were not seen as petty or esoteric; the English believed the marriages were incestuous and transgressed the law of God. The banns against near-kin marriage were viewed as a way to keep a prospective couple from entering an illicit and invalid marriage that would be to their spiritual detriment. Thus, Parker's list was guidance for the prospective couple to examine their kinship, as well as a guide for the couple's parishioners to help them avoid an incestuous connubial union.

Of central importance to this historical survey, thus far, is the expansion of prohibited relationships based on the principle of reciprocal application, the use of inversion, and the inclusion of degrees determined by inference and deduction. Parker's seven additional prohibitions to the man and woman were deduced by adding forbidden relationships in ascending and descending proximity. When these inferred prohibitions were added to the man, they were then reciprocally applied to the woman. English

Protestant teaching, which developed on the foundation of the four reforming fathers, agreed that marriage to a deceased wife's sister violated the law of God.

As this discussion moves from the particulars relevant to the Church of England's treatment of these unions to the Puritans and the Westminster Assembly, it will be seen that both the Anglican Church and the Puritans shared a common concern regarding the near-kin marriages and these two disparate Protestant groups approached the problem in different ways.

## Chapter 2 - The Puritans and the Westminster Assembly

*The House are much troubl'd about Religion, I wonder they should trouble that, which never troubled them; the maine Query is concerning marriage within the degrees of consanguinity or Affinity, and seeing it tended to the sweet sin of Lechery, they made no more adoe, but did commit it.*

*Mercurius Melancholius*, 26, Saturday Feb. 19–Munday Feb. 28, 1648, p. 152<sup>110</sup>

The purpose of this chapter is to examine Puritan near-kin thought leading up to and including the composition of the *Westminster Confession's* affinity sentence. This is accomplished by first considering some sociological factors contributing to the common occurrence of these marriages within England. Then, the views of Puritan era figures will include the Elizabethan Cambridge academic, William Perkins, and his student, William Ames, whose exile moved him from the halls of Christ's College to Franeker in the Netherlands. Examination of the writings of several members of the Westminster Assembly will show the near-kin views influencing the *Confession's* section on consanguinity and affinity. The thought of these Assembly representatives will help in reconstructing the events relevant to the composition and inclusion of the affinity sentence in the *Confession*. The records regarding the deliberations of the Westminster Assembly are limited, but enough material exists to show that there was some controversy over the fourth section of the *Confession's* marriage chapter and its affinity statement. A brief examination of British Christians' use of the *Confession* in the era immediately following the Assembly will end the chapter along with a conclusion.

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<sup>110</sup> This is a newspaper, from the royalist perspective, which took every opportunity to ridicule the House of Commons. Thanks to Chad Van Dixhoorn for supplying this quote by e-mail from Cambridge, England.

### **Sociological and Cultural Circumstances Contributing to Near-kin Marriages**

In order to better understand the development of the affinity sentence it would be helpful to consider some factors which contributed to the occurrence of consanguine and affine marriages. One influential aspect was England's continued sociological and economic transition from the parochial limitations of feudalism into the flexibility of increased mobility. This transition extended into the seventeenth century because of the ties of families to their land. The family who owned land would pass it on from generation to generation and preserve the unity of the property. The descendants' tie to the land assured that kin would live in close geographical proximity. Even those who worked for a land-owner would be bound to the land-owner's property, because a father would teach his trade to his son and the son would naturally succeed his father in the same trade on the master's estate. However, the fading of feudalism contributed to the freedom of the family to move from the lord's estate, but the reality was that families continued to live on or near the lord's estate from generation to generation. England was in transition, but it was a slow one.<sup>111</sup>

An aspect of English life that contributed to the occurrence of marriages of consanguinity and affinity was family economics. To put it simply, the English family was concerned to maintain its wealth and property despite the division of that wealth due to marriage. While the families were anxious that as many of their children wed as possible, they were also concerned that the male children marry with an eye to the preservation of inherited property. For some it was deemed advantageous to arrange marriages with the nearest possible kin in order to maintain or reconsolidate wealth and

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<sup>111</sup> See: Macfarlane, *Marriage and Love*, 248-251.

land.<sup>112</sup> David Herlihy has observed that, "One seemingly universal purpose of close marriages is the re-integration of a patrimony divided among brothers. The marriage between the paternal uncle and his niece is an efficient means of achieving this goal."<sup>113</sup> If the inheritance were divided between two brothers and one brother died leaving a daughter as sole heir, then the marriage of the surviving brother to his niece would reunite the estate into a single inheritance.

The maintenance of the integrity of the estate was of central concern to responsible parents and some astute entrepreneurs of the day were in the business of arranging marriages of kinship conducive to the perpetuation of their client's estate:

To prevent estates going out of the family, or to consolidate social, political and other ties, most societies are organized so that strong pressures are put on the individual stating which kin he should marry. To find a person standing in the right kinship relationship is one of the central tasks of an elaborate kinship vocabulary, as well as the 'marriage brokers' who exist in many societies.<sup>114</sup>

The concern to preserve land and wealth led to the arranging of marriages that were often nothing more than business deals for the sake of property.<sup>115</sup> Of course, unscrupulous marriage brokers could endeavor to forge birth certificates and other legal documents for

<sup>112</sup> Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800*, abridged edition (New York: Harper and Row, 1977, 1979), 37-38. In one case in Scotland, two families were concerned to bring their families together. When the fifth Earl of Angus betrothed his sister, Lady Jane, to David Scott Buccleuch in the fifteenth century, the contract stipulated that if David died prior to the consummation of the marriage, then his next brother was to marry Jane, and if Jane died her sister was to marry David. This succession of sons and daughters was to continue until one of the betrothed sons was able to marry one of the daughters and consummate the marriage. David Scott ended up marrying Lady Jane, so the succession of son and daughter partners became unnecessary. See: Les Buckaloo, "Family of David Scott of Buccleuch, Sir (20) & Somerville 26. David Scott, 21, M. [Generation #12]," [http://james.com\\_scott/](http://james.com_scott/).

<sup>113</sup> David Herlihy, "Making Sense of Incest", 4.

<sup>114</sup> Alan Macfarlane, *Marriage and Love*, 247.

<sup>115</sup> Macfarlane's assertion is affirmed by: Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800*, abridged edition (New York: Harper and Row, 1979), 81-82.

the purpose of estate reconsolidation if their clients tempted them with enough silver. For those concerned to preserve their estates it was important that civil and ecclesiastical marriage laws be as limited as possible since the greater the number of degrees prohibited the greater the division of the patriarch's inheritance. The pragmatic concerns for wealth consolidation contributed to an environment conducive to near-kin nuptials and fostered the continued need for church prohibitions applying God's near-kin law.

Another aspect of these unions was their use as justification for marital separation. Divorce was generally prohibited in the sixteenth and seventeenth centuries, but despite limited divorce, marriages were sometimes broken by annulment.<sup>116</sup> If a couple was found to be married in violation of the prohibited degrees, then it could result in annulment.<sup>117</sup> One writer on this subject has stated:

The traditional law of the church rigorously upheld the sanctity of the married state and the indissolubility of the conjugal bond, so that divorce in the modern sense - the termination of a valid marriage, enabling the partners to marry again - was not recognized. However, it was possible to secure an annulment (declaring that the union had never constituted a true state of marriage) if it could be proved that certain basic 'impediments' to matrimony had been violated. The most important grounds were the fact that one or both partners were under age; permanent frigidity or impotence; the existence of a prior contract of marriage, even if it had not been consummated or solemnized; and the fact that the couple were related within certain prohibited degrees of kinship or affinity.<sup>118</sup>

Marriages that occurred contrary to legitimate impediments could be annulled. The potential for abuse is obvious in that couples wanting separation but unable to attain it

<sup>116</sup> The exception to this non-divorce rule was, as Luther showed in chapter 1, that those who had the means—whether ecclesiastically, politically, or monetarily—divorces could be obtained.

<sup>117</sup> The church could impose this action according to Matthew Parker's Visitation Articles of 1561. Any marriage within the levitical degrees was to be dissolved by the visiting bishop. See: Caldwell, *Documentary Annals*, 1:301.

<sup>118</sup> Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge: Cambridge University Press, 1987), 145.

would then either find a legitimate impediment which had been violated, such as consanguinity or affinity, or, if this failed, would concoct a phony impediment to achieve termination of their marriage. The forbidden degrees were intended to prohibit consanguine and affine marriages and save the couple from violation of God's law, but they were sometimes used to break marital bonds and end legitimate unions. The near-kin writings of Protestants were composed in a cultural situation in which these unions were not only condemned in principle and theory but in occurrence and case.

From this short survey of reasons why near-kin unions occurred it can be seen that the historical, sociological, economic, and ecclesiastical atmosphere moving through the Elizabethan era, into the Jacobean, and on into the decapitated reign of Charles I contributed to the occurrence of marriages of consanguinity and affinity. Ecclesiastical regulations impeding near-kin connubial unions were established on the teaching of Leviticus and Deuteronomy, but the application of these rubrics became necessary on repeated occasions in England due to couples pursuing prohibited marriages.

### **The Elizabethan Puritans**

The Puritans' theological response to near-kin marriages will now be considered by examining two of the fathers of English Puritan thought, the Anglican Cambridge scholar, William Perkins, and his student of the Independent way, William Ames.

#### **William Perkins (1558-1602)**

William Perkins influenced the Westminster Assembly even though he died four decades before its commencement. His influence came through his teaching at Christ's College, Cambridge, as well as his instruction as lecturer at Great St. Andrews Church. *Christian Oeconomie*, Perkins's treatise on marriage and family, addressed near-kin

unions in the chapter, “Of the Choice of Persons fit for Marriage.” The second of five essential signs necessary for a proper marriage, is the “just and lawful distance of blood.”<sup>119</sup> Perkins developed his interpretation and application of the marriage laws on the basis of the foundational principle of Leviticus 18:6, “No man shall come near to any of the flesh of his flesh; or to the kindred of his flesh.” Perkins illustrated the “flesh of his flesh” principle:

Now in this right line,<sup>120</sup> whether ascending or descending, the person, of whom the case or question is moved, comes near to the kindred of his flesh. And therefore marriages in this line are prohibited infinitely without any limitation; so as if *Adam* himself were now alive, he could not marry by the law of God, because he should come near to the kindred of his own flesh, as *Moses* speaks. The reason hereof is, because in the right line, superiors and inferiors are to each other as parents and children, and the kindred between parents and children, being the first and nearest of all other, their conjunction in marriage must needs be most unclean, and repugnant unto nature.<sup>121</sup>

No one in the same line may marry anyone in that line even to the extent that Adam could not marry if he were alive in Perkins era.<sup>122</sup> The reason given is that all posterity is in a consanguineous and singular relationship with Adam and is therefore, “flesh of his flesh.” The blood relationship between parents and their descendants for successive generations prohibits near-kin marriages on the basis of Lev 18:6 condemning a man for marrying the “flesh of his flesh”.

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<sup>119</sup> William Perkins, *Christian Oeconomie: A Short Survey of the Right Manner of Erecting and Ordering a Family According to the Scriptures*, trans. T. Pickering; in *The Works of that Famous and Worthie Minister of Christ in the Universitie of Cambridge, William Perkins* (London: Cantrell Legge, 1612-1613), 3:673.

<sup>120</sup> In the same direct line consanguine ascendants and descendants.

<sup>121</sup> Perkins, *Oeconomie*, 3:674.

<sup>122</sup> Melanchthon made a similar statement about Adam being prohibited marriage to any in, Philip Melanchthon, trans. J. A. O. Preus, “Marriage” in appendix of *Loci Communes 1543* (St. Louis: Concordia Publishing House, 1992), 248.

Perkins responded to several objections to the prohibition of near-kin marriages. One objection was that Adam and Eve's sons must have married their sisters because there were no other women available, to which he replied that the situation was unique and allowed as an exception by divine dispensation.<sup>123</sup> A second objection was Abraham's marriage to his half-sister Sarah which is described in Gen 20:12. Perkins answered this objection with three theories for the irregularity, noting that God tolerated things though they were wrong.<sup>124</sup> A further objection was that Tamar's imploring Amnon to ask David's permission to marry, despite the fact that she was his half-sister, shows biblical sanction for near-kin marriage (2 Sam 13:13). Perkins responded that Tamar suggested this because she feared being raped, or because she believed David had the authority to set aside Mosaic legislation.<sup>125</sup>

William Perkins's casuist concerns led him to assist concerned prospective marriage couples with four rules clarifying the prohibitions of affinity. First, if a man is in a consanguineous relationship to a woman then he is related by affinity to her husband. Second, both consanguine and affine first cousins are prohibited marriage. That is, with respect to *consanguinity*, the children of siblings cannot wed; with respect to *affinity*, the children of the husband's siblings cannot marry the children of the wife's siblings. Third, the relationships of affinity established by marriage do not extend to the consanguine relations of each spouse. For example, the mother of a man's wife is in an affine relationship to the man, but she bears no relationship to the man's siblings. Finally, the husband's affine relationships are also in an affinity relationship to his wife, and affine

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<sup>123</sup> Perkins, *Oeconomie*, 3:675.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

kin of the wife are likewise affine to her husband.<sup>126</sup> These four rules expanded the prohibitions given in Parker's list and went beyond the Church of England's table that Perkins would have been acquainted with. For example, the Church of England did not prohibit the marriage of first cousins but William Perkins's analysis did.

Perkins's four rules of affinity did not specifically address the critical affine relationships of a man to his wife's sister or that of the woman to her husband's brother. For these the Elizabethan cleric turned to Lev 18:16 and 20:21.<sup>127</sup> These verses applied to the woman, said Perkins, forbid the marriage of a man to his brother's wife and reciprocally the union of a woman to her sister's husband. Perkins also saw Lev 18:18 as irrelevant to the deceased wife's sister union because it deals with polygamy.<sup>128</sup>

Perkins interpreted Lev 18:16 as prohibiting a man from marrying his brother's widow, which necessitated his dealing with levirate marriage. Deut 25:5 calls for the marriage of a brother to his deceased brother's widow so that she can bear children in the deceased husband's name. Perkins's view in *Christian Oeconomie* was the commonly accepted perspective that levirate marriage was an exception to Leviticus 18:16, which he saw as exemplified in the case of Boaz's marriage to the widowed Ruth.<sup>129</sup>

### **William Ames (1576-1633)**

William Ames, like Perkins, influenced the *Westminster Confession* indirectly since he had already died when the Assembly met. Ames's influence upon both English and New England Puritan teaching came through the many translations and publications of his works. Issues of consanguinity and affinity were addressed in both his *The*

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<sup>126</sup> Ibid., 3:676-77.

<sup>127</sup> Ibid., 3:676.

<sup>128</sup> Ibid., 3:677.

<sup>129</sup> Ibid.

*Marrow of Theology* and his *Conscience, with the Power and Cases Thereof*.<sup>130</sup> The presentation in *Marrow* is more concise and pointed, while *Conscience* expanded his perspective with more specificity. The latter work will be concentrated on in the following discussion.

Ames presented his understanding of near-kin issues in *Conscience* by asking a single question which received seven answers—“Whether or no, and how far too nigh an affinity hindereth Marriage?”<sup>131</sup> In his first answer he said that consanguinity is an “affinity which is contracted by carnal propagation from the same immediate stock,” and is an impediment to marriage.<sup>132</sup> The reasons given for this first response are because: these kin are of the same flesh, nature teaches us to reverence our parents, marriage of near-kin would negate the “increase of nearness and friendship” that is a fruit of marriage, and near-kin unions create other problems.<sup>133</sup> The second answer denied the Roman Catholic idea of spiritual affinity created through Baptism and Confirmation as well as legal affinity by adoption.

Ames’s third response concerned natural law, which John D. Eusden has described as his “cosmic principle.”<sup>134</sup> Ames’s appeal to natural law appears in his formulations of both doctrine and casuistry, but natural law does not stand as an authority in itself for Ames; natural law is not a universal morality, or law behind the law upon which any nation or people builds an *equally authoritative*, contextualized ethical system.

<sup>130</sup> William Ames, *The Marrow of Theology*, trans. John Dykstra Eusden, (Grand Rapids: Baker Books, 1968); *Conscience, with the Power and Cases Thereof* (London: Edwin Griffin, 1643).

<sup>131</sup> Ames, *Conscience*, 199.

<sup>132</sup> Ibid.

<sup>133</sup> Ames, *Conscience*, 199.

<sup>134</sup> John Dykstra Eusden, *Puritans, Lawyers, and Politics in Early Seventeenth-Century England* (New Haven: Yale University Press, 1958), 131.

For Ames, there was a unique, authoritative, and proper interpretation of the law of nature, and in the case of near-kin marriages it was Leviticus 18 “wherein is unfolded the Law of nature.”<sup>135</sup> Natural law is cosmic, but it is also ultimately subject to definition by Scripture. So, for Ames, the reason why all peoples, whether influenced by Mosaic law or not, are repulsed by near-kin marriages is because of the Divine whisper of nature working in their consciences.

The fourth answer stated that what was specifically prohibited one person is also prohibited the other party involved in the prohibited marriage, which is an application of inversion to the specific prohibition. For example, Lev 18:12,13 forbids a man marrying his father’s or mother’s sister, so inverting the relationship, a woman cannot marry the son of her sibling.

Ames’s fifth response echoes Calvin’s recommendation that if any prospective couple doubts that their impending marriage is sufficiently distanced, then the best course is to avoid the union “as in the case of first cousins.”<sup>136</sup> This answer shows a casuist’s concern for the spiritual welfare of the two contemplating connubial union, as well as showing Ames’s belief that first cousin marriages are of doubtful legitimacy. What John Calvin and Ames did was build a fence of safety around the specific prohibitions of Divine law. The fence is portable in that some may use it due to their reservations, but others would not because they have no reservations and are satisfied with the Mosaic near-kin enumeration.

Ames’s sixth response addressed Deut 25:5-10 and levirate marriage. Ames taught that any exceptions to the levitical prohibitions must be honored. Even though he

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<sup>135</sup> Ames, *Conscience*, 199.

<sup>136</sup> Ibid., 200; for Calvin see his section in chapter 1.

did not give a specific example of an exception, levirate marriage could qualify as an exception to the law against a man marrying his deceased brother's wife.

The final answer to his near-kin question is particularly interesting because it allows the civil magistrate to make laws that go beyond those given in the Scriptures. Ames wrote, "Besides those degrees prohibited by Divine right, the Civil Magistrate may prohibit a Matrimonial contract to some persons for political reasons. And so it is well in some places provided, that the guardian marry not his ward."<sup>137</sup> Presumably, Ames's mention of the guardian is due to the possibility that a guardian might unscrupulously seek to marry his ward in order to obtain access to her inheritance. Though the guardian/ward example could or could not involve near-kin, Ames's seventh answer gives opportunity for the expansion of prohibited degrees well beyond the specifics of Mosaic legislation. This seventh answer contrasts with the instruction given by Martin Bucer to Edward VI in *De Regno Christi* warning him that no law the monarch could make could surpass the laws given in Leviticus.<sup>138</sup>

In summary, these two Puritans' views on near-kin marital restrictions are similar. Both saw near-kin unions as wrong by the law of nature, but the continued use of God's law for direction was necessary for authoritative interpretation; Ames emphasized natural law more than his mentor, but both saw near-kin unions as prohibited by nature. Both saw marriage of first cousins as inexpedient; Perkins saw it as a definite error, while Ames saw it as questionable and therefore to be avoided for a clear conscience. Perkins was a minister in the Church of England and his expanded prohibitions included consanguine and affine first cousins, both of which were not found in Parker's list. Ames

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<sup>137</sup> Ibid., 200.

<sup>138</sup> Bucer was discussed in his section in chapter 1.

expanded prohibitions to include those legislated by the magistrate as well as any other relations causing couples' consciences unrest. Perkins saw the deceased wife's sister marriage as condemned because of the reciprocal application of Lev 18:16 to the woman. Ames's analysis of the "wife to her sister" of Lev 18:18 interpreted the verse as a prohibition of polygamy and he did not discuss the case of marriage to a deceased wife's sister.<sup>139</sup> Ames used inversion to obtain the woman's prohibitions, while Perkins embraced reciprocal application from the man to the woman. Perkins's interpretation expanded the affine prohibitions because he believed that all the consanguine and affine laws given to the man in Leviticus were also forbidden him of his wife's kin. From Luther, to Bullinger, to Parker, to Perkins and Ames, Protestants developed an increasing circle of prohibited marriages that moved beyond the specifics of Mosaic legislation.

### **Commissioners to the Westminster Assembly**

When Parliament called the Westminster Assembly in 1643, the relationship between Parliament and the King was strained. When the Westminster Assembly was called, its supporters consisted of: those who were political enemies of their Catholic King, others who opposed Charles's religion and desired a more inclusive Church of England, those who were for a Presbyterian Church in England, and the Puritans who pressed for a pure worship stripped of all its remaining papal accretions. The Puritans were not a monolithic party because their membership differed on several issues and the most famous issue was polity. Some sought independent church government, others were willing to remain in the Church of England, some pressed for England to become Presbyterian in the full spirit of the Solemn League and Covenant, but others tried to

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<sup>139</sup> Ames, *Marrow*, 318.

moderate between the three or a pair of these views. It was this sometimes unharmonious body that forged hard at the anvil of debate to produce the *Westminster Confession*.

### **Near-kin Views Present at the Assembly**

The views of the commissioners to the Assembly will be determined on the basis of an examination of the writings of six of its members: John Selden, William Gouge, Thomas Gataker, John Lightfoot, James Ussher, and Peter Smith.

#### **John Selden (1584-1654)**

John Selden is a particularly unique example of the different perspectives present at the Assembly because his interests included Hebrew, philology, law, and government. With respect to the church government views at the Assembly, Selden was an Erastian and an Anglican. Though Selden was not a Puritan, his three elections to Parliament brought him into contact with Puritans and their views.<sup>140</sup> Despite Selden's vocal Erastianism, he agreed with the Puritans' contention that the crown's power was restricted and not absolute.<sup>141</sup> Selden had borne the wrath of the Crown when he and the Puritan John Eliot were imprisoned for two years because they opposed taxation by tonnage and poundage.<sup>142</sup> Selden had offended the Puritans with his *History of Tithes* (1618) in which he said the tithe was *not* a divine institution.<sup>143</sup> Selden appeared to be a royalist when he wrote *Mare Clausum* (1635) in response to Grotius's *Mare Liberum* (1609). Selden contended that a nation had the right to restrict other nations from the

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<sup>140</sup> Barker, *Puritan Profiles*, 57, lists these years; but *John Selden on Jewish Marriage Law: The Uxor Hebraica*, trans. Jonathan R. Ziskind (Leiden: E. J. Brill, 1990), 1, says he was a Member of Parliament in 1624 and 1626; while "Selden, John," in vol. 17, *Dictionary of National Biography*, says he was a MP in 1623, 1626, and 1628.

<sup>141</sup> Barker, *Puritan Profiles*, 57.

<sup>142</sup> Webster's New Biographical Dictionary, "Selden, John."

<sup>143</sup> Ibid.

seas. John Selden was a bit of a chameleon; sometimes he appeared in the King's regal blue, but sometimes he donned the Puritan cap. Most important for this study, regardless of Selden's other endeavors, was his work with Hebrew and its associated Oriental culture.

Selden was a prolific writer having authored twenty-seven books in the course of his life. The most pertinent works for the issue of consanguinity and affinity are his *De Jure Naturali & Gentium juxta Disciplinam Ebraeorum*, 1640, and *Uxor Hebraica*, 1646. In *Uxor Hebraica*, which was prepared for the presses during the Assembly, Selden presented his studies of rabbinical Jewish marriage law.<sup>144</sup> The first example cited is the Talmudists' interpretation that prohibited a man's marriage to eighteen different women kin.<sup>145</sup> The Talmudists said that fifteen of these degrees were specifically prohibited by the law and the other three were obtained by inference.<sup>146</sup> The Talmud also described secondary prohibitions that were wrong because of ancestral customs and the teachings of the scribes.<sup>147</sup> The purpose of this secondary level was to build a fence around the law to protect the Jew from infringing upon the specific prohibitions of the law. What started as eighteen prohibited near-kin unions expanded to thirty-eight including the secondary relationships.<sup>148</sup>

Selden then turned to the Karaite interpretation of consanguinity and affinity. This Jewish sect attacked the Talmudic interpretation of the Bible while developing their own literal biblical hermeneutic that led to their adopting a rigorous and ascetic life. The

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<sup>144</sup> Maybe debate on the *Confession's* marriage chapter stimulated Selden's publishing this work at the time he did.

<sup>145</sup> Selden, *Uxor Hebraica*, 34-36; Selden has diagramed these relationships on p. 35.

<sup>146</sup> Selden, *Uxor Hebraica*, 36.

<sup>147</sup> Ibid., 37.

<sup>148</sup> Ibid., 38-39.

Karaites expanded near-kin prohibitions and effectively doubled the list of the Talmudists who had limited the application of the levitical prohibitions to the man.<sup>149</sup>

One unusual Karaite interpretation concluded that since a husband and wife become one flesh in marriage, if a woman was divorced and remarried she was then one flesh with the second husband as well as the first. The first husband was then prohibited to marry all female relatives of the second husband and vice-versa.<sup>150</sup> The results of the Karaites ever expanding kinship marriage laws was that their small sect was approaching the point where no one could marry any one.<sup>151</sup>

One Karaite leader, Rabbi Joseph, rejected the idea of the unity of spouses and taught that the entire prohibition of incest rested on five bases, but each of the five bases had several relationships. The first base had six, the second had sixteen, the third had six, the fourth had twelve, and the fifth had seven.<sup>152</sup>

Karaite interpretation and application of the prohibited degrees clearly shows how a myriad of near-kin restrictions can develop from what appears to be a logical and equitable interpretive principle. Selden dealt with the Karaites as an Orientalist and he did not express an opinion regarding their near-kin views, but it is clear that he was well acquainted with the consanguinity and affinity issues of Leviticus and able to contribute to the *Confession's* affinity sentence.

Further information regarding Selden's ideas became available following his death when his personal secretary, S. W. Singer, published his *Table Talk*. The *Table Talk* was a compilation of statements on various topics made by Selden during the later

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<sup>149</sup> Ibid., 44.

<sup>150</sup> Ibid., 45.

<sup>151</sup> Selden, *Uxor Hebraica*, see footnote 40, page 47.

<sup>152</sup> Selden, *Uxor Hebraica*, 47-49.

years of his life.<sup>153</sup> One of the statements dealt with the marriage of cousins-german. Selden mentioned that some did not marry cousins because it was unlawful before the Reformation and some continued to avoid cousin unions because of Catholic canon law. Selden concluded his short statement by saying that, “Cousin-germans in England may marry both by the Law of God and man; for with us we have reduced all the Degrees of Marriage to those in the *Levitical-Law*, and ‘tis plain there’s nothing against it.”<sup>154</sup> Though Selden does not specifically mention Parker’s table, his Church of England affiliation would have acquainted him with the table and his contention that England had reduced the near-kin prohibitions to those of Leviticus could allude to Parker’s table.

### **William Gouge (1578-1653)**

William Gouge served as Assessor at the Westminster Assembly following the death of Herbert Palmer in 1647.<sup>155</sup> His most pertinent published work is *On Domestical Duties, Eight Treatises*, which he published in 1622. The Second Treatise, Part I, “Of Husband and Wife, who are so to be accounted,” begins with instruction concerning who may marry.<sup>156</sup> Gouge discussed those things that were necessary to make a person fit for marriage. His third point was that, “One [must be] beyond those degrees of consanguinity and affinity which are forbidden by the Law of God,” and that the degrees are specifically given in the law of Lev 18.<sup>157</sup>

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<sup>153</sup> John Selden, *The Table-Talk of John Selden*, 2nd edition (London: John Russell Smith, 1856). The book was compiled from memos, letters, and the memory of Singer.

<sup>154</sup> Selden, *Table-Talk*, 91.

<sup>155</sup> Barker, *Puritan Profiles*, 35.

<sup>156</sup> William Gouge, *Of Domestical Duties* (London: n.p., 1622; reprint, Theatrum Orbis Terrarum, Ltd., 1976), 179.

<sup>157</sup> *Ibid.*, 185.

An interesting aspect of Gouge's abbreviated discussion is his mention of "a table of the degrees of consanguinity and affinity within which none may marry, appointed to be hung up in every Church."<sup>158</sup> Gouge was a preacher at Blackfriars Church in London, first as a lecturer and then as associate to the rector, so his ties with the Church of England are clear even though he would later be involved in establishing a Presbytery in London.<sup>159</sup> So, though a Puritan with Presbyterian sympathies, Gouge was comfortable with this "table" which can only be Parker's table of 1563 which was still an official Church of England document.<sup>160</sup>

Gouge the Puritan considered Parker's list to be appropriate and helpful for the determination of the propriety of any impending marital union with respect to kindred issues. Because of Gouge's membership on the Assembly's First Committee, which was responsible for composition of the *Confession's* marriage chapter, he could have had an influence on the writing of the affinity sentence.<sup>161</sup>

### **Thomas Gataker (1574-1654)**

Thomas Gataker was considered one of the most scholarly members of the Westminster Assembly and he was a friend to two of the Anglicans, John Selden and James Ussher. Up to the time of the Assembly, he had published thirty-one works.<sup>162</sup> Ussher and Selden both supported Episcopacy while Gataker considered himself a

<sup>158</sup> Ibid., 185-86.

<sup>159</sup> Barker, *Puritan Profiles*, 35, 37.

<sup>160</sup> See discussion of Matthew Parker's table of prohibited degrees.

<sup>161</sup> For the committee membership see, Robert S. Paul, *The Assembly of the Lord* (Edinburgh: T. & T. Clark, 1985), 555; for the committee's assignment see, Alex F. Mitchell and John Struthers, eds., *Minutes of the Sessions of the Westminster Assembly of Divines* (1874; reprint. Edmonton: Still Waters Revival Books, 1991), 190.

<sup>162</sup> Ibid., 154.

proponent of what he termed a “moderated Episcopacy” that viewed Bishop as synonymous with Presbyter and the remaining Episcopal hierarchy as dispensable.<sup>163</sup>

In 1611, Gataker had taken the Church of England pastorate at Rotherhithe in Southwark where he would remain for the rest of his life.<sup>164</sup> One work of particular concern to the issue of near-kin marriage is Gataker’s sermon on Proverbs 19:14 titled, *A Good Wife God’s Gift*.<sup>165</sup> Gataker had considerable experience with wives because he outlived four.<sup>166</sup> Gataker discussed prohibited marriage in the following:<sup>167</sup>

*The wife is bound, saith the Apostle, while her husband liveth; but if her husband be dead, she is at liberty to marry where she will, but yet, in Domino, in the Lord. Wherein they offend, either that go too near, matching within those degrees [from Lev. 18] that God hath inhibited: or that go too far off, matching [Deut. 7:3,4; 1 Kings 11:1,2] with such as for matter of religion they are prohibited to marry; and so transforming those rules and directions that the Word of God giveth. As also those that be under the government of others, or that desire those that be in the power of others to dispose of; they then seek in the Lord, when they advise with, and are content to be disposed of by those, whom God hath given power over thee; or when they seek not to them in the first place, but to those, by whom God will have them to be disposed. That which not God’s people alone, but [Gen. 34:6,11] the Heathen also, by the light of Nature, saw to be equal and right. When they take other courses, they seek beside God, and cannot hope or expect any blessing from God, whose order and ordinance therein they break.*<sup>168</sup>

Gataker’s analysis echoed the teaching of Martin Bucer because he said that it is just as wrong to marry one who is near-kin as to marry an unbeliever. Bucer allowed near-kin marriage when a Christian seeking a spouse could not find an unrelated believer to wed; Gataker saw both near-kin and unequally yoked marriages as sinful. Gataker, as others,

<sup>163</sup> Ibid., 158-59.

<sup>164</sup> Ibid., 155.

<sup>165</sup> The text of the sermon is in: Thomas Gataker, *Certaine Sermons, First Preached, and After Published at several times* (London: John Haviland for Edward Brewster, 1637), 135-144.

<sup>166</sup> Barker, *Puritan Profiles*, 156-57.

<sup>167</sup> The Scripture references in [ ] were in the margin in the original. The references were inserted in the body of the text.

<sup>168</sup> Gataker, *Certaine Sermons*, 141.

mentioned the “light of Nature” that illumines the unbelieving to follow the principles specifically presented in God’s law. Though Gataker did not address the specific relations prohibited marriage, he affirmed the error of near-kin marriages.

### **John Lightfoot (1602-1675)**

John Lightfoot was an Anglican Erastian who opposed the polity of the Independents while being sympathetic to the Presbyterians. While involved in the Westminster Assembly he was Lecturer at St. Bartholomew’s by the Exchange until he became the rector at Great Munden, Hertfordshire in 1644. Lightfoot expressed some of his views regarding near-kin marriages in his *Harmony of the Four Evangelists Among Themselves and with the Old Testament*, which was published between 1644 and 1650.<sup>169</sup>

In Lightfoot’s discussion of Luke 3:19, which deals with John the Baptist’s rebuke of Herod for marrying his brother’s wife, he notes that Herodias had not only been the wife of Philip and then became Herod’s wife, but she was the niece of both men as well.<sup>170</sup> Lightfoot saw the marriage of a man to his brother’s wife as a particularly heinous incest because Lev 20:21 describes it as “an unclean thing” leading to a childless marriage.<sup>171</sup> He did not expand on the prohibited degrees nor did he make any conclusions regarding the applicability of Lev 18 in the Christian era.<sup>172</sup> Marriage to a deceased wife’s sister and its relation to the deceased brother’s wife prohibition was not addressed, but his ministry in the Church of England would have acquainted him with Parker’s list due to its public posting in his church building.

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<sup>169</sup> Barker, *Puritan Profiles*, 64.

<sup>170</sup> John Lightfoot, *The Whole Works of the Rev. John Lightfoot, D.D.* (London: J. F. Dove, 1824), 5:75.

<sup>171</sup> Ibid.

<sup>172</sup> Ibid., 5:76.

### **James Ussher (1581-1656)**

At the time of the Westminster Assembly, James Ussher was Archbishop of Armagh and the Primate of the Church of Ireland. He had declined his initial appointment to the Assembly in 1643 because he thought the meeting was illegal because it lacked the approval of Charles I. Though it is doubtful whether the Bishop ever attended the Assembly's sessions, he bore an influential presence due to the Assembly's considerable use of his *Irish Articles*.<sup>173</sup> Though Ussher was faithful to Charles I and the Church of England, he was nevertheless greatly respected by many Puritans of other polity views.<sup>174</sup>

The Bishop published many works and one that addressed marriages of consanguinity and affinity was *A Body of Divinitie or The Sum and Substance of Christian Religion*. Ussher began his discussion of incest by turning to Lev 18:6ff as a description of these “unnatural” mixtures of “bodies” which should not occur whether in or out of marriage.<sup>175</sup> Some of the specific unions Ussher mentioned as prohibited include: father with daughter, brother with sister, son with aunt, and daughter with uncle. Ussher accepted the legitimacy of first-cousin marriages but noted, “in divers respects it is unnecessary and inconvenient.” Ussher condemned a man’s marriage to his deceased wife’s sister because the prohibitions of affinity are the same as those of consanguinity.

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<sup>173</sup> One comment in, *Journals of the House of Commons*, Vol. 5, December 1646 through September 1648, ([London:] H. M. Stationery Office, 1803-1813), 423, says that Commons: “Resolved, &c. That Dr. James Usher [sic] shall have Leave to preach at Lincolne’s [sic] Inn, according to the Desire of his Petition. Resolved, &c. That Dr. James Usher shall have Leave to go sit with the Assembly of Divines, as one of the said Assembly. The Lords Concurrence to be desired herein.”

<sup>174</sup> Barker, *Puritan Profiles*, 44.

<sup>175</sup> James Ussher, *A Body of Divinity, or, The Sum and Substance of Christian Religion*, 8<sup>th</sup> ed. (First edition, 1645; London: Printed by R. J. for Jonathan Robinson ... [et al.], 1702), 253.

His interpreting the Mosaic prohibitions of affinity on the basis of those of consanguinity exemplifies the interpretive principle upon which the *Confession's* final version of the affinity sentence would be built. Then the Archbishop, as Luther a century earlier had done, condemned the Pope's dispensing with the degrees prohibited by Leviticus while forbidding unions which God allows and “making that to be sin, which is no sin, and that which is no sin to be sin.”<sup>176</sup>

Ussher’s brief analysis of near-kin marriages shows his acceptance of reciprocal application from the named to the unnamed spouse, and his service in the Irish Church meant familiarity with Parker’s table. He advised that cousin marriages, though not prohibited, should be avoided. Ussher prohibited a man’s marriage to his wife’s sister because he was prohibited his own sister; the consanguine relations of a spouse cannot marry the other spouse.

### **Peter Smith**

One less prominent and not as well known Assembly attendee was Peter Smith. Smith was a minister at Backway, Herfordshire, when Parliament called him to the Assembly.<sup>177</sup> He was a member of the First Committee and would have had opportunity to influence the composition of the *Confession's* marriage chapter and its affinity sentence.<sup>178</sup> Smith was familiar with the interpretive problems associated with Lev 18

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<sup>176</sup> Ussher, *A Body of Divinity*, 253.

<sup>177</sup> [Archibald Alexander], *A History of the Westminster Assembly of Divines. Embracing an Account of its Principal Transactions and Biographical Sketches of its Most Conspicuous Members* (Philadelphia: Presbyterian Board of Publication, 1841), 372.

<sup>178</sup> Robert S. Paul, *The Assembly of the Lord* (Edinburgh: T. & T. Clark, 1985), 555.

because of his labors completing Andrew Willet's *Hexapla in Leviticum*.<sup>179</sup> The *Hexapla* gives the most detailed analysis of Lev 18 of any of the Puritans examined thus far because twenty-one quarto pages are dedicated to near-kin marriages.

Smith interpreted Lev 18:10 as condemning a man's marriage with his son's daughter or his daughter's daughter. This restriction against marrying grandchildren is two generations, or degrees in the same line, removed from the man.<sup>180</sup> Restrictions against marrying a person two generations removed in a direct line prompted Smith to ask how distant a linear ascending or descending kinship relationship must be for its union to be acceptable, and he answered:

Now in this right line, whether ascending or descending, the person, of whom the case or question is moved, comes near to the kindred of his flesh. And therefore marriages in this line are prohibited infinitely without any limitation; so as if Adam himself were now alive, he could not marry by the law of God, ....<sup>181</sup>

Notice the use of "right line" for the direct line of ascendants and descendants. This is the same terminology used by William Perkins and there are other similarities between the statements of Smith and Perkins. For example, note the common use of the italicized words in the previous quote and the one following:

... that in the right line ascending, and descending, the prohibition goeth ... infinitely; that if Adam were now alive, he could not contract matrimony with any.<sup>182</sup>

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<sup>179</sup> Andrew Willet and Peter Smith, *Hexapla in Leviticum That is, a Six-Fold Commentarie Upon the Third Booke of Moses, Called Leviticus. Wherein sixe severall things are observed upon every Chapter* (London: Printed by Aug. Matthewes, 1631). See the "Epistle Dedicatore" for an explanation of the authorship. With such an ambiguous attribution of who wrote what parts, the Lev 18 material could be Willet's, but Smith would certainly have been familiar with what Willet had done.

<sup>180</sup> Smith describes this as "the fourth degree." How this was calculated is not clear, but again, methods for counting the degrees of relation vary from writer to writer.

<sup>181</sup> Willet and Smith, *Hexapla*, 422.

<sup>182</sup> This sentence was presented earlier in this chapter with respect to Perkins.

Though this observation concerning Adam's posterity is interesting, the reason for its inclusion by these two writers is not clear. Possibly, they were making the point that near-kin rules must end somewhere or the prohibitions would eliminate all marriages.

The *Hexapla* continues through the verses commenting on the prohibitions enumerated in each with specific emphasis given to the issues raised by the apparent contradiction between Lev 18:16 and Deut 25:5. Smith believed that some interpreted Lev 18:16 as prohibiting marriage or fornication with a brother's wife while the brother lived, but the *Hexapla* notes that this would be superfluous since this would have been adultery and punishable by death.<sup>183</sup> Levirate marriage is not a contradiction of Lev 18:16 because it is the brother's responsibility to raise seed for his deceased sibling because he takes the widow not as his own wife but as his brother's. Calvin's view which interpreted "brother" in Deut 25:5 as any kinsman other than the sibling brother was deemed unacceptable by the *Hexapla*, while the more common interpretation, which viewed Deuteronomy as an exception to Lev 18:16, was adopted with the caveat that the woman was the deceased brother's wife as she united with the living brother.<sup>184</sup>

The commentators addressed the deceased wife's sister marriage as they presented their interpretation of Lev 18:18 and determined whether it deals with polygamy or marriage to a wife's sister. Smith believed that the "received opinion" viewed this verse as forbidding the marriage of a man to two living sisters at the same time, but "the better interpretation is" that *sister* should be interpreted as "any other

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<sup>183</sup> Willet and Smith, *Hexapla*, 425; If one takes "having a brother's wife" literally, it would mean either a polygamous relationship in marriage, or the brother's divorced wife which some view as unable to remarry, or "carnal copulation" with the brother's wife while the brother and his wife were married.

<sup>184</sup> Ibid., 425.

woman” so that a man should not take wives in addition to his first bride and commit polygamy.<sup>185</sup> The prohibition of marriage to a deceased wife’s sister is forbidden by reciprocal application of Lev 18:16 to the woman; a man cannot marry his brother’s wife, thus a woman cannot marry her sister’s husband.<sup>186</sup>

One aspect of the *Hexapla* clearly illustrates the tendency for the prohibited degrees to expand well beyond the specifics of Mosaic legislation. In the section headed, “Of the number of the persons in this Chapter forbidden to marry with,” there are three categories of relations forbidden. The first are those six women forbidden a man which are kin to his wife and they are her: mother, mother’s mother, father’s mother, daughter, daughter’s daughter, and son’s daughter. The second are nine in number, and they are the kin of the man which he is prohibited from having “any carnal knowledge,” and they are his: mother, stepmother (or “father’s concubine”), sister, father’s sister, mother’s sister, wife’s sister, brother’s wife, uncle’s wife, and the last is the non-kin prohibition of “the menstrual woman.” The third group is twenty in number and are those “not expressed” in Leviticus which includes the man’s: mother’s mother, mother’s father’s mother, father’s mother, father’s father’s mother, father’s father’s wife, mother’s father’s wife, father’s half brother’s wife, mother’s half brother’s wife, son’s son’s wife, daughter’s son’s wife, son’s daughter’s daughter, son’s son’s daughter, daughter’s daughter’s daughter, daughter’s son’s daughter, wife’s son’s son’s daughter, wife’s daughter’s daughter, wife’s father’s mother’s mother, wife’s mother’s father’s mother, and the wife’s father’s mother.<sup>187</sup>

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<sup>185</sup> Ibid., 426.

<sup>186</sup> Ibid.

<sup>187</sup> Ibid., 435.

Smith listed the prohibition against marrying a wife's sister in the second group. The man is forbidden "to have any carnal knowledge" of his wife's sister. Since the prohibition is against "any carnal knowledge," it incorporates both the "wife to her sister" polygamous interpretation of Lev 18:18 *and* the interpretation that the verse prohibits marrying a deceased wife's sister. Amazingly, in these thirty-four relations—excluding the prohibition against relations with a woman during her menstrual cycle—there are some near-kin missing such as the man's daughter, his son's wife, his daughter's daughter, and his son's daughter. Adding these four relations to Smith's enumeration increases the total to thirty-eight, and this would double if inversion was used to achieve the woman's prohibitions. Smith and Willet's interpretation of Lev 18 expands the number of distant relations prohibited while overlooking nearer forbidden relations.<sup>188</sup>

In summary, the issues of consanguinity and affinity continued to occupy English Protestant efforts beyond the period of the Reformers, through the Elizabethan period, and into the politically chaotic era of the English Civil War when the Puritans met at the Westminster Assembly. The views of Perkins, Ames, and the six commissioners to the Assembly show an expansion of the prohibited degrees beyond the specifics of Lev 18. John Selden discussed the extended circle of prohibitions of the Karaites and specifically saw first cousin marriages as acceptable. William Gouge saw Matthew Parker's list as an appropriate interpretation of the Lev 18 rubrics. Thomas Gataker said the laws of Lev 18 defined the relations who should not marry, but he was just as concerned to warn of the dangers of marrying an unbeliever. John Lightfoot's exposition of Luke 3 viewed marriage to a brother's wife as wrong, but he did not specifically address marriage to a

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<sup>188</sup> Maybe the *Hexapla*'s intention was to define the closer relations prohibited by circumscribing the limits with more distant relations.

deceased wife's sister. Archbishop Ussher elaborated on some of the more obvious prohibitions, and he forbade marriage to a deceased wife's sister because a man is forbidden his wife's sister just as he is forbidden his own sibling. Smith's *Hexapla* contained an extended discussion that expanded the circle of prohibitions greatly while including the prohibition of marriage to a deceased wife's sister.

These eight pastors and academics spanned the period from the Elizabethan Perkins to the less famous Smith, but they all agreed, to a greater or lesser degree, that the moral law of Lev 18 continued to prohibit near-kin marriages. Some had a greater list of prohibitions than others did, but all saw marriages of consanguinity and affinity as contrary to the law of God. Some of these scholars mentioned a man's marriage to his deceased wife's sister and considered it incestuous. The reasons most often given for prohibiting the wife's sister marriage included the reciprocal application of Lev 18:16 to the woman and the principle that a man must not marry the blood relations of his wife because they are as his own blood relations.

### **The Westminster Assembly and “The Light of Nature”**

Many of the theologians considered thus far in this study have expressed their belief that the error of near-kin marriages is apparent because of the natural repulsion one feels regarding such unions. This natural repulsion is expressed in the *Westminster Confession* as “the light of nature.” Is the “light of nature” synonymous with man’s natural repulsion to incest?

Three examples of the use of “the light of nature” in the *Westminster Confession* and *Catechisms* will show the Assembly’s meaning. The first chapter teaches that the “light of nature,” along with the “works of creation and providence,” abundantly shows

forth the goodness of God, leaving humanity without excuse regarding his existence.<sup>189</sup> God's general revelation to man in his conscience, the creation, and the Divine preserving and governing "all his creatures and all their actions" are sufficient to show all people that God *is* and he must be worshipped.<sup>190</sup> The second example is found in the chapter on effectual calling where "the light of nature" is described as insufficient to bring a person to Christ for redemption because the Holy Spirit, working through the Word of God, is necessary for one to be effectually called and redeemed.<sup>191</sup> Though "the light of nature" can bring man to an intellectual comprehension of God's existence, it cannot bring him to know God. The final occurrence is in the *Larger Catechism's* discussion of the law of God as it affirms that going against "the light of nature" contributes to the "aggravations that make some sins more heinous than others."<sup>192</sup> This last example has particular relevance to near-kin issues because if going against nature aggravates sin, then contracting a near-kin union would be a sin against nature according to several of the views examined thus far in the present study. Sins against nature are greater because they are condemned by both general and special revelation; going against one's innate sense of right and wrong increases the weight and scope of the sin.

For the Westminster Assembly, the "light of nature" includes: the certainty of God's existence, the necessity of worshipping him, the continued preservation and sustaining of the creation by him, and man's inherent knowledge of right and wrong. All four of these aspects cannot be properly understood without the additional light of the Word of God. Knowing that God exists means that man should seek him, but man does

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<sup>189</sup> *Westminster Confession*, 1:1; also as a summary in the *Larger Catechism*, Q. 2.

<sup>190</sup> *Shorter Catechism*, Q. 11.

<sup>191</sup> *Westminster Confession*, 10.4; *Larger Catechism*, Q. 60.

<sup>192</sup> *Larger Catechism*, Q. 151.

not seek him without the work of the Holy Spirit regenerating and renewing the will so that man begins to rightly comprehend God through his Word. The necessity of worshipping God is clear to all because false religions and false worship exist throughout the world. God's preserving and sustaining work are clearly seen in the turning of the seasons, the rain falling upon the just and the unjust, and the re-growth of fauna and flora following a meteorological or seismic disaster. If man had no sense of right and wrong, the world could not endure. Whether it is a sense of duty to parents, reflecting the fifth commandment; or submitting accurate income tax returns, showing the eighth commandment; or not marrying a brother's widow, which exemplifies the seventh commandment; these senses of right and wrong show "the light of nature." This is the sense in which the *Confession* and *Catechisms* use the term, and it is essentially the teaching of John Calvin.

In the *Institutes of the Christian Religion* Calvin used "sense of deity," "sense of divinity," or "seed of religion," to describe man's awareness of the existence of God and his responsibility to serve and worship him. For example, "There is within the human mind, and indeed by natural instinct, an awareness of divinity."<sup>193</sup> As was seen in the analysis of Calvin's views regarding near-kin marriages, he believed that such unions were naturally repulsive and the repulsiveness constitutes an aspect of the ethical restraining influence within the conscience of man. In man's fallen and degenerate nature, "some sparks still gleam" and they give man the ability to reason and understand even though his reason is choked with "dense ignorance."<sup>194</sup> The knowledge of God man has includes an ethical seed of what God expects, but this knowledge is incomplete and

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<sup>193</sup> Calvin, *Institutes*, 1.3.1.

<sup>194</sup> Ibid., 2.2.12.

must be defined by the “spectacles” of Scripture, which can only be rightly fitted through redemption.<sup>195</sup>

With respect to the near-kin issue, the “light of nature” establishes that due to a common sense of the incestuous nature of these unions there is something particularly severe about marriages of consanguinity and affinity. As the catechism question puts it, to go against the “light of nature” is to increase the severity of the violation of God’s Word; it is bad enough to go against nature, but to go against nature and its specifications in the Bible is more serious.

### **The Westminster Assembly (1643-1649)**

The history of marriage prohibitions leading up to the Assembly shows that the levitical rubrics against near-kin marriage were the subject of academic study and ecclesiastical application. Due to the occurrence of these marriages and the sensitivity of the clergy to near-kin issues, it was inevitable that teaching concerning consanguinity and affinity would make its way into the *Confession*. How the affinity sentence came to take its finished form is the subject of this section.

The events leading to the inclusion of the affinity sentence begin with John Lightfoot’s *Journal of the Assembly*. Lightfoot assists analysis of the Assembly’s proceedings by noting that debate on the *Directory for Marriage* began on November 21, 1644, but the discussion was concerned mostly with whether marriage was a part of worship or a civil contract.<sup>196</sup> On November 22, Dr. Stanton’s report to the Assembly

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<sup>195</sup> Calvin, *Institutes*, 1.6.1, 1.14.1.

<sup>196</sup> Lightfoot, *Works*, 13:335; The question whether marriage was a civil or ecclesiastical function occupied theologians since the early days of the Reformation. The Assembly never quite resolved it and it continued to be an issue in the American Presbyterian

concerning marriage induced further debate.<sup>197</sup> The following Monday, the *Directory for Marriage* was committed to a committee to prepare a statement concerning the prohibited degrees.<sup>198</sup> The resolution of this issue occurred when the Assembly moved the bulk of the teaching concerning consanguinity and affinity to the *Confession* itself. The near-kin statement in *A Directory for the Publique Worship of God in the Three Kingdomes* is brief and says that marriage must not be “within the degrees of consanguinity or affinity prohibited by the Word of God.” The *Directory*’s near-kin sentence is a copy of the first sentence of the *Confession* 24:4.<sup>199</sup> The more detailed teaching on near-kin marriages is in the *Confession*, and the use of the *Confession*’s first sentence in the *Directory* shows the Assembly’s desire to turn *Directory* users to the details of the *Confession*.

The Assembly rejected one near-kin statement that read, “Marriage betwixt cousins-german and others beyond the degree of cousins-german is lawful.”<sup>200</sup> No reason for the exclusion is given but two factors may have contributed to it: first, Leviticus does not prohibit first cousin marriages, and second, the Assembly was concerned to include in the *Confession*’s consanguinity and affinity paragraph the relations that are *prohibited* and not those that are *allowed*.

Church. Maybe this civil/ecclesiastical tension explains why the *Confession*’s chapter on marriage is between the chapters on the civil magistrate and the church.

<sup>197</sup> Lightfoot, *Works*, 13:336.

<sup>198</sup> Alex F. Mitchell and John Struthers, eds., *Minutes of the Sessions of the Westminster Assembly of Divines* (1874; reprint, Edmonton: Still Waters Revival Books, 1991), 11; Lightfoot, *Works*, 13:337, notes that he was out of town November 25-28.

<sup>199</sup> *A Directory for Publique Prayer, Reading the Holy Scriptures, Singing of Psalms, Preaching of the Word, Administration of the Sacraments, and other parts of the Publique Worship of God, Ordinary and Extraordinary*, in *The Westminster Standards: An Original Facsimile by the Assembly of Divines*, forward by William S. Barker (Original English Edition, 1648; reprint, Audubon: Old Paths Publications, 1997), 28. The *Directory for Marriage* is an earlier designation for the section “The Solemnization of Marriage” in, *A Directory for the Publique Worship of God in the Three Kingdoms*.

<sup>200</sup> Mitchell, *Minutes*, 263.

The adoption and approval process for the affinity sentence by both the Assembly and Parliament was not smooth sailing. The Assembly took up the approval of the sentence on August 3, 1646 and adopted it as follows:

[T]he man may not marry any of his wives kindred nearer then he may of his owne[,] nor the wife any of her husbands kindred, nearer then of her owne.<sup>201</sup>

The Assembly minutes make no mention of debate. At the same session, the Assembly adopted the first sentence of the consanguinity and affinity section, but it was not until September 11, 1646 that the Assembly added the second sentence.<sup>202</sup> The latter addition of the discipline statement could indicate controversy, or it could show that after further thought the consanguinity and affinity paragraph was incomplete without the second sentence.

When the *Humble Advice* was undergoing the approval process at the House of Commons, the affinity sentence it considered adopting was not the same one previously approved by the Assembly. On April 29, 1647, the Commons ordered the Assembly to have a six-hundred copy run of the *Humble Advice* printed for the “service of both Houses and the Assembly of Divines.”<sup>203</sup> The affinity sentence in that edition reads as follows:

The man may not marry any of his wives kindred, nearer in blood, then he may of his own; nor, the woman, of her husbands kindred, nearer in blood, then of her own.<sup>204</sup>

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<sup>201</sup> This is a precise transcription of the minutes provided by Chad Van Dixhoorn by e-mail from Cambridge, England. The sentence is also found in, Mitchell, *Minutes*, 263.

<sup>202</sup> Mitchell, *Minutes*, 263, 280.

<sup>203</sup> *Journals of Commons*, 5:156.

<sup>204</sup> *The Westminster Standards: An Original Facsimile by the Assembly of Divines*, forward by William S. Barker (Original English Edition, 1648; reprint, Audubon: Old Paths Publications, 1997), 28; also in the *Journals of Commons*, 5:467.

The *Humble Advice* version voted on by Commons differs with the version approved by the Assembly because it has the words “in blood” added following both occurrences of “nearer.” The version of the affinity sentence approved by the Assembly was not the version voted on by the House of Commons. When the *Humble Advice* came before the House of Commons for approval it readily adopted the first two sentences of section four of the marriage chapter, but when the affinity sentence was presented it stimulated debate prior to its eventual rejection on February 18, 1647<sup>205</sup> by a seventy-one to forty division of the house.<sup>206</sup> When and how the affinity sentence was changed between August 6, 1646 and April 29, 1647 cannot be clarified from the Mitchell and Struthers minutes, but the point is that the “in blood” caveat was added and its addition achieved a limitation of the prohibited degrees that did not exist with the Assembly’s version.

An example using the two different interpretive principles of the two versions of the affinity sentence will clarify the difference in their application to near-kin marriages. In Lev 18:8 a man is forbidden to marry his father’s wife (i.e. stepmother). This is a relationship of affinity since there should be no common blood between the son and the stepmother. If the original Assembly version of the affinity sentence is used for interpretation it would necessitate the prohibition of the man’s marriage to his wife’s

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<sup>205</sup> Remember, that according to the Parliamentary calendar February 1647 would follow April 1647 since February 1647 is actually February 1648.

<sup>206</sup> *The Journals of the House of Commons*, vol. 5, *From December 5<sup>th</sup> 1646 ... to September 1<sup>st</sup> 1648* (reprint, [London:] By Order of the House of Commons, 1803), 467. The justification for “some debate” comes from the *Mercurious Melancholius* quote which is in the heading to this chapter. *Mercurious* was a royalist publication so its snide observation regarding the implied foolishness of Commons for debating the deceased wife’s sister could be overstated. At this time, the Lords and Commons were following English practice and beginning the year on March 25, which is reflected in the dating in the journals of both Commons and Lords. The present writer *has not* converted the dates to coincide with the January first year change.

stepmother because he cannot marry his wife's kindred "nearer than he may his own." To put this in perspective, an examination of Parker's table (Table 5) shows the man's prohibition of his own stepmother as number 11, but the table has no restriction against marrying the wife's stepmother. The original affinity sentence is more expansive than the listing in Parker's table. If the final version of the affinity sentence is applied to the man's prohibition of his stepmother, the wife's stepmother would not be forbidden because the "in blood" caveat would have eliminated it as a prohibited union. If the original affinity sentence was included in the *Confession*, it would have resulted in additional prohibitions beyond those of Parker's table and led to further expansion of the kindred relations prohibited marriage.

At this point, it might be helpful to speculate concerning why the House of Commons rejected the modified affinity sentence. The *Journals of the House of Commons* record no points of disagreement, but there was some kind of tension over the affinity sentence that led to its rejection. The Commons could have seen the sentence as adding unfounded prohibitions because they believed the *Confession's* statement that "marriage ought not to be within the degrees ... forbidden in the word" adequately addressed marriages of consanguinity and affinity. Taking the other side, Commons could have thought that the "in Blood" added to the Assembly's version was too lax and did not prohibit enough near-kin relations. Of course, their motive could have been less noble and more pragmatic—they may have been concerned that the affinity sentence in any form would restrict their rights to marry kin for the purpose of preserving inheritance and property. Whatever the reasoning, the "in blood" sentence did not make it through the House of Commons, but it did make it into the Scots' edition of the *Westminster*

*Confession*, which B. B. Warfield has concluded is the source of all the editions including those that came to America.<sup>207</sup>

Though the specifics concerning how the affinity sentence's completed, "in blood" form came to be included in the *Confession* are unclear, one influence contributing to the form approved by the Assembly is available. Peter Smith's presence on the committee dealing with the marriage chapter would have given him opportunity to influence the affinity sentence's wording. It has already been seen that his interpretation and application of the Lev 18 rubrics expanded the prohibited degrees. The affinity sentence adopted by the Assembly without the "in blood" qualifier could have been formulated from Smith's expanded listing of the prohibitions in his *Hexapla*. His participation in the committee dealing with chapter 24 would have given him opportunity to present statements from the *Hexapla* for consideration as the committee worked out the marriage chapter, but even if Smith did not attend the meetings, the *Hexapla* could have been influential as a published source.

In the present section, this author has strived to reconstruct the events leading to the formulation and inclusion of the affinity sentence in the *Westminster Confession*. There have been many occurrences of "could have" or "might have" in this section, but the evidence concerning the Assembly and its operations is limited and limited resources yield limited certainty. One thing is certain, though, and that is the addition of "in blood" in the affinity sentence decreased the number of prohibited relations from the version

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<sup>207</sup> B. B. Warfield, "Printing of the Confession," in *The Works of Benjamin B. Warfield*, vol. 6, *The Westminster Assembly and its Work* (New York: Oxford University Press, 1932; reprint, Grand Rapids: Baker Book House, 2000), 342.

initially approved by the Assembly. The Westminster Assembly's affinity sentence restrained the growth of prohibited relations.

### **In England Following the Assembly**

In order to determine the influence of the *Westminster Confession* in England following the Assembly, three views will be considered: that of the *Westminster Annotations*, Edward Reyner's pamphlet, and Richard Baxter's *Christian Directory*.

#### **The *Westminster Annotations*, 1651**

An example of English thought on near-kin issues following the Westminster Assembly shows that questions regarding these marriages continued to perplex Christians and that the *Westminster Confession's* precepts governing these unions were consulted. The publication of the second edition of the Westminster Assembly's *Annotations Upon all the Books of the Old and New Testaments* presented England with an updated commentary on Scripture by the divines. The author saw "to her sister" in Lev 18:18 to be a prohibition of polygamy and that the deceased wife's sister union was prohibited by reciprocal application of the injunction from Lev 18:16 concerning a man marrying his brother's wife.<sup>208</sup> The deceased wife's sister marriage is seen as wrong, but not because of the principle of the affinity sentence.

#### **Edward Reyner (1600-1668)**

The use of the *Westminster Confession's* teaching concerning consanguinity and affinity is seen in Edward Reyner's booklet, *Considerations Concerning Marriage*.<sup>209</sup>

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<sup>208</sup> *Annotations Upon all the Books of the Old and New Testaments* (London: Printed by John Legatt, 1651), no pagination.

<sup>209</sup> Edward Reyner, *Considerations Concerning Marriage. The Honour, Duties, Benefits, Trouble, of it. Whereto are Added, I. Directions in two Particulars, i. How they that have wives may be as if they had none, ii. How to prepare for parting with a dear yoke-*

Edward Reyner was a St. Johns, Cambridge, graduate who pastored in Lincoln and suffered some indignity while the royalists occupied Lincoln during the Civil War.<sup>210</sup>

Reyner showed his pastoral sensitivity in his casuist approach to the question, “Whether it is lawful for a man to marry his wife’s own sister?” He answered that it is unlawful and proceeded to prove it. He contended, by means of a rather conveniently reasoned syllogism, that: “A. A man may not marry one that is near of kin to him. B. A man’s wife’s sister is near of kin to him. C. Ergo, A man may not marry his wife’s sister.”<sup>211</sup> The accuracy of this syllogism is dependent on his assumption that the wife’s sister is “near of kin to him” in B. A key issue debated in the affinity sentence discussions was whether a wife’s sister is near enough kin to exclude her from marriage. This less than convincing analysis might convince one presupposing the affine sister as “near of kin,” but it would not convince a person who doubted Reyner’s point B.

Edward Reyner found better support for his view when he turned to the *Westminster Confession*. He specifically quoted the affinity sentence emphasizing its method for establishing that “proximity of alliance is no lesse a barre to marriage, then proximity of blood.” Since a woman cannot marry her brother, nor a man his sister, a husband cannot marry his wife’s sister because his deceased wife was one flesh with him and their union brought the sister into a sister-like relationship with him.<sup>212</sup>

Reyner reinforced his analysis of the wife’s sister marriage by appealing to both William Perkins and William Ames. He appealed to Perkins’s interpretation of cousin

*fellow by death, or otherwise. 2. Resolution of this Case of Conscience, “Whether a man may lawfully marry his Wife’s Sister?* (London: Printed by J. T. for Thomas Newbery, 1657).

<sup>210</sup> “Reyner, Edward (1600-1668),” in vol. 16, *Dictionary of National Biography*.

<sup>211</sup> Reyner, *Considerations Concerning Marriage*, 73.

<sup>212</sup> *Ibid.*, 75.

marriage restrictions. Perkins believed that blood cousins were prohibited marriage, and he reciprocally applied this to the spouse so that a marital partner is prohibited his or her spouse's blood cousins. Reyner then applied the principle to Lev 18:16 to prohibit a man's marriage to his wife's sister.<sup>213</sup> Ames's *Cases of Conscience* interpreted the law that forbids a nephew to marry his aunt, in Lev 18:14 and 20:20, as also forbidding an uncle marrying his niece. Reyner saw Ames's use of reciprocity as reinforcing his own use of the principle for prohibiting the deceased wife's sister marriage.

An objection raised, by those contending for the legitimacy of deceased wife's sister marriages, was that Lev 18 pertained to the Jews and their situation alone and it is not applicable to Christians. Reyner turned to the *Westminster Confession* for support and contended that incestuous marriages were a part of what defiled Canaan and what defiled then continues to defile the church.<sup>214</sup> He also appealed to the light of nature as condemning the deceased wife's sister union:

Now whatsoever Law is natural being written in the hearts of Heathen, must needs be moral and perpetual, as it is written in God's Book at large in a full and fair copy.<sup>215</sup>

Natural law continued to be a key supportive argument against marriages of consanguinity and affinity. He concluded his arguments by citing contemporary divines, the fathers, and past civil laws of nations that condemned such unions.<sup>216</sup> Reyner's

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<sup>213</sup> Ibid., 76.

<sup>214</sup> Ibid., 79.

<sup>215</sup> Ibid., 81.

<sup>216</sup> Ibid., 84-86.

presentation is significant because within the generation following the Assembly he quoted the *Confession's* affinity sentence and its reciprocity of relations.<sup>217</sup>

### **Richard Baxter (1615-1691)**

Though Baxter was active in his ministry at the time of the Westminster Assembly he is being considered as an after the Assembly theologian because his *Christian Directory* was published in its first edition in 1673. Baxter's concern in the *Directory* was to address "cases of conscience" and reduce theoretical knowledge into serious Christian practice.<sup>218</sup> The question and answer format of the *Directory* leads to consideration of the prohibited degrees and how one knows which relations are forbidden to marry.<sup>219</sup> Baxter answered that though Lev 18 is no longer a national law "it is of use, and consequential obligation to all men, even to this day." Baxter advised that it is best to avoid all those degrees enumerated in Lev 18 along with those that can be deduced from its verses, but those that are of doubtful error should not trouble consciences.<sup>220</sup> The specific levitical prohibitions are a good guide for avoiding incestuous marriages and those deduced directly from Leviticus should be avoided as well. Unfortunately, Baxter did not clarify how one knows which relations are directly deduced and which are not.

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<sup>217</sup> The need for Reyner's instruction concerning near-kin marriage is exemplified by a case in England in 1693. Charles Blount committed suicide, because he was prevented from marrying his deceased wife's sister. Blount had written *Anima Mundt*, 1679, and *Great is Diana of the Ephesians*, 1680. *The Cambridge History of English and American Literature in 18 Vols.*, Vol. 9, From Steele and Addison to Pope and Swift (Cambridge: University Press, 1907-1921).

<sup>218</sup> Richard Baxter, *The Practical Works of Richard Baxter: With a Preface, Giving some Account of the Author, and of this Edition of his Practical Works: an Essay on his Genius, Works, and Times; and a Portrait in Four Volumes*, vol. 1, *A Christian Directory*, Introduction by J. I. Packer (London: George Virtue, n.d.; Ligonier: Soli Deo Gloria, 1990).

<sup>219</sup> Baxter, *Directory*, 404.

<sup>220</sup> Ibid.

Baxter then turned to consider how those involved in near-kin marriages should deal with their situation. He addressed the consciences of those troubled by a first cousin marriage by saying:

I would have them cast away such doubts, or at least conclude that it is now their duty to live peaceably in the state in which they are; and a great sin for them to be separated on such scruples. The reason is, because, if it be not certain that the degree is lawful, at least no man can be sure that it is unlawful. And for husband and wife to break their covenants and part, without a necessary cause, is a great sin; and that which no man can prove to be a sin, is no necessary or lawful cause of a divorce. Marriage duties are certainly commanded to the married, but the marriage of cousin-germans is not certainly forbidden. Therefore if it were a sin to marry so, to them that doubted; or if they are since fallen into doubt whether it was not a sin; yet may they be sure that the continuance of it is a duty, and that all they have to do is to repent of doing a doubtful thing, but not to part, nor to forbear their covenanted duties. Nor, to indulge or suffer those troublesome scruples, which would hinder the cheerful discharge of their duties, and the comfortable serving of God in their relations.<sup>221</sup>

This perspective on first cousin marriages shows Baxter's concern that the bonds of marriage are of such great importance that the first cousin marriage should not lead to separating the couple. A questionable marriage is given the benefit of the doubt. As Baxter considered other cases involving the specific prohibitions of Leviticus as well as unions involving a levitical "parity of degree," he agreed with the spirit of the *Confession's* discipline sentence and called for the couple's separation. Though Baxter does not specifically refer to the *Confession*, his views do show their compatibility with Parker's table.

### **Summary of Chapter 2**

The Puritans' composition of the *Westminster Confession's* affinity sentence built upon the Protestant interpretations that had gone before. The minimal near-kin prohibitions of Luther's early years increased in number as the years passed. Parker's

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<sup>221</sup> Baxter, *Directory*, 405.

table of thirty prohibitions for both the man and the woman expanded the twenty-four of Bullinger's rendition. The *Hexapla* of Willet and Smith adopted principles of interpretation that would have expanded prohibitions well beyond those of Matthew Parker. As the years passed Protestants were coming full-circle with respect to near-kin rules as their ever increasing ascending and descending prohibited degrees moved them closer to Catholicism's canon law. The first edition of the affinity sentence reflected a more open-ended interpretive approach that was restricted by the addition of the "in blood" caveat. The *Westminster Confession's* affinity sentence became *a stabilizing and restricting influence in the midst of near-kin prohibitions gone amuck.*

The *Confession's* affinity sentence would lead to many near-kin cases in the American Presbyterian context. The problem of proper discipline complicated near-kin cases because the presbyters had difficulty determining how much, if any, discipline was appropriate. The most contested affine union in the American Presbyterian Church would be that of a man's marriage to his deceased wife's sister, or viewed reciprocally from Lev 18:16, a woman's marriage to her deceased sister's husband.

## Chapter 3 - The American Presbyterian Church, Part 1

*It seemed to her that there were some thousands of the most unintelligible things - “An Appeal on the Unlawfulness of a Man’s Marrying his Wife’s Sister” turned up in every barrel she investigated, by twos or threes or dozens, till her soul despaired of finding an end.*

Harriet Beecher Stowe, *Poganuc People*, 1878, 172<sup>222</sup>

### An Early New England Near-Kin Publication

A pamphlet published by early American Protestants in New England is indicative of the seeds of controversy that led to the growth and propagation of near-kin cases in the Presbyterian Church, other denominations, and society in general.<sup>223</sup> This pamphlet claimed both Increase and Cotton Mather, John Danforth, and other clergy of New England Puritanism as its co-authors.<sup>224</sup> The short tract begins by chastising the

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<sup>222</sup> Stowe may be referring to Benjamin Trumbull’s *An Appeal to the Public, Relative to the Unlawfulness of Marrying a Wife’s Sister* (N. p.: E. Hudson, 1810). This line is said by Dolly, who probably represents Stowe’s perspective. Dolly later married her distant cousin Alfred Dunbar after an extended courtship (1878; reprint, introduction by Joseph S. VanWhy; Hartford: Stowe-Day Foundation, 1977), 172. Stowe wrote a series of three other books, which, along with *Poganuc People*, were designated her New England Novels. This Series was set in her childhood during the early years of the newly independent nation. Stowe was born in 1811 so her early years would have seen some of the most contested near-kin marriage cases in the Presbyterian Church. She was the daughter, wife, and sister of Presbyterian ministers. In another New England novel, *The Minister’s Wooing*, Mary Scudder became romantically involved with her first cousin, James Marvyn, whom she eventually married (1859; reprint ed. Sandra R. Duguid, Hartford: The Stowe-Day Foundation, 1978).

<sup>223</sup> A near-kin related issue occurred in England about this time and involved Charles Blount who had defended the legitimacy of a deceased wife’s sister marriage in a portion of his book *The Oracles of Reason*. His writing on the subject was motivated by his own desire to marry his deceased wife’s sister. Since it was illegal to accomplish such a marriage, in despair, Blount inflicted a mortal wound upon himself. As he slid towards death he refused to take food from anyone but the sister-in-law he wanted to marry. See: *Dictionary of National Biography*, “Blount, Charles (1654-1693).”

<sup>224</sup> Increase Mather, Charles Morton, James Allen, Samuel Willard, James Sherman, John Danforth, Cotton Mather, and Nehemiah Walter all signed this pamphlet, *The Answer of*

proponents of deceased wife's sister unions for their advocating a "practice so evil." These ministers saw it as scandalous that those who had received the light of religion practiced marriages that "Heathen Nations have detested ... although they had no other principle but the honesty of nature to guide them."<sup>225</sup>

These New England Congregational fathers deemed such unions illicit because Lev 18:6 condemned marriages of consanguinity and affinity, and because "a man may not marry any of his wives kindred nearer in blood than he may of his own; nor may the woman of her husbands."<sup>226</sup> This is not a precise quote of the affinity sentence, but it is clear that when these clergymen wrote this statement they had the *Confession*'s twenty-fourth chapter in mind. The New England Puritans exemplified their "hearty assent and attestation to the whole" of the *Westminster Confession* "for substance of doctrine" by turning to the affinity sentence to support their case. The New England clergy's *Cambridge Platform* took exception to "some sections in the 25, 30 & 31, chapters" but the twenty-fourth chapter was accepted.<sup>227</sup> Later in the pamphlet, these New England Puritans confirmed their use of the *Westminster Confession* when they quoted all of chapter 24, section 4, to support their case against near-kin unions.<sup>228</sup> These early

*Several Ministers in and near Boston to that Case of Conscience, Whether it is Lawful for a Man to Marry his Wives own Sister* (Boston: Bartholomew Green, 1695).

<sup>225</sup> *The Answer of Several Ministers*, 2.

<sup>226</sup> *Ibid.*, 4.

<sup>227</sup> Williston Walker, *The Creeds and Platforms of Congregationalism* (New York: Charles Scribner's Sons, 1893), 195. Walker notes on page 188 that "the Cambridge Platform became the recognized, if not the unquestioned, pattern of ecclesiastical practice in Massachusetts. Endorsed, 'for the substance of it,' by the Reformed Synod in September, 1679, it continued as the legally recognized standard till 1780." The Savoy Declaration of the English Congregational Churches composed in 1658 does not have the affinity sentence, per Williston, 395, and Philip Schaff, *The Creeds of Christendom*, 3:721.

<sup>228</sup> *The Answer of Several Ministers*, 7.

Congregationalists condemned the wife's sister marriage because Leviticus, the *Confession*, nature, and civil laws "have condemned the practice as abominable."<sup>229</sup>

The New England Puritans forbade the deceased wife's sister marriage by means of the affinity sentence's interpretation of Lev 18. The Mosaic legislation in Leviticus authoritatively defined the incestuous nature of these unions deemed repulsive by nature. For these New Englanders, marriage to a wife's sister was wrong because a man should not marry his wife's sister any more than he should marry his own sister.<sup>230</sup>

### **A Case in Early American Presbyterianism - Andrew Van Dyke, 1717**

Before the Adopting Act, near-kin marriage adjudication began in the Colonial Presbyterian Church in 1717 with the case of Andrew Van Dyke who had married his brother's widow.<sup>231</sup> The issue was referred to the Synod of Philadelphia by way of the Presbytery of New Castle. After "considerable time being spent in discoursing upon it," the Synod of Philadelphia ruled that the marriage was "incestuous and unlawful," and that so long as the couple "lived together, they be debarred from sealing ordinances." The Synod directed the pastor of Van Dyke's congregation to inform his flock of the judicatory's decision so the members could respond accordingly and avoid similar

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<sup>229</sup> Ibid., 4-8.

<sup>230</sup> An early publication from the Anglican perspective was, Thomas Brett, *Some Considerations on the Times Wherein Marriage Is Said to be Prohibited: in Two Letters From one Clergy-man to Another* (London: Printed by J. L. for John Wyatt, 1709). This work deals more with licensing marriages and the days in England's ecclesiastical calendar when marriages could not be performed, but it does mention the place of the Visitation Articles in marriage (19), the importance of pronouncing the banns thrice (12, 13), and the allowance of a proposed marriage if there is no impediment (20).

<sup>231</sup> Edwin S. Gaustad, ed., *Records of the Presbyterian Church, in the United States of America Embracing the Minutes of the General Presbytery and General Synod 1706-1788*, Religion in America (Philadelphia: Presbyterian Board of Publication and Sabbath School Work, 1904; reprint New York: Arno Press & The New York Times, 1969), 92-96.

incestuous unions.<sup>232</sup> At the 1718 Synod, it was reported that the pastor had fulfilled this responsibility.<sup>233</sup>

At this early stage in the history of the American Presbyterian Church, before the Adopting Act, this case of a man's marriage to his deceased brother's wife was judged to be incestuous and contrary to Mosaic law. The Synod called for the suspension of the couple from church privileges until they separated; the Van Dyke marriage was judged both illicit and invalid.<sup>234</sup>

### **Cases Following the Adopting Act and the Old Side/New Side Reunion**

With the 1729 Adopting Act the affinity sentence became the required constitutional interpretation of the laws of consanguinity and affinity in Scripture. The Synod of New York and Philadelphia met in 1759 at the Second Presbyterian Church and took up "a case of conscience"<sup>235</sup> involving a man's marriage to his half-brother's widow.<sup>236</sup> This case had been deferred by the Synod of 1758.<sup>237</sup> Reunion of the Old and New Sides dominated the 1758 docket as the Presbyterian Church reaffirmed subscription to the *Westminster Confession of Faith* and came to agreement on other

<sup>232</sup> Gaustad, *Records of the Presbyterian Church*, 50. Many of the near-kin cases that follow are available in a summary form in: William Moore, ed., *The Presbyterian Digest of 1886. A Compend of the Acts and Deliverances of the General Assembly of the Presbyterian Church in the United States of America* (Philadelphia: Presbyterian Board of Publication and Sabbath School Work, 1886), 814-820; J. A. Hodge's *What is Presbyterian Law?* (N.p. 1882), 100-103; another source is *A Digest of the Acts of the Supreme Judicatory of the Presbyterian Church in the United States of America* (Philadelphia: Presbyterian Board of Publication [1849]), 85-86, 119-120, 147-157; any of the earlier digests can acquaint the reader with a summary of near-kin decisions.

<sup>233</sup> Gaustad, *Records of the Presbyterian Church*, 51.

<sup>234</sup> One man, John Steel, born in England, went to New York in the early eighteenth century due to his prosecution for marrying his deceased wife's sister. Daniel Steele Durrie, "The Steeles of New York," <http://www.angelfire.com/wv/snr/jcdurrie.html>.

<sup>235</sup> Note the continued use of this Puritan Casuistry term through the colonial period.

<sup>236</sup> A "half-brother" is a brother related as a brother by one parent only.

<sup>237</sup> Gaustad, *Records of the Presbyterian Church*, 289, 295.

issues raised by reunification. The affinity sentence continued as the authoritative interpretation of the Word of God concerning such marriages.<sup>238</sup> Synod considered dealing with the case in 1759, but “as the members have not generally closely examined this matter in its general nature, it is deferred till next Synod.”<sup>239</sup>

When the Synod convened at Philadelphia the following year, it faced not only the deferred case involving a man’s marriage to his half-brother’s widow but two additional ones as well. One of the new cases involved a marriage uniting a “brother’s and sister’s relicts,” while the other involved a man who married the sister of his deceased wife.<sup>240</sup> The judicatory appointed a committee to study these three cases and bring a summary of “Scripture” and “English law” to the Synod to aid in their deliberations concerning the unions.<sup>241</sup>

The first case, the man who married his half-brother’s widow, was deferred, once again, to the next Synod, and the other two cases were deferred until the afternoon.<sup>242</sup> The Synod discussed the two cases in the afternoon and concluded that the marriage involving the brother’s and sister’s relicts may be “inexpedient” but they could not find it “prohibited by Levitical law.”<sup>243</sup> When the deceased wife’s sister marriage was addressed, the Synod saw the union as “incestuous” and “contrary to the laws of God and

<sup>238</sup> Ibid., 286.

<sup>239</sup> Ibid., 295.

<sup>240</sup> A “relict” can mean a widow or any survivor. The *Oxford English Dictionary* defines “relict” as “left by death, surviving.” The relationship in this case is not specified, so the exact nature of the union is unclear. This could be a brother’s widow who married her sister’s widower.

<sup>241</sup> Gaustad, *Records of the Presbyterian Church*, 300-301; “Messrs. Samuel Finley, James Finley, [John] Blair, [Alexander] Miller, [Abraham] Kettletas, and Gilbert Tennent” were the committee.

<sup>242</sup> Gaustad, *Records of the Presbyterian Church*, 302, 303; this is the third time it was deferred to the next meeting of Synod.

<sup>243</sup> Gaustad, *Records of the Presbyterian Church*, 303.

the land,” but since many disagreed about the error of this type of marriage the Synod postponed decision till the next year.<sup>244</sup> So, two cases were deferred, the one involving marriage to a half-brother’s widow and the other involving marriage to a deceased wife’s sister.

Synod met at Philadelphia in 1761 and appointed a committee to prepare a report on the two cases of conscience involving near-kin marriage.<sup>245</sup> When the committee reported and the Synod discussed the issue, the court postponed action until the next session of their meeting. The Synod eventually adopted a statement concerning the two marriages:

That as the Levitical law, enforced also by the civil laws of the land, is the only rule by which we are to judge of marriages, whoever marry within the degrees of consanguinity or affinity forbidden therein, act unlawfully, and have no right to the distinguishing privileges of the churches; and as the marriages in question appear to be within the prohibited degrees, they are to be accounted unlawful, and the persons suspended from special communion while they continue in this relation.<sup>246</sup>

A striking aspect of this statement is that the Levitical law “enforced … by the civil laws,” is “*the only rule* by which we are to judge of marriages.”<sup>247</sup> In these early years of the American Colonies, the law of the land prohibited near-kin marriages because God’s law condemned the marriages. With respect to near-kin marriage, the state and the church were agreed that the unions were incestuous and the civil authorities enforced the levitical consanguinity and affinity prohibitions.

<sup>244</sup> Ibid., 303.

<sup>245</sup> Ibid., 309; committee of “Dr. Alison, Messrs. [Alexander] McDowell, Samuel Finly [or Finley], [John] Blair, [David] Bostwick, Caleb Smith, [George] Duffield, [Matthew] Wilson, and [John] Steel.

<sup>246</sup> Moore, *The Digest of 1886*, 815.

<sup>247</sup> Gaustad, *Records of the Presbyterian Church*, 312; italics added for emphasis.

In the light of the 1758 reunion of the Old and New Sides and the reaffirmation of subscription to the *Westminster Confession of Faith* one might expect to have read, “The Levitical law as interpreted by the *Confession*” or “Leviticus and the *Confession*, 24:4” as justification for the decision, but this is not the case. Neither one of these marriages, condemned by the Synod of New York and Philadelphia, can be found to be illicit in the *literal* words of Leviticus. Literally, in Leviticus, there is no prohibition of marriage to a half-brother’s wife, nor can it be inferred from Leviticus unless the Synod believed that since a full brother’s wife is forbidden (Lev 18:16), then a half-brother’s wife is forbidden as well. The decision does not state whether the deceased wife’s sister marriage was condemned due to a reciprocal application of Lev 18:16 to the woman, or because of the “wife to her sister” of Lev 18:18, or because of the affinity sentence’s “in blood” principle, but whatever the reasoning for the decision, the Synod maintained the error of the marriage and required the separation of the couple. The disciplinary action taken indicates the spirit of the second sentence of the *Confession* 24:4, because the Synod believed that the couple could not “live together as man and wife.”

In 1771 the Synod of New York and Philadelphia met in Philadelphia and faced adjudication of another case of near-kin marriage.<sup>248</sup> The names of the man and woman and the specific consanguineous or affine relationship involved were not stated. The Synod postponed decision until the 1772 meeting when, after extended discussion, decision was deferred until the next morning when a committee would bring “a minute on the case.”<sup>249</sup> The committee’s minute was read, modified, and adopted by the Synod.

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<sup>248</sup> Gaustad, *Records of the Presbyterian Church*, 419, 427.

<sup>249</sup> Ibid., 427; the committee was composed of the ministers Benjamin Woodruff, John Close, Hugh Vance, and John Slemmons, along with elder Thomas Woodruff.

The couple's pastor, Andrew Hunter, was instructed to read the statement to his congregation and have the session rebuke the couple.<sup>250</sup> Synod's resolution saw the particular marriage in question as "not a direct violation of the Levitical law" and did not necessitate "the censures of the church," but it did transgress "the laws of the country" and the "custom of protestant nations in general."<sup>251</sup> Though it did not break Leviticus it was "offensive to the church," evinced "great untenderness," and failed to "avoid things of ill report."<sup>252</sup>

The Synod's apparent intention was not only to rebuke the particular couple whose marriage had been questioned, but also to remind the churches that near-kin marriages were to be avoided. The Synod of New York and Philadelphia took the position that it was better to establish prohibited degrees beyond those of Leviticus and avoid the appearance of evil, than to risk transgressing the specific degrees prohibited by Divine law; the Synod established a fence around the law and its pickets and rails were the civil law and protestant tradition. During the course of the case's adjudication there were no specific appeals to the consanguinity and affinity section of the *Confession*.

### **Anthony Dushane Case, 1782**

Another case came before the Synod of New York and Philadelphia when Anthony Dushane, who married the sister of his deceased wife, petitioned Synod concerning his marriage. A decision on Dushane's marriage petition had been postponed by the Synod of New York and Philadelphia in 1779, 1780, and 1781, and he was asking

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<sup>250</sup> Gaustad, *Records of the Presbyterian Church*, 427.

<sup>251</sup> Ibid.

<sup>252</sup> Ibid.

the court to decide the case and restore him and his wife to church privileges.<sup>253</sup> The case was decided when, by a considerable majority, the Synod voted for Dushane's restoration, but the judicatory also recommended "to their people, to abstain from them [near-kin marriages], in order to avoid giving offence."<sup>254</sup>

The Synod's decision was not the last word on the case because "Remonstrances from sundry congregations" came before the judicatory in 1783 seeking reversal of the 1782 decision.<sup>255</sup> The Synod responded by affirming its dissatisfaction with all marriages "inconsistent with Levitical law" and described the marriages as "highly censurable," but the court stated further that censurability did not necessitate annulment.<sup>256</sup> The Dushanes were to be received into full church communion "with a solemn admonition, at the discretion of the session." The session was also instructed to remind the congregation members to "abstain from celebrating such marriages."<sup>257</sup>

This decision did not go without a minority response. James Finley, who would write a pamphlet prompted by the Dushane case, dissented from the judgment and informed the judicatory of his intent to submit his reasons in writing. His reasons did not appear in the minutes until the following year.<sup>258</sup>

The Synod's decision maintained the unbiblical nature of such a marriage, but it also enforced discipline short of separation from church privileges and annulment. In

<sup>253</sup> Ibid., 484, 487, 490, 491, and 495.

<sup>254</sup> Ibid., 495.

<sup>255</sup> Ibid., 499.

<sup>256</sup> Ibid., 500.

<sup>257</sup> Ibid.

<sup>258</sup> Ibid. Another deceased wife's sister marriage in the Colonial era involved a Maryland public servant named Henry Dickinson (d1789) who married Elizabeth, the daughter of the Episcopal minister Philip Walker, who was the rector of St Mary's Whitechapel Parish in Caroline County. Following Elizabeth's death Henry married her sister, Ann. See: "Archives of Maryland: Biographical Series," at, <http://www.mdarchives.state.md>.

these early Presbyterian Church records, the *Westminster Confession* did not enter the discussion of Dushane's marriage even though the affinity sentence's "in blood" principle would have readily condemned their marriage. James Finley could have appealed to the Synod's neglect of the requirements of the *Confession*'s near-kin paragraph's second sentence, which condemned the couples continued cohabitation, but the Reverend failed to say anything about the *Confession* in his dissent.<sup>259</sup> The Synod's contradiction of the second sentence could have been an effective point of contention for James Finley. The second sentence required the dissolution of the union and the Synod had to put aside this tenet to allow the Dushane's continued cohabitation.

### **James Finley's Pamphlet (1725-1795)**

The Reverend James Finley's views regarding the Dushane marriage were expounded in a treatise on the subject of deceased wife's sister marriages.<sup>260</sup> James Finley was born in Ireland and educated in the Colonies by Samuel Blair. He was licensed by New Castle Presbytery and then ordained to receive a call in Maryland in 1752. At the time of the Dushane case, Finley was in transition between Maryland, where his pastoral relationship was dissolved in 1782, and the Redstone Presbytery of western Pennsylvania where he would receive a call in 1785.<sup>261</sup>

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<sup>259</sup> In the dissertation section following the present one, Finley's pamphlet will be discussed. He mentions the *Confession* in his pamphlet.

<sup>260</sup> James Finley, *A Brief Attempt to set the Prohibitions in the 18<sup>th</sup> and 20<sup>th</sup> of the Book of Leviticus in a Proper Light. Wherein An Answer to the two following Questions is more especially attended to, viz. I. Whether it be right for a Man, after the Death of his Wife, to marry her Sister? II. Supposing the Marriage to be wrong, whether they, continuing to cohabit, may be admitted to Church Privileges?* (Wilmington: Printed by James Adams, 1783); Finley had served on the committee studying the three near-kin marriages brought before the 1760 General Assembly.

<sup>261</sup> *Encyclopedia of the Presbyterian Church*, s.v., "Finley, Rev. James;" note that Finley served his first congregation for thirty years.

Finley's tract proposed to show the incestuous nature of a deceased wife's sister marriage by establishing, first, that Leviticus was applicable to the New Testament Church and marriage to a deceased wife's sister was prohibited by it, and second, that it required the end of cohabitation before the couple could be re-admitted to church privileges.<sup>262</sup>

With respect to the first proposition, Finley established that without the law of Moses to delineate the specific prohibitions, man would not be able to properly define the prohibited degrees. Nature teaches that "such marriages" are "abominable," and it is due to "the intrinsick baseness of such intercourse and marriage" that Leviticus sets forth the degrees. He posited further that kindred relations are the same in all countries and among all peoples (i.e. cousins are cousins in any country), thus the illicit nature of near-kin marriages must apply to all peoples. Finley instructed his readers to not behave like the Canaanites who polluted their land with incest, sodomy, and bestiality.<sup>263</sup>

The *Westminster Confession's* affinity sentence was quoted to establish that the wife's sister marriage was wrong by affinity just as marriage to a sister was wrong by consanguinity. Finley added that this sentence reflected "the general opinion of protestants, and I think agreeable to the scriptures."<sup>264</sup> Finley's application of the near-kin prohibition from the *Confession* shows that his subscriptional commitment necessitated his dealing with the deceased wife's sister marriage from the *Confession's* teaching. He also appealed to the specific prohibition of a man's marrying his deceased brother's wife and applied it to the woman reciprocally to achieve the prohibition of a

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<sup>262</sup> Finley, *A Brief Attempt*, 5.

<sup>263</sup> Ibid., 6,7, 9.

<sup>264</sup> Ibid., 13.

woman marrying her deceased sister's husband.<sup>265</sup> Finley's double-barreled approach condemned the marriage using both the reciprocity of Lev 18:16 and the affinity sentence's "in blood" principle.

One of the opposing views he addressed was the use of the levirate marriage of Deut 25:8ff as a justification for a more flexible approach to the law of Leviticus. Finley saw levirate marriage as a temporary measure applicable to Israel that showed mercy to the widow so that she would not be homeless. Levirate marriage supplied a widowed woman with a protector and property.<sup>266</sup>

James Finley's second point was with respect to the appropriate discipline for a couple married incestuously. In the Dushane case, appropriate discipline was the point of contention. Finley wrote against those who believed that to separate the incestuous couple was a greater evil than to allow their continued cohabitation. Separation of the wedded persons was necessary because the two parties *could not* live together as husband and wife. Any like union necessitated exclusion from church privileges in hopes that the two would repent and separate.<sup>267</sup> Finley's approach was consistent with both the affinity and discipline sentences; the "in blood" principle established the error of the deceased wife's sister marriage, and his condemnation of their continued cohabitation showed his fidelity to the second sentence of 24:4.<sup>268</sup>

James Finley responded to the view that marrying a deceased wife's sister was parallel to a Christian marrying an unbeliever. Finley believed that this perspective erred

<sup>265</sup> Ibid., 11, 13.

<sup>266</sup> Ibid., 16-17.

<sup>267</sup> Ibid., 18.

<sup>268</sup> "24:4" will be used on occasion as an abbreviation for "the consanguinity and affinity paragraph of the marriage chapter."

by comparing apples to oranges. He contended that the crime of the Christian-nonbeliever union was “in the marriage of such an one, not in cohabiting afterwards,” but the evil of the deceased wife’s sister connubial relation was twofold because it was not only wrong to marry, but to continue relations and repeatedly “uncover the nakedness” of each other.<sup>269</sup> Thus, for Finley, the first case was illicit but not invalid, while the second case was both illicit and invalid.

In summary, as the adjudication of near-kin cases in the Presbyterian Church unfolded, the complexity of the issue became increasingly apparent due to a multiplicity of questions. Does Leviticus apply to the New Testament people of God? If so, does Leviticus address marriage to a deceased wife’s sister? Is the *Confession’s* affinity sentence an appropriate interpretation of Leviticus, or is it better to avoid only the literal and specific prohibited relationships in Leviticus? Should such unions be disciplined and to what extent? Is it necessary that the couple separate to show their repentance? These questions arose in the early years of adjudication in the American Presbyterian Church and they would reoccur in multiple cases from several presbyteries for years to come.

### **Samuel Miller (1769-1850) and the Affinity Sentence**

The *Confession’s* affinity sentence became, for one prominent Presbyterian minister and scholar, an issue of subscription. Samuel Miller, a founder of Princeton Seminary and a professor, was influenced by the deceased wife’s sister polemics of his day. The Reverend Luther Halsey, at the time Professor of Theology at the Western Theological Seminary, contended in the *New York Observer* that when the Presbyterian Church adopted the *Westminster Confession* and catechisms it affirmed that “only the

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<sup>269</sup> Finley, *A Brief Attempt*, 18.

essential or fundamental doctrines” shall be the test of ministerial and Christian fellowship. To support this he cited Miller as having taken exception to the marriage chapter of the *Confession*.

Dr. Miller responded to Halsey in a letter and clarified the issue noting that the affinity sentence was the source of his uncertainty. Miller had doubted the accuracy of the affinity sentence because he “had happened, a few weeks before [his licensure], to listen to a discussion of the question, whether a man might lawfully marry the sister of his deceased wife.” He concluded that the issue was doubtful, he took exception to the affinity sentence, and Lewes Presbytery, in September of 1791, judged his exception to be non-essential doctrine. Dr. Miller added that he later overcame his doubts regarding the accuracy of the affinity sentence and he came to believe it “the wisest, safest, and most Scriptural ground.”<sup>270</sup>

Dr. Miller was a serious subscriptionist and in his book, *The Utility and Importance of Creeds and Confessions*, he expressed his conviction concerning the necessity of creed subscription for maintaining the purity and peace of the Presbyterian Church.<sup>271</sup> The purpose of this pocket-sized book was to encourage candidates for the ministry in their approach to confessional subscription. He advised candidates to honestly express their reservations about the Presbyterian standards to their presbytery so

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<sup>270</sup> As in Samuel Miller’s son’s, *The Life of Samuel Miller, D.D., LL.D., Second Professor in the Theological Seminary of the Presbyterian Church, at Princeton, New Jersey* (Philadelphia: Claxton, Remsen, and Haffelfinger, 1869), 53-56; Luther Halsey information is from, *Encyclopedia of the Presbyterian Church*, s.v. “Halsey, Luther, D. D., LL.D.”

<sup>271</sup> Samuel Miller, *The Utility and Importance of Creeds and Confessions Addressed Particularly to Candidates for the Ministry* (Philadelphia: Presbyterian Board of Publication, 1839).

Table 7 - Eighteenth-Century Near-Kin Prohibitions<sup>1</sup>

TABLE

<i>Consanguinity.</i>  None of you shall approach to any that is near of kin to him to uncover their nakedness vs. 6. You shall not, therefore, marry any that is related to you by	<i>In the direct line.</i>  <i>In the lateral line, &amp; that</i>	In the <i>first degree</i> with your	Father vs. 7
			Mother.
		In the <i>second degree</i> with the daughter of your	Son, vs. 10. Daughter.
		In the <i>equal line</i> in the second degree with your sister, whether	Whole, vs. 9. of half born of the same
		In the <i>unequal line</i> third degree, with your	Aunt, i.e. the sister of your Uncle, or father's brother, vs. 14.
<i>Affinity</i>	<i>In the direct line.</i>  <i>In the lateral line, &amp; that</i>	In the <i>first degree</i> with your	Step-mother, vs. 8. Step-daughter, vs. 17. Daughter-in-law, or son's wife, vs. 15.
		In the <i>second degree</i> with the Daughter of your	Step-son, vs. 17. Step-daughter.
		In the <i>equal line</i> in the second degree with your	Brother's wife, vs. 16. Sister's husband.
		In the <i>unequal line</i> third degree with your	Uncle's wife, vs. 14. Aunt's husband.

<sup>1</sup> This table is from: *The Marriage of a Deceased Wife's Sister Incestuous. "In Answer from a Citizen to his Friend."* New York: T. & J. Swords, 1798, 29. Note the Ramist pattern of branching/bifurcation being used at the end of the eighteenth century.

it could determine whether the candidate's concerns were acceptable exceptions.<sup>272</sup> Dr. Miller's advice reflects his own experience regarding the deceased wife's sister marriage and his exception to the affinity sentence, but despite Miller's later reversal concerning his exception, he advised candidates to be honest with their presbyteries and take exceptions when necessary.

Two years after the first General Assembly of the Presbyterian Church met, Dr. Miller expressed his reservations regarding the affinity sentence and his Presbytery concurred with his request viewing the affinity sentence as a point of inessential doctrine. At least in the case of Lewes Presbytery, a precedent regarding the peripheral nature of the near-kin affinity statement was established.<sup>273</sup>

### **Jonathan Edwards the Younger (1745-1801)**

Jonathan Edwards's son was the President of Union College when he preached a sermon in the Yale chapel September 12, 1792, titled, "The Marriage of a Wife's Sister Considered: A Sermon on Leviticus 18:16."<sup>274</sup> The occasion of this sermon was commencement and Edwards informed his listeners that the Congregational General Association had requested his exposition of Lev 18:16 due to the relevance of the issues raised by its teaching.

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<sup>272</sup> Ibid., 101-102.

<sup>273</sup> Dr. Miller maintained some interest in the issues of marital affinity because the inventory of his library following his death revealed two near-kin titles. One book is Janeway's, *Unlawful Marriage*, 1843, and the other is an 1816 work described as a *Dissertation on Marrying a Wife's Sister*, which may be Livingston's *A Dissertation on the Marriage of a Man with His Sister in Law* (New Brunswick: Deare & Myer, 1816). See: Samuel Miller, "Catalogue, As Found at his Death," PTSEM 1:3, pp. 2, 35; Miller's son chose not to enter the affinity discussion because his "Exegetical Notes on Leviticus," S. Miller Jr. Collection, PTSEM, 1:4, skipped the kindred passages.

<sup>274</sup> Jonathan Edwards, "The Marriage of a Wife's Sister Considered," in *The Works of Jonathan Edwards* (Andover: Allen, Morrill & Wardwell, 1842), 2:124-41.

Edwards introduced his sermon with the observation that in “no former period have there been so many instances of’ deceased wife’s sister marriages than in his own era.<sup>275</sup> He then proceeded to present the arguments against a man’s marrying his wife’s sister by turning to Lev 18:16 and 20:21. Edwards said that since these verses forbid marriage to a deceased brother’s wife they also prohibit his marrying his deceased wife’s sister; “When a man marries his wife’s sister, the same man marries two sisters. And when a man marries his brother’s widow, the same woman marries two brothers.”<sup>276</sup> Reciprocal application of Lev 18:16 and 20:21 to the woman requires the condemnation of a man’s marriage to his wife’s sister.

Edwards then proceeded to refute thirteen objections raised against the prohibition of deceased wife’s sister marriages, but only a sample of these will be considered here. Some contended that the only prohibitions against near-kin marriages are the specific forbidden degrees of Lev 18, to which Edwards responded if this were true, then a woman could marry her grandson.<sup>277</sup> Another perspective, echoed in other publications, was that Lev 18:16 prohibited relations with a brother’s wife, but not marriage to his widow. Edwards responded that if this were the case for Lev 18, then the Scripture would be left without any legislation against incest.<sup>278</sup> Other views he refuted included: those who interpreted the Lev 18 laws as ceremonial; others who believed the marriage was acceptable because it was not consanguineous; some believed Lev 18:18 condemned marriage to two living sisters and they saw the *deceased* wife’s sister marriage as acceptable; others contended that the laws of Moses do not apply to the church; another

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<sup>275</sup> Ibid., 124-5.

<sup>276</sup> Ibid., 125.

<sup>277</sup> Ibid., 126-27.

<sup>278</sup> Ibid., 127.

party turned to the teaching of the Jewish rabbis that allowed marriage to a wife's sister; and finally, one group argued that these marriages should be allowed in Connecticut because the neighboring states allowed them.<sup>279</sup>

The sermon concluded with Edwards exhorting the Yale students to avoid near-kin marriages even if they had only minor doubts of its validity. Edwards reasoned that it was better to err by being too strict than to enter a sinful marriage.<sup>280</sup> As Edwards drew the sermon to its end, he summarized:

I have briefly stated the evidence from scripture and reason, that the marriage in question is unlawful, and have carefully attended to the objections to the doctrine; and it is humbly conceived, that the result of our inquiry is, that this marriage is as plainly and fully forbidden by God, as several other marriages, which we all acknowledge to be forbidden; as the marriage of a grandson, the marriage of a mother's brother's wife, and the marriage of a husband's grandson, etc. To be consistent therefore we seem to be necessitated, either to hold that these marriages are not forbidden or to acknowledge that the marriage of a wife's sister is forbidden.<sup>281</sup>

Though Edwards did not bring the *Westminster Confession's* affinity sentence into his presentation of the deceased wife's sister issue, as a Congregationalist he would have known of the partial incorporation of the *Confession*, including the affinity sentence, as a part of the Cambridge Platform.<sup>282</sup>

The closing paragraphs of the sermon designated his era as one of “revolution and innovation” in the political arena as well as in other areas of life, but he contended that change should not be embraced for its own sake nor should “all restraint” in morals and

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<sup>279</sup> Ibid., 127-40.

<sup>280</sup> Ibid., 140.

<sup>281</sup> Ibid.

<sup>282</sup> Walker, *The Creeds and Platforms of Congregationalism*, 195.

religion be thrown off.<sup>283</sup> Near-kin marriages tended to segregate the “great and affluent” from the rest of society and such a separation had no place in a republican government. Deceased wife’s sister unions could tend to produce an aristocracy if they were allowed to continue unabated and aristocracy is incompatible with democracy. All marriages should be tested by Scripture and they must be enforced by both church and state.<sup>284</sup>

In summary, Edwards’s perspective looked to Lev 18:16 and its condemnation of marriage to a brother’s widow to justify, by reciprocity, the prohibition of a woman’s marriage to her deceased sister’s widower. He did not appeal to the *Confession’s* marriage chapter for support, but he did appeal to other factors such as the use of marriages of consanguinity and affinity in England for reconsolidating estates and maintaining an upper class aristocracy or royalty. Where near-kin unions had been used by the English for economic and sociological nest building, the new American Republic could not countenance such self-serving attitudes and machinations. There was no king in America and there must be no deceased wife’s sister marriages. The younger Edwards

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<sup>283</sup> Edwards, “The Marriage,” 140. Harriet Beecher Stowe’s writings exemplified this “throwing off the shackles of tradition” perspective in her fictional work *The Minister’s Wooing* (New York: Derby & Jackson, 1859; reprint, Sandra R. Duguid, ed., Hartford: The Stowe-Day Foundation, 1978). Stowe drew a distinction between theology based on monarchy and theology based on democratic principles. Stowe attacked Calvinism as having its basis and support in monarchical government and contended that a government of, by, and for the people could not abide belief in a sovereign God. Lewis B. Weeks, in *Encyclopedia of the Reformed Faith*, s.v. “New Haven Theology,” observed that the “New Haven theology provided a vehicle in the reconstruction of Calvinism to appeal to a democratic American culture.” In Dorothy Berkson’s introduction to *Old Town Folks* (1869; reprint, Dorothy Berkson, ed., New Brunswick: Rutgers University Press, 1987), she said, “Calvinism is not just psychologically devastating, it is also undemocratic, the wrong theology for a nation that has chosen to locate the power of governance in the people rather than in an authoritarian ruler” (xxvii).

<sup>284</sup> Edwards, “The Marriage,” 141.

showed that the condemnation of deceased wife's sister marriages begun in early New England by the Puritan clergy was still accepted one hundred years later.

### **Three Near-kin Marriages at the End of the Eighteenth Century**

As the calendar turned from the eighteenth to the nineteenth century, cases of near-kin marriage continued to come before the Presbyterian Church General Assembly. Each of the assemblies in 1797, 1799 and 1802 adjudicated a case of incestuous marriage appealed from the lower courts.

The first case came via reference through the Synod of Virginia and asked whether Charles Mitchel's marriage to his former wife's half-brother's daughter should prohibit him and his wife from admittance to church privileges. The 1797 Assembly resolved that, "the marriage referred to is not of such a nature as to render it necessary to exclude the parties from the privileges of the Church," but this decision was not to be interpreted "in any way" as approving of such unions and thus "give uneasiness to serious persons."<sup>285</sup> The affinity sentence was not specifically mentioned, but it would not prohibit this union because since a man is not prohibited marriage to his half-brother's daughter by Leviticus, he is not forbidden his wife's half-brother's daughter either.

When the 1799 Assembly met it faced another near-kin case in the form of a petition from John Latham, who had been suspended from church privileges because he married his deceased wife's sister's daughter. Latham sought relief from the suspension administered to him nine years earlier. The Assembly referred this case back to the Synod of the Carolinas instructing it to review the decision and determine if "the existing

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<sup>285</sup> *Minutes of the General Assembly from 1788 to 1820*, 126-27.

laws of the State and the peace of the Church" would allow the couple's reentering church privileges.<sup>286</sup>

The last turn of the century case involved an unnamed couple from the Westminster Church of Jefferson County, Tennessee, who requested the decision of the 1802 Assembly regarding their marriage as uncle and niece—"the woman being sister's daughter to the man's former wife." This was the same near-kin marriage relationship decided by the 1799 Assembly in the case of John Latham. The Assembly's initial response to this affine union was:

*Resolved*, That such marriages as that in question have been determined both by the late Synod of New York and Philadelphia and by the General Assembly to be on the one hand not forbidden by the laws of God and on the other hand to be contrary to the general practice of Protestant Churches, and the feelings and opinions of many serious Christians among ourselves, and on that account to be discountenanced; therefore,

*Resolved*, That when such marriages take place, the session of the church where they happen are carefully to consider the case, and if they think it expedient, to administer such discipline as they may judge to be deserved for that want of Christian tenderness and forbearance that are incumbent on all the professors of our holy religion, or for violating any municipal law, if this has been done, and then to admit or restore them to good standing in the Church. And if the session judge that the state of society is such where these marriages take place as that neither the duty of Christian tenderness and forbearance, nor the laws of the State have been violated, they may admit the persons concerned to Christian privileges without censure.<sup>287</sup>

This was not to be the final word of the Assembly on the Westminster Church case. Later in the meeting two-thirds of the members who had voted for the above resolutions agreed to reconsider their action and resolved to refer the parties to the earlier judgment made by the 1797 Assembly with respect to the Charles Mitchel case:

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<sup>286</sup> Ibid., 248-49, 252.

<sup>287</sup> Ibid., 248.

*Resolved* That although the Assembly would wish to discountenance imprudent marriages, or such as tend in any way to give uneasiness to serious persons, yet it is their opinion that the marriage referred to is not of such a nature as to render it necessary to exclude the parties from the privileges of the church.<sup>288</sup>

Three particular aspects of the earlier pair of resolutions merit some reflection: first, that the Assembly used the general practice of Protestant Churches (i.e. tradition) as a criterion; second, that each case was to be decided on its own merit taking into account the laws of the region, as well as the culture (i.e. “the state of society”), along with the law of God; and third, it saw the issue from a “weaker brother” perspective in that it expressed concern for the “feelings and opinions” of some of the brethren. The reiteration of the 1797 Mitchel decision by the 1802 Assembly reaffirmed its earlier statement as the official teaching of the Presbyterian Church on near-kin unions. With respect to discipline, the Presbyterian Church sought a conservative flexibility because it decided that exclusion from church privileges was not “necessary” and lesser discipline may be adequate and appropriate.<sup>289</sup>

Once again, the reasoning used to determine the legitimacy of the marriages did not involve the *Confession’s* pertinent points. If the first sentence of 24:4 had been applied along with the affinity sentence to these three cases, *none* of the marriages would have been determined incestuous. In Charles Mitchel’s case, a wife’s half-brother’s daughter is not specifically forbidden by Leviticus, nor is the man specifically forbidden the “in blood” marriage to his own half-brother’s daughter; the affinity sentence would not prohibit the marriage. In both the Latham case and the unnamed 1802 marriage, the man married his wife’s sister’s daughter. Looking at the Mosaic near-kin texts this

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<sup>288</sup> Ibid., 252.

<sup>289</sup> Ibid., 248, 252.

marriage is not specifically forbidden the man, nor is he forbidden his own sister's daughter. A man is not prohibited the "in blood" marriage to his sister's daughter by Leviticus, so the affinity sentence would allow the man to marry his wife's sister's daughter. The first sentence of chapter 24, section 4, specifies that a man is forbidden to marry his consanguineous relations when they are prohibited "in the Word," and then the affinity sentence forbids his marriage to the like consanguineous relations of his wife. Neither one of the two types of marriage adjudicated by the Assembly meet the specifications of both *Confessional* sentences. If the Presbyterian Church had exercised the restraining influence of the specifically delimited Scriptural restrictions along with the affinity sentence, these three cases could have been readily vindicated.

### **The James Gaston Case (1802-1805)**

In 1804 the Assembly's ruling of two years earlier was tested as James Gaston's marriage to "a woman who was sister's daughter to his former wife" was referred by the Synod of Pittsburgh to the General Assembly. This was the same type of near-kin union decided by the 1799 and 1802 Assemblies. Mr. Gaston had appealed to the Synod of Pittsburgh from the decision of the Presbytery of Ohio regarding his marriage. The appeal came before the Synod of Pittsburgh in its first meeting following its establishment as a synod incorporating the presbyteries of Redstone, Ohio, and Erie.<sup>290</sup> Synod initially postponed decision until later in the meeting, and then until their next stated meeting.<sup>291</sup>

The following year, when the Synod of Pittsburgh met in October, it adjudicated Gaston's appeal and sustained the decision of the Ohio Presbytery, but then they

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<sup>290</sup> *Records of the Synod of Pittsburgh*, vol. 1, 1802-1816, Sept. 29, 1802, p. 1, PHSP.

<sup>291</sup> *Ibid.*, 2.

reconsidered their vote and decided to appeal the case to the General Assembly.<sup>292</sup> The Assembly responded by issuing a decision stating that it had “given repeated decisions on similar cases, [and] cannot advise to annul such marriages, or to pronounce them to such a degree unlawful as that the parties, if otherwise worthy, should be debarred from the privileges of the Church.” The decision goes on to stipulate that no universal rule can be made for such marriages and that Gaston’s case must go back to the lower judicatories for decision.<sup>293</sup>

The decision in the Gaston case echoed the previous decisions with respect to the nature and discipline of such a union. Once again, the restraining influence of the affinity sentence could have saved the parties involved in the marriages unnecessary stress. Neither Leviticus nor the associated passages condemned the marriage directly, nor could the affinity sentence interpret it as incestuous. The General Assembly’s perspective was that the case involved uncertain issues and due to this uncertainty, the couple should not be suspended from the Lord’s table.

### **The Case of William Adams (1805)**

Despite repeated efforts by the Assembly to keep near-kin marriage cases in the lower judicatories, the 1805 meeting saw another appeal. William Adams’s case came to the Assembly by way of the Presbytery of Erie through the Synod of Pittsburgh. Erie had pronounced Adams’s marriage to his brother’s wife incestuous and the Synod of Pittsburgh unanimously sustained the decision of the Presbytery.<sup>294</sup> The Assembly referred the case to a Committee and its recommendations were amended and adopted.

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<sup>292</sup> Ibid., 14-15.

<sup>293</sup> *Minutes of the General Assembly from 1788 to 1820*, 306.

<sup>294</sup> *Synod of Pittsburgh*, Oct. 3, 1804, p. 22.

The Committee's report stated that marriages of a similar nature had been decided in the past by the higher judicatories and these decisions had found "that while such marriages are offensive to some, to others they appear lawful, therefore this Assembly consider the subject doubtful and delicate." The Assembly appealed to the 1804 Assembly decision in a similar case and referred the marriage back to the session of the Rocky Spring Church for final disposition.<sup>295</sup>

This decision has some particular difficulties. First, the only similarity between the Adamses' case and that of James Gaston is that both were affine marriages. Second, the Adamses' marriage is specifically condemned by Lev 18:16 and 20:21, while Gaston's marriage was neither forbidden by Leviticus nor the affinity sentence's application of the Mosaic legislation. Third, the minimal discipline applied in the Gaston case, and the two similar unions before it, was unjustified because the unions were not wrong according to the *Confession*'s first and third sentences. According to the second sentence of the consanguinity and affinity paragraph of the *Confession*, Adams and his wife should have separated because their marriage was illicit and invalid. The Presbyterian Church was not taking advantage of the direction it had vowed to uphold; the guidance of the *Westminster Confession* could have aided their adjudication.

### **The Assembly of 1804 and Confessional Revision**

The 1804 General Assembly addressed the issue of a general revision of the *Westminster Confession*. In each of the near-kin cases spanning the period from 1797 through 1805, the *Westminster Confession* was not specifically cited with regard to the case. Since the Presbyterians were considering a general revision of the *Confession* it

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<sup>295</sup> *Minutes of the General Assembly from 1788 to 1820*, 338, 340.

would have been the ideal time to deal with the consanguinity and affinity paragraph. Though the revision discussion gave an opportunity for changing or removing the affinity sentence, this was not the course taken by the Presbyterian Church:

After a serious attention to the subject committed to them, your committee have resolved to propose no alteration whatever, in the Confession of Faith and Catechisms of our church, and are clearly of opinion, that none ought to be attempted.

The creed of every church, as it ought to be derived immediately and wholly from the word of God, must be considered as standing on ground considerably different from that which supports the system of forms and regulations, by which worship shall be conducted and government administered. And if it be once rightly settled, can never be altered with propriety by any change of time, or external circumstances of the church.<sup>296</sup>

The Assembly saw the *Westminster Confession* as a continuing, accurate, and sufficient summary of Scripture's teaching. At this point in the Presbyterian Church's history, the Assembly adopted a statement that was *against* any revision *at all* even though, in the heat of the near-kin debate, this would have been a golden opportunity for considering changes. This decision is perplexing when one considers that the Assembly had directly violated sentence two of the near-kin paragraph of the *Confession* in their recent statement on the William Adams marriage; it would have been appropriate at this time for the Presbyterians to move towards excision of sentence two if they were going to continue to disregard its instruction.

Despite this resounding affirmation of the reliability of the *Confession*, the Presbyterian Church, apparently, was not using it to its fullest. As seen in the Adamses' marriage and others, the Assembly was not applying the *Confession* to the cases at hand. Generally, the cases were prosecuted on the basis of: having broken Lev 18, and/or the

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<sup>296</sup> Ibid., 302.

laws of the land, and/or offending sensitive consciences, and/or being contrary to tradition, but the *Confession* seems mute. The practice of confessional subscription and application manifests a split personality; on the one hand, the *Confession* is sound and good, but on the other hand, it was not always followed.

### **Similar Issues in the Reformed Dutch Church<sup>297</sup>**

At the same time near-kin cases occurred in the Presbyterian Church, two pamphlets were published concerning deceased wife's sister marriages in the Reformed Dutch Church. Even though the *Three Forms of Unity* of the Reformed Dutch Church did not address issues of consanguinity and affinity, the Reformed Dutch had to deal with marriages of consanguinity and affinity within its congregations.

#### **The Pamphlet by “Citizen”**

The first pamphlet was published by an anonymous author named “Citizen.” Vindication of the legitimacy of deceased wife's sister unions was the author's goal as he used “Reason” and “Revelation” to present his defense.<sup>298</sup> Citizen viewed marriage as a civil contract and the proper subject of the regulatory efforts of the government, and it was not against the law in his own state of residence to marry a deceased wife's sister. He believed that civil legislation should govern marriages of near-kin.

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<sup>297</sup> This denomination is called both the “Reformed Dutch Church” and the “Dutch Reformed Church.” In John Henry Livingston's, *A Dissertation on the Marriage of a Man with his Sister in Law* (New Brunswick: Deare & Myer, 1816), 5, 176, 178, he described his denomination as the “Reformed Dutch Church.” The present writer has chosen Professor Livingston's designation but it seems the designations are interchangeable.

<sup>298</sup> *The Marriage of a Deceased Wife's Sister Vindicated* (New York: T. & J. Swords, 1797), 5. “Citizen” maintained his anonymity so effectively that the particular denominational case giving rise to this tract could not be determined until the end of the pamphlet written in response to him. See: *The Marriage of a Deceased Wife's Sister Incestuous. In Answer to “A Letter from a Citizen to his Friend”* (New York: T. & J. Swords, 1798), 60.

The author then proceeded to defend his view from the Bible by stating that there is “no precept of the gospel” against the marriage, and if such a union was wrong, the “Great Head of the church” would have given “a prohibition more or less explicit.”<sup>299</sup> With respect to the “Mosaic dispensation,” he contended that the law was for the Jews and their primitive condition, but these laws have no relevance “in these times of knowledge and refinement.”<sup>300</sup> Despite Citizen’s relegation of the Old Testament law to the Old Testament Hebrews, he proceeded to interpret Lev 18 which, beginning with verse 6, he believed prohibited primarily marriages of consanguinity and not those of affinity. He contended that the prohibition against a man marrying his deceased brother’s wife could not be applied reciprocally to the woman to prohibit her marriage to her deceased sister’s husband. If the principle of reciprocal application were legitimate then the levirate marriage rule should be applied to the woman as well; if her widowed sister’s husband were childless, then the sister could marry the man to bring seed.<sup>301</sup>

After presenting several more perspectives on deceased wife’s sister unions, Citizen concluded that there was no biblical prohibition against a man’s marrying the sister of his deceased wife. He established the foundation for this analysis on the distinction between the Old Testament law applicable to Israel, and the New Testament Gospel applicable to the church. Even if there were a law in Leviticus specifically stating the error of marriage to a deceased wife’s sister, it would be irrelevant to the church.<sup>302</sup>

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<sup>299</sup> *Marriage Vindicated*, 8.

<sup>300</sup> Ibid., 9.

<sup>301</sup> Ibid., 10-14.

<sup>302</sup> Ibid., 28-30.

### The Pamphlet by “Eudoxius”

The second publication in this heated period of near-kin history was a response to Citizen’s pamphlet, but unfortunately for this discussion, the author chose the pseudonym of Eudoxius to cover his identity.<sup>303</sup> Eudoxius presented a Reformed view of the law of God, and he chastised Citizen for his failure to deal adequately with Lev 18.<sup>304</sup> The Mosaic law, said Eudoxius, contains moral, civil, and ceremonial law, the latter two being no longer applicable to the covenant people of God. The moral law has abiding authority and the near-kin rules of Lev 18 are moral law.<sup>305</sup>

Another point of dispute was with Citizen’s description of marriage as a contract and a purely civil responsibility administered by the magistrate. Eudoxius understood marriage to be an ecclesiastical responsibility and it must be properly regulated to maintain a well-ordered society based on the law of God. He observed further that, “civil government itself is founded on the *moral law*, which is written upon the hearts of *all men*, and its laws presuppose the authority of Jehovah as the lawgiver!” The substance of the moral law proceeds “from the very *nature* and *perfections* of God” and is “obligatory upon all men in every age.”<sup>306</sup>

Affirming the Lev 18 interpretive principle of reciprocity, Eudoxius saw the prohibitions specifically listed as applying to the opposite but unnamed gender as well. The prohibition against a man marrying his deceased brother’s wife likewise prohibits the woman marrying her deceased sister’s husband. Eudoxius used the interpretive principle

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<sup>303</sup> *The Marriage of a Deceased Wife’s Sister Incestuous. In Answer to “A Letter from a Citizen to his Friend”* (New York: T. & J. Swords, 1798); this publication is 61 pages, and Citizen’s is 30.

<sup>304</sup> Ibid., 7.

<sup>305</sup> Ibid., 12-14.

<sup>306</sup> Ibid., 10, 14.

of reciprocity to apply the Levitical prohibitions given the named spouse to obtain the forbidden degrees of the unnamed spouse.<sup>307</sup>

Eudoxius also contended with Citizen's analysis of the statement prohibiting marriage to a deceased brother's wife in Lev 18:16 and the endorsement of such a connubial bond in Deut 25:5. He saw Lev 18:16 and Deut 25:5 as two different kinds of law, the first *moral* and the second *ceremonial*. Citizen believed the purpose of Deuteronomy's levirate marriage was a pragmatic concern to perpetuate the family name and provide care for widows, but Eudoxius saw it as a way to keep the tribes of Israel distinct and unique for the coming of the Messiah to the tribe of Judah.<sup>308</sup>

With respect to levirate marriage, Eudoxius believed it taught that the "next kinsman" was required to do three things: first, he was to redeem the possessions of his brother when he had to sell property due to poverty; second, he was to avenge the blood of his kinsman on the man-slayer; and third, it required the near-kinsman to marry the widow of his deceased brother for the preservation of his seed in Israel.<sup>309</sup> He turned to the marriage of Boaz and Ruth as an example because Boaz was not Elimelech's brother but rather a near-kinsman of Elimelech.<sup>310</sup> Eudoxius strengthened his case by noting that *Jābām*, in Deut 25:5, is "synonymous with *Goēl*, and imports the *very next kinsman to the*

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<sup>307</sup> Though the *Belgic Confession*, *Heidelberg Catechism*, and *Canons of Dort* do not address near-kin issues, the Swiss *Second Helvetic Confession* of Heinrich Bullinger states: "We teach that marriages ought to be contracted lawfully, in the fear of the Lord, and not against the laws which forbid certain degrees to join in matrimony, lest the marriages should be incestuous." Joel R. Beeke and Sinclair B. Ferguson, *Reformed Confessions* (Grand Rapids: Baker Books, 1999), 236.

<sup>308</sup> *In Answer to "A Letter,"* 34.

<sup>309</sup> *Ibid.*, 36-37.

<sup>310</sup> *Ibid.*, 36.

*deceased husband.*<sup>311</sup> Eudoxius concluded, “This law [Deut 25:5ff], then, like the others with which it is connected, is evidently *ceremonial*; and, as such, *typical* of our spiritual *Goël*, our gracious *kinsman-Redeemer*.<sup>312</sup> He then turned to the greater significance of the *Goël* and pointed out that Jesus was a kinsman-Redeemer because:

He hath regained, and purchased by the vast price of his *precious blood*, our lost possessions, and, thereby, delivered us from the servitude of the *law*, *sin* and *satan*, to whom we had sold our heavenly inheritance. Rom. v. 6-10. 1 Thess. i. 10. 2 Cor. viii. 9. He avenged our blood on *satan*, the *arch-murderer*, by bruising his head, condemning sin, and abolishing death. Gen. iii. 15, 16. 2 Tim. i. 10. Rom. viii. 3,4. He assumed our widowed *nature*, and espoused the church of the New Testament, because the ancient church could bear him no more spiritual children; and by means of his *apostles*, and the incorruptible seed of the gospel, raised up children and heirs of the eternal inheritance, and that, out of his first wife, Hos. ii. who sat as a widow.<sup>313</sup>

Eudoxius interpreted Deuteronomy’s marriage of a man to his deceased brother’s wife redemptive-historically; just as the Old Testament kinsman-redeemer relieved poverty and aided the weak, so Jesus, the greater kinsman, redeemed his people from the poverty of sin and death.

These two views from the Reformed Dutch Church controversy illustrate that one of the key debates concerning near-kin unions was the authority of the law of God for the Christian. Citizen’s justification for allowing the deceased wife’s sister marriage was based upon his exclusion of Mosaic legislation from the church’s canon. “Reason” and “Revelation” necessitated seeing the laws of Lev 18 as irrelevant. The analysis published by the pseudonymous Eudoxius affirmed the abiding authority of the prohibitions against incest in Lev 18. Eudoxius provided a Christological understanding of the apparent

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<sup>311</sup> Ibid.

<sup>312</sup> Ibid., 37.

<sup>313</sup> Ibid., 38.

contradiction between Lev 18 and Deut 25 concerning the marriage of a man to his deceased brother's wife.

### **Cases in the Synod of Pittsburgh - Ebenezer Brown and William Gass (1810)**

The growing American frontier was bringing increased opportunities for widows and widowers to enter marriages involving the kin of their deceased spouses. Western expansion meant that siblings and their families often braved the frontier together and the uncertainties of pioneer life often led to the death of a man's or a woman's spouse. The extended family of the husband and wife often lived close by, so that when a spouse died, the most convenient, and sometimes only, prospects for marriage were kin of the deceased.

One area of frontier western expansion incorporated the Synod of Pittsburgh. The western Pennsylvania area had been growing due to the continuing settlement of pioneers in its region, and the Synod of Pittsburgh reflected that growth when the General Assembly added the Presbytery of Hartford to it in 1807.<sup>314</sup> At the Synod meeting in October of 1810, the Presbytery of Lancaster presented references regarding Ebenezer Brown's marriage to his brother's widow and William Gass's connubial union with his mother's brother's widow.<sup>315</sup> Synod decided, with respect to the Brown case, that his session at the Church of Ten-Mile had disciplined him for his marriage and the case was not regularly before the synod since it came by way of reference from the Presbytery of Lancaster. The lower judicatory had priority as the first court of jurisdiction.<sup>316</sup> The second case, regarding Mr. Gass, was decided against him. The synod stated that the

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<sup>314</sup> *Synod of Pittsburgh*, Oct. 7, 1807, 62; In 1810 (p. 65) the presbyteries are: Ohio, Erie, Lancaster, and Hartford. Redstone is no longer listed as a presbytery of the synod.

<sup>315</sup> *Synod of Pittsburgh*, Oct. 2, 1810, p. 72.

<sup>316</sup> *Ibid.*, 72.

Gasses' marriage made them "inadmissible to the communion of the Church until they give satisfactory evidence of repentance."<sup>317</sup>

The legitimacy of both marriages would have been determined by specific Levitical teaching and the affinity sentence would not have been needed. The sense of the Synod cannot be determined with respect to Mr. Brown's marriage, which violated Lev 18:16, because it viewed the Presbytery's reference as out-of-order in light of Brown's session's discipline. Gass's marriage to his mother's brother's widow was specifically condemned by Lev 20:20 and actions against him would have been justified by sentence one of the *Confession's* consanguinity and affinity paragraph because the prohibition was "in the Word." The Synod decided that Mr. Gass must be suspended from communion until he gave evidence of repentance. The specifics of what constitutes "evidence" of repentance were not stated. If evidence of repentance meant separation of the married couple, then the Synod was upholding sentence two, but if it meant anything less, its action was out of accord with the *Confession*. The Synod, as the General Assembly, had moved away from using the discipline sentence in near-kin cases and turned to using lesser disciplinary action.

### **The Anonymous Case at the General Assembly of 1810**

In the 1810 General Assembly another case of a deceased wife's sister marriage was brought for adjudication. This case involved a reference from the Bethel Church of South Carolina. It was resolved that the decision of 1804 be given in answer to the reference. The Assembly had repeatedly made decisions in similar cases and it reaffirmed its opinion that such marriages were not necessarily "in such a degree

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<sup>317</sup> Ibid.

unlawful” that the marriages require annulment or debarring the couple “from the privileges of the Church.” Such cases were doubtful and no “absolute rule can be enjoined with regard to them,” therefore such near-kin cases should be decided at the discretion of the lesser judicatories according to their “best light” and according to “the circumstances in which they find themselves placed.”<sup>318</sup> The Assembly maintained the unlawfulness of the marriage, but it did not apply the discipline sentence to the marriage.

The highest court of the Presbyterian Church had said all it felt it could say on the issue and referred the responsibility for decision back to the lower judicatories. Once again, the Assembly had decided a near-kin case, but this would not be the final answer because in 1811 the Assembly received a letter from the joint sessions of the Bethel and Indiantown congregations concerning the 1810 decision. The Assembly responded by appointing a committee to draft a letter to the two sessions “communicating advice relative to the justice or prudence of their conduct in the case submitted by them to this Assembly.”<sup>319</sup> The committee presented its letter to the Assembly but it was recommitted for further deliberation.<sup>320</sup> Despite the effort to assist the South Carolina sessions with their dilemma, the committee requested the Assembly to dissolve it “and their request was granted.”<sup>321</sup> It is not clear from the records whether the Assembly dissolved the committee because it had completed its task or because they had reached an impasse.

This case showed the congregations the Presbyterian Church’s continued conviction that a man’s marriage to his wife’s sister and other near-kin unions were

<sup>318</sup> *Minutes of the General Assembly from 1788 to 1820*, 456-57.

<sup>319</sup> Ibid., 466; committee members were: Dr. Smith, Messrs. Walter, King and Campbell.

<sup>320</sup> *Minutes of the General Assembly from 1788 to 1820*, 475; the two additions were: Dr. Lyman and Mr. Carnahan.

<sup>321</sup> *Minutes of the General Assembly from 1788 to 1820*, 480.

wrong. Despite the General Assembly's consistent condemnation of deceased wife's sister marriages, the lower courts of the Presbyterian Church continued to petition the highest judicatory concerning the marriages. The Assembly's repeated response was to turn the people to previous decisions for guidance.

### **The Tract War Continues with Four Publications**

Literature against marriages of consanguinity and affinity continued to be published through the early decades of the nineteenth-century with four particular pamphlets representative of the period between 1810 and 1813.

#### **The Publication by Benjamin Trumbull (1735-1820)**

The first tract was Benjamin Trumbull's *An Appeal to the Public*. Trumbull was a Connecticut Congregational minister who argued that a wife's sister "is a man's nearest relative, next to his father and mother in law."<sup>322</sup> The 1801 Plan of Union had brought the Connecticut Congregational and national Presbyterian Churches into a cooperative alliance and their common use of much of the *Westminster Confession*, including the marriage chapter, is reflected in Trumbull's statement that marriage makes husband and wife one flesh and a man's wife's sister is "akin to the consanguineous relationship with his own sister."<sup>323</sup> He concluded that marriage to a deceased wife's sister was "absolutely unlawful."<sup>324</sup> Trumbull's methodology for determining the incestuous nature of a sister-in-law marriage reflected the "in blood" principle of the affinity sentence; since a man is prohibited his own sister, he therefore is prohibited his wife's sister.

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<sup>322</sup> Webster's New Biographical Dictionary, "Trumbull, Benjamin"; Benjamin Trumbull, *An Appeal to the Public, Relative to the Unlawfulness of Marrying a Wife's Sister* (N.p.: From the Press of E. Hudson, 1810), 5

<sup>323</sup> Trumbull, *An Appeal to the Public*, 5.

<sup>324</sup> Ibid., 6.

### Nehemiah Prudden's Publication

Nehemiah Prudden responded to Trumbull's pamphlet with a thirty-page treatise advocating deceased wife's sister marriages as consistent with the Mosaic law. Prudden agreed that husband and wife become one flesh in marriage, but he saw this as irrelevant to the union in question because after "the death of one wife, a man was at liberty, to marry another, whether she be his wife's sister, or some other woman." Prudden believed that Lev 18:18 addressed polygamy and not marriage to a wife's sister.<sup>325</sup> Only the specifically stated kin relationships listed in Lev 18 were prohibited connubial union and no further inferred relations could be deduced. For example, the ninth verse prohibits a man marrying his sister because he would be uncovering his father's or mother's nakedness, so by inversion, if a woman married her brother she too would be uncovering her parent's nakedness.<sup>326</sup> Therefore, Lev 18:16 cannot be applied to the deceased wife's sister because inversion of the verse simply prohibits the woman's marriage to her husband's brother.<sup>327</sup> Prudden maintained the authority of the Mosaic legislation while limiting the prohibited degrees to those specified and their inversions. His method denied the principle of the affinity sentence.

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<sup>325</sup> Nehemiah Prudden, *To Marry a Wife's Sister, not Inconsistent with the Divine Law. To Which is Added Some Remarks on Dr. Trumbull's Late Appeal to the Public* (Hartford: Pete B. Gleason & Co., Printer, May 1811), 9, 10.

<sup>326</sup> Though this marriage is prohibited by both reciprocity and inversion, Prudden's point is made with inversion in mind since he did not want to prohibit any relation which the specifics of Lev 18 did not prohibit.

<sup>327</sup> Prudden, *To Marry a Wife's Sister*, 24.

### An Anonymous Publication from 1811

An anonymous pamphlet spoke against marriage to a deceased wife's sister by applying Lev 18:16 reciprocally to the sister.<sup>328</sup> This short treatise entered the discussion of appropriate discipline for deceased wife's sister marriages asserting that those in such a union must be "set aside ... from their holy communion."<sup>329</sup> The author's reciprocal interpretation of Lev 18:16 was used to justify the prohibition of a deceased wife's sister union. His methodology was not consistent with the "in blood" principle of the affinity sentence, but his conclusion agreed with the prohibition of the marriage. His disciplinary perspective points towards agreement with the *Confession's* requirement that the couple separate, because the purpose of separation from communion is to convict the offenders of their sin, lead them to separate, and show repentance.

### An Anonymous Publication in Response, 1813

An unnamed author from Connecticut took the opposite perspective on discipline of near-kin marriages. The author saw the prohibition of marriage to a deceased wife's sister or a deceased brother's wife as "doubtful" rules and believed that "consistent charity" required Christians to allow these marriages.<sup>330</sup> This author pointed out that Connecticut repealed the civil law against marrying a wife's sister in 1793, but the marriage of a man to his deceased brother's wife was still illegal.<sup>331</sup> The tract advocated

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<sup>328</sup> *A Tract: Containing A Plain Demonstration of the Unlawfulness of Marrying a Wife's Sister. Adapted to the Capacity of Every Reader. By a Clergyman* (Hartford: Printed by Peter B. Gleason & Co., 1811), 11; though anonymous, the publication in Hartford could indicate a Congregational author.

<sup>329</sup> *A Tract*, 12.

<sup>330</sup> *A Consideration of the Right of Marrying the Sister of a Deceased Wife, or The Wife of a Deceased Brother: Also, of the Propriety of Making the Practice a Matter of Christian Discipline* (Hartford: Printed by Hudson and Goodwin, 1813), 3.

<sup>331</sup> *Ibid.*, 4.

the application of Christian charity to all near-kin marriages and called for the end of discipline against the unions; Christians must be open-minded and allow the differences of other professing Christians in insignificant matters like these marriages.<sup>332</sup>

In summary, these four short treatises present the two key issues pertinent to the continued debate in the American ecclesiastical scene in general, and the Presbyterian Church in particular. The essential issues for near-kin marriages were how to interpret and apply Leviticus, and what discipline to administer to those who transgressed near-kin prohibitions. The *Confession* had answers for both of these issues, but the Presbyterian Church was not turning to its instruction and applying the confessional teaching consistently. Both these issues reflected growing doubts about both the illicit and invalid nature of wife's sister marriages. Some perspectives on biblical interpretation depreciated applying Leviticus to near-kin marriages, while others debated the appropriate amount of discipline necessary for near-kin marriages already existing. Even though these tracts did not specifically speak to the *cases* in the Presbyterian Church, they addressed the *issues* raised by the *Westminster Confession*.<sup>333</sup>

### **The Assembly of 1816 and the *Westminster Confession***

The 1816 General Assembly did not deal with any near-kin issues, but it did address the wider circulation of the *Confession of Faith* and associated documents contained in the *Constitution of the Presbyterian Church*. The Assembly adopted the

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<sup>332</sup> Ibid., 22, 24.

<sup>333</sup> Another tract, *A Review of A Treatise on the Unlawfulness of Marrying a Brother's Wife; Together with Remarks on the Marriage of a Wife's Sister. Being an Appendix to "A Consideration of the Right of Marrying the Sister of a Deceased Wife, or the Wife of a Deceased Husband," etc.* (Hartford: Printed by Hudson and Goodwin, 1814), 43 pages, was not included in this paragraph. The publication was not found at the libraries of: Westminster Theological Seminary-Philadelphia, Princeton University, Yale University, PTSEM, PHSM, or PHSP.

report of a committee recommending that all the churches be encouraged to expand the circulation of constitutional publications, and that this distribution include exhortation to the congregations “to supply their own poor with the Confession of Faith.” This statement of the importance of the Presbyterian standards was accompanied by instruction to the trustees of the General Assembly to investigate republishing the *Constitution of the Presbyterian Church* and report to the next Assembly.<sup>334</sup>

Even though the *Confession* was not always introduced into the discussions of issues facing the presbyters, the Presbyterian Church continued to encourage its use and distribution. The Presbyterians viewed the presuppositional foundation developed in the *Confession* as essential to the Presbyterian Church, and they were concerned that all members, regardless of station in life, have it available for use.

### **The Reformed Dutch Church and John H. Livingston (1746-1825)**

The year of 1816 saw the publication of a book, by the Reformed Dutch minister and theologian John H. Livingston, condemning the marriage of a widower to his sister-in-law.<sup>335</sup> Livingston’s influence on the Reformed Dutch could be compared to Samuel

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<sup>334</sup> *Minutes of the General Assembly from 1788 to 1820*, 626.

<sup>335</sup> John H. Livingston, *A Dissertation on the Marriage of a Man with His Sister in Law* (New Brunswick: Deare and Myer, 1816). In order to grasp the legal implications of near-kin marriages consider the marriage of the Scot, Thurstaus Livingston (no known relationship to John H.), who was born about 1770 and married Susannah Brown. Two years after Susannah died he married her sister, Catherine, and they had a son named Alexander. When Alexander’s uncle died, he assumed his title as the eleventh baronet and became Sir Alexander. One relative sued contending the estate was not properly Alexander’s because his parents’ marriage was unlawful. The court ruled that the determination of Alexander’s legitimacy had to be tried in England since Thurstaus was living there during both marriages. After much legal wrangling, including decisions by the English House of Lords, Alexander’s parents’ marriage was determined to be incestuous and Alexander was declared illegitimate and his title and estate were taken from him. See: “Clan Livingstone,” at, <http://www.electricscotland.com/webclans/htol/livings2.html>.

Miller or Archibald Alexander's influence upon Presbyterians. Livingston graduated from Yale and studied theology at the University of Utrecht and received an S.T.D. in 1770. He became the first theological educator in America when the Classis of Amsterdam appointed him Professor of Theology in 1784. At the time of his book's publication, he was Professor of Theology and the President of Queen's College, which later became Rutgers University.<sup>336</sup>

The occasion for his book was the General Synod's request to Livingston that he "state the arguments and ascertain the sentiments of the Reformed Church respecting the illegitimacy of such a connubial connection [i.e. a wife's sister marriage]."<sup>337</sup> Dr. Livingston contended that affinity is "as fully and expressly" prohibited as consanguinity; marriage to a deceased wife's sister is as incestuous as marriage to one's own sister because the sister of a man's deceased wife is "also in truth his sister."<sup>338</sup> This analysis exemplified the "in blood" principle of the *Westminster Confession* even though the *Confession* was not a Reformed Dutch Church standard. Livingston also believed that nature condemned the deceased wife's sister marriage. The law of nature is "recognized by all men," and establishes the foundation "for constituting society," and gives the "first principles of morality," but what is generally given by the light of nature is clarified by the revealed law of Scripture.<sup>339</sup>

Dr. Livingston interpreted both Lev 18:16 and 18:18 as moral law, with the first verse prohibiting both the marriage of a man to his brother's widow and reciprocally a

<sup>336</sup> D. G. Hart and Mark A. Noll, eds., *Dictionary of the Presbyterian & Reformed Tradition in America* (Downers Grove: InterVarsity Press, 1999).

<sup>337</sup> Livingston, *A Dissertation on the Marriage*, 5.

<sup>338</sup> Ibid., 28-30.

<sup>339</sup> Ibid., 63.

woman to her sister's husband, while the second verse prohibited polygamy.<sup>340</sup> The prohibition of marriage to a brother's wife is condemned twice, in Lev 18:16 and 20:21, and these verses also apply to the reciprocal relationship of a sister marrying her sister's husband.<sup>341</sup> Dr. Livingston listed as one of his points that, “[e]very relation of the same degree when reversed, must be understood to be as much included in the precept as if it had been specifically mentioned,” which essentially expresses the principle of reciprocity so commonly used to determine the error of a deceased wife's sister marriage from Lev 18:16.<sup>342</sup> As the book concluded the author summarized his perspective:

The Lord God forbids a man to marry his sister in law; whether she be the widow of his deceased brother, or the sister of his deceased wife. By the divine law she is his sister. She is near of kin to him. It is incest.<sup>343</sup>

John Livingston affirmed that Lev 18 is moral law and perpetually binding. The prohibitions given the specifically expressed spouse are also prohibited the other spouse by reciprocal application. Dr. Livingston's book is significant for the present discussion because his interpretation coincides with that of the Presbyterian Church and the *Confession*. The Reformed Dutch and Presbyterians were facing the same issue in their respective judicatories and arguments for the prohibition of a deceased wife's sister union fell along the same lines.

### **The General Assembly of 1818**

“Certain marriages” said to be contrary to the church constitution were the subject of an overture to the 1818 General Assembly meeting in Philadelphia. The previous Assembly had received a question from the Presbytery of West Tennessee inquiring

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<sup>340</sup> Ibid., 81-2.

<sup>341</sup> Ibid., 86.

<sup>342</sup> Ibid., 85.

<sup>343</sup> Ibid., 173.

whether a man could marry his brother's widow and be consistent with the Bible. The Assembly had referred the case to a special committee appointed for the purpose and instructed them to present a report to the 1818 Assembly.<sup>344</sup> The nature of these "certain marriages" was not specifically stated in the minutes, but they were referred by the 1818 Assembly to the committee appointed in 1817 regarding the Tennessee deceased brother's wife case.<sup>345</sup> Unfortunately, an examination of the *Minutes* extending to the 1820 General Assembly has failed to yield any evidence of a resolution to the committee's labors; there is no further record of the issues giving rise to the committee nor is there a report from the committee.

### **The William Vance Case (1821-1822)**

Moving into the third decade of the nineteenth-century, questions surrounding near-kin marriages continued to come before the Presbyterian Church. The case of William Vance—a captain in the War of 1812 and a member of the Pennsylvania Legislature from 1815-1816—came before the General Assembly.<sup>346</sup> Vance was appealing the decision of the session at the Cross Creek Presbyterian Church and the subsequent ratification of the session's decision by the presbytery. Vance was suspended from church privileges due to his marriage to his deceased wife's sister, and he appealed to the Presbytery of Washington (in Pennsylvania), but it sustained the decision of the Cross Creek session. The General Assembly referred Vance's appeal to a study committee.

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<sup>344</sup> *Minutes of the General Assembly from 1788 to 1820*, 665; the members of the committee were: Drs. James Richards, Romeyn, Griffin, Messrs. Hornblower, and Lewis.

<sup>345</sup> *Minutes of the General Assembly from 1788 to 1820*, 688.

<sup>346</sup> "Crumrine-Smith Township," at <http://chartiers.com/crumrine/twp-smith.html>.

The committee's completed report reaffirmed the impropriety of near-kin marriages and the importance of teaching against such unions. At the same time, the Assembly went on record saying that it was "by no means prepared to decide that such marriages as that in question, are so plainly prohibited in Scripture, and so undoubtedly incestuous, as necessarily to infer the exclusion of those who contract them from church privileges." The case was referred back to the Cross Creek session for resolution in a manner agreeable to earlier Assembly decisions and "most conducive to the interests of religion."<sup>347</sup>

The decision of the 1821 Assembly was questioned in 1822 by a memorial from the Cross Creek Session requesting the Assembly to readdress the case. Once again, as in previous near-kin marriage cases, the Assembly appointed a committee to consider the memorial and bring its recommendations to the Assembly.<sup>348</sup> The committee recommended that the decision of the 1821 Assembly should stand and there should be no modifications of that judgment.<sup>349</sup>

The Assembly resolved this Pennsylvania case in the same way it resolved other cases during the previous decades. The Assembly said the marriages were inexpedient, they should be avoided and ministers should discourage such unions, but discipline should not go so far as to separate the parties involved from church privileges. William Vance's marriage was specifically prohibited by the affinity sentence, but it did not receive discipline consistent with the discipline sentence of the *Confession's* chapter 24, section 4. The use of the affinity sentence and the accompanying difficulty faced in

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<sup>347</sup> *Minutes of the General Assembly 1821*, 15.

<sup>348</sup> *Ibid.*, 10; committee members were: Drs. Thomas McAuley, Rice, Coffin; and Messrs. Reid and Burgess.

<sup>349</sup> *Minutes of the General Assembly 1822*, 17.

applying appropriate discipline continued to cause difficulty for the courts of the Presbyterian Church.

### **The Donald McCrimmon Case (1824-1827)**

It would only be two years, in 1824, before the Assembly would deal with another affine marriage. This time the appeal came from an elder, Mr. Donald McCrimmon of Ottary's Church in the Presbytery of Fayetteville, Synod of North Carolina, who was suspended from office for marrying his deceased wife's sister. An Assembly committee was appointed to bring recommendations concerning the appeal, but its efforts came to naught when, following extensive discussion, the issue was recommitted to a different committee for more study.<sup>350</sup>

During the 1824 Assembly a minister from Fayetteville Presbytery, Colin McIver, made a speech concerning the case, presumably during the “extensive discussion” mentioned above.<sup>351</sup> Colin McIver began his speech by reminding the presbyters of their having subscribed to the *Westminster Confession of Faith* and included in its teaching was the affinity sentence’s prohibition of wife’s sister marriages. McIver saw subscription as a commitment to uphold all the teachings of the *Confession* and he addressed the affine marriage through the *Confession*. Thus, elder McCrimmon’s

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<sup>350</sup> *Minutes of the General Assembly 1824*, 214; the committee was: Drs. Blatchford, James Richards, Chester, Romeyn, McDowell, Samuel Miller and J. J. Janeway.

<sup>351</sup> This speech occupies 22 pages of fine-print text and is recorded in Rev. McIver’s *Ecclesiastical Proceedings, in the Case of Mr. Donald McCrimmon, A Ruling Elder of the Presbyterian Church, who was Suspended From sealing ordinances, and from the exercise of his office ... For Marrying the Sister of his Deceased Wife ... To Which is Added A Speech, Delivered in the General Assembly of the Presbyterian Church, on the 1<sup>st</sup> of June, 1824* (Fayetteville: Printed for the Author and Publisher, 1827).

subscription to the *Confession* bound him to uphold the affinity sentence that condemned his marriage.<sup>352</sup>

McCrimmon protested that the prohibition of a deceased wife's sister marriage was not specifically in the Bible. McIver agreed with this, but he also contended that the *Confession*'s affinity statement established the error of the marriage. The rubric against a man's marriage to his deceased brother's wife in Lev 18:16 coupled with the affinity sentence condemned McCrimmon's marriage from two interpretive angles.<sup>353</sup> McCrimmon's reasons for appeal were then refuted by McIver and he concluded his speech with an apology for his having "trespassed too long on the patience of this General Assembly." Then he made a final appeal to the supreme judicatory of the Presbyterian Church to deny Mr. McCrimmon's appeal and uphold the decision of the Session of Ottery's Church.<sup>354</sup>

McIver's desire would not be accomplished at the 1824 or 1825 meetings due to postponements.<sup>355</sup> The committee failed to report when the Assembly met in Philadelphia in 1826.<sup>356</sup> The Assembly's response to this committee's failure was to dissolve it and appoint another committee. The Assembly instructed the new committee to report before the end of the present Assembly.<sup>357</sup> When the committee reported they

<sup>352</sup> McIver, *Ecclesiastical Proceedings*, 20, 21; It would have been interesting and helpful if McCrimmon would have taken an expressed exception to the affinity sentence, but neither he, nor any other party involved in near-kin cases, contended their prosecution on the basis of having taken exception to the sentence.

<sup>353</sup> McIver, *Ecclesiastical Proceedings*, 22, 23, 24.

<sup>354</sup> *Ibid.*, 41.

<sup>355</sup> *Minutes of the General Assembly 1824*, 214; *Minutes of the General Assembly 1825*, 258.

<sup>356</sup> *Minutes of the General Assembly 1826*, 9.

<sup>357</sup> *Minutes of the General Assembly 1826*, 9-10; members were: Dr. Neill, Dr. Herron, Mr. Fisher, Dr. Chester, and Dr. Axtell.

stated that Mr. McCrimmon could not be aided without first altering the *Confession of Faith* by removing the affinity sentence. The Assembly resolved that the erasure be sent down to the presbyteries for their approval.<sup>358</sup> The Assembly had decided that the affinity sentence's "in blood" principle was problematic for resolution of the McCrimmon case since it necessitated a wife's sister being a prohibited affine union due to the man being prohibited his own blood sister. The majority of the presbyters believed that the affinity sentence was the cause of the General Assembly's repeated adjudication of wife's sister marriages and it sought the sentence's removal.

### **The Pamphlet by Ezra Stiles Ely (1786-1861)**

The adjudication of the McCrimmon case and the proposed confessional revision occasioned the publication of a pamphlet by Ezra Stiles Ely.<sup>359</sup> The Assembly appointed Ely as Stated Clerk of the General Assembly in 1825 and he continued in that position until 1836. He was a Yale alumnus and pastor of the Pine Street Church, Philadelphia, where he succeeded Archibald Alexander following his move to Princeton Seminary.<sup>360</sup>

Ely listed several reasons people used to justify their vote against erasure. One reason given was the reluctance of some people to adopt innovations and changes. Others believed that retaining the sentence did not necessitate the application of discipline to such unions. Another group believed that the incest laws of Lev 18 were

<sup>358</sup> *Minutes of the General Assembly 1826*, 22.

<sup>359</sup> *Considerations on the Proposed Erasure of Sect. 4, Chap. XXIV of the Presbyterian Confession of Faith, which asserts, That "the man may not marry any of his wife's kindred, nearer in blood than he may of his own; nor the woman of her husband's kindred, nearer in blood than of her own"* ([n.p.]: W. F. Geddes Printer, [1826]), PHSP; one of Ely's most important contributions to Presbyterian history was his *A Contrast Between Calvinism and Hopkinsianism* (1811), which awakened the Presbyterian Church to the growing influence of Samuel Hopkins's theology and how Hopkins's system was inconsistent with Reformed theology.

<sup>360</sup> *Encyclopedia of the Presbyterian Church*, s.v. "Ely, Dr. Ezra Styles."

still authoritative for the church. Still another perspective believed that Lev 18 prohibited illicit intercourse with near-kin and had nothing to do with consanguineous and affine marriages.<sup>361</sup> These perspectives against revision echoed the analysis of views presented by other writers in earlier epochs, but one of the reasons against removal given by Ely was unique and reflected the pragmatic economic concern of some presbyters:

By making any change in the present Confession of Faith, the Church will lose several valuable legacies, given for the establishment of scholarships, and other purposes, and to be held on condition of the adherence of the Church to her present Creed.<sup>362</sup>

Some saw any revision to the *Confession* as voiding the stipulation of creed subscription placed upon bequests to the Presbyterian Church; these parties saw any change as reason to cancel the financial benefits of some endowments. This would have some implications for the subscription debate. If one held the affinity sentence to be an inaccurate presentation of the teaching of Scripture, then even though it was inaccurate it would have to be kept in the *Confession* to fulfill the economic stipulations; one could take exception to the sentence, as had been done by Samuel Miller, but one could not remove the sentence. If others held all of the *Confession* to be essential doctrine necessitating full adherence, then certainly the affine “in blood” statement would have to stay. Unfortunately, Ely’s analysis is the only comment on this perspective against erasure in the historical literature examined, and it could have been based on knowledge limited to the Stated Clerk and a handful of others who handled the bank accounts.

Ely believed that the only relationships prohibited marriage were those specifically listed in Leviticus. His view necessitated his favoring the removal of the

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<sup>361</sup> Ely, *Considerations*, 1-5.

<sup>362</sup> *Ibid.*, 1.

affinity sentence because it called for additional prohibitions based on inferences from the specific levitical laws.<sup>363</sup> Dr. Ely went on to state that the Presbyterian Church had “never been able to satisfy itself that the marriage of a deceased wife’s sister is positively forbidden in the Bible.”<sup>364</sup> To prove this quote Ely went on to cite the history of near-kin marriage adjudications in the General Assembly and the court’s inconsistent decisions respecting the marriages. Ely concluded, “Shall a marriage union, which the Assembly never has felt itself free to declare unscriptural, and in itself unlawful, subject any pious couple to excommunication.”<sup>365</sup>

The Stated Clerk of the General Assembly believed that there was an element of uncertainty associated with using the affinity sentence to prohibit a wife’s sister marriage.<sup>366</sup> Dr. Ely called for the erasure of the affinity sentence because of the ecclesiastical courts’ inconsistent application of it to particular historical cases; inconsistent use of the sentence betrayed the presbyters’ uncertainty regarding its accuracy. Since the case against the wife’s sister marriage was uncertain, it did not merit discipline. Ely’s assertion that the Presbyterian Church Assembly had “never” felt itself able to call the deceased wife’s sister union unscriptural is not an accurate presentation of the previous history. As has been seen, the Assembly repeatedly upheld the unscriptural nature of the marriage, but its difficulty was with appropriate discipline of the couple.

### **A Tract War of Anonymous Authors Precipitated by the McCrimmon Case**

The debate over the McCrimmon case led to a tract war between anonymous authors. The first, *Domesticus*, adorned with a classical sounding name, published a tract

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<sup>363</sup> Ibid., 10.

<sup>364</sup> Ibid., 11.

<sup>365</sup> Ibid., 11-17.

<sup>366</sup> Ibid., 17.

concerning the impending decision of 1827 regarding revision of the *Westminster Confession* and the resolution of McCrimmon's appeal.<sup>367</sup>

### **The Publication from “Domesticus”**

Domesticus contended that marriage to a deceased wife's sister is incestuous, but his conviction was not dependent on the letter of Levitical law. The key to understanding why a deceased wife's sister union is wrong is getting to the “reason” why “the divine lawgiver” established the Levitical prohibitions. This “reason” is not natural law—the universal voice in the conscience of man that expresses repugnance towards near-kin unions—because he specifically denied natural law's influence later in his tract. For Domesticus, the Levitical law must be contextualized in that the obligatory portions are those that agree with the “physical, moral and political circumstances of modern society.” He also believed that the use of Leviticus must strive to promote the public good “as apprehended by the common sense of mankind.”<sup>368</sup> Leviticus, said Domesticus, prohibits incest and its teaching must be expanded rather than diminished, but incest is wrong because of the “reason of that class of prohibition which we agree to call by the technical term Incest.”<sup>369</sup>

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<sup>367</sup> *The Doctrine of Incest Stated, with an Examination of the Question, Whether a Man May Marry His Deceased Wife's Sister, In a Letter to a Clergyman of the Presbyterian Church, By Domesticus.* 2<sup>nd</sup> ed. (New York: G. & C. Carvill, 1827); this second edition may have been necessitated by the intemperance of Domesticus's language since he said he corrected his “grossness and indelicacies of expression” that brought many complaints from readers. Ezra Styles Ely attributed this publication to “Professor M'Clelland” in his *Considerations on the Proposed Erasure*, on page 5. This would be Alexander McClelland, D.D., who was Professor of Logic, Metaphysics, and Belles Lettres at Dickinson College in Carlisle, PA, according to, “McClelland, Alexander, D. D.,” in *Encyclopedia of the Presbyterian Church*, s.v., Philadelphia: Presbyterian Encyclopedia Co., 1884.

<sup>368</sup> *The Doctrine of Incest Stated*, 1827, 7.

<sup>369</sup> *Ibid.*, 9-10.

Domesticus then presented four unsatisfactory views on marriage to a deceased wife's sister. The first view contended the marriage was wrong because it was contrary to nature. The second interpretation believed that incest prevents near-kin unions that would expand family friendships and diminish associations to a broader circle of people. It was seen earlier that Jonathan Edwards the Younger endorsed this perspective in his commencement sermon at Yale. The third point, expressed concern that the "crossing of breeds" was necessary to improve physical appearance and heartiness. The fourth view included others who said that the prohibitions were against only those relations in directly ascending or descending lines (i.e. a son marrying his mother or a man his daughter). Domesticus found all of these perspectives wanting.<sup>370</sup>

Domesticus then went on to elaborate upon his understanding of *why* there was a law of incest. The anonymous author stated that: "The Law of Incest is the great moral safeguard appointed by Providence for *protecting the laws of Marriage and Chastity*; without which *the best organized society, that the earth has ever seen upon its surface, would become in a few years, a hideous mass of corruption and rottenness.*"<sup>371</sup> Incest law prohibits marriages brought about by the lust men or women have for their kin. He argued that there is no natural revulsion to such marriages.<sup>372</sup> Noah's flood showed that near-kin marriage in his era was not naturally repulsive; the earth's destruction was partially due to the people having no "determinate law of incest."<sup>373</sup> Any near-kin union

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<sup>370</sup> Ibid., 11.

<sup>371</sup> Ibid., 12; italics in the original.

<sup>372</sup> Ibid., 12-14.

<sup>373</sup> Ibid., 15-16.

of any degree of relationship is wrong if it has the potential of threatening domestic purity and peace, whether the relationship is one of consanguinity or affinity.<sup>374</sup>

Domesticus commented on the affinity sentence noting that revulsion for a deceased wife's sister marriage is due to its being prohibited by the sentence.<sup>375</sup> He saw the affinity sentence as a good thing because of his contemporary cultural situation in which a woman often lived with her married sister. Sometimes two or more sisters lived with their married sibling's family.<sup>376</sup> This is not good, said Domesticus, and he contended that the *Confession's* affinity sentence established a hedge against instances of wife's sibling fornication and prevented the married sister from distrusting her sister and husband in their relationships with each other.<sup>377</sup> Domesticus observed that no "kindness then is shown to a female, in permitting her to marry her sister's husband. On the contrary it is real cruelty."<sup>378</sup>

The presentation of Domesticus argued from the utility of the deceased wife's sister prohibition to its being a Divine law. The author concluded, "that it [the prohibition of the deceased wife's sister marriage] was as really part of the *will of God* and of the *divine institution* as those [prohibitions] which are more clearly expressed."<sup>379</sup> The true divine law is the law behind the words of Leviticus. Domesticus's perspective viewed the reason behind the law as the foundation for revealed law; what Moses wrote in Lev 18 was authoritative only as it reflected the reason behind the particular laws. God ordained his law, and the laws of Leviticus express a contextualized application of

<sup>374</sup> Ibid., 19.

<sup>375</sup> Ibid., 28.

<sup>376</sup> Ibid., 29.

<sup>377</sup> Ibid., 31-2.

<sup>378</sup> Ibid., 32.

<sup>379</sup> Ibid., 34.

divine law to the historical people of Israel. The prohibitions specifically listed in Lev 18 were good for Moses and the Jews, but they were not necessarily good for people in the sociological and familial situation of the early nineteenth century. Domesticus argued for the retention of the affinity sentence in the *Confession* because of its usefulness for prohibiting near-kin unions and he did so in a fashion that detracted from the abiding Divine authority given through Moses in Leviticus.

### **The Publication by an Anonymous “Layman”**

Another anonymous author, who described himself as a layman, specifically addressed the impending confessional revision in a pamphlet occasioned by the Domesticus tract.<sup>380</sup> He contended that judging a deceased wife’s sister marriage as wrong is “altogether the invention of men,” and the prohibition of such unions is extra-biblical and adds to Scripture.<sup>381</sup> Contra Domesticus, Layman argued that deceased wife’s sister unions are not wrong and they should not be disciplined to any extent, especially not so far as the dissolution of the marriage. Arguing for the prohibition of these marriages, contended the author, teaches us “that we are now under Moses and his penalties, which no Christian believes.”<sup>382</sup>

As Layman summarized his perspective in his conclusion he stated that “at the time they [the Levitical laws] were given by Moses, the law-giver, to the Israelites” they were limited to Israel’s experience and expressed God’s desire to keep the Jews from entering the practices of the Canaanites. The teaching of Paul and Christ are sufficient for the New Testament Christian and Lev 18 has no continuing authority.

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<sup>380</sup> *The Opinions of a Layman, on the Method of Treating the Marriage of a Deceased Wife’s Sister, by Some Modern Divines.* New York: Printed by Elliott and Palmer, 1827.

<sup>381</sup> Ibid., 4-6.

<sup>382</sup> Ibid., 17.

Though Domesticus and the Layman took opposing views on the deceased wife's sister marriage, they both agreed that the stipulations of Lev 18 are no longer valid as law in the New Testament era. For Domesticus, it was the law, or "reason," behind the laws of Leviticus that established the foundation for a contextualized anti-incest legislation for the post-incarnation church. For Layman, the law of Moses was dead for the New Testament church and the particular stipulations of Lev 18 could not be applied to deceased wife's sister marriages. Due to the anonymity of these two writers, it cannot be determined whether they were Presbyterians, though this is likely, but their views on Mosaic law betray their inability to support the *Westminster Confession's* statement that the "moral law doth for ever bind all ... Neither doth Christ in the gospel any way dissolve, but much strengthen this obligation" (19:5).

#### **Another Pseudonymous Publication from "Veritas"**

Having heard Domesticus defend the prohibition against deceased wife's sister marriages, and Layman's arguments against the prohibition, it is now time to hear from one who called himself a Presbyterian named Veritas.<sup>383</sup> Veritas noted that the "instances in which the marriages alluded to take place, are becoming every day more frequent," and the statutes forbidding these unions are most often simply disregarded.<sup>384</sup> The author argued for the removal of the affinity sentence because of the inconsistency of the ecclesiastical discipline applied to those who entered these connubial unions.<sup>385</sup> In opposition to Domesticus, Veritas contended that Lev 18 was moral and "perpetually and

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<sup>383</sup> *Remarks on the Letter of Domesticus, Containing the Doctrine of Incest Stated, With an Examination of the Question, "Whether a Man may Marry his Deceased Wife's Sister.* By Veritas (New York: G. & C. Carvill, 1827), 8.

<sup>384</sup> Ibid., 6-7.

<sup>385</sup> Ibid., 8.

invariably obligatory,” and that Lev 18 and 20 were still in force in “the specific cases mentioned.” The near-kin relationships not specifically mentioned in Leviticus should be resolved according to expediency and the common sense of mankind.<sup>386</sup>

Veritas’s most significant point of contention with Domesticus was with regard to his view of the law of God:

I think Domesticus has been led—reposing an undue confidence in his theory with regard to the reason of the law [the law behind the law]—to propose the very extraordinary expedient of revising and extending a positive law of God. For it will be remembered, that, although he avows that he does not attach much importance to the 18th chapter of Leviticus, yet he wishes not to be “understood as denying the obligation of the incestuous prohibitions of Moses.” But what kind of obligation does he recognize? An obligation which extends, in reality, no further than the circumstances of the people to whom it was delivered; for there is not one precept in it which may not, according to his principle, with perfect propriety be abrogated, in its application to any other people whose circumstances might happen to be materially different from theirs.<sup>387</sup>

Veritas contended that instead of the law defining the behavior of the people, the behavior of the people defines the law of God. Domesticus called for a temporary suspension and restoration of the parties involved in near-kin marriages and was against excommunication. To this Veritas responded that if a deceased wife’s sister marriage was incestuous, then all those who were guilty of it should be excommunicated unless the people involved separated and reformed.<sup>388</sup> At this point, Veritas is expressing the teaching of the *Confession*’s discipline sentence that calls for the separation of incestuous marriages. However, Veritas believed that the deceased wife’s sister marriage was not contrary to Lev 18 because only the specifically stated relationships were forbidden to

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<sup>386</sup> Ibid., 21-2.

<sup>387</sup> Ibid., 29.

<sup>388</sup> Ibid., 38.

marry. He favored removing the affinity sentence because its interpretation of the prohibited degrees was not accurate.

### **The Publication from the Pseudonymous “Clericus”**

A fourth tract came from the penname of Clericus who completed this series of publications from classical and scholarly sounding pseudonyms. According to Ezra Styles Ely, Clericus was in actuality the Reverend Alexander Gunn, D. D., of Bloomingdale, New York, who directed his clerical pen at the pamphlet by Domesticus.<sup>389</sup> Clericus attacked Domesticus contending that his defense of the affinity sentence actually cut his own polemical throat. The Domesticus publication led one to the conclusion that the affinity sentence should never have been made a term of communion rather than affirming the importance of its prohibitions. Domesticus took the pragmatic perspective that the affinity sentence's teaching was, in itself, a restraint of near-kin marriages regardless of Leviticus. Thus, for Domesticus, argued Clericus, how could the affinity sentence be maintained if it was not based on Leviticus since the Confession is a summary of the doctrine of Scripture?

Clericus went on to show that, following the principles espoused by Domesticus, it would be as wrong for a widower to marry his household seamstress as it would be to marry his deceased wife's sister. Ely concluded that the analysis from Clericus

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<sup>389</sup> Unfortunately, this writer was unable to obtain Clericus's tract, so this analysis is based on Ely's comments. Veritas mentioned, on pages 39-40, that if he had known about Clericus's pamphlet against Domesticus it would not have been necessary for him to write. This tract could not be found at the libraries of: Westminster Theological Seminary - Philadelphia, Yale University, Princeton University, PTSEM, PHSM, and PHSP.

understood that Domesticus viewed reason as “both *guide and judge* in this matter, when the Bible, the only infallible rule of faith and practice is laid aside.”<sup>390</sup>

In summary, these four tracts occasioned by the McCrimmon case and the proposed revision of the *Confession* presented four views of the law of God. Domesticus propounded a moral incest law behind the particular laws in Leviticus 18, which led him to lobby for keeping the affinity sentence as an effective fence against near-kin marriage. Layman rejected the Old Testament law as no longer valid for the New Testament church and called for removal of the affinity sentence. Veritas lobbied for removal of the sentence even though he affirmed the abiding authority of the rules of Lev 18, and he contended that the affinity sentence was wrong and only the specific prohibitions were binding. Clericus saw the perspective of Domesticus as self-defeating and against the spirit of the *Confession* and the letter of Scripture. All four of these positions were contrary to the teaching of the *Westminster Confession* in at least one point, whether it was the affinity sentence, or the abiding authority of the law. The conflict over deceased wife’s sister marriages was fed by differing interpretations of the law of God and irregular application of the *Confession*’s discipline and affinity sentences.

### **The End of the McCrimmon Appeal at the 1827 Assembly**

The 1827 Assembly met in Philadelphia with Francis Herron moderating. The committee appointed to tally the vote of the Presbyteries concerning the removal of the affinity sentence reported that of the eighty-eight Presbyteries, fifty-five of the sixty-eight that reported were against the revision, which needed only a majority of forty-five for a

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<sup>390</sup> Ely, *Considerations*, 6; Ely’s perspective on Clericus is on 6-7.

decision. The revision was defeated by a substantial margin.<sup>391</sup> The failure of the proposed revision was also the end of Donald McCrimmon's appeal. The failed attempt to remove the affinity sentence left the Presbyterian Church with the potential for further near-kin adjudications, and even if the erasure had passed, it would not have addressed the issue of appropriate discipline for near-kin marriages. The marriage to a deceased wife's sister issue was not resolved at the General Assembly level and the affinity sentence continued as the Presbyterian Church's interpretation of the laws of Leviticus.

### **Summary of Chapter 3**

Through 1827, the Presbyterian Church affirmed the validity of the affinity sentence's interpretation of Levitical law. The General Assembly had repeatedly affirmed that marriage to a deceased wife's sister and other near-kin unions were contrary to Mosaic legislation. The highest judicatory of the Presbyterian Church had called for ecclesiastical discipline leading to the separation of the couple in the colonial period, but as time passed it was moving to disciplinary procedures of a lesser degree. The Presbyterians continued to question the validity of the denomination's interpretation of near-kin marriage prohibitions. Decisions of the ecclesiastical courts diminished the authority of God's law and the *Confession's* interpretation of the law in the consanguinity and affinity paragraph. Presbyteries, Synods, and the General Assembly had repeatedly referred cases back to the lower courts encouraging them to decide the cases with an eye to the sensitivities of the congregation members concerning near-kin marriages. The Presbyteries had decidedly voted against removing the affinity sentence at the time of the McCrimmon case, and the Presbyterian Church would decide any future adjudication of

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<sup>391</sup> *Minutes of the General Assembly 1827*, 114, 129, 132.

near-kin cases by applying the Levitical rubrics as interpreted by the *Westminster Confession*. The affinity sentence was kept as an accurate principle for interpreting marriages of affinity from the Mosaic legislation.

## Chapter 4 - The American Presbyterian Church, Part 2

*After a few more communications have been published on each side of this question, we may with propriety, perhaps, lay it aside for the present. But until then we deem it unadvisable to do so, as it is one of those subjects on which we cannot truly say, verbum sat, a word is sufficient. It appears worthy of fair, and ample discussion at this time, not merely or chiefly because of the recent occasion which has brought it once more before the public mind, but because of its theological bearing and influence on our faith and practice, and because it cannot be correctly decided without adapting right principles of interpretation, both to the Bible and our Book of Discipline. It was thought worthy of notice in both the Old and New Testament by God himself, and of solemn enactment by the pious and learned divines who framed our standards. We hope, therefore, that our readers will follow on a little further in this interesting discussion without weariness.*

*Christian Observer, July 29, 1842*<sup>392</sup>

### **The Case of the Reverend Archibald McQueen, (1841-1848)**

Before considering the adjudication of Archibald McQueen's near-kin marriage, it would be helpful to know something of his life and background. Scottish Highlanders predominated as the earliest settlers in the Robeson County area of North Carolina where McQueen was born around 1796. His interests were diverse. He pursued practicing law for a short period following his graduation from the University of North Carolina, then his attention turned to the study and practice of medicine due to the need for physicians in his area, but believing himself called to the ministry he prepared himself for that purpose.<sup>393</sup> Candidacy was granted McQueen in 1826, and he supplied the pulpit at the Presbyterian Church in Wilmington following his licensure in 1828.<sup>394</sup> Fayetteville

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<sup>392</sup> "The Marriage Question Again," *Christian Observer*, July 29, 1842, vol. 21, no. 30, 118.

<sup>393</sup> *Historical Sketches of Laurel Hill and Smyrna Churches* (N.p., n.d.), 8-9, PHSM.

<sup>394</sup> *Minutes of Fayetteville Presbytery*, Nov. 18, 1826, 84-85; Apr. 3, 1828, 163-65, PHSM.

Presbytery organized the Smyrna Church with McQueen as Pastor a few years after his ordination.<sup>395</sup> Within the year, he became the pastor of both the Laurel Hill and Smyrna congregations.<sup>396</sup> In the fall of 1839, there was a revival at the Smyrna Church that brought roughly seventy new members to the congregation.<sup>397</sup> He was a gifted communicator able to preach in both English and Gaelic.<sup>398</sup>

The subject of concern for this work is the Reverend McQueen's marriages. McQueen was married three times. First, he was married to Margaret Stewart who bore him three children including a son named James Stewart McQueen. He married his second wife, Juliana McLeod, Dec. 20, 1833, and they enjoyed the births of Archibald Alexander and John Knox<sup>399</sup> before she died March 25, 1840 due to the "certain and insidious progress of pulmonary disease."<sup>400</sup> The third marriage, which was to cause considerable adjudication in the Presbyterian Church, took place October 24, 1841 when he married Mary McLeod, the sister of his recently deceased wife.<sup>401</sup> Because of this marriage, the Fayetteville Presbytery prosecuted him for violating both the law of God and the *Confession's* affinity sentence. Adjudication of the case and its associated discipline would rock the McQueen and McLeod families, the Laurel Hill and Smyrna churches, and the courts of the Presbyterian Church for several years.

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<sup>395</sup> *Minutes of Fayetteville Presbytery*, Dec. 25, 1829, 266-69, PHSM; G. F. Kirkpatrick, *Historical Sketches of Laurel Hill and Smyrna Churches* (N.p., n.d.), 7, PHSM.

<sup>396</sup> *Brief Historical Sketch of Smyrna Church*, PHSM, #993,078.

<sup>397</sup> *Ibid.*

<sup>398</sup> Ruth Jane Trivette, *The Merging of the Gaels: A History of Fayetteville Presbytery, 1813-1983* (n.p.: The Pilot, Inc., 1987), 105.

<sup>399</sup> McQueen was quite aware of his church historical roots when he named his children.

<sup>400</sup> *Southern Religious Telegraph*, Jan. 4, 1833, vol. 12, no. 1, p. 3; *Watchman of the South*, Apr. 23, 1840, vol. 3, no. 35, p. 3, PHSM.

<sup>401</sup> *Minutes of Fayetteville Presbytery*, Nov. 11, 1841, p. 251, PHSM; *Minutes of the Synod of North Carolina*, Nov. 2, 1843, p. 117, PHSM.

### The Actions of Fayetteville Presbytery, 1841-1842

When Fayetteville Presbytery met in November 1841, Archibald McQueen, on the basis of “common fame,” was charged with having married his deceased wife’s sister and he was called to appear before Presbytery at its meeting convening January 5, 1842.<sup>402</sup> He was cited as having violated the law of marriage as found in the Word of God and specifically defined in the affinity sentence of the *Westminster Confession of Faith*.<sup>403</sup>

After establishing the solemnity and importance of the judicial proceedings about to begin, the Presbytery adopted an ordered ten-step procedure for the trial of Archibald McQueen.<sup>404</sup> As the trial began he admitted to the facts of his citation, but he plead not guilty to the charge itself.<sup>405</sup> McQueen believed the *Westminster Confession*’s affinity sentence was an inadequate interpretation of the Bible’s prohibitions.<sup>406</sup> Presbytery appointed the Reverend Adam Gilchrist as McQueen’s advocate and then proceeded to hear his extended defense presentation.<sup>407</sup>

The trial continued as each presbyter stated his remarks concerning the case and then Archibald McQueen responded with his answers. The proceedings concluded with a brief rejoinder.<sup>408</sup> The clerk called the roll for the vote and by a vote of thirteen to two,

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<sup>402</sup> *Minutes of Fayetteville Presbytery*, Nov. 11, 1841, pp. 250-51, PHSM; The *Book of Discipline*, in the *Constitution of the Presbyterian Church*, 1827, p. 395, stipulates: “There are two modes in which an offence may be brought before a judicatory: either by an individual or individuals, who appear as accusers, and undertake to substantiate the charge; or by common fame.”

<sup>403</sup> *Minutes of Fayetteville Presbytery*, Nov. 11, 1841, 251, PHSM.

<sup>404</sup> *Minutes of Fayetteville Presbytery*, Jan. 2, 1842, 279-81, PHSM.

<sup>405</sup> *Ibid.*, 281.

<sup>406</sup> *Historical Sketches of Laurel Hill and Smyrna Churches* (N.p., n.d.), 8, PHSM.

<sup>407</sup> *Minutes of Fayetteville Presbytery*, Jan. 2, 1842, 281, PHSM.

<sup>408</sup> *Ibid.*, 285.

with three abstentions, the Presbytery found McQueen guilty of having violated Scripture and the *Confession*. The moderator appointed a committee of three to present a report concerning appropriate discipline for Archibald McQueen. When the committee reported, it proposed that Fayetteville Presbytery reprimand him and give him opportunity to show sorrow and repentance for his marriage to Juliana's sister. The committee's vote was divided two-to-one, and the minority report recommended that he be suspended from the ministry until he manifested satisfactory evidence of repentance. This difference of opinion on appropriate discipline was indicative of things to come.<sup>409</sup>

The Presbytery, dissatisfied by both reports, adopted a substitute, which also advised suspension, but did so in stronger language calling the marriage "incestuous" and a "crime of a higher nature."<sup>410</sup> The substitute contended further that the *Confession* teaches that such a marriage is unlawful and the McQueens' continued cohabitation is continued sin.<sup>411</sup> Fayetteville Presbytery suspended McQueen from the ministry because of his affine marriage and he gave notice to Fayetteville Presbytery that he would appeal to the Synod of North Carolina. At the same meeting, the Presbytery declared the pulpit vacant at McQueen's former charge at Laurel Hill and it appointed a man to inform the congregation of the situation.<sup>412</sup>

A question one might want answered regarding this case is, "Who performed the wedding ceremony uniting McQueen and his deceased wife's sister?" If a fellow Presbyterian minister had married the two, then he would have been guilty of solemnizing a marriage of affinity prohibited by the Presbyterian constitution and he

<sup>409</sup> Ibid., 285-86.

<sup>410</sup> Ibid.

<sup>411</sup> Ibid. 287-88; this is from the second sentence of the *Confession*, 24:4.

<sup>412</sup> *Minutes of Fayetteville Presbytery*, Jan. 2, 1842, 289, PHSM.

would be liable to ecclesiastical discipline. This question was answered by the Presbytery when it instructed the Smyrna Church session to cite Elder Alexander McKinnon to appear before them for performing the wedding for Archibald and Mary.<sup>413</sup>

Archibald McQueen decided in the spring of 1842 that he would prefer appealing directly to the impending General Assembly rather than the Synod of North Carolina. McQueen contended that appealing directly to the Assembly and bypassing the Synod was necessary due to the urgency of his situation. After considerable discussion by Fayetteville Presbytery, McQueen was allowed to withdraw his appeal to the Synod and present it directly to the 1842 Assembly.<sup>414</sup>

McQueen's appeal argued five points of defense. The first point contended that it is doubtful whether marriage to a deceased wife's sister is an incestuous marriage and this has been proven by decisions of the General Assembly that contradicted one another. The second argument was that the principle of affinity on which the deceased wife's sister prohibition is based is "subversive" of many happy marriages because it would mean that two brothers could not marry two sisters. His third contention was that several members of Fayetteville Presbytery voted to sustain the charge against McQueen even though they doubted the applicability of the *Confession's* affinity sentence to a deceased wife's sister marriage. The fourth argument contended that a member of the Presbytery told McQueen that a great majority of the judicatory's members were prepared to condemn the marriage without a trial. The final defense was that the decision against him was "evidently at variance with God's Word," which is the only rule of faith and

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<sup>413</sup> Ibid.

<sup>414</sup> *Minutes of Fayetteville Presbytery*, March 31, 1842, 294-95, PHSM.

practice.<sup>415</sup> This enumeration of McQueen's points of defense against the judgment upon him is the only record of his position.

The American Scot's appeal denied the accuracy of the affinity sentence contending that its doubtful interpretation of levitical law was proven by the Presbyterian Church's inconsistency in dealing with near-kin issues. A fundamental problem facing McQueen involved his subscription to the *Westminster Confession*; when he was licensed and ordained he vowed before God to uphold the system of doctrine taught in the *Confession*. There is no evidence that he protested the charges against him by contending he had taken exception to the sentence when he was licensed or ordained. If McQueen had taken an exception to the affinity sentence, he certainly would have made it a key point of his defense.

The subscriptional importance of the near-kin issue unfolded in the Old School General Assembly as individuals expressed their views and interpretations of the *Confession*. Those who held to a full constitutional subscription prosecuted McQueen because he had violated the *Confession*'s interpretation of Scripture. Others emphasized the biblical teaching and contended that the affinity sentence inaccurately interpreted the Bible. Another perspective believed that the affinity sentence was a peripheral and inessential point of doctrine and adherence to its principle was not necessary. Another perspective condemned McQueen for breaking Lev 18 and did not refer to the affinity sentence at all. The relationship between the Bible, the *Confession*, and subscription led to a number of interpretive perspectives and involved the Presbyterian Church in a complex labyrinth of debate.

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<sup>415</sup> Ibid., 301-3.

A document in the minutes of Fayetteville Presbytery expresses the court's response to the McQueen defense. In this document they responded to each of his five points of defense and defended Fayetteville's charge against McQueen. The presbyters contended that they had exercised fairness and equity in dealing with Archibald McQueen and they were grieved to impose such discipline upon their co-laborer.<sup>416</sup>

The Presbytery's answer to McQueen's first point contended that if he doubted the legitimacy of the marriage, then the best course for him would have been not marrying his deceased wife's sister. A doubtful issue can be resolved by either taking the questionable course or choosing the route of certain safety. The "when in doubt, don't" approach can trace its roots back to Calvin. The Genevan recommended that kindred related by degrees beyond the biblical enumeration should not wed if they were uncertain about their marriage's legitimacy. Continuing to respond to McQueen's first point, the Presbytery took "the weaker brother" perspective and argued he should not have entered the marriage because such unions offend a great portion of the people in the Presbyterian Church. Further, the Presbytery was obligated to discipline McQueen because the *Confession* condemns marriage to a deceased wife's sister, and the presbyters vowed to uphold the *Confession*; therefore, they had to apply discipline to the case.<sup>417</sup>

McQueen's second point of defense contended that the affinity sentence prohibited two brothers marrying two sisters. The Presbytery responded that his view involved a misunderstanding of the meaning of the *Confession*.<sup>418</sup> There were no similarities between McQueen's marriage and the example of two brothers marrying two

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<sup>416</sup> *Minutes of Fayetteville Presbytery*, April 2, 1842, 303-4, PHSMS.

<sup>417</sup> Ibid., 304-5.

<sup>418</sup> For someone as intelligent as McQueen this appears a surprising point of defense. He may have felt desperate and was seeking even the remotest possible help.

sisters.<sup>419</sup> Presbytery went on to prove this with an example. If two brothers married two sisters out of a family of four sisters and the first two sisters died leaving the brothers to marry the remaining sisters, then the two brothers would be guilty of McQueen's offense, but if these two brothers were to marry two sisters in another family it would be acceptable.<sup>420</sup>

Fayetteville rebutted McQueen's third point of defense contending that there are often differences of opinion concerning issues in the Presbyterian Church, but it is the duty of a judicatory to authoritatively resolve the issue. Even though some doubted that the Bible prohibited the deceased wife's sister marriage, the decision by the Presbytery was an authoritative resolution of the conflict. The purpose of an ecclesiastical judicatory is to consider differing views and interpretations and draw a conclusion that is in agreement with the church standards. The Presbytery believed that its decision agreed with the Bible, the *Confession*, and the *Book of Discipline*; Fayetteville Presbytery contended that its decision was a legitimate and proper judgment.<sup>421</sup>

The fourth point Rev. McQueen raised was that the presbyters were prejudiced. The Presbytery answered this objection by noting that what may have appeared as prejudice was actually proper procedure. The Presbytery defended itself observing that there was no need to establish, through the calling of witnesses, the facts of the case because the marriage was obvious to all (i.e. he was prosecuted on the basis of "common fame"). The Fayetteville Presbytery's defense contended further that if there were any

<sup>419</sup> This writer's friends' two daughters recently married two brothers.

<sup>420</sup> *Minutes of Fayetteville Presbytery*, April 2, 1842, 305-6, PHSM. This brings to mind Jesus' confrontation with the Saducees in Matt 22:23-33 regarding the seven brothers who married the same woman in succession.

<sup>421</sup> *Minutes of Fayetteville Presbytery*, April 2, 1842, 306-7, PHSM.

facts that the Presbytery did not hear due to the court's failure to listen to any witness, then McQueen could deem the Presbytery prejudiced, but the Presbytery believed that they were fair and proper in their actions.<sup>422</sup>

The final statement, ending the response of Fayetteville Presbytery to the quintet of McQueen's points of protest, dealt with his assertion that marriage to a deceased wife's sister is not contrary to the Word of God. Presbytery's response noted that if the marriage was acceptable, then McQueen must prove it from the Bible, but this is the point where the appellant and the Presbytery disagreed and why McQueen appealed to the General Assembly for a wise and deliberative resolution.

In summary, Rev. McQueen contended that marriage to a deceased wife's sister was not contrary to the Bible, and he believed the *Westminster Confession* was wrong in its interpretation of the law of Leviticus with the affinity sentence. The Presbytery responded that there may be differences of opinion on the applicability of the affinity sentence to a marriage with a deceased wife's sister, but the decision of Fayetteville held to the accuracy of the *Confession's* affinity sentence because just as a man is prohibited his own sister, he is also prohibited his wife's sister.

### **Preparing for the 1842 General Assembly**

As the meeting of the General Assembly approached, Archibald McQueen sought the assistance of the Reverend Colin McIver for the impending adjudication of his case. Colin McIver was mentioned earlier with respect to his speech at the General Assembly of 1824 regarding the marriage of Donald McCrimmon to his deceased wife's sister.

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<sup>422</sup> Ibid., 307-8.

McIver was born on the Island of Tervis, Scotland, on March 9, 1784.<sup>423</sup> He had ministered in Fayetteville Presbytery since 1813 and since 1815 he was the Presbytery missionary to the Scottish Highlanders. McIver had served the Presbyterian Church as the Stated Clerk of both Fayetteville Presbytery and the Synod of North Carolina, pulpit supply, and Fayetteville's representative to General Assembly.<sup>424</sup> One biographical paragraph described Colin McIver as one "tenacious of his opinions, and at times would earnestly contend for them," and he was "an ardent Mason and ... chaplain of Phoenix Lodge."<sup>425</sup> Archibald McQueen sought the assistance of this respected member of Fayetteville Presbytery to aid him with his impending trial.

At McQueen's request, McIver wrote to William L. Engle, editor of the weekly newspaper *The Presbyterian*, seeking his assistance in selecting a person to represent McQueen at the Assembly. McQueen's first choice for advocate was the Reverend William Marshall of Peekskill, New York, but if Marshall could not fulfill the responsibility then McQueen wanted someone with a similar perspective on the affinity sentence to be appointed as his defender. McIver goes on to describe his close friendship with McQueen and the many sleepless nights and tears of sorrow he had shed over the incestuous marriage. The letter was not only written to assist McQueen, but Colin McIver was also soliciting Engle's support for having the McQueen case referred by the General Assembly back to the Synod of North Carolina.<sup>426</sup> Colin McIver would play a key part in the adjudication of McQueen's case just as he had in the case of Elder Donald McCrimmon.

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<sup>423</sup> "McIver, Colin (1784-1850)," Biographical Information mss file, PHSM.

<sup>424</sup> Obtained by reading the statistical reports to the Assembly from 1812 through 1850.

<sup>425</sup> "McIver, Colin (1784-1850)," Biographical Information mss file, PHSM.

<sup>426</sup> Colin McIver, April 7, 1842, to W. L. Engle, PHSP, Call # MSEN3, Fol. #3, 1842.

### The Reverend William Marshall's Pamphlet, 1834

William Marshall was a good choice for an advocate because he made a speech before the Synod of New York, which was published as a pamphlet titled, *A Speech on the Question Whether the Marriage of a Man to the Niece of his Former Wife is Agreeable to Scripture*. Marshall described marriages of consanguinity and affinity as having “plagued” the church for sixty years.<sup>427</sup> Interest in the issue developed for Marshall when his brother married his deceased wife’s niece. The prospective bride’s pastor excused himself from taking any part in the wedding because “though the marriage might be right, it was one in which it might be inexpedient for him to officiate.”<sup>428</sup> The near-kin couple married, then the session separated the woman from communion. The separation had already extended seven years at the time of Marshall’s speech.

The husband appealed the suspension to the Second Presbytery of New York and it decided that the marriage was unscriptural and unlawful. Marshall represented the case at the Synod meeting, and his defense persuaded the Synod to reverse the Presbytery’s decision.<sup>429</sup> As Marshall made his speech to the judicatory, he contended that the affinity sentence of the *Confession* was irrelevant in the case of a man’s marrying his wife’s niece because Leviticus does not forbid a man to marry his own niece.<sup>430</sup> William Marshall used the “in blood” principle of the affinity sentence to establish the levitical acceptability of the marriage. Not only did the affinity sentence lead to the prosecution

<sup>427</sup> The full title is: *A Speech on the Question Whether the Marriage of a Man to the Niece of his Former Wife is Agreeable to Scripture, and to the Laws of the Presbyterian Church in the United States of America: Delivered in the Synod of New York, at their Meeting in October, 1834* (New York: Leavitt, Lord, and Co., 1834), 3.

<sup>428</sup> Marshall, *A Speech on the Question*, 4.

<sup>429</sup> Ibid., 4; the pamphlet notes that the vote was near unanimous in that there was only one vote against the appeal.

<sup>430</sup> Marshall, *A Speech on the Question*, 6-7.

of some marriages, but it also fulfilled the spirit of the Westminster Puritans' restraining intent by vindicating those prosecuted unjustly.

With respect to the Mosaic law, Lev 18:6-18 and 20:11-21 being the key texts that dealt with the subject, Marshall asked "whether the laws in Leviticus were binding on the Jews only, and on them, only for a time, or are they binding on the whole world, and under every dispensation."<sup>431</sup> Moral, ceremonial, and civil law, said Marshall, are set forth as the categories of law in the nineteenth chapter of the *Confession*, and the moral law is "perpetually binding" but the ceremonial and judicial are not. Moral law, though, cannot be the law of Leviticus because either "the whole law in Leviticus must be in force, or the whole of it, *as a law* must be abrogated."<sup>432</sup> Marshall developed this perspective due to his concern that some statutes, which could be obsolete ceremonial or judicial laws, might be intermingled with those that were not and this could cause confusion regarding whether a law was still binding or not.

Marshall's solution to his civil-ceremonial-moral dilemma was a blanket exclusion of Leviticus from the Christian canon. He wrote that: "the Levitical law was local and temporary, and expired by its own limitations when the Messiah established his reign on the earth. It was confined to the land of Judea, and the time of the Jewish commonwealth."<sup>433</sup> Binding moral precepts are behind the laws, but the laws themselves are particular case applications given in Leviticus to the Jews of Judea.<sup>434</sup> Leviticus was for the Hebrew nation, at that point in time, and in that geographical location. Marshall believed that the moral precepts come from God, and these precepts are applied in

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<sup>431</sup> Ibid., 13.

<sup>432</sup> Ibid., 14; italics in the original.

<sup>433</sup> Ibid., 15.

<sup>434</sup> Ibid.

different ways to various cultures whether in the laws of “China, Canaan, Arabia, Media, Amalek,” or the Jews, “all the moral precepts in the Levitical law, and in all other laws are binding on us.”<sup>435</sup> Marshall concluded that “the regulations in the Levitical law respecting marriage are not moral.”<sup>436</sup> Marshall summarized his view:

Upon the review of the whole matter, I feel very confident, that with the Levitical law, considered as a law, we have nothing to do. God never gave it for a law to us. The moral precepts which it contains we receive, because they are moral, but not on the authority of the Levitical law, and if we receive some of the precepts of the *judicial* branch of the Levitical law, it is not because they are found in that law, but because their general equity [*Confession*, 19:4] recommends them for our adoption.<sup>437</sup>

Marshall interpreted “general equity” in the *Confession* as the reason behind the particulars of Mosaic civil legislation. Christians do not use the civil laws of Jerusalem, but they may discern the reason behind the laws and through “general equity” develop laws for the use of their contemporary culture.

Marshall illustrated the “general equity” principle with an example based on the types and forms of government. God has not given any particular form of government to man whether it is oligarchy, democracy, monarchy, or another, but he has ordained government as “essential to order and human happiness.”<sup>438</sup> Likewise, God has appointed marriage throughout the Bible as an institution and defined the duties of wedded union, but he has not “told us who they are, that, under the Christian dispensation, may lawfully contract it.”<sup>439</sup> Leviticus was the particular expression of the

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<sup>435</sup> Ibid., 15, 16.

<sup>436</sup> Ibid., 16.

<sup>437</sup> Ibid., 18.

<sup>438</sup> Ibid., 21.

<sup>439</sup> Ibid., 22.

reason behind the law for the Jewish people and no one else; the reason behind the law was expressed for the Jews in the particular laws of Leviticus.

Marshall wrote further, regarding Leviticus, that the prohibitions cited concerning near-kin refer to illicit intercourse and not marriage because the term translated “uncover nakedness” is not used with reference to marriage in the Bible. He also believed that the case applications cited were intended to be a complete list with no other inferred prohibited relations whether by reciprocity, inversion, or the “in blood” principle of the affinity sentence. Marshall saw the Leviticus passages as irrelevant on two counts, first, because the law of Leviticus is not moral law, and second, because the verses speak of fornication and not marriage.

Marshall drew his discussion to a conclusion contending that Bible commentators, the Presbyterian General Assembly, synods, presbyteries, and sessions were often uncertain in dealing with marriages of affinity and this uncertainty was indicative of the foolishness of acting with authority in such marriages. With respect to discipline, Marshall believed it was wrong to take any action against professing Christians involved in near-kin marriages.<sup>440</sup>

William Marshall was at odds with the *Confession* on at least two counts. The first is because chapter twenty-four, section four, references both Lev 18 and 20 as proofs for the accuracy of its presentation of the teaching of Scripture, but Marshall saw Leviticus as not applicable to the church. Marshall believed that the moral law was so intermingled with ceremonial law in Leviticus that the whole of the book must be excluded from Christian use. The second problem is his view of biblical law in general.

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<sup>440</sup> Ibid., 55-58.

The “law behind the law” is a principle that is specifically applied in various societies and cultures in different ways. For Marshall, the specific application of the law behind the law in any culture’s prohibitions is equally legitimate; the law of England, Afghanistan, and China are proper and authoritative representations of the law behind the law. For Marshall, the Bible’s law is the best of ethnic laws, but it is not a unique, inspired, and authoritative law for guiding the Christian in righteousness.<sup>441</sup> One positive aspect of Marshall’s perspective on the *Confession* was his use of the “in blood” caveat of the affinity sentence to vindicate the marriage case he debated even though he did not believe the affinity sentence an appropriate interpretive tool.<sup>442</sup>

In summary, Archibald McQueen’s desire to have William Marshall defend him appears to have been a good choice because his perspective on Leviticus undermined both the relevance of the Old Testament law to near-kin marriage and the accuracy of the affinity sentence. The New Yorker’s perspective on levitical law did not conform to the *Westminster Confession’s* teaching on the law of God. Whether McQueen was sympathetic to Marshall’s entire analysis of the Old Testament law is not clear, but it is clear that Archibald McQueen saw the New Yorker’s perspective on the *Confession’s* affinity sentence as beneficial to his case.

### **The 1842 General Assembly**

The McQueen case came before the General Assembly, per his appeal, at the 1842 meeting in Philadelphia.<sup>443</sup> Colin McIver’s attempt to solicit William Marshall as McQueen’s advocate proved fruitless and his defense was presented by the Reverend Dr.

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<sup>441</sup> Ibid., 25-26, 33-34.

<sup>442</sup> Ibid., 35.

<sup>443</sup> Moore, *Digest of 1886*, 817. The exclusion of the New School by the Old School in 1837 resulted in a reduced number of commissioners to consider the case.

John M. Krebs.<sup>444</sup> At the time, Dr. Krebs was Clerk both of Presbytery and of the Synod of New York.<sup>445</sup> Krebs began his presentation contending that the Presbyterian constitution provided for its own alteration and removing the affinity sentence would be acceptable because it is not essential to the “Calvinistic system,” and the “fathers of the Presbyterian church, through their adopting act, allowed exceptions to be made, if they were honestly made, and were not of vital moment.”<sup>446</sup> Krebs based his defense of McQueen on the *Confession* containing a system of doctrine requiring subscription but also having particulars that were not essential and could “honestly” be excepted. The problem was that McQueen had not taken exception to the affinity sentence and attempting to present an *ex post facto* exception would result in additional debate concerning the exception’s legitimacy.

Krebs continued his defense arguing that Lev 18:16 applied to fornication and not marriage because it prohibits a man having sexual relations with his brother’s wife and not his brother’s widow.<sup>447</sup> Krebs concluded his remarks with a four-point summary. The first point contended that McQueen was convicted and condemned by a dubious and uncertain law (i.e. the affinity sentence). The second point posited that the prosecution must prove that the affinity sentence is a good interpretive principle. He argued third, that it is difficult to prove that there is no law in the Bible to condemn McQueen. The final point contended that the punishment given to McQueen was unjust and severe. This

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<sup>444</sup> The records are confusing on this issue. In the *Minutes* of the Assembly for 1842, p. 213, “Mr. Stanton” is presented as being McQueen’s advocate, but on pp. 237, 238 it is John M. Krebs who presented an extended speech in his behalf. Krebs seems the better choice because *The Presbyterian*, July 9, 1842, 109, stated he was McQueen’s advocate.

<sup>445</sup> *Encyclopedia of the Presbyterian Church*, s.v. “Krebs, John Michael, D.D.”

<sup>446</sup> “Case of Rev. Mr. McQueen,” *The Presbyterian*, June, 11 1842, vol. 12, no. 24, 94.

<sup>447</sup> *Ibid.*

final point touched on the *Confession's* discipline sentence, but Krebs chose not to address the issues raised by its teaching.<sup>448</sup> If the discipline sentence was inaccurate then Krebs should have argued against that statement as well as the affinity sentence.

Colin McIver represented the prosecution and the gist of his position was simple. He argued that Lev 18 dealt with marriage and not adultery and was applicable to cases of consanguinity and affinity, and that the *Confession's* affinity sentence applied the Leviticus marriage prohibitions to McQueen's third marriage.<sup>449</sup>

The case came to a vote and the Assembly rejected McQueen's appeal by the decisive margin of sixty-eight to eleven. The Assembly stated specifically, "That the judgment of the Presbytery of Fayetteville, in the case of Archibald McQueen, be affirmed, and that the appeal be dismissed."<sup>450</sup> Despite Dr. Krebs's defense and an extended debate, the Assembly upheld the teaching of the *Confession's* affinity sentence by a substantial margin. The General Assembly affirmed once again the incestuous nature of a deceased wife's sister marriage. After this decision there were additional appeals by Archibald McQueen that continued to produce debate in succeeding General Assembly meetings.

### **Response to the Decision by the 1842 General Assembly**

The response of the periodical press to the McQueen case was immediate. The Presbyterian Church's decision met with comments from at least one non-church publication contending that the Assembly should not interfere with "men's partialities if they choose to marry the sisters of their deceased wives." The secular periodical press

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<sup>448</sup> Ibid.

<sup>449</sup> Ibid.

<sup>450</sup> Moore, *Digest of 1886*, 817.

saw McQueen's marriage as an issue beyond the scope of the Presbyterian Church's responsibility.<sup>451</sup> Two ecclesiastical publications, both published in Philadelphia, entered into the debate concerning deceased wife's sister marriages. The first publication was a New School effort called the *Christian Observer*, which was a recent addition to the ecclesiastical press established by the union of the *Philadelphia Observer* and the *Southern Religious Telegraph* in 1839.<sup>452</sup> The second newspaper was the *Presbyterian*, which was an Old School periodical that informed its readers of the events of the McQueen case with news reports as the debate unfolded at the Assembly.

### **The *Christian Observer***

The *Christian Observer* was edited by Amasa Converse who was licensed to preach by the Franklin Association of Congregationalists and ordained by the Presbytery of Hanover in 1826.<sup>453</sup> The June 24<sup>th</sup> issue commented on "The Marriage Question" by quoting from ministers and publications which saw McQueen's marriage as an "alleged crime of incest." The *Observer* contended with those in the Old School Assembly who voted against McQueen "on the *avowed* principle that the Confession of Faith condemned him, though the Bible does not. They say, we have promised to abide by the book, and it is not for us to say that it is wrong." The *Observer* quoted the *New England Puritan* as regretting the decision and saying, "We believe that to marry a deceased wife's sister is no breach of divine or civil law, and no offence against propriety." The article concluded

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<sup>451</sup> "Marriage Question," *The Presbyterian*, June, 25 1842, vol. 12, no. 26, 102; the quote was from a secular publication and given in a speech concerning the marriage.

<sup>452</sup> "Christian Observer," in *Encyclopedia of the Presbyterian Church*.

<sup>453</sup> "Converse, Amasa, D.D." in *Encyclopedia of the Presbyterian Church*.

with a cryptic list of other Presbyterians involved in near-kin marriages that could be pursued by the Old School for ecclesiastical discipline.<sup>454</sup>

The *Christian Observer* continued its involvement in the McQueen case publishing the sentiments of one writer—known only as “Y”—concerning two aspects of the adjudication. The first concerned what he had been “informed … [about] the speech of the Professor of Hebrew,” Charles Hodge. Mr. Y contended with Hodge’s analysis of Leviticus because Hodge had used the English Bible and not the original language for his argument, which Mr. Y saw as remarkable for “a Professor of Hebrew.” Hodge’s speech with respect to the McQueen case “had more influence than all the others” according to Y’s informer. The anonymous writer went on to argue that Hodge mistranslated the Hebrew and that the only marriages forbidden in Lev 18 are those of consanguinity as expressed in “flesh of his flesh.”<sup>455</sup>

The second aspect of the McQueen case addressed by the *Observer* concerned how the *Westminster Confession* was being viewed by some at the 1842 Assembly. Mr. Y saw McQueen being condemned by the interpretive principle expressed in the *Confession*’s affinity sentence even though many believed it was wrong. Some at the Assembly believed the affinity sentence must be followed even if it did not accurately express the teaching of Leviticus. This, contended Y, showed that the Old School needed “another reformation from Popery.” Mr. Y’s perspective ended on a sour note as he said of Dr. Hodge that, “justice can never be hoped for from the Beast, though he be dressed in the garb of an humble Presbyterian.”<sup>456</sup>

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<sup>454</sup> “The Marriage Question,” *Christian Observer*, June 24, 1842, vol. 21, no. 25, 98.

<sup>455</sup> Ibid.

<sup>456</sup> “Professor Hodge’s Opinion,” *Christian Observer*, July 8, 1842, vol. 21, no. 27, 105.

Marriage to a deceased wife's sister became a heated issue in the Presbyterian Church and though the *Christian Observer* represented a New School defense of McQueen, it would be an error to think this issue fell along Old School/New School lines. The views expressed by Mr. Y concerning confessional subscription would find more support in the New than the Old School, but his interpretation of Leviticus knew no such clear-cut bounds.

The *Christian Observer*'s interaction with the McQueen marriage adjudication continued well into the fall of 1842 with letters, anonymous articles, and editorial comments. In the July 22<sup>nd</sup> issue, pseudonymous Mr. B. emphasized that the laws of Lev 18 were in fact ceremonial laws that were abrogated in Christ and had no bearing on the case.<sup>457</sup> The following week saw three columns of the paper dedicated to the case. An article by "Unitas," whom the editor of the *Observer* described as Dr. Hill, consumed most of these columns.<sup>458</sup>

Dr. Hill's presentation contended that the Presbyterian Church's practice had been to view the marriages as barring one from church membership, and that cases of marriage to a deceased wife's sister began to proliferate with the 1780 case of Anthony Dushane. The then highest judicatory—the Synod of New York and Philadelphia—and the General Assembly after it, repeatedly failed to emphasize the danger of these unions and

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<sup>457</sup> "The Marriage Question," *Christian Observer*, July 22, 1842, vol. 21, no. 29, 114.

<sup>458</sup> "Incestuous Marriages," *Christian Observer*, July 29, 1842, vol. 21, no. 29, 118-19; possibly William Hill (1769-1852) of Virginia, a graduate of Hampden-Sidney College, who ministered in Winchester and Alexandria per "Hill, William, D. D." in *Encyclopedia of the Presbyterian Church*. "Unitas" mentions several events in Virginia.

discipline them accordingly.<sup>459</sup> Cases increased and sentiments in favor of near-kin unions developed in Hanover Presbytery of Virginia due to the influence of “northern men in that Presbytery.” For Dr. Hill, the number of near-kin cases brought before the Presbyterian Church were indicative of the church’s decline in confessional conviction due to “northern influences.”<sup>460</sup>

Articles continued in August when an anonymous “Northern Man,” undoubtedly having his ire raised due to Hill’s sectional aspersions, responded to some of the Southerner’s analysis and defended the northern states against his accusations. This anonymous northerner stated that whatever “the *opinions* of northern men may be the *practice* shows that the trouble has existed mainly in the south.” The Northern Man agreed with Dr. Hill that such near-kin marriages were wrong, but he analyzed the issue by expositing the relevant biblical texts in Leviticus and did not bring the *Confession* into the picture.<sup>461</sup> Though Unitas and the Northern Man maintained sectional prejudices, they both agreed that McQueen’s marriage was incestuous.

In August another *nom de plume*, “Heclo,” argued for the marriage of a man to two sisters successively on the basis of applying the levirate marriage law of Deut 25:5 to the woman. He believed that if a wife died childless, then her sister should marry the widower to bring seed. Heclo used the principle of reciprocal application to justify a levirate marriage practice for the benefit of the deceased woman. The pseudonymous author believed that Lev 18:16 prohibited relations with a brother’s wife and not his

<sup>459</sup> Hill’s observation is consistent with what was surveyed in chapter three of the present work, because prior to the Dushane case the Presbyterian Church was calling for the dissolution of near-kin marriages.

<sup>460</sup> “Incestuous Marriages,” *Christian Observer*, July 29, 1842, vol. 21, no. 29, 118.

<sup>461</sup> “The Marriage Question,” *Christian Observer*, Aug. 19, 1842, vol. 21, no. 33, 129.

widow; for the woman, it prohibited fornication with her sister's husband, but not marriage to her widower.<sup>462</sup>

Further ink was spilt the following month as the Northern Man felt bound to express more reasons why God would prohibit marriage to a deceased wife's sister. One reason resurrected the contention of Jonathan Edwards the Younger that marriage outside the family extended the human family. A second point took a genetic perspective as the author contended that avoiding near-kin marriages protected the descendants from "the natural corruption of stock produced by intermarriage."<sup>463</sup>

One final article from the *Christian Observer* contributed to the apologetic favoring marriage to a deceased wife's sister. The author, a pseudo Greek named "Omicron," examined each of the levitical marital relationships prohibited and found summarily that, "I may not cohabit ... with my own blood-kin in the *six* nearest degrees. With that which my own blood-kin of the *four* nearest degrees has cohabited. With the *three* nearest blood-kin of her body, with whom I myself cohabited." Omicron saw Lev 18:18 as a prohibition of polygamy and not a rule against wife's sister marriages. The author denied the accuracy of the affinity sentence by limiting the prohibited relations to those specifically enumerated in Lev 18.<sup>464</sup>

In summary, the *Observer's* New School perspective saw two principle problems with the McQueen case. The first problem was the view of some in the Old School who the *Observer* thought elevated the teaching of the *Confession* above Scripture and effectively established a new papacy. The second perceived difficulty was the

<sup>462</sup> "Law of Marriage," *Christian Observer*, Aug. 26, 1842, vol. 21, no. 34, 134.

<sup>463</sup> "The Marriage Question," *Christian Observer*, Sept. 23, 1842, vol. 21, no. 38, 152.

<sup>464</sup> "Marriage of a Wife's Sister," *Christian Observer*, Oct. 28, 1842, vol. 21, no. 43, 169.

inconsistent prosecution of these marriages and the ensuing erratic application of discipline. The affinity sentence was not discussed much since it was specifically referred to only by “Unitas” (Dr. Hill) who affirmed its interpretation of Leviticus. If the perspectives presented in the *Christian Observer* were representative of the New School thinking on near-kin unions, then these marriages were nearly as divisive for the New School as for the Old.

### **Charles Hodge’s Analysis of the Assembly of 1842**

The Princeton theologian, Charles Hodge, agreed with the Assembly’s interpretation of the *Confession* and its condemnation of McQueen’s marriage.<sup>465</sup> He saw three interpretive positions represented at the Old School Assembly: some contended that the Bible has no incest law, others said there are laws against incest but they are no longer in force, and another group said the law is in force but it does not pertain to the McQueen marriage.<sup>466</sup> After discussing and refuting all three, Hodge concluded that the laws of Lev 18 and 20 were of “permanent obligation” and pertinent to McQueen.<sup>467</sup> The Levitical laws are the revelation of God’s will for his people and near-kin prohibitions are not to be omitted any more than “any other expression of the will of God.”<sup>468</sup>

Hodge then considered whether the marriage of a man to the sister of his deceased wife was condemned by Lev 18:18. Contrary to some, the Princetonian interpreted the verse as a prohibition against polygamy that had no bearing on the issue of a man marrying his sister-in-law.<sup>469</sup> The prohibitions against marrying kin were based upon the

<sup>465</sup> Charles Hodge, “General Assembly of 1842,” *BRPR* 14 (1842): 497-521.

<sup>466</sup> *Ibid.*, 498.

<sup>467</sup> *Ibid.*, 515.

<sup>468</sup> *Ibid.*, 517-18.

<sup>469</sup> *Ibid.*, 519.

nearness of the relationship, the nearer the relation the greater the offense. If a man must not marry his sister, or his brother's wife, or his wife's daughter or granddaughter, then he must not marry his deceased wife's sister because of her relationship to the deceased.<sup>470</sup> Hodge concluded, "In reviewing the case ... we think it plain that the word of God ... does forbid marriage between a man and the near-kindred of his wife."<sup>471</sup> Hodge believed that the affinity sentence was an accurate interpretation of Scripture.

In his *Systematic Theology*, published in 1872, Hodge would restate his earlier argument. The levitical marriage law is still in force, and the question was whether that law describes the *principles* of the degrees of consanguinity and affinity, or is it a list of the actual *cases* prohibited. He concluded that the near-kin relationships enumerated in Leviticus describe the outer limitations of the consanguine and affine marriages prohibited; the relationships specifically prohibited by Moses delimit the relationships that can be inferred.<sup>472</sup> He addressed the *Westminster Confession* specifically and declared it "a simple and comprehensive statement of the law as laid down in Leviticus."<sup>473</sup> Affinity is as real a bond of relationship as consanguinity.<sup>474</sup> The husband's marriage to a woman establishes a familial relationship with her sister and a husband marrying the sister of his deceased wife is akin to the husband marrying his own sister.<sup>475</sup> Though he believed the reciprocal application of Lev 18:16 to the woman was a

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<sup>470</sup> Ibid., 520.

<sup>471</sup> Ibid.

<sup>472</sup> Charles Hodge, *Systematic Theology* (1875; reprint, Grand Rapids: Eerdmans, 1995), 3:413.

<sup>473</sup> Ibid., 3:419.

<sup>474</sup> Ibid.

<sup>475</sup> Ibid., 3:420.

valid interpretive principle, he preferred to interpret the wife's sister marriage as incestuous by using the "in blood" principle of the *Confession*.

In summary, Hodge's view affirmed the "in blood" principle of the affinity sentence as the best way for understanding the affinity prohibitions. Hodge added that the severity of a consanguine or affine marriage transgression decreased as the distance of the kinship relationship between the man and woman increased. For Hodge, a man marrying his deceased wife's sister was less severe than a man marrying his own sister because the wife's sister relation to her sister's widower is one of affinity and not consanguinity.<sup>476</sup> The Princetonian's analysis supported the *Westminster Confession's* teaching and showed his opposition to removing the affinity sentence.

### **Archibald McQueen Again Seeks Help for his Defense**

After the 1842 General Assembly, Archibald McQueen solicited assistance for his case in a letter to William Engle, the Editor of *The Presbyterian*. McQueen had seen a series of four articles in *The New York Commercial Advertiser* where an "Old School Presbyterian" wrote concerning the Marriage Question. McQueen, at the request of a number of his friends, wrote to Engle in hopes of having the series reprinted in *The Presbyterian*. The letter concluded by saying that McQueen believed this request was due him, and the publication of the series of articles would be a favor to "a suffering brother."<sup>477</sup> The American Scot believed the request was due him, presumably, because *The Presbyterian* had supported the Presbyterian Church Assembly's sustaining of Fayetteville Presbytery's decision.

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<sup>476</sup> Ibid., 3:417; see also: Charles Hodge, "The General Assembly of 1847," *BRPR* 19 (1847): 418, for his justification of this statement.

<sup>477</sup> Archibald McQueen, July 29, 1842, to William M. Engle, MSEN3, Folder #3, 1842, PHSP.

The *Presbyterian*, in the spirit of an objective and fair press, answered McQueen's request in October when Engle printed an article from *The New York Observer* opposing the decision of the General Assembly.<sup>478</sup> This article, penned by "Omicron," would also appear in its entirety on the front page of the *Christian Observer* of October 28, 1842.<sup>479</sup> Omicron enjoyed the distinction of being published in both the Philadelphia Old and New School newspapers.

It seems that William Engle's journalistic patience had come to an end, at least temporarily, when he printed a short paragraph in the *Presbyterian* saying that "other requests and articles on the same subject" would not be printed because he was "persuaded ... that the great mass of our readers are satisfied with the voluminous articles already published on both sides." The paragraph ended with a recommendation that any further polemics should be published "in pamphlet form."<sup>480</sup> Some people took Mr. Engle seriously because the ink continued to flow due to further publications responding to the deceased wife's sister marriage and the McQueen case. Engle's exasperation foreshadowed the frustration that many concerned Presbyterians felt as adjudication of the McQueen marriage continued in the Presbyterian Church's courts.

### **The Prosecution of Mary McQueen and Elder Alexander McKinnon**

Discipline proceeded with Mary, the other half of the McQueen affine marriage, when the Presbytery of Fayetteville instructed the Laurel Hill Church Session to deal with her marriage to her deceased sister's husband. The Session cited "the said Mary McLeod now Mary McQueen" to appear before them on a Saturday in December to

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<sup>478</sup> "Marriage of a Wife's Sister," *The Presbyterian*, Oct. 8, 1842, vol. 21, no. 41, p. 161.

<sup>479</sup> The article's content was discussed earlier in this chapter in the section "The *Christian Observer*."

<sup>480</sup> "Marriage Question," *The Presbyterian*, Oct. 8, 1842, vol. 21, no. 41, 162.

respond to the charge that she had violated the law of marriage as given in the *Confession's* affinity sentence.<sup>481</sup>

At the appointed time the Session met and they decided, on the basis of the Presbyterian Church's *Book of Discipline*, chapter eleven, section five, that the one year statute of limitations on commencing process in cases of scandal had been exceeded and that this had created a problem of "peculiar difficulty." Because of this rule, the session referred Mary's case to the next meeting of Fayetteville Presbytery in hopes of obtaining its advice concerning the one-year limitation. Even though Mary McQueen had not appeared before the Session as cited, the elders decided to postpone issuing another citation until Fayetteville Presbytery resolved the *Book of Discipline* issue. The elder delegate to the spring meeting of Fayetteville Presbytery reported to the session that he did not "officially" bring the statute of limitations issue before the Presbytery, but by his private polling of the presbyters he determined that the majority believed the Laurel Hill elders must follow the order of the highest judicatory.<sup>482</sup>

With this procedural problem resolved, the Laurel Hill Session issued another citation to Mrs. McQueen specifying that if she did not appear the case would proceed with her *in absentia*.<sup>483</sup> The session met May 2, 1843 only to discover that the Clerk had not yet served the second citation to Mrs. McQueen. The meeting was adjourned to reconvene at the call of the Moderator.<sup>484</sup> When Mrs. McQueen was served the second citation, the Session met with her absent and appointed Mr. Murdoc McKinnon as her

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<sup>481</sup> *Records of Laurel Hill, Ashpole, Centre, and Red Bluff Churches, 1815-1862*, December 31, 1842, 68560, 68-70, PHSM.

<sup>482</sup> *Records of Laurel Hill*, Dec. 31, 1842, 70-73, PHSM; *The Constitution of the Presbyterian Church* (Philadelphia: Presbyterian Board of Publications, [1839]), 494.

<sup>483</sup> *Records of Laurel Hill*, April 10, 1843, 73-78, PHSM.

<sup>484</sup> *Records of Laurel Hill*, May 2, 1843, 78-79, PHSM.

defender.<sup>485</sup> After hearing his defense presentation, the Elders voted unanimously, less Mr. Murdoc McKinnon's abstention due to his position as defender, to suspend her from the privileges of the Church until she repented of her marriage with her deceased sister's husband. Having concluded their business with Mary McQueen's case, the Session proceeded to deal with a case of public intoxication.<sup>486</sup>

Elder Alexander McKinnon had performed the wedding ceremony and he was the third participant in the McQueen's incestuous marriage. Having met with McKinnon, the Smyrna session adopted his contention that since he was a Justice of the Peace he was bound by his civil office to solemnize the marriage.<sup>487</sup> McKinnon had been presented a valid marriage license from the Clerk of the Civil Court, and he believed the license obliged him to do his job and unite Archibald and Mary. The result of the Smyrna Session's investigation was to dismiss the charges against McKinnon.<sup>488</sup> Murdoc McKinnon's defense illustrates the difficulty the Presbyterian Church had dealing with marriage and its relationship to the state laws because both ministers and civil servants could solemnize marriages. Murdoc McKinnon's defense for his action was that he had to perform the marriage because the couple had a legitimate marriage license. For McKinnon and the elders of the Smyrna Church, the state's marriage authority superceded the church's marriage duties.

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<sup>485</sup> The relation of Murdoc McKinnon to Alexander McKinnon was not investigated by the present writer—they may have been brothers.

<sup>486</sup> *Records of Laurel Hill*, September 9, 1843, 79-82, PHSMS.

<sup>487</sup> It may help at this point to remember what was noted earlier regarding the location of the *Confession's* chapter on marriage between the chapters "Of the Civil Magistrate" and "Of the Church." The Westminster Assembly dealt with the tension between church and state and this tension continued to be of concern in nineteenth-century America.

<sup>488</sup> *Minutes of Fayetteville Presbytery*, Oct. 20, 1842, 24, PHSMS.

When Fayetteville Presbytery heard the Smyrna Church's report it did not accept McKinnon's argument. After considerable discussion, the Fayetteville presbyters resolved that the defense presented for dismissing Mr. McKinnon's case was "altogether insufficient," and "utterly inadmissible." Presbytery pointed out that there should be no conflict between McKinnon's obligations as a civil officer and his duties as an elder in the Smyrna Church. Further, Presbytery stated that if McKinnon believed there was a conflict between his two duties, the proper action for him would have been, as a "conscientious man," to give up one of the offices rather than fail in his responsibilities to either position. Fayetteville Presbytery told the Smyrna session to reconsider their "mistaken conceptions of duty," and it instructed the elders to return to their neglected responsibility and fulfill their obligation as an ecclesiastical court. With a rather ominous tone, the Presbytery informed the session that if the issue was not resolved expeditiously, the session itself would face the "severe" measures of Fayetteville's discipline.<sup>489</sup>

When Fayetteville Presbytery met on March 23, 1843, it returned to the problem at the Smyrna Church. Per Presbytery's instruction, the Session had met in February and heard Mr. McKinnon's defense again. The Session decided that since Archibald McQueen was the nephew of several of the Smyrna Church's members it would be best if a higher judicatory hear Mr. McKinnon's case.<sup>490</sup> Presbytery agreed with the elders at Smyrna and stipulated that all the necessary papers and records be prepared, organized, and delivered to the Synod of North Carolina so it could adjudicate the case.<sup>491</sup>

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<sup>489</sup> Ibid., 23-25.

<sup>490</sup> It is not stated specifically, but there appears to have been some relationship between Archibald McQueen and the McKinnons other than their Scots heritage.

<sup>491</sup> *Minutes of Fayetteville Presbytery*, March 23, 1843, 42-43, PHSMS.

The Synod of North Carolina met at Raleigh in November of 1843. Due to discrepancies between McKinnon's account and that of other witnesses, the Synod disregarded all disputed testimony. The case was heard, the roll was called to give all presbyters an opportunity to speak, and the vote was taken. The Synod decided that it could not sustain the action of Mr. McKinnon in marrying the McQueens. Despite its decision against McKinnon, the Synod chose not to inflict any censure on him and recommended to the Smyrna session that they dismiss the case.<sup>492</sup> The Synod affirmed the error of McKinnon's solemnizing the McQueen marriage, but it did not believe the action of Elder McKinnon warranted any further disciplinary action. Even though McKinnon was a Presbyterian elder who bore the responsibility for performing an illicit marriage, the Synod did not see any reason for further discipline.<sup>493</sup>

### **The McQueens and the Spring 1843 Meeting of Fayetteville Presbytery**

At the spring 1843 meeting, Fayetteville Presbytery inquired into the action of the Laurel Hill Session with respect to their discipline of "Mary McLeod." The use of Mary's maiden name in the minutes was indicative of the conviction that the McQueen marriage was actually not a marriage at all because the couple's cohabitation was illicit and invalid. The Session informed the Presbytery that they had made some progress in the case, but they had not yet concluded their efforts. Presbytery instructed the Session to

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<sup>492</sup> *Minutes of the Synod of North Carolina*, Nov. 2, 1843, 116-123, PHSMS.

<sup>493</sup> The P.C.U.S.A. resolved the church/state dilemma regarding near-kin marriage in 1953 when it decided to omit 24:4 from the *Confession* because, "State laws, in general, control this matter." *The Presbyterian Constitution and Digest*, 2 vols. (Philadelphia: The Office of the General Assembly of the United Presbyterian Church in the United States of America, 1963), 1:A43.

have the issues related to Mary's case completed in their entirety and that it be prepared to report at the next Stated Meeting.<sup>494</sup>

Fayetteville Presbytery also asked whether any further disciplinary action must be taken with respect to Archibald McQueen. This subject raised considerable and extended debate leading to the Presbytery's decision to postpone any further action against McQueen until the next stated meeting.<sup>495</sup> The McQueen case was into its second year of adjudication and its continued ramifications would occupy the Presbyterian Church for several more years.

### **William Marshall's Book and the McQueen Case**

William Marshall did not appear at the 1842 General Assembly as Archibald McQueen's advocate, but as if to make up for his absence, he published a book on marriages of consanguinity and affinity in which he spoke to the McQueen case.<sup>496</sup> This book was an expansion of the arguments given in his 1834 pamphlet, but it also addressed new issues pertinent to the deceased wife's sister marriage. In Marshall's first chapter, he entered into the issue of confessional subscription as he answered the question, "What is a trial by the Word of God in the case of a person who has signed his adherence to Presbyterianism and his approval of the Confession of Faith?"<sup>497</sup> He interpreted the following, from the *Book of Discipline*, as guaranteeing a trial by the Scriptures:

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<sup>494</sup> Ibid., 57.

<sup>495</sup> Ibid., 57-58.

<sup>496</sup> William Marshall, *An Inquiry Concerning the Lawfulness of Marriage Between Parties Previously Related by Consanguinity or Affinity. Also, a Short History of Opinions in Different Ages and Countries, and of The Action of Ecclesiastical Bodies on that Subject* (New York: Mark H. Newman, 1843); the book is 212 pages long and it was published between the 1842 and 1843 Assemblies, see page v.

<sup>497</sup> Marshall, *An Inquiry*, 9.

Nothing therefore, ought to be considered by any judicatory as an offence, or admitted as matter of accusation, which cannot be proved to be such from Scripture, or from the regulations and practice of the church, founded on Scripture; and which does not involve those evils, which discipline is intended to prevent.<sup>498</sup>

Marshall observed that this statement is not “quite so definite as is desirable for practical purposes,” but added that the General Assembly had interpreted it as justification for giving the offended a trial by God’s Word. The case must be proved “from Scripture” and “from the regulations and practice of the church founded on Scripture.”<sup>499</sup>

According to Marshall’s analysis, there were three perspectives on what constituted a trial by the Bible in the Presbyterian Church. The first view included those who held that McQueen’s suspension for marrying his deceased wife’s sister should be sustained because he had transgressed the affinity sentence in the *Confession*. Those holding this view believed that the removal of the affinity sentence was a prerequisite to McQueen’s obtaining a reversal of the disciplinary suspension imposed upon him by Fayetteville Presbytery. Marshall interpreted this view as a trial by the *Confession’s* affinity sentence rather than a trial by the Word of God. Trial by the Word of God does not necessitate the removal of the sentence before acquitting McQueen; McQueen could be acquitted by the Bible and effectively bypass the affinity sentence.<sup>500</sup> Discussion of the first view concluded with the following comment: “It follows from these considerations that, agreeable to the provisions of the constitution, a man may be acquitted by the General Assembly, and yet the rule which he has broken may retain its

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<sup>498</sup> *Constitution of the Presbyterian Church* (Philadelphia: Towar & Hogan, 1827), 391.

<sup>499</sup> Marshall, *An Inquiry*, 12-13.

<sup>500</sup> *Ibid.*, 9-11.

place in our standards, because the Assembly has no power over it.”<sup>501</sup> Marshall saw his perspective as a way to maintain the *Confession’s* prohibitive statement while at the same time bring relief to Archibald McQueen.

The second view represented in the Presbyterian Church believed that trial by the Word of God necessitated acquittal of the accused if “it shall appear certain to the majority” that the rule “he has broken is contrary” to the Bible.<sup>502</sup> Marshall said that some at the Assembly believed that since McQueen had vowed adherence to the *Confession* he could not use his doubts about the Scriptural accuracy of the affinity sentence as a defense; he had not taken exception to the affinity sentence at his licensure or ordination and he had to uphold it and be held to its teaching. McQueen’s only hope of release from discipline was if the majority of the Assembly believed it “certain” that the affinity sentence inaccurately represented the teaching of Scripture. Where the first view asserted the primacy of the *Confession’s* affinity sentence, the second view propounded the primacy of the General Assembly’s analysis of Scripture’s teaching.<sup>503</sup>

The third view involved trying the case “as if the Confession had no existence.”<sup>504</sup> The *Book of Discipline* stipulated that the regulations of the church are established on Scripture, and if any regulation had no such foundation, then it was necessary to evaluate the situation from the Bible and put aside the *Confession*. Marshall was concerned that McQueen, or anybody else, might be convicted of something that stood on a weak or dubious foundation. If the *Confession* decidedly and accurately teaches the doctrine of Scripture on the point in question, then its teaching should be upheld, but if there was a

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<sup>501</sup> Ibid., 11.

<sup>502</sup> Ibid.

<sup>503</sup> Ibid.

<sup>504</sup> Ibid., 12.

lack of certainty regarding the accuracy of a confessional statement, then people should not be prosecuted for breaking its teaching.<sup>505</sup>

Marshall was concerned that Presbyterians not lose sight of the fact that the primary standard of the church is Scripture, and the secondary standard is the *Westminster Confession of Faith*. The situation was difficult for the Presbyterians because there were different opinions concerning the propriety of deceased wife's sister unions, and many believed the only relief which could be given was removal of the affinity sentence. Marshall believed that the Bible could be used to exonerate McQueen despite the teaching of the affinity sentence, but this analysis would tend to undermine the authority of the *Confession*. On the other hand, continued prosecution of McQueen when the incestuous nature of his union was doubted by many would be an injustice to the minister and his wife.

Issues were further complicated by the meaning of Confessional subscription. Marshall contended that there is a distinction between those aspects of the *Confession* that are essential and others which are not essential. He likened the essential tenets to the stones of a Roman arch which will not continue to stand if any one of the arch stones is removed, and he said the inessential teachings are like "loose stones or rubbish piled against the arch, but imparting no strength."<sup>506</sup> Marshall believed the affinity sentence to be one of the "loose stones" at the foot of the arch of essential and orthodox doctrine.

With respect to discipline, Marshall discouraged the application of severe measures in cases of deceased wife's sister marriages because he believed the affinity

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<sup>505</sup> Ibid., 12, 13.

<sup>506</sup> Ibid., 18; describing any aspect of the *Confession* as "rubbish" is a poor choice of terminology.

sentence was not essential to Presbyterianism.<sup>507</sup> The Presbyterian Church should not use its constitution “as a basis of discipline so that no man may be received into the church until he approve every item which they contain.”<sup>508</sup> Marshall proposed that the General Assembly get behind the affinity sentence and try McQueen by the Word of God. Confusion regarding near-kin marriages in the Presbyterian Church was exacerbated by differing views of the relationship between the Bible and the *Confession*, the meaning of subscription, and the responsibilities of ecclesiastical courts.

### **The Case of Mr. Dickson’s Licensure in Kentucky, 1843**

As the Presbyterian Church anticipated the 1843 General Assembly meeting, a case involving the affinity sentence of the *Westminster Confession* arose in the Louisville Presbytery of Kentucky. A licentiate of the Presbytery, Mr. Dickson, had expressed his reservations concerning the accuracy of the interpretation of Scripture represented in the affinity sentence and he was allowed to take exception to the sentence.

In response to this, several members of Louisville Presbytery submitted a protest.<sup>509</sup> The protest contended that the Presbytery was out of order when it received and licensed Mr. Dickson because he stated his belief that the affinity sentence inaccurately interpreted the teaching of Scripture. A reason given for filing the protest was concern that allowing this single exception would establish a “dangerous precedent” that would lead to ever increasing exceptions to the *Confession* and open the door to the “perversion” and “subversion of Creeds and Confessions.” The protesters contended further that the constitution of the Presbyterian Church required both licentiates and

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<sup>507</sup> Marshall, *An Inquiry*, 28.

<sup>508</sup> *Ibid.*, 29.

<sup>509</sup> *Minutes of Louisville Presbytery*, April 11, 1843, 335, PHSP.

ministers to adopt the *Confession* as containing the system of doctrine taught in Scripture and that presbyters could not take exceptions.<sup>510</sup> The protest pointed out that Louisville Presbytery's required discipline for marriages of affinity directly contradicted the allowance of an exception to the affinity sentence; the Presbytery required the excommunication of parties involved in near-kin marriages and allowing Mr. Dickson's exception was not consistent with the Presbytery's standing rule. The protesters believed the Presbytery could not allow a man to take exception to the constitutional sentence that summarizes the affinity prohibitions.<sup>511</sup> It was also stated in the protest that the Presbytery could not allow the exception because of its belief that the Presbyterian Church was about to remove the affinity sentence; the revision must first be achieved through proper procedure before it could be considered no longer constitutional.<sup>512</sup>

Those appointed to respond to the complaint and protest answered that though Brother Dickson took exception to the affinity sentence, he also agreed to abide by the sentence and by the rules of Louisville Presbytery respecting its discipline of affine marriages.<sup>513</sup> The implication of this response is that any people involved in a near-kin marriage, who were under Dickson's ministry, could be prosecuted and excommunicated, but since Dickson had taken exception to the affinity sentence, it would seem possible that he could have married his wife's sister and not suffered any discipline. The elders and ministers of the Presbyterian Church were afforded the opportunity to put aside the same rule they might use to prosecute their own congregants.

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<sup>510</sup> Ibid., 336-37.

<sup>511</sup> Ibid., 338.

<sup>512</sup> Ibid., 339.

<sup>513</sup> Ibid., 340.

Two views of confessional subscription are clearly described in the two perspectives represented in Louisville Presbytery. The complainants contended that subscription involved adherence to the entirety of the constitution of the Presbyterian Church with no exceptions allowed, but the Presbytery responded that the exception was allowed so long as Mr. Dickson did not teach contrary to the affinity sentence.<sup>514</sup> When Mr. Dickson came before the Louisville Presbytery for ordination, the Stated Clerk was instructed to include a statement regarding Dickson's subscription and his exception to the affinity sentence. The statement specifically expressed his adherence to the *Confession of Faith* in all its particulars except for the affinity sentence.<sup>515</sup>

The pastor of the First Presbyterian Church of Louisville, W. L. Breckinridge, came before Louisville Presbytery in its September meeting and presented a complaint to the Synod of Kentucky against the Louisville Presbytery's action in the ordination and installation of H. L. Dickson. A motion was made to appoint a committee to defend the Presbytery's actions before the Synod of Kentucky, but the motion was lost.<sup>516</sup> Breckinridge then presented an overture to Presbytery asking whether Presbyteries had the right to dispense with the adoption of any part of the *Confession*. The vote was negative. Since this stood in direct contradiction with what the Presbytery had done in the case of Dickson, an amendment was presented contending that the Presbytery did not exceed its authority when it allowed Dickson's exception.<sup>517</sup> This amendment was lost and the overture was indefinitely postponed.<sup>518</sup>

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<sup>514</sup> Ibid.

<sup>515</sup> *Minutes of Louisville Presbytery*, May 3, 1843, 350, PHSP.

<sup>516</sup> *Minutes of Louisville Presbytery*, Sept. 5, 1843, 359, PHSP.

<sup>517</sup> Ibid., 359-60.

<sup>518</sup> Ibid., 360.

The issue debated by Louisville Presbytery was whether the Presbyterian Church required subscription to the entirety of the *Confession* as the system of doctrine taught in Scripture, or whether it could allow subscription to mean adhering to the *Confession's* system of doctrine allowing exceptions to points of lesser importance. The Dickson case was particularly relevant to the parallel events with the McQueen case, since many within the Presbyterian Church contended the accuracy of the affinity sentence.<sup>519</sup> Louisville Presbytery's controversy foreshadowed the conflict that would occupy the proceedings of the impending General Assembly as well as the future decades of debate regarding constitutional subscription.

### **The General Assembly of 1843**

The Presbyterian Church General Assembly met at Philadelphia in 1843 and its docket included two items of business relevant to the McQueen case. The first item was an overture from the synods of New Jersey and Alabama, and the presbyteries of the Western District, petitioning the General Assembly to consider whether the affinity sentence should be deleted.<sup>520</sup> The committee handling the disposition of the overture recommended that a committee be appointed to consider removal of the sentence.

Debate on the appointment of a committee began when Dr. James Hoge—a minister from Columbus, Ohio—expressed the sympathies of himself and others that the Assembly was too busy to discuss such a time-consuming issue.<sup>521</sup> The report was tabled.<sup>522</sup> The Assembly moved to reconsider the report when Dr. Aaron W. Leland,

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<sup>519</sup> Maybe Dickson was influenced by the sister-in-law marriage debate to consider the implications of the affinity sentence and his exception was a result of the McQueen case.

<sup>520</sup> *Minutes of the P.C.U.S.A., 1838-1847*, 271.

<sup>521</sup> “The Marriage Question,” *The Presbyterian*, June 17, 1843, vol. 13, no. 24, 93.

<sup>522</sup> *Minutes of the P.C.U.S.A., 1838-1847*, 277, 278; the vote was 83 yeas to 55 nays.

Professor of Theology at Columbia Seminary, made a motion to remove it from the table.<sup>523</sup> Leland spoke to the issue and stated his opposition to marriages like McQueen's, but he was concerned that the Assembly apply "the constitutional source of power" by sending the question to the presbyteries.<sup>524</sup> He argued further that it was inconsistent to discipline one minister while allowing others to live uncensured for the same offense.<sup>525</sup> Dr. Leland's appeal to the inconsistency of disciplinary application to near-kin marriages was a point often raised in the debates. Consistency could have been achieved if sentence two of the consanguinity and affinity paragraph of the *Confession* had been applied to all near-kin marriages. The discipline sentence required the church to pursue the separation of the couple, but the Presbyterian Church was reluctant to follow its standards due to the reluctance of many Presbyterians to impose this degree of discipline on a near-kin marriage.

Dr. John MacLean, vice-president of Princeton College, believed that erasure of the affinity sentence would leave the near-kin marriage issue open for individual decision.<sup>526</sup> Further, MacLean believed that the affinity sentence was built on a questionable foundation and there "should be nothing in the Confession of Faith which has a dubious basis."<sup>527</sup>

W. L. Breckinridge was concerned that the issues relevant to confessional revision were being debated late in the Assembly and many commissioners had already

<sup>523</sup> Minutes of the P.C.U.S.A., 1838-1847, 286; the vote was 56 yeas to 49 nays.

<sup>524</sup> "The Marriage Question," *The Presbyterian*, June 17, 1843 vol. 13, no. 24, 93.

<sup>525</sup> Ibid., 93.

<sup>526</sup> Ibid.

<sup>527</sup> Ibid.

left.<sup>528</sup> The Kentuckian believed that a move to erase the affinity sentence would accomplish nothing because the Presbyterian Church had shown, with respect to the McCrimmon case two decades earlier, its desire to maintain the sentence. Breckinridge also noted that the “Presbytery of New Brunswick … [favored] … the measure, but the old men of Princeton, whom the Church venerates” were against it. He warned that issues relevant to the McQueen case and confessional revision were being influenced by outside parties, and the presbyters must not allow the external influences to sway the Assembly. At this point, it was decided to table “the whole subject.”<sup>529</sup> Later, the overture was removed from the table, debated, and adopted, but selection of the study committee was postponed.<sup>530</sup>

When the special committee was chosen it included: James Hoge, D.D., Charles Hodge, D.D., Gardiner Spring, D.D., Aaron W. Leland, D.D., and the Reverend Nathan L. Rice.<sup>531</sup> The controversial case of McQueen’s marriage to his deceased wife’s sister had led to the greater issue of revising the *Confession* by removing the affinity sentence.

The second issue at the 1843 Assembly concerning near-kin marriage was a resolution requesting the Assembly to instruct the Presbytery of Fayetteville to restore McQueen to the ministry.<sup>532</sup> Dr. John MacLean spoke observing that there were three factions in the court: those who condemned McQueen, not for violating Scripture, but for violating the *Confession*; others who thought that the censure should continue for a

<sup>528</sup> Ibid.

<sup>529</sup> *Minutes of the P.C.U.S.A., 1838-1847*, 286; the vote was 68 yeas to 65 nays.

<sup>530</sup> *Minutes of the P.C.U.S.A., 1838-1847*, 289; “The Marriage Question,” *The Presbyterian*, June 17, 1843 vol. 13, no. 24, p. 93, the vote was 61 yeas to 54 nays.

<sup>531</sup> *Minutes of the P.C.U.S.A., 1838-1847*, 290; the vote for the composition of the committee was unanimous.

<sup>532</sup> “The Marriage Question,” *The Presbyterian*, 17 June 1843, vol. 13, no. 24, p. 93.

limited period; and the final group included those who thought McQueen should separate from Mary before suspension was removed.<sup>533</sup>

At this juncture, a point of order was raised questioning whether a resolution was the proper way to handle the subject since no reference had been made to the Assembly by either McQueen or his presbytery. The Moderator deemed the resolution in order, he was challenged, and his ruling was sustained.<sup>534</sup>

Debate continued as the Reverend D. X. Junkin, pastor of the Greenwich, New Jersey congregation, contended that McQueen had been properly disciplined by his Presbytery, the action was affirmed by the last Assembly, and the present Assembly should not interfere with the lower court's discipline.<sup>535</sup>

Following several more speeches Chancellor Jones pointed out that the issue was not properly before the court because if McQueen was to be helped he needed to apply to his presbytery for an end to the suspension, and then if he obtained no satisfaction, he should appeal to his synod and the Assembly as necessary. The question was called, and the resolution for the restoration of Rev. McQueen was lost.<sup>536</sup> The Assembly had weighed the issue and decided not to interfere with the disciplinary actions of the Presbytery of Fayetteville. Those who pressed for the McQueens' separation had won a partial victory because Fayetteville suspended McQueen hoping that he would separate from Mary and show his repentance.

<sup>533</sup> Ibid.

<sup>534</sup> Ibid.

<sup>535</sup> Ibid.

<sup>536</sup> *Minutes of the P.C.U.S.A., 1838-1847*, 290; "The Marriage Question," *The Presbyterian*, June 17, 1843 vol. 13, no. 24, 93, observed that the motion was defeated by a great majority.

### **The General Assembly and Fayetteville Presbytery's Spring Meeting, 1844**

When the Presbyterian Church met for the 1844 General Assembly in Louisville, Kentucky, it did not deal directly with the McQueen case. The Assembly enjoyed some temporary relief from the adjudication but issues relevant to the McQueen case continued to come before Fayetteville Presbytery. Rev. McQueen memorialized Fayetteville Presbytery in hopes of obtaining relief from his suspension and restoration to the exercise of his ministry. When the memorial was read the Presbytery moved to postpone consideration until the next meeting of the Presbytery.<sup>537</sup> The postponement effectively eliminated the consideration of the memorial at the 1844 General Assembly meeting and extended McQueen's suspension for another year.

At the fall session, Presbytery took up McQueen's memorial and after considerable time spent in deliberation, it was unanimously decided to deny the request. Archibald McQueen informed the Presbytery that he intended to complain about the decision, and it was his desire to appeal directly to the Assembly and bypass the Synod of North Carolina. The Presbytery "readily granted" McQueen's request.<sup>538</sup> When the Assembly met in 1845, it would again consider the continuing case of the Reverend Archibald McQueen and his affine marriage to his wife's sister.

### **J. J. Janeway's Book, 1844**

Even though 1844 was an uneventful year for the McQueen case at the General Assembly level, interest in deceased wife's sister marriages had not subsided. The continued interest in marriages of affinity was reflected in Jacob J. Janeway's book on

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<sup>537</sup> *Minutes of Fayetteville Presbytery*, April 11, 1844, 104, PHSMS.

<sup>538</sup> *Minutes of Fayetteville Presbytery*, November 2, 1844, 133, PHSMS.

deceased wife's sister marriages.<sup>539</sup> Janeway was graduated from Columbia College in 1794 and studied theology with the father of the Reformed Dutch Church in America, John Henry Livingston.<sup>540</sup> His many years of experience included: serving at Second Presbyterian Church of Philadelphia with Ashbel Green, moderating the 1818 General Assembly, pastoring a Reformed Dutch Church, being Vice President of Rutgers University, serving on the Princeton Seminary Board, and working in the Presbyterian Church in other capacities as well.<sup>541</sup>

Janeway's book was written as an apologetic against publications defending marriage to a deceased wife's sister. In his introduction, Janeway observed that the Reformed Dutch Church had "rescinded" their rule against a deceased wife's sister marriage in 1842, and recent events in the Presbyterian Church were moving in that direction.<sup>542</sup>

Two points of view supporting McQueen were opposed by Janeway. The first, designated "Puritan," contended that Lev 18 was Jewish law "having no reference to marriage, and imposing no obligation on other nations," and that its prohibitions were against single acts of incestuous fornication, having nothing to do with near-kin marriage nor the New Testament Christian.<sup>543</sup> The other perspective was represented by "Omicron" who argued that Leviticus concerned the prohibition of particular near-kin marital unions, but the deceased wife's sister marriage was not one of those prohibited in

<sup>539</sup> Jacob J. Janeway. *Unlawful Marriage: An Answer to "The Puritan" and "Omicron," who Hale [sic] Advocated, In a Pamphlet, the Lawfulness of the Marriage of a Man with his Deceased Wife's Sister.* New York: Robert Carter, 1844; preface, Nov. 29, 1843.

<sup>540</sup> Livingston's book, *A Dissertation on the Marriage of a Man with his Sister in Law* (New Brunswick: Deare and Myer, 1816), was discussed in chapter 3.

<sup>541</sup> "Janeway, Jacob J., D.D.," in, *Encyclopedia of the Presbyterian Church.*

<sup>542</sup> Janeway, *Unlawful Marriage*, 10.

<sup>543</sup> Ibid., 15-16, 18.

the text.<sup>544</sup> Early in the book Janeway exposed the Puritan's misinterpretation of the writings of John Selden. Where the Puritan had used this seventeenth-century academic to support his interpreting Lev 18 as condemning single incestuous acts, Janeway showed that Selden actually interpreted the verses with regard to marriage and not fornication.<sup>545</sup>

Dr. Janeway's opposition to the views of both the Puritan and Omicron was stated clearly in his summary statement regarding the continued necessity for Lev 18:

We believe that God has given to his Church a law of incest and marriage, and that this law is found recorded in Levit. 18:6-18. It can, we think, be proved that this law is a *permanent ecclesiastical* law, neither civil or judicial, nor repealed;—that it refers to marriage and prescribes its limits;—and that it is *one law*, and a *natural law*. If we shall succeed in establishing all these points, the way will be prepared for proving the particular marriage under discussion to be unlawful.<sup>546</sup>

Natural law was one of Janeway's key points of argumentation with the Puritan. The prohibition of marriage to a deceased wife's sister, said Janeway, was based on natural law because it was established upon the natural relation that subsists between man and God. The laws of incest may be understood partially through reason without the aid of Scripture, but they can be most properly known only through written revelation; natural revelation must be interpreted by God's definitive written revelation. Janeway chided the Puritan because he repeatedly spoke of the "voice of nature," "the book of nature," and near-kin unions being "abhorrent to nature," but he failed to explain how one knows which particular unions are against nature.<sup>547</sup>

Janeway gave an interesting explanation for the sibling marriages which some had assumed necessary for Adam's children in the book of Genesis. He theorized that when

<sup>544</sup> Ibid., 16.

<sup>545</sup> Ibid., 22-23, 28, 98.

<sup>546</sup> Ibid., 63.

<sup>547</sup> Ibid., 138-39, 150.

the human race began “the voice of nature did not forbid the marriage of brothers and sisters; nor did nature abhor such connexions.”<sup>548</sup> As the population increased marriages could be achieved outside the “family circle,” and it was then that marriages to brothers and sisters became repugnant due to God’s revealing “a law of incest” which limited certain near-kin relations from marrying.<sup>549</sup> Thus, Janeway saw a progressive revelation in the conscience of man, a natural law, which exposed sinful unions, and these prohibitions were defined and finalized in Lev 18 and 20.

The Puritan’s great difficulty was that though he saw natural law prohibiting certain near-kin unions, the actual way man’s natural repugnance to these unions was applied in particular cases was determined subjectively. One person or ethnic group might find marriage to a particular near-kin repugnant, but another person or group might not. According to Janeway’s view, if Leviticus is not used to specify the particular prohibited relations, then natural law is interpreted with the eyes of each beholder.

As Janeway turned to the Puritan’s contention that the laws of Lev 18 pertained to the Old Testament Hebrews and had no authority for the New Testament Christian, he refuted it covenantally. The levitical law was not repealed for the Christian church and it “flourishes under the same gracious covenant by which the Jewish church was formed.”<sup>550</sup> Due to the covenant relationship between God and the church, the moral law is necessary to direct the Christian in proper conduct. Levitical law regulating marriage

<sup>548</sup> Ibid., 139.

<sup>549</sup> Ibid., 139, 144; of course, how could the marriages *ever* get out of the family circle? The consanguinity and affinity would become more distant, but to some degree, kin would always be marrying.

<sup>550</sup> Janeway, *Unlawful Marriage*, 95-96.

is “neither ceremonial, nor civil or judicial, but ecclesiastical and moral; moral because . . . it prescribes the limits of marriage.”<sup>551</sup>

In summary, Janeway’s interpretation of Lev 18 established that verse 16 reciprocally prohibits marriage to a deceased wife’s sister as well as marriage to a deceased brother’s wife, and that verse 18 is not against polygamy, but against marriage with a wife’s sister whether the wife is dead or alive. At no point in Janeway’s near-kin discussion does the *Westminster Confession* enter his arguments. The affinity sentence was not used in his presentation, and for that matter, the *Confession* does not appear anywhere in the book. Marriage to a deceased wife’s sister was seen as an incestuous union because Leviticus condemned the marriage with two verses. Where others emphasized the *Confession’s* interpretation and summarization of the levitical law in the affinity sentence as the interpretation of Leviticus subscribed to by Presbyterian ministers, Janeway did not present the issue as one of subscription and confessionalism, but rather as one of biblical interpretation and application.

### **The General Assembly of 1845**

Just a few weeks before the Assembly convened in the summer of 1845, issues pertaining to the McQueen case came before a meeting of Fayetteville Presbytery. McQueen’s complaint against the action of Presbytery that denied his memorial was before the presbyters because he wanted to make some modifications to the document. Presbytery granted him the freedom to make the desired changes. Fayetteville also decided that any response necessitated by the complaint at the General Assembly would

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<sup>551</sup> Ibid., 135.

be answered by Fayetteville's commissioners to the Assembly.<sup>552</sup> The stage was set for the events that would occur at the General Assembly meeting in Cincinnati.

The highest judicatory of the Presbyterian Church deliberated on near-kin marriage issues at its 1845 meeting by means of three instruments. The first instrument was the committee report—deferred by the 1844 Assembly—concerning the removal of the affinity sentence from the *Confession*.<sup>553</sup> The second document was Rev. McQueen's complaint dealing with the extent of discipline exercised against him by Fayetteville Presbytery. The final near-kin issue involved another case of marriage to a deceased wife's sister brought before the court from the Presbytery of Cincinnati, which was dealt with in short order since it was tabled.<sup>554</sup>

The report from the study committee on confessional revision was docketed for Monday morning.<sup>555</sup> On Monday, the report was postponed until Tuesday, and on Tuesday until Wednesday when it was again delayed in order to hear a report on fund-raising for salaries and scholarships at Princeton Seminary.<sup>556</sup> On Friday afternoon, the Assembly defeated the motion to revise the confession by a vote of ninety-eight to eighty-three.<sup>557</sup> The erasure attempt at the time of the McCrimmon case had made it to the presbyteries for their consideration, but the attempted excision associated with the McQueen case failed to make it that far. Even though the question of sending the proposed change to the Presbyteries was defeated, a special committee was appointed to draft a paper expressing the sense of the Assembly concerning the marriage issue. The

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<sup>552</sup> *Minutes of Fayetteville Presbytery*, April 3, 1845, 207, PHSMS.

<sup>553</sup> *Minutes of the P.C.U.S.A., 1838-1847*, 336.

<sup>554</sup> *Ibid.*, 383.

<sup>555</sup> *Ibid.*, 380.

<sup>556</sup> *Ibid.*, 384, 387, 393.

<sup>557</sup> *Ibid.*, 397.

special committee presented their paper on Saturday; it was read and placed on the docket for debate and decision.<sup>558</sup> When the report was presented at the docketed time the Assembly postponed it indefinitely.<sup>559</sup>

The Assembly then moved on to consider the extent of the discipline received by Archibald McQueen. Papers relevant to the case, from both sides of the issue, were heard and weighed by the commissioners. The court moved to recommend to the Presbytery of Fayetteville that they reconsider their discipline against McQueen and discern if the three years he had already been suspended were sufficient.<sup>560</sup> This action of the Assembly established that discipline short of excommunication was appropriate for a deceased wife's sister marriage, and it established that a minister involved in such a union did not have to be divested or excommunicated. This decision both upheld the use of the affinity sentence and put aside the requirements for marital dissolution stipulated in the *Confession's* discipline sentence.

### **Charles Hodge's Report on the 1845 General Assembly**

Charles Hodge's report on the Assembly of 1845 expressed his concern that the marriage issue was dividing the Presbyterian Church and had been doing so for over a hundred years.<sup>561</sup> Further, "The Assembly ... has almost always acted upon the principle of neither restoring a man condemned by his session or presbytery for such a marriage, nor coercing the lower courts to make it a matter of discipline."<sup>562</sup> Hodge concluded that

<sup>558</sup> Ibid., 398.

<sup>559</sup> Ibid., 402.

<sup>560</sup> Ibid., 403; the vote was 86 yeas to 62 nays.

<sup>561</sup> Charles Hodge, "The General Assembly of 1845," *BRPR* 17 (1845): 443.

<sup>562</sup> Ibid., 444.

this was an appropriate way to handle such cases and if the issue was pressed to a matter of communion, he believed it would divide the Presbyterian Church.<sup>563</sup>

Hodge's analysis of the severity of the near-kin issue in the Presbyterian Church should not be taken lightly. Even though this issue may appear insignificant to twenty-first century eyes, it was a difficult problem for the Presbyterian Church and resolution of the matter necessitated the use of wisdom and discernment. The people involved on both sides of the issue were serious about their views and some believed near-kin marriages to be a sign of the sliding of the church into serious error.

### **Fayetteville Presbytery's Meeting, Fall 1845**

The sixty-fifth session of the Presbytery of Fayetteville met on October 30, 1845. When the General Assembly actions were reported to the Presbytery, the fourth item—the Assembly's recommendation that Archibald McQueen's suspension end—produced extensive and heated debate.<sup>564</sup> The argumentation was indicative of the general turmoil within the bounds of Fayetteville Presbytery. Many ministers were anxious for a solution and “hundreds of Memorialists from … [McQueen's] own immediate neighborhood and former charge” were calling for his restoration to the ministry.<sup>565</sup> Others believed that the discipline of ministerial suspension and separation from church privileges must continue until the McQueens ceased living together.<sup>566</sup> Appropriate discipline became an issue of debate rivaling the controversy regarding the near-kin issues of the McQueens' marriage.

The extended discussion led to Presbytery's decision to refer the case back to the General Assembly “for final adjudication, that the voice of the whole church may, again,

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<sup>563</sup> Ibid., 444.

<sup>564</sup> *Minutes of Fayetteville Presbytery*, Oct. 30, 1845, 272, PHSM.

<sup>565</sup> Ibid., 271.

<sup>566</sup> Ibid., 273-74.

be heard, and the matter finally settled.”<sup>567</sup> This action is recorded twice in the minutes with an extensive thirteen-page entry inserted between the two accounts of its adoption. These intervening pages recount the proceedings of Presbytery concerning a substitute motion that produced extended discussion.<sup>568</sup> In the course of debate on the substitute, it was pointed out that for Fayetteville Presbytery to restore McQueen it would be necessary to transgress Leviticus, the *Confession*, and the vows of ordination taken by the members of the Presbytery to uphold the constitution of the Presbyterian Church.<sup>569</sup> Those supporting the substitute contended that McQueen’s marriage to his deceased wife’s sister was of “such an incestuous nature” that it could never “be made lawful by any law of man, or consent of parties” and the union was, therefore, not only illicit but also invalid.<sup>570</sup> The discipline sentence required the McQueens to separate. The case, they said, had already been decided by Fayetteville and it was necessary that Rev. McQueen remain suspended until he showed his repentance by separating from Mary.<sup>571</sup> The substitute was defeated by a vote of seventeen to fourteen.<sup>572</sup> After several “abortive attempts” to amend the original resolution, it was adopted as presented, and the case was sent back to the General Assembly.<sup>573</sup>

Fayetteville Presbytery was divided into two factions with respect to the nature and extent of proper discipline for McQueen. The one perspective contended that the

<sup>567</sup> Ibid., 272, 284.

<sup>568</sup> Ibid., the two entries are on pages 271 and 284.

<sup>569</sup> Ibid., 275, 281-82.

<sup>570</sup> Ibid., 275; words in quotes are from 24:4 of the *Confession* and the specific quote from 24:4 denying the validity of the union is: “so as those persons may live together as man and wife.”

<sup>571</sup> Ibid., 278-79.

<sup>572</sup> Ibid., 283.

<sup>573</sup> Ibid.

marriage was incestuous and the *Confession* required that all such marriages necessitated the separation of the two. The other view did not believe the marriage required separation and that discipline could be limited to some lesser measure. Subscription entered the debate when the supporters of the substitute stated that it was a violation of the vows of ordination for the marriage to continue; the *Confession* required separation because such a marriage was in fact not a marriage, such a union could not be made lawful, and the affinity sentence defined marriage to a deceased wife's sister as incestuous. As the extensive documentation of the debate came to an end it stated that, "it is plain, that no member of this Presbytery could vote for his restoration without a sinful violation of his solemn Ordination vows."<sup>574</sup>

### **The General Assembly of 1846**

Whether Archibald McQueen's near-kin marriage would split the church or not, the case reappeared at the Assembly of 1846 for its fifth year of ecclesiastical adjudication. The Presbytery of Fayetteville presented its resolution to the Assembly concerning McQueen's restoration, which was placed on the docket.<sup>575</sup> Following some delays, the Assembly took up the reference and when the vote was taken it was lost and the case was dismissed.<sup>576</sup> The Assembly upheld its 1845 recommendation that Archibald McQueen be fully restored to the ministry. The ball was back in Fayetteville Presbytery's court.

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<sup>574</sup> Ibid., 282.

<sup>575</sup> *Minutes of the P.C.U.S.A., 1838-1847*, 437.

<sup>576</sup> Ibid., 445.

### Fayetteville Presbytery's Meeting, Fall 1846

In September of 1846, Fayetteville Presbytery convened for its sixty-seventh stated meeting, and once again, it would have to deal with the case of the Reverend Archibald McQueen. Colin McIver vacated his position as Stated Clerk so he could accept the responsibility of moderating the meeting.<sup>577</sup> The McQueen case was taken up in a judicial capacity as the Presbytery considered restoring McQueen to church privileges and the ministry. According to the General Assembly's recommendation, Fayetteville Presbytery resolved, by a vote of sixteen to twelve "that The Rev. Archibald McQueen be, and he is hereby restored to the sealing ordinances of the church, and to all the functions of the Gospel Ministry, on the ground and principle submitted to Fayetteville Presbytery, by the General Assembly."<sup>578</sup>

The restoration of McQueen precipitated a protest by some members of the minority. The protestants gave several reasons for their action. They contended that restoring McQueen was contrary to Fayetteville's decision to suspend him for marrying his deceased wife's sister; the intent of the suspension necessitated McQueen's penitence and regret for his incestuous marriage and true penitence existed only if the couple separated. Restoration implied, contrary to the *Confession*, that such an incestuous marriage *could* be "made lawful by any law of man, or consent of parties." Further, the restoration of McQueen was not conducive to promoting the purity and peace of the church. The protest concluded by forecasting that the acceptance of McQueen's restoration without his penitent separation from Mary established a precedent which

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<sup>577</sup> A temporary clerk was appointed, but the handwriting in the minutes does not appear to change. This could mean that the temporary clerk recorded the minutes on another piece of paper and Colin McIver then transcribed them neatly into the official book.

<sup>578</sup> *Minutes of Fayetteville Presbytery*, Sept. 26, 1846, 359, PHSMS.

precluded Fayetteville Presbytery's ability to effectively discipline similar cases in the future. The signers of the protest made known their intention to complain to the Synod of North Carolina.<sup>579</sup>

Following the protest Moderator McIver declared that the complaint "arrested the business ... and that Mr. McQueen could not be considered ... restored, until the case" was decided by a higher judicatory. The minority of Fayetteville continued to fight what they saw to be the sanctioning of an incestuous marriage that was contrary to the Bible and the *Confession*. They contended that the church standards required separation. Marriage to a deceased wife's sister was not only illicit but invalid as well, and the *Confession* condemned any attempts to accept the legitimacy of a deceased wife's sister marriage.

### **The Synod of North Carolina's Meeting, Fall 1846**

The business of the Synod of North Carolina, beginning September 30, 1846, was to a great degree determined by the complaint from Fayetteville Presbytery.<sup>580</sup> Following a failed attempt to have the minority's complaint against the McQueen restoration postponed indefinitely, a committee of five was appointed to bring recommendations regarding the best way to resolve the issue.<sup>581</sup> The committee's report opened with the observation that "it is well known, that this Synod, our General Assembly, and indeed, the whole Christian world, differ in opinion, as to the necessity of continued censure, in such cases," and then it stated that both the minority and majority of Fayetteville "acted

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<sup>579</sup> Ibid., 361-365.

<sup>580</sup> *Minutes of the Synod of North Carolina*, Sept. 30, 1846, 6, PHS.

<sup>581</sup> Ibid., 11-13.

with perfect integrity.”<sup>582</sup> Frustration may be the best word to describe the dilemma. Both sides did all decently and in order, but even so, the continued diversity of opinion regarding sister-in-law marriages had the makings of a multi-gunned Mexican standoff.

The report then went on to express reservations concerning how the *Confession* and the Word of God were to be applied to these cases. A further problem was that the committee did not believe marriage to a deceased wife’s sister necessitated excluding the parties involved from “all possibility of connexion with the church of Jesus Christ.” A final recommendation was that McQueen’s restoration be sustained and the complaint dismissed, and the North Carolina Synod’s presbyteries were to be exhorted to “maintain uniform and consistent discipline” in their dealings with such marriages. How this equitable discipline was to be maintained was not stated. Synod resolved to dismiss the complaint per the recommendation.<sup>583</sup> The issue of proper discipline continued to be a sticking point for resolution of McQueen’s case. The judicatories could not decide whether a limited suspension, an interminable suspension, or excommunication was the best choice. The only choice compatible with the *Confession’s* discipline sentence was the last.

Colin McIver announced his intention, along with others who might join him, to complain to the General Assembly.<sup>584</sup> A committee, appointed to respond to the complaint against the Synod of North Carolina, reported that:

... the Complaint of the minority is not sustained, Because the action of the Presbytery of Fayetteville, in restoring Mr. McQueen, was, in the opinion of the Synod, in accordance with the recommendation of the General Assembly of 1845.

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<sup>582</sup> Ibid., 17.

<sup>583</sup> Ibid., 21; the vote was 34 to 10.

<sup>584</sup> *Minutes of the Synod of North Carolina*, Sept. 30, 1846, 17, PHSM; there were four signatures on the complaint to General Assembly.

In this judgment, however, the Synod would explicitly state, that they express no opinion, on the nature or grade of the offence for which Mr. McQueen was suspended; nor is their decision of this case to be construed as giving countenance to such offence.<sup>585</sup>

Synod adopted the report, and it essentially expressed a paradigm of the many proceedings related to the McQueen case as well as other adjudications involving the affinity sentence. One court would pass responsibility for decision to another, and/or express its reluctance to be giving an opinion regarding the marriage and its discipline. Near-kin marriages in general, and deceased wife's sister unions in particular, were viewed as incestuous, but discipline covered the gamut from a rebuke of the parties involved, to excommunication when it became clear the couple would not separate. The Presbyteries, in response to the recommendation of the Assembly, had twice affirmed the constitutionality of the affinity sentence by voting against its removal from the *Westminster Confession*. The reoccurring problem with these cases was determining and applying appropriate discipline even though the required discipline was clearly stated in the marriage chapter's discipline sentence.

#### **Parallel Events in Louisville Presbytery's Meeting, Fall 1846**

The inconsistency of ecclesiastical discipline applied to near-kin marriages is demonstrated by some cases adjudicated in the Louisville Presbytery. While the McQueen case continued in the Presbyterian Church's General Assembly and lesser courts, another near-kin marriage came before the Louisville Presbytery at its September 1846 meeting.

A reference regarding a judicial case was brought by the session of the Big Spring Church seeking Presbytery's assistance in the case of Mr. Carr who had married his

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<sup>585</sup> *Minutes of the Synod of North Carolina*, Sept. 30, 1846, 22, 24, PHSM.

deceased wife's sister. The elders believed there were peculiar, though not recorded, circumstances to the marriage that tended to embarrass the Session. Extensive deliberations ensued with the result that Mr. Carr was excommunicated. Excommunication, the severest measure of Presbyterian ecclesiastical discipline, had to be applied due to an earlier decision of the Presbytery made in a case of near-kin marriage adjudicated in October of 1840.<sup>586</sup>

As a reminder to the Presbytery's congregations of the precedent and justification for this excommunication, the Presbytery clerk was instructed to provide the editor of the *Western Presbyterian Herald* a copy of "certain resolutions" regarding near-kin marriages for publication. Further, the individual sessions of Louisville Presbytery were to read the resolutions to their congregations and record them in their sessional records.<sup>587</sup>

The 1840 case, which resulted in the Presbytery rule that necessitated the excommunication of Mr. Carr, was the near-kin marriage of Joseph Huber. Huber had been licensed by Transylvania Presbytery in 1830 and transferred as a minister to Louisville Presbytery in 1836. His ministry consisted of supplying pulpits and working as the sales agent for the Louisville Presbytery's Sunday School curriculum. At the September 1840 meeting of Presbytery, it was reported on the floor of Presbytery that the Reverend Huber had married his deceased wife's niece. Huber was present at the meeting and he confessed the report was true. Huber waived the "usual formalities" of a judicial investigation and stated that he was willing to abide by the decision of the Presbytery.

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<sup>586</sup> The records do not make it clear whether this discipline would be applied if the couple separated. It could be that this was assumed when the excommunication law was established and separation would negate the need for excommunication.

<sup>587</sup> *Minutes of Louisville Presbytery*, Sept. 28, 1846, 428, PHSP.

This marriage was not the first near-kin union for Joseph Huber. Before his marriage to his wife's niece, he had married his deceased wife's sister.<sup>588</sup> The earlier marriage had been condemned by another Kentucky presbytery and the Synod of Kentucky. After deliberation, the Presbytery of Louisville decided that due to the "peculiar delicacy" of the case and the potential "extensive influence" of a decision, the case should be brought before the Synod of Kentucky for resolution.<sup>589</sup>

Synod chose not to decide the issue and referred the case back to Louisville Presbytery instructing them to meet on the last Tuesday in October to consider and adjudicate the matter.<sup>590</sup> Presbytery met at the Church at Shelbyville, deliberated, and decided that Joseph Huber be suspended from all functions of the ministry until he gave sufficient evidence of repentance. There was considerable debate on the issue and what began as a suspension from ministerial duties became a deposition from the ministry.<sup>591</sup>

In its statement of deposition Louisville emphasized four points: first, that the *Westminster Confession's* affinity sentence condemned marriage to the niece of a deceased wife; second, that Huber had been involved in an earlier marriage to his deceased wife's sister which was also condemned by the *Confession* and disciplined by two ecclesiastical courts; third, that the Presbyteries had recently defeated an attempt to amend the *Confession* by erasing the affinity sentence; and fourth, that he had not heeded

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<sup>588</sup> Huber married a woman, she died and he married her sister, and she died so he married her niece, or he married the niece of another wife who was unrelated to the two sisters.

<sup>589</sup> *Minutes of Louisville Presbytery*, Sept. 1, 1840, 256-57, PHSP.

<sup>590</sup> *Ibid.*, 259.

<sup>591</sup> *Ibid.*, 260.

the admonitions of his previous presbytery and the Synod of Kentucky with regard to his earlier affine marriage.<sup>592</sup>

When the vote for deposition was tallied, fifteen voted for deposition and six were opposed. Those voting for the motion included W. L. Breckinridge and N. L. Rice—the pastor of the Bardstown Church and editor of *The Western Protestant*. Following deposition, the Presbytery proceeded to excommunicate Joseph Huber with a vote margin similar to that for deposition. Deposition and excommunication were seen as two separate processes, the first removing the man from the ministry and the second, removing him from Christian communion. Further, the Presbytery instructed the First Free Church in Louisville to institute processes against Mrs. Emily Huber for her marriage to the husband of her deceased aunt. The vote was recorded with ten voting for this action, eight against, and one abstention.<sup>593</sup>

The Presbytery of Louisville exercised the highest degree of disciplinary action possible against Joseph Huber for his marriage to a more distant affine relative, while Archibald McQueen's more near affine marriage brought the lesser action of suspension from the ministry. Huber's situation involved a greater responsibility on his part because of his earlier deceased wife's sister marriage and its accompanying limited discipline. The Presbytery of Louisville's basis for action against Huber's third marriage was the affinity sentence of the *Confession*. The problem is that the affinity sentence did not condemn Huber's marriage to his deceased wife's niece. The "in blood" principle meant that since Leviticus did not explicitly forbid a man's marriage to his own niece, he was

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<sup>592</sup> *Minutes of Louisville Presbytery*, Oct. 27, 1840, 261-62, PHSP.

<sup>593</sup> *Ibid.*, 263-64.

not prohibited marriage to his wife's niece. The restraint offered in the affinity sentence was lost in the dust of debate.<sup>594</sup>

### Fayetteville Presbytery's Meeting, Spring 1847

Before the General Assembly of 1847 convened, additional issues involving Archibald McQueen were dealt with by Fayetteville Presbytery. During the reading of the minutes of the previous meeting, it was observed by some presbyters that McQueen's restoration to the ministry was not recorded in the published minutes. Presbytery resolved "that our Minutes be so corrected as to secure, to Mr. McQueen; the exercise of the functions of the office, to which, at our last Stated Session, he was restored; and that our Stated Clerk be directed to enroll the name of Rev. Archibald McQueen, now as a member of this Presbytery."<sup>595</sup> Even this matter of proper procedure and clerical propriety became a topic "discussed, at considerable length." The Reverend Colin McIver spoke for himself and others promising the entry of a protest against this action as well as a complaint to the General Assembly.<sup>596</sup> The protest, signed by McIver and six others, essentially recounts the points of contention expressed by the minority in earlier protests and complaints: the decision to restore was not lawful nor constitutional, the complaint against McQueen's restoration was not heard by the General Assembly, McQueen's marriage directly contradicted the *Confession of Faith*, and a new contention, he could not be accepted as a presbyter "because we believe [him] to be, in the full & truly offensive sense of the appellation, an incestuous man - a man, living in a state,

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<sup>594</sup> The Transylvania (1837-1848) and Lexington (1840-1847) Presbyteries, both of which incorporate some part of Kentucky in part or in whole, did not have any near-kin cases in the periods expressed in the parentheses.

<sup>595</sup> *Minutes of Fayetteville Presbytery*, April 8, 1847, 391-92, PHS; vote was 24 to 13.

<sup>596</sup> *Minutes of Fayetteville Presbytery*, April 8, 1847, 392-93, PHS.

which is declared to be an abomination in the sight of God.<sup>597</sup> According to the protestants, nothing short of marital separation would satisfy the requirements of the Bible and the *Westminster Confession*. The protest was consistent with the requirements of the *Confession's* discipline sentence in its marriage chapter.

Later in the meeting discussion returned to the minutes of the previous stated meeting. A resolution was presented calling for the removal of a portion of the published minutes that was in the copies received by the presbyters. This disputed entry recorded Colin McIver's judgment that McQueen could not be reinstated until the complaint against his restoration was adjudicated. The resolution "was never adopted by this Presbytery; but was introduced after their adjournment, by our Stated Clerk." The Presbytery's will was not accomplished, though, because the paragraph in question is still in the original manuscript minutes.<sup>598</sup>

Unfortunately, the extended adjudication of the McQueen case contributed to some questionable behavior by some presbyters. The deceased wife's sister marriage of Archibald McQueen was receiving a great amount of attention, but without resolution of the discipline issue, there would be no final and lasting solution to his case.

### **The General Assembly of 1847**

When the General Assembly convened at Richmond in 1847 the McQueen case was again brought before the judicatory for consideration. On Tuesday afternoon, the Assembly took up the complaint from Colin McIver against the decision of the Synod of North Carolina and the Presbytery of Fayetteville for restoring Archibald McQueen to his ministerial duties. At this point a resolution was presented contending that McIver's

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<sup>597</sup> Ibid., 401-405; underlining as in the original.

<sup>598</sup> Ibid., 409.

complaint was out of order because the lower courts were following the recommendation made by the 1845 Assembly. After some debate, this resolution was laid on the table.<sup>599</sup> The Assembly, later, returned to the resolution, discussed it extensively—beginning Thursday afternoon and continuing until Saturday morning—and eventually adopted it.<sup>600</sup> The highest judicature of the Presbyterian Church stood by the 1845 decision recommending that the lower courts restore McQueen to the ministry.<sup>601</sup>

### **The Perspective of James Henley Thornwell, the Moderator of the 1847 Assembly**

James Henley Thornwell was the Moderator of the 1847 Assembly and he discussed the McQueen case in his correspondence with his wife and in his recollections of his service as Moderator. Though a man's private and unguarded letters to his wife may not be the best instruments for determining his views on an issue, they should be seen as generally reflecting his perspective. In a letter he informed his wife that:

Father McIver, from North Carolina, is here, to prosecute a complaint against Fayetteville Presbytery and the Synod of North Carolina, for restoring McQueen to the ministry. The old man is full of the subject. He seems to think that all will come to desolation, if men are allowed to marry their wives' sisters. He is a good man, and his zeal and earnestness on this subject are truly amusing. I do not know yet in what shape the question will come before us; but my speech is killed by being put in the Moderator's chair.<sup>602</sup>

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<sup>599</sup> *Minutes of the P.C.U.S.A., 1838-1847*, 500.

<sup>600</sup> Ibid., 507-509, 511; the vote was 95 for and 53 against.

<sup>601</sup> At this same time in Great Britain there were similar difficulties with near-kin issues. In 1847 a Royal Commission was appointed to study the case of a man's marriage to his deceased wife's sister and how it related to "Statute 5 and 6 William IV (Lord Lyndhurst's Act)." The Commission concluded that Lord Lyndhurst's Act was ineffectual against such unions and they doubted any prohibition could be effectual. The circumstances that led to these marriages were more significant in the minds of the near-kin couples than England's law. As discussed in *Kindred And Affinity As Impediments To Marriage* (London: S.P.C.K., 1940), 7. See the Bibliography for an extensive list of United Kingdom publications on this issue.

<sup>602</sup> B. M. Palmer, ed., *The Life and Letters of James Henley Thornwell* (1875; reprint, Edinburgh: The Banner of Truth Trust, 1974), 298.

Dr. Thornwell's sentiments expressed some exasperation. The McQueen case had been at the General Assembly since 1842, in one form or another, and Thornwell's frustration was probably echoed by many. Colin McIver would not have appreciated being described as "amusing"; the deceased wife's sister issue was a serious subject to him. A week later Dr. Thornwell took his pen in hand, dipped his ink, and wrote his wife again and told her:

The McQueen case is not yet decided; but I am inclined to think that the decision of the Fayetteville Presbytery, restoring him to the ministry, will be sustained. If it could come up on its merits, this would probably not be the case; but it comes up hampered with a decision of the Assembly of 1845, which rather shuts us up, in the opinion of many, to the adoption of this course.<sup>603</sup>

The 1845 decision referred to was the Assembly's recommendation to the Presbytery of Fayetteville advising restoration of McQueen to the ministry.

In Thornwell's recollections of the 1847 General Assembly, he described the decision to recommend restoration as "remarkable."<sup>604</sup> He specifically addressed the issue from the perspective of the *Confession* as he wrote against the Assembly's action saying:

... it was evidently in gross defiance of the letter of our Standards. It is true, that incest is a crime which admits of various degrees of turpitude, but according to our covenanted articles *all* the degrees of it, even the lowest, are distinguished by this circumstance, that they are incompatible with the marriage relationship. Parties connected with each other by the prohibited ties of affinity or blood can never enter into the marriage contract.<sup>605</sup>

In the southern theologian's opinion, it was a more gross transgression to marry a mother, sister, or an aunt, than to marry a deceased wife's sister, but in all the prohibited cases,

<sup>603</sup> Ibid., 298-99.

<sup>604</sup> James Henley Thornwell, *The Collected Writings of James Henley Thornwell* (1875; reprint, Edinburgh: The Banner of Truth Trust, 1974), 4:489.

<sup>605</sup> Ibid., 493.

the marriage was not only illicit but also invalid.<sup>606</sup> Thornwell grasped the significance of the disciplinary sentence of the marriage chapter. There was no way McQueen could be restored to the ministry because the *Confession* said that all near-kin marriages prohibited by the Word are invalid. The only suitable sign of repentance on the part of Archibald and Mary would have been their separation, and “It is just as wicked to perpetuate the contract as it was to make it.”<sup>607</sup>

Thornwell then addressed the issue of confessional revision as he observed that if the teaching of the *Confession* is stricter than the law of the Bible, then the *Confession* must be changed. Removal of the entire chapter on marriage, Thornwell thought, would be better for the Presbyterian Church than to continue violating the standards; if Presbyterians were going to disregard the *Confession*’s teaching, then the *Confession*’s content should be brought in line with their practice.<sup>608</sup> The Assembly decided that McQueen’s suspension from the ministry was sufficient discipline, but Dr. Thornwell contended their separation was necessary if subscription was taken seriously.

### **The Presbytery of Fayetteville’s Meeting, Fall 1847**

The Presbytery of Fayetteville met for its sixty-ninth session in October of 1847. The judicatory adopted its annual report to the Synod of North Carolina which noted that in September of 1846, Archibald McQueen was restored to the “communion of the

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<sup>606</sup> Ibid.

<sup>607</sup> Ibid.

<sup>608</sup> Ibid., 494; The *Thirty-Nine Articles* of the Church of England does not include instruction on marriage other than affirming the goodness of marriage in opposition to celibacy. The Westminster Assembly had originally been assigned the task of revising the *Thirty-Nine Articles* but instead wrote a new confession including more extensive marriage instruction. See: Gerald Bray, ed., *Documents of the English Reformation* (Minneapolis: Fortress, 1994), 284-309, 664.

church" and the full "exercise of ... the Gospel Ministry."<sup>609</sup> Though this would appear to have laid the McQueen matter to rest once and for all, a protest against the Presbytery's proceedings was filed by Archibald Smith and Colin McIver.<sup>610</sup>

The McIver-Smith protest contended against some Presbytery actions earlier in the meeting. The two protesters stated that when one of them had stood to "offer a minute" regarding the Assembly's dismissal of the complaints against the Presbytery of Fayetteville and the Synod of North Carolina, the Moderator ruled the issue out of the Presbytery's hands and declared the minute out-of-order without hearing the content of the minute.<sup>611</sup> The protestors then posited that this ruling was out of order and they challenged his ruling, but the Presbytery sustained the moderator.

Then the two presbyters protested the vote of Presbytery sustaining the Moderator's decision. Three reasons for the protest were given, the gist of them being that the Moderator could not rule a minute out of order without hearing its contents.<sup>612</sup> The two parties filing the protest also entered a "Testimony" against the decision to restore Archibald McQueen to the ministry. The "Testimony" stated that restoring McQueen to active ministry was against the constitution of the Presbyterian Church, it corrupted the "purity of families," it introduced into the church the "leaven of corruption," and that the toleration of this union with the sister-in-law was against their

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<sup>609</sup> *Minutes of Fayetteville Presbytery*, October 29, 1847, 9-10, PHSM; *Minutes of the Synod of North Carolina*, Nov. 4, 1847, 93, PHSM.

<sup>610</sup> *Minutes of Fayetteville Presbytery*, October 29, 1847, 16-17.

<sup>611</sup> *Ibid.*, 16.

<sup>612</sup> *Ibid.*, 9, 16-17.

ordination vows.<sup>613</sup> This was the end of the debate and decisions concerning Archibald McQueen's marriage to his deceased wife's sister.<sup>614</sup>

### **Summary of Chapter 4**

Looking at the events relevant to the McQueens' marriage from a twenty-first century perspective may blind the reader to the sincerity of the people involved on both sides of the issue. Archibald McQueen contended that a deceased wife's sister marriage was not contrary to Leviticus, and he argued further that the affinity sentence's "in blood" principle was wrong. Colin McIver pursued McQueen's marriage because he was convinced that it was illicit and invalid according to the *Westminster Confession's* interpretation of the levitical near-kin prohibitions. McIver and others believed McQueen had subscribed to the *Confession* and he should be held to his ministerial vows.

Subscription entered the debates not only regarding the marriage itself, but also with respect to the appropriate discipline that should be administered to the McQueens. The views spanned the gamut from no discipline, to a rebuke, to suspension, to divestment and excommunication. Other presbyters, like James Henley Thornwell, saw the words, "nor can such incestuous marriages ever be made lawful by any law of man so that they may live together as man and wife," as requiring the Presbyterian Church to instruct Archibald and Mary to separate. The General Assembly's restoration of McQueen to the ministry and privileges of the church meant that it had to set aside the specific teaching of the *Westminster Confession*. The majority of the General Assembly

<sup>613</sup> Ibid.

<sup>614</sup> Moore's *Digest*, 817, heads the section on the McQueen case, "Case of Archibald McQueen.—Suspended, and Suspension Sustained." This gives the impression that McQueen remained suspended. Moore does mention the restoration; the heading does not tell the whole story.

accomplished a single case *de facto* revision of the *Confession*. The Old School was not a monolith of unity concerning the McQueen case, and their disunity was exemplified by differing views regarding interpretation of God's law and the application of discipline.

Another factor in this case was the sensitivity of the members of the Assembly to the emotional side. Archibald McQueen was a minister, he was a member of the Presbytery of Fayetteville, he was a brother in Christ, and he was a friend to some including, at least initially, Colin McIver. Though it was not explicitly stated in the records, presbyters were reluctant to apply discipline to this case. The postponements, protests, appeals, and in some cases, plain old passing-the-buck, were indicative of uncertainty concerning the issue and showed sympathy for McQueen as well. It is difficult enough to discipline an offending party when the issue is foundational and absolutely necessary doctrine, but when the offense moves into the realm of a peripheral issue it becomes that much more difficult.

The McQueen case had occupied many hours of ecclesiastical judicatory discussion at all levels, but its resolution had not determined the greater issue of how future near-kin cases were to be handled in the light of the explicit teaching of the *Confession* and its affinity sentence. The Presbyterian Church continued to be vexed concerning the proper application of its standards to these marriages as well as reticent to deal with the disciplinary implications of the sentence preceding the affinity sentence.<sup>615</sup>

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<sup>615</sup> A novel was written in 1849 which presents a deceased wife's sister marriage and its aftermath. The couple have their daughter, born by the first sister, taken away from them by the husband's minister father. When the couple have their own son he grows up being chastised and rebuked by his neighbors for his parents' incestuous union. When the daughter from the first marriage becomes engaged to be married, the plans are canceled by the prospective groom's parents when they find out that the girl's father married his deceased wife's sister. This event led to the girl having an illness that left her brain

## Epilogue

Neither Colin McIver nor Archibald McQueen lived for very long after these events. McIver enjoyed a stable ministry as the pastor of the Galatia and Barbeque churches until his death at Fayetteville on January 18, 1850.<sup>616</sup> When Fayetteville Presbytery met on April 11, 1850, it “received the melancholic intelligence of the death of the Rev Colin McIver.” The Moderator, who ironically happened to be Archibald McQueen, appointed a committee of two to compose a minute respecting the Reverend Colin McIver.<sup>617</sup> The next day a remembrance of McIver was adopted which expressed gratitude to God for his years of service and his “untiring zeal … in the service of the Church.”<sup>618</sup> His “last accents were in the Gaelic tongue, requesting to be dressed in the time honored silken gown and Geneva band. He rests in Fayetteville grave-yard, where a plain stone, erected by the contributions of all denominations, marks the spot.”<sup>619</sup>

Archibald McQueen survived Colin McIver by less than eighteen months. At the September 1851 meeting of Fayetteville Presbytery a Committee was appointed to “draft a minute” concerning the recent death of Archibald McQueen.<sup>620</sup> McQueen had died June 4 of a protracted illness. The years following the conclusion of his near-kin marriage case appear to have been difficult with respect to his work as a minister. He

damaged so that she needed the constant care of her stepmother who was her mother’s sister. See: [Felicia Skene] *The Inheritance of Evil, Or, the Consequences of Marrying a Deceased Wife’s Sister* (London: Joseph Masters 1849; transcribed, encoded, and proofed by Tara Wright, edited by Perry Willett, Library Electronic Text Resource Service, Victorian Women Writers Project, Bloomington: Indiana University, 1997), available at [www Indiana.edu](http://www Indiana.edu).

<sup>616</sup> “McIver, Colin (1784-1850),” Biographical Information file, PHSM.

<sup>617</sup> *Minutes of Fayetteville Presbytery*, April 11, 1850, 156, PHSM.

<sup>618</sup> *Ibid.*, 162.

<sup>619</sup> “McIver, Colin (1784-1850),” Biographical Information mss file, PHSM.

<sup>620</sup> *Minutes of Fayetteville Presbytery*, Sept. 25, 1851, 247, PHSM.

was listed in the General Assembly reports as without call. In the memorial minute, he was described as an “excellent Brother” who was dear to the presbyters due to his intelligence and sensitivity.<sup>621</sup>

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<sup>621</sup> Ibid., 254. In 1846 Mary McQueen had either been dismissed from the Laurel Hill Church to another congregation “at her own request” while under suspension for her marriage, or she was dismissed from her suspension and stayed at Laurel Hill—the minutes are not clear (*Records of Laurel Hill*, November 1, 1846, pp. 87-88, PHSM). In the 1850 census, just prior to Archibald’s death, the McQueens were described as living in Robeson County, on a property of over 467 acres, next door to “Little” Peter McEachin, and Archibald Curie, a blacksmith. Archibald fathered five boys and three girls. The inscription on his grave marker reads: Rev. Archibald McQueen/Son of Col. James McQueen/b. about 1795, d. about 1854/An Able Lawyer, a Skillful Physician/A Great and Consecrated Preacher (The inscription is from: Jeffrey D. McEachin, [www.synthcom.com](http://www.synthcom.com).)

## Chapter 5 - After the McQueen Case

*The desire of the Englishman to marry his deceased wife's sister is one of the most marked phenomenon of the times. ... In all his breathing spells from emergencies he turns to that. When he is not being massacred by the South Africans, or slaying Soudanese, or fighting Afghans, or pacifying the Irish, or being blown up in his Tower, he is attending to the deceased wife's sister bill. ... It appears to be the passion of his life to marry his deceased wife's sister. We who live in a land where nobody opposes such an alliance cannot conceive the attraction it seems to have to Englishmen. And seeing how universal and strong this desire is in England we cannot but inquire why the Englishman does not marry his wife's sister in the first place. Why does he go on marrying the wrong one, and then wait for death and the law to help him out?*

*The Presbyterian*, July 18, 1885, vol. 55, no. 29, p. 5.

### **The General Assembly of 1848, Old School**

Several instruments from lower judicatories once again put the General Assembly and the *Westminster Confession* to the test in 1848. The first was John Cathey's appeal of the Paw Creek Church's suspension of him for marrying his deceased wife's sister. Both the Presbytery of Concord and the Synod of North Carolina had sustained the session's decision. Mr. Cathey was not in attendance and he was defended by Archibald McQueen's 1842 defender, Dr. John M. Krebs, but the defense came to naught because the Assembly affirmed the suspension and denied Cathey's appeal by a vote of fifty-five to twenty-six.<sup>622</sup> A second item came from the Synod of West Tennessee requesting that the presbyteries consider, once again, removal of the *Confession's* affinity sentence. The Bills and Overtures Committee's report advised against pursuing the confessional revision and the Assembly adopted the recommendation.<sup>623</sup> Colin McIver presented the third item, which was a complaint and memorial against both the Synod of North

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<sup>622</sup> *Minutes of the P.C.U.S.A.*, 1848, 12, 17, 57.

<sup>623</sup> *Ibid.*, 19.

Carolina and the Presbytery of Fayetteville concerning the McQueen case. The complaint was the same one presented unsuccessfully to the 1847 Assembly, but McIver had modified it with additional reasons. The Assembly dismissed McIver's complaint and memorial.<sup>624</sup> The final instrument was a paper seeking to have the affinity sentence removed. This second 1848 attempt at removal of the sentence was postponed indefinitely.<sup>625</sup> Through 1848, the Presbyterian Church upheld the improper nature of marriages prohibited by the affinity sentence of the *Westminster Confession*, but the subject of discipline continued to cause dissension.

### **The New School Presbyterian Church and Near-kin Marriage, 1853**

It would be wrong to think the New School was untouched by the near-kin issues of the nineteenth century. One instrument brought before the Committee on Bills and Overtures in 1853 concerned the propriety of a man's marriage to his sister's daughter. The overture consisted of two questions: first, is it scriptural for a man to marry his sister's daughter, and second, when members of the church contract such a union can they retain their standing in the church. Following a postponement, the Assembly adopted a substitute motion affirming that such marriages are "evidently contrary to the teachings of the Scriptures, and incestuous" and such marriages demand "the judicial action of the Church, and if not repented of, should incur Church censure."<sup>626</sup> The Assembly condemned the man's marriage to his consanguine niece. This solo New School decision affirmed that the marriage was contrary to Scripture and clarified that discipline leading to further censure should be administered if there is no repentance.

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<sup>624</sup> *Minutes of the P.C.U.S.A.*, 1848, 29, 57.

<sup>625</sup> *Ibid.*, 47.

<sup>626</sup> *Minutes of the P.C.U.S.A.*, New School, 309, 322, 339.

### **The General Assembly of 1857, Old School**

Even though the Old School Assembly did not deal with any cases of near-kin marriage after 1849, there were further attempts to remove the affinity sentence in 1857 and 1859. A memorial from the Presbytery of Carlisle brought before the Assembly of 1857 proposed considering, once again, the excision of the affinity sentence. This instrument was dealt with in short order since “On motion, this whole subject was laid on the table.”<sup>627</sup> In 1859, two joined overtures came from the Synod of Philadelphia. The first overture sought removal of the affinity sentence, while the second suggested that, “the change proper … be made in the language of the *Confession*.<sup>628</sup> The meaning of this language change is not specified. It may have been looking to rewrite the affinity sentence in a way that would exclude the deceased wife’s sister prohibition. The General Assembly tabled the joint overtures in 1860 and ended their consideration.<sup>629</sup> This would be the last attempt at revision of chapter 24 until after the War Between the States.<sup>630</sup>

### **Following the Great and Bloody War**

The cataclysmic events of the War Between the States left the nation with the aftermath of a complex and horrible conflict.<sup>631</sup> The South was in the chaotic and

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<sup>627</sup> *Minutes of the P.C.U.S.A.*, 1857, 36.

<sup>628</sup> *Minutes of the P.C.U.S.A.*, 1859, 535; the second overture did not state what change was desired, presumably Mr. Williams’s change had to do with the affinity sentence since it was attached to the Philadelphia overture.

<sup>629</sup> *Minutes of the P.C.U.S.A.*, 1860, 40.

<sup>630</sup> Or, if you so choose, Civil War.

<sup>631</sup> D. X. Junkin, who had spoken against McQueen’s marriage at the 1843 Assembly, was the brother of Dr. George Junkin, the president of Washington College in Lexington, VA. George Junkin’s daughter Elinor married Thomas J. “Stonewall” Jackson in 1853. Ellie died shortly after the delivery of her stillborn son. Jackson became fond of her sister, Margaret, and one historian has concluded that Jackson was in love with his deceased wife’s sister. He believes that Jackson, a Presbyterian, did not marry Maggie because he knew it was prohibited by the *Westminster Confession*, 24:4. Earlier in

difficult era of Reconstruction, while the North was switching to a peacetime economy. The reuniting nation was tired of fighting. Since near-kin issues did not come before the General Assemblies of either the Northern nor Southern Church for several years following the war, it could be that the people in the Presbyterian Churches had seen enough of ecclesiastical near-kin conflict as well.<sup>632</sup>

### **The Debate on the Deceased Wife's Sister in *The Southern Presbyterian Review***

The *Southern Presbyterian Review* was published initially as a southern journal equivalent to Princeton's *Biblical Repertory and Princeton Review*. It was the voice of the southern Old School at Columbia Theological Seminary in South Carolina. This section will examine six articles concerning near-kin marriages which emphasized the marriage of a man to his deceased wife's sister.

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Jackson's life he had romantic feelings toward Harriet Murdock, but he did not propose to her because she was a cousin. See: James I. Robertson, Jr., *Stonewall Jackson: The Man, The Soldier, The Legend* (New York: Macmillan, 1997), 162, 147, 157, 174, 143. Benjamin Harrison, the twenty-third President, organized the Seventieth Indiana Regiment during the war. He was a Presbyterian elder from 1857 until his death. He married his deceased wife's niece in 1896 only five years before he died. At the time of his near-kin union the affinity sentence had been removed. See: *Benjamin Harrison: Hoosier Warrior 1833-1865* (Chicago: Henry Regnery, 1952), 59-60, 113, 166. Another affine union involved Union General John A. McClernand who married his deceased wife's sister in December of 1862, took her with him to the Vicksburg campaign, and was delayed crossing the Mississippi River due to the transport of his wife's baggage in April 1863. See: Victor Hicken, "From Vandalia to Vicksburg: The Political and Military Career of John A. McClernand" (Ph.D. diss., University of Illinois, 1955), 259, 261. The final near-kin marriage takes an infamous turn because it involved the outlaw Jesse James who rode with Quantrill's raiders. James married his first cousin "Zee" Mimms in 1874 after a nine year engagement which began when she was nursing him to health from a gun shot wound. Ted P. Yeatman, *Frank and Jesse James: The Story Behind the Legend* (Nashville: Cumberland House, 2000), 83-84, 119.

<sup>632</sup> One issue faced in the 1869 New School/Old School reunion Assembly was a statement concerning infanticide (i.e. abortion) and divorce on pages 937-38.

### **“The Law of Marriage,” Anonymous, October 1880**

The unnamed author of this article was concerned that marriage be held with high regard.<sup>633</sup> The article opens with the statement that, “In ranking marriage among the sacraments of God’s house, the Roman Catholic hierarchy is not so far astray as they are who regard marriage as a merely civil contract.”<sup>634</sup> God had instituted marriage in Eden and it was the only human institution known to man before the fall. The contemporary conditions regarding marriage in America and England had depreciated the marital bond so much that it was viewed as “a rope of sand.”<sup>635</sup> The author then reviewed the Bible’s teaching on the institution of marriage as a response to the low view of the marital bond in his contemporary culture.<sup>636</sup>

Following the introductory comments, the reader’s attention is turned to the marriage laws of Lev 18. The author contended that Lev 18 contains neither ceremonial nor civil laws but universal moral laws applicable to both the named and unnamed marital partners.<sup>637</sup> Reciprocity is built into the Ten Commandments because when a man is forbidden coveting his neighbor’s wife, it is obvious that a woman is likewise restricted from coveting her neighbor’s husband.<sup>638</sup> This same principle is applied to polygamy because a “man is no more truly married to two women at the same time, than

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<sup>633</sup> At this time James Woodrow was the co-editor according to: A. H. Freundt, Jr., “Woodrow, James (1828-1907),” *Dictionary of the Presbyterian & Reformed Tradition in America*, s.v., ed. D. G. Hart, (Downer’s Grove: InterVarsity Press, 1999), 280.

<sup>634</sup> “The Law of Marriage,” *The Southern Presbyterian Review* 31, no. 4, (October 1880), 648.

<sup>635</sup> Ibid., 649.

<sup>636</sup> Ibid., 648-53.

<sup>637</sup> Ibid., 659.

<sup>638</sup> Ibid., 657.

a woman is married to two men.”<sup>639</sup> The laws of Lev 18 are not only to be reciprocally applied, but they are also “complete and exhaustive.”<sup>640</sup> Because of these cases of reciprocal application of the Mosaic law, which the author contends to be obviously correct, he concludes that the near-kin prohibitions to the man in Lev 18 are to be reciprocally applied to the woman.

The article interacts with the views expressed in two books that included discussion of a man’s marriage to his deceased wife’s sister. The first book is William Lindsay’s *Inquiry into the Christian Law as to the Relationships which Bar Marriage*.<sup>641</sup> Lindsay was a United Presbyterian minister who studied at Glasgow University and was Professor of Sacred Languages and Biblical Criticism on the staff of the United Presbyterian Hall, Glasgow.<sup>642</sup> Having established the principle of reciprocal application, the anonymous article’s author used Lindsay to support his conclusion with the following:

The conclusion, then, we think, stands impregnable, that the prohibitions embodied in Leviticus xviii, must be viewed as including not merely those cases which are specifically described, but others also, where the relationship is exactly the same. Deny this, and you are under the necessity of admitting some of the most shocking marriages which it is possible to imagine.<sup>643</sup>

Lindsay adopted the principle of reciprocity for interpreting Lev 18. He illustrated this principle by showing that in Lev 18 there is no specific prohibition of a father marrying his daughter. For a father-daughter union to be prohibited it is necessary that Moses’

<sup>639</sup> Ibid., 655.

<sup>640</sup> Ibid., 658.

<sup>641</sup> William Lindsay, *Inquiry into the Christian Law, as to the Relationships which Bar Marriage*, 2<sup>nd</sup> ed. (London: James Nisbet & Co., 1871), 1<sup>st</sup> ed., 1855; about 2 1/3 pages of fine print text.

<sup>642</sup> “Lindsay, William (1802-1866),” in *The Dictionary of National Biography: The Concise Dictionary*, s.v. (London: Oxford University Press, 1906), 779.

<sup>643</sup> “The Law of Marriage,” 660; see also 661 for a similar, but extended statement.

rubic in Lev 18:7 against a son marrying his mother be applied equally to a daughter's marrying her father. If the reciprocal application of Lev 18:16 to the deceased wife's sister marriage is abandoned, then the reciprocal application of Lev 18:7 to a father-daughter union is not legitimate either.<sup>644</sup> The anonymous author's case for reciprocity was bolstered by the work and analysis of William Lindsay.

The anonymous author's second source for interaction was S. E. Dwight's *The Hebrew Wife*. This was a popular book in both the United States and Great Britain.<sup>645</sup> Dwight's presentation contended that the specific levitical prohibitions must be supplemented by other prohibitions incorporating relationships similar to those in Leviticus. The anonymous author's use of Dwight pertains more to Lev 18:18 than 18:16. Dwight saw the deceased wife's sister marriage prohibited by the "wife to her sister" given in Lev 18:18. This differs from Lindsay who saw the same union prohibited by reciprocal application of Lev 18:16 to the woman.<sup>646</sup> The author concluded that both analyses reach the same conclusion though they arrived at their conclusions by different means. Thus, the article saw the two perspectives as providing two angles of attack, both of which were aimed at the legitimacy of a deceased wife's sister marriage.

As the author drew his article to a close, he specifically entered the debate concerning the affinity sentence and the *Westminster Confession*. He expressed two factors which support his conclusion that the deceased wife's sister marriage is wrong. First, the affinity sentence condemns a man's marriage to his wife's sister because

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<sup>644</sup> "The Law of Marriage," 660.

<sup>645</sup> S. E. Dwight, *The Hebrew Wife; or the Law of Marriage Examined in Relation to the Lawfulness of Polygamy, and to the Extent of the Law of Incest* (Boston: Crocker & Brewster, 1836); see Bibliography "United Kingdom Publications" for Scots data.

<sup>646</sup> "The Law of Marriage," 663.

Leviticus and Deuteronomy condemn marriage to his own sister.<sup>647</sup> The second factor condemning the wife's sister marriage is "that affinity within defined limitations is identical with consanguinity," that is, the affine relationship of the wife's sister to her brother-in-law is as if she is his consanguine sister. These two reasons, added to the principle of reciprocity discussed earlier, combine to give what the author believed was an ironclad case against the marriage.

#### **"The World's Marriage Law & the Deceased Wife's Sister, W. Stoddert, July 1881**

William Stoddert (1824-1885) was a graduate of both Hampton Sydney College and Union Theological Seminary in Virginia. He ministered mostly in Tennessee and Virginia following his service as a chaplain for Ewell's Brigade of the Confederate Army.<sup>648</sup> He wrote this article in response to the previous article purposing to determine which degrees of near-kin marriage are prohibited in Lev 18:7-18 with particular emphasis on the deceased wife's sister. He was concerned to concentrate his efforts on the Bible's specific teaching and avoid the "light of nature, common sense, and sentiment" so often appealed to.<sup>649</sup> The law of Leviticus is the "World's Marriage Law" in that it is for all people of the world. The twelve verses of Lev 18 pertinent to incest give all the prohibited degrees and could be described as "the Dodecalogue of Marriage; the Twelve Commandments; the Finished Code."<sup>650</sup>

Stoddert divided the Lev 18 prohibitions into three classes that cover all the stipulations listed in verses 7 through 18. Class one prohibitions include "unlawful

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<sup>647</sup> Ibid., 671, 672, 674.

<sup>648</sup> E. C. Scott, *Ministerial Directory of the Presbyterian Church, U.S. 1861-1941* (Austin: Published by Order of the General Assembly, 1942), 687.

<sup>649</sup> William Stoddert, "The World's Marriage Law and the Deceased Wife's Sister," *The Southern Presbyterian Review* 32, no. 3, (July, 1881), 470.

<sup>650</sup> Ibid., 471.

degrees of natural [i.e. consanguineous] kindred” as described in verses 7-13. Class two restrictions forbid “the widows of natural kindred,” given in verses 14-16. Class three prohibitions give “the law about the relations of the wife” described in verses 17, 18.<sup>651</sup>

The author’s discussion of these three classes of prohibitions involved two interpretive principles that provide additional forbidden kinship relations not specifically stated in Leviticus. One of these principles is that when “one degree is forbidden, an equal degree is also forbidden.” This principle was applied to the specific law against a man’s marrying his granddaughter in Lev 18:10 to obtain the prohibition of a man’s marriage to his grandmother. If a man is forbidden his granddaughter in Lev 18:10, then he is also forbidden his grandmother; the two descending steps to the granddaughter, are used to justify the two ascending steps to the grandmother.<sup>652</sup> The application of Stoddert’s principle shows that when a descending degree is forbidden, then the like ascending degree must also be forbidden. This principle also provides the prohibition against a man’s marrying his consanguineous niece (i.e. the daughter of his brother or sister). Since a man is forbidden his aunt in the ascending degree, therefore in the descending degree he is forbidden his niece.<sup>653</sup> The second principle of interpretation provided justification for the inclusion of the restriction against a man’s marriage to his daughter, which is a forbidden degree one might expect to find in Lev 18, but it is not there. The incestuous nature of this union was determined using the principle that when a more distant relation is prohibited as incestuous, then the intermediate relations must also be forbidden. The granddaughter is prohibited by Lev 18:10, therefore the closer

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<sup>651</sup> Ibid., 472-74.

<sup>652</sup> Ibid., 477.

<sup>653</sup> Ibid.

relation, the daughter, must also be prohibited.<sup>654</sup> These two principles coupled with Stoddert's concern to stick closely to the Levitical text yielded a conservative and limited list of prohibited degrees.

Discussion of class one prohibitions opens with Stoddert's recognizing an exception to his description of the natural/consanguine degrees delimited in verses 7-13. Verse 8 prohibits marrying the "father's wife" which is a relationship that is not consanguineous for the son. This restriction is included in the "natural" prohibitions because it is a particularly heinous type of affine union. Stoddert appealed to Paul's teaching in 1 Cor 5:1 concluding that since the father's wife marriage is "not so much as named among the heathen" it must be particularly incestuous and should be treated as a consanguine relation even though it is actually an affine relation.<sup>655</sup>

As Stoddert's discussion of the first class of prohibitions concluded, he expressed the prohibited degrees of this class in tabular form. His tabulation shows clearly how he viewed the laws of Lev 18 and that he derived the woman's prohibitions using inversion:

<i>A man may not marry his</i>	<i>A woman may not marry her</i>
Grandmother	Grandson
Mother	Son
Daughter	Father
Granddaughter	Grandfather
Sister	Brother
Aunt	[Nephew]
Niece	[Uncle] <sup>656</sup>

If the prohibitions for the woman were listed according to reciprocity like Parker's table, then the second column would have been: grandfather, father, son, grandson, brother,<sup>657</sup>

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<sup>654</sup> Ibid.

<sup>655</sup> Ibid., 473.

<sup>656</sup> Ibid., 478; On the table he had Nephew and Uncle swapped, but this seems to have been a printer's error because he is consistent leading up to these two relations.

uncle, and nephew. These seven relationships for the man and the woman are all consanguineous, barring the one exception of the father's wife.

When Stoddert applied his two interpretive principles to the class two prohibitions—those against marrying “the widows of natural kindred” described in verses 14-16—he obtained the following tabulation:

<i>A man may not marry the widow of his</i>	<i>A woman may not marry her husband's</i>
Grandfather	Grandson
Father	Son
Son	Father
Grandson	Grandfather
Brother	Brother
Uncle	Nephew
Nephew	Uncle <sup>658</sup>

Again, Stoddert's principle is inversion and not reciprocity. It is these class two prohibitions which bring the deceased wife's sister union into consideration. There is no prohibition of a man's marriage to his deceased wife's sister (i.e. a woman's marriage to her deceased sister's husband) in the listing. Stoddert's table simply inverts the prohibition given to the man in Lev 18:16 to achieve the perspective of the woman. Thus, since a man cannot marry his brother's widow, it is obvious that a woman cannot marry her husband's brother. The class two prohibitions are summarized as: “No man shall marry the widows of those in his direct line [i.e. son's widow, father's widow], of collaterals next to it [i.e. uncle's widow], or of parents' descendants [i.e. brother's widow].”<sup>659</sup>

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<sup>657</sup> In the case of sibling marriages, both reciprocity and inversion yield the same prohibitions. A man cannot marry his sister, thus by *inversion*, a woman cannot marry her brother; if *reciprocity* is used, the woman is still prohibited marrying her brother.

<sup>658</sup> Stoddert, “World's Marriage Law,” 481.

<sup>659</sup> *Ibid.*, 483.

The class three marriages are found in Lev 18:17-18 and involve the wife's relatives. Stoddert points out that Lev 18:18 is not concerned with a general prohibition of polygamy because each time, except one, when "uncover nakedness" occurs in the passage it refers to reprehensible impurity and describes an incestuous marriage. The single exception where "uncover nakedness" does not speak of incest is in verse 19 where relations with a wife during her menstrual impurity is prohibited. Lev 18:18 must therefore refer to an incestuous polygamy where a man marries two or more *living* sisters as he takes "a wife to her sister." This type of union would fulfill both the requirements demanded by the Lev 18 context since it would be a reprehensible impurity and incestuous, but it would also be the type of polygamous marriage which would lead to tension between the two wives and "vex" the first wife.<sup>660</sup>

Another issue dealt with yields additional support to Stoddert's contention that a man's marriage to his deceased wife's sister is acceptable. As long as a man's wife lives he is in a unique relationship to her collateral kin, but when she dies the "teaching is then clearly, ... [he is] one with her race. The necessary inference is that with her death his position, unchanged with respect to her direct line, is changed with respect to her other relations."<sup>661</sup> The relationship with the direct line of the wife's kin survives her death, but the relationship to her collaterals—sisters, nieces, etc.—ceases.<sup>662</sup> Lev 18:18 does not prohibit marriage to a deceased wife's sister because death ends the relationship the man had to the sister, but it does condemn marriage to the sister in a polygamous union while both sisters are alive. Stoddert's argument is essentially an application of 1 Cor

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<sup>660</sup> Ibid., 486; Stoddert did not tabulate the class three restrictions.

<sup>661</sup> Stoddert, "World's Marriage Law," 487.

<sup>662</sup> Ibid., 491.

7:39 to the kin of a deceased wife. The Apostle Paul contended that a wife is bound to her husband until he dies, then the marriage bond is broken, neither spouse can fulfill their obligations to the other, therefore she is free to marry another. As Stoddert put it, “The law does not forbid the collaterals of the wife, because such union is no more incestuous than marriage with one of the Antipodes.”<sup>663</sup>

One of the author’s observations is particularly helpful for understanding why deceased wife’s sister marriages were common. When death occurs, the surviving sister becomes an obvious candidate for marriage. The attributes that attracted the widower to his deceased wife may also “naturally attract him again.”<sup>664</sup> The sister’s association with her deceased sister’s children gives her a unique sensitivity to their thoughts, needs, and situation. So, once “time has healed the wounds and he seeks for a mother for the orphans, he looks on his deceased wife’s sister precisely as on any other lady.”<sup>665</sup>

The Deuteronomic levirate did not present a problem for Stoddert’s analysis because he viewed the levirate as a different type of marriage. While Lev 18:16 is an incestuous, non-levirate union, the Deuteronomic instruction is not incestuous because it fulfills the higher principle of bringing seed to the barren and helping the weak.<sup>666</sup> Levirate marriage is not an exception to the incest laws of Lev 18; levirate marriage is a different type of union that fulfills the deceased brother’s need for a male heir.

William Stoddert did not mention the *Westminster Confession* in his analysis, but his presentation shows his concern that the only near-kin relations condemned be those “forbidden in the word” (24:4). Stoddert saw the prohibitions for both genders given in

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<sup>663</sup> Ibid., 488.

<sup>664</sup> Ibid., 489.

<sup>665</sup> Ibid.

<sup>666</sup> Ibid., 484-85.

the specific statements of Lev 18 and he applied them to the woman by inversion and not reciprocity. He added to the specific prohibitions with a limited use of his two interpretive principles. His approach was conservative and the result is a limited list of prohibited marital relations. Stoddert built his case for the legitimacy of deceased wife's sister unions on the basis of Lev 18:17 which established the error of marrying those in a direct line of kinship to the wife, while his interpretation of Lev 18:18 prohibited a polygamous union with his wife's sister. Though William Stoddert did not directly address the affinity sentence, his views would feed the fires of debate presented in *The Southern Presbyterian Review* as subsequent writers discussed the Biblical view of near-kin marriage. His idea that the wife's death breaks the near-kin bond that the husband had with the wife's sister was contested by the following article.

#### **“God’s Marriage Law,” Anonymous, October 1881, a Response to William Stoddert**

The author of this article is the same one who wrote the anonymously penned essay in the October 1880 *Southern Presbyterian Review* that condemned marriage to a deceased wife's sister. As the author interacted with Stoddert, he admitted that Stoddert's argument was “probably the most able argument that could be presented on that side,” but the author felt it incumbent upon himself to defend his earlier article, which condemned marriage to a deceased wife's sister.<sup>667</sup>

The author contended with Stoddert's application of his first interpretive principle, which is “When one degree is forbidden, an equal degree is also forbidden.”<sup>668</sup> Stoddert applied this rule in order to prohibit a man's marriage to his grandmother, which

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<sup>667</sup> “God’s Marriage Law,” *The Southern Presbyterian Review* 32, no. 4, (October 1881), 682; the author describes himself as “a practical misogynist” and “who is *verging towards sexagenarianism*.”

<sup>668</sup> “God’s Marriage Law,” 685.

is a relationship not specifically prohibited by Lev 18. He applied the rule by saying that since the descending degree of the granddaughter is condemned, then the ascending relation of the man to his grandmother is also forbidden; the first interpretive principle is limited to ascending and descending relations in the same line of descent. The anonymous author of the present article said that Stoddert's rule was good but he did not use it enough. Mr. Anonymous used reciprocal application of Lev 18:16 to the woman to prohibit her marriage to her deceased sister's husband. The author's use of reciprocal interpretation is seen in his statement that "the relation subsisting betwixt a man and his wife's sister is exactly equal to that subsisting betwixt a woman and her husband's brother."<sup>669</sup> The trouble is that the anonymous author's application makes two mistakes. The first error was his application of Stoddert's rule to the parallel or collateral lines of descent when it was intended to be used with the same line. The second error was his application of the rule to people in the same generation when it was supposed to be used for ancestors and descendants. The anonymous author misunderstood and misapplied Stoddert's rule.

The article continues by arguing for the prohibition of the deceased wife's sister marriage. It is an incestuous union because the reciprocal application of Lev 18:16 to the woman prohibits such a marriage; if a man is prohibited his brother's wife, then a woman is prohibited her sister's husband.<sup>670</sup> The marriage is also condemned by the man and woman becoming one flesh in marriage because a man's wife's sister is as his own sister.<sup>671</sup> The marital bond ties the consanguine relations of each spouse to the other.

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<sup>669</sup> Ibid., 685.

<sup>670</sup> Ibid., 689.

<sup>671</sup> Ibid., 691.

In summary, William Stoddert, in his introduction to his article, affirmed the goodness and holiness of marriage and noted that when man and woman marry they become one flesh.<sup>672</sup> The anonymous author agreed with Stoddert on this point. Both authors were united in the view that when a man entered his wife's family through marriage he became morally the son or daughter of his wife's parents as well as brother to her sisters and brothers. However, the two authors disagreed on how death affected this relationship; Stoddert said that death ended the collateral relations, while the anonymous critic said the relationships continued after death. The anonymous author viewed marriage to a deceased wife's sister as wrong because she was in effect his own sister, while Stoddert saw it as acceptable because the sister relationship to him ended with his wife's death. Neither of these authors approached the issue from the perspective of the affinity sentence and the *Confession* does not appear in this article.

### **“Marriage with a Deceased Wife’s Sister,” by Ferdinand Jacobs, October 1883**

What Ferdinand Jacobs published as an article was originally given to Charleston Presbytery, the previous April, as the report of a Committee appointed to consider the subject of a man’s marriage to his deceased wife’s sister.<sup>673</sup> The Presbytery resolved that the *Southern Presbyterian Review* be asked to publish the report as an article. The issue was continuing to vex the P.C.U.S. and due to continued questions regarding the

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<sup>672</sup> Ibid.

<sup>673</sup> The author is probably Ferdinand Jacobs (1808-1894) who was graduated from Union Theological Seminary in Virginia in 1835. At the time this article was published, he was pastor of the James Island Presbyterian Church in Charleston Presbytery. See: E. C. Scott, *Ministerial Directory of the Presbyterian Church, U.S. 1861-1941* (Austin: Published by Order of the General Assembly, 1942), 348. Jacobs’s name is at the end of this *Southern Presbyterian Review* article as the author (p. 703), but as a committee report it would have been composed by more than one person. Jacobs may have edited it for publication or been the committee chairman. Jacobs will be considered the author for the purposes of this dissertation.

marriage's legitimacy, the *Southern Presbyterian Review* thought it appropriate to publish the report with the hope that it would "help to bring some who are opposed to the expunging of the law, to acquiesce in the present state of the matter in our Church."<sup>674</sup>

Jacobs began his analysis by attributing the Lev 18 prohibitions regarding incest to the civil law of Israel. The near-kin laws are no more obligatory for Christians than "the law forbidding the eating of swine's flesh" or the "law of divorce."<sup>675</sup> Even if these laws could be construed as prohibiting marriage to a deceased wife's sister in Old Testament Israel, they have no force for the Christian church "unless it can also be shown that such marriages are essentially immoral." Jacobs contended that the near-kin prohibitions are not moral law; the laws are civil laws restricted to the Hebrews.<sup>676</sup>

Jacobs's perspective interpreted the laws of Lev 18:7-18 as pertaining not to incestuous marriage but to incestuous fornication.<sup>677</sup> In reaching this conclusion he argued that marriage with a brother's widow is not equivalent to marriage with a deceased wife's sister because the "connecting link of affinity between a man and his wife's sister, is a woman, his wife; the connecting link between a man and his brother's wife, is a man, his brother."<sup>678</sup> The man's rights, relation, and influence are different from those of the woman. This, says Jacobs, is seen in the case of the levirate of Deut 25:5 where a brother brings seed to his deceased brother, but a woman does not marry her sister's widower to bring seed to her sister. There cannot be a parity of reasoning between the man and the woman because the Old Testament dealt differently with the

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<sup>674</sup> Ferdinand Jacobs, "Marriage with a Deceased Wife's Sister," *The Southern Presbyterian Review* 34, no. 4, (October 1883), 683.

<sup>675</sup> Ibid., 684.

<sup>676</sup> Ibid., 685.

<sup>677</sup> Ibid., 687.

<sup>678</sup> Ibid., 686.

man than the woman.<sup>679</sup> Lev 18:16 cannot prohibit the marriage of a man to his brother's widow because such marriages are commanded by the levirate, so marriage to a brother's wife must be acceptable because God would not "ordain a law that involved an essential immorality."<sup>680</sup> These three factors led to Jacobs's conclusion that Lev 18 and Lev 20 speak of the wife and not the widow, they speak of fornication between the man and his near-kin's wife.<sup>681</sup>

Jacobs then turned his attention to Lev 18:18 and its prohibition of taking "a wife to her sister, to vex her." This passage is an exception to the analysis in the preceding paragraph in that it does not refer to fornication but marriage.<sup>682</sup> Jacobs then reasoned that the verse could not refer to polygamy because polygamy was a legitimate practice for the Hebrews because it was not condemned until Christ did so in the New Testament and returned the standard to the Edenic limitation of one wife.<sup>683</sup> Therefore, Lev 18:18 was given in the context of permitted polygamy and prohibited a man marrying two, or possibly more, sisters at the same time. The caveat in verse 18, "in her life time," shows that marrying a deceased wife's sister is legitimate. This is confirmed by 1 Cor 7:39 which shows that death breaks the bonds of the first marriage and frees the widower to marry his wife's sister.<sup>684</sup> Jacobs summarized the conclusion of his analysis "that even if the Hebrew polity were to its full import binding on us, there was in it no statute forbidding the marriage of a man with his deceased wife's sister."<sup>685</sup>

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<sup>679</sup> Ibid.

<sup>680</sup> Ibid., 686-87.

<sup>681</sup> Ibid., 689.

<sup>682</sup> Ibid., 691.

<sup>683</sup> Ibid., 691-92.

<sup>684</sup> Ibid., 692-93.

<sup>685</sup> Ibid., 694.

As Jacobs brought his article to its conclusion, he mentioned the thirty-five year old case of Archibald McQueen. He discussed the McQueen case with particular reference to James Henley Thornwell's contention that the McQueen restoration was in direct defiance with the *Confession* 24:4. Jacobs said of Thornwell that "he forcibly shows that the restoration of Mr. McQueen was a practical ignoring of the law. In our view, it was a practical annulment of the law."<sup>686</sup> The reason for the inconsistent way the McQueen case and other near-kin adjudications were handled must be due to the ecclesiastical commissioners being perplexed over the issue, concluded Jacobs. They "were in a dilemma, as will be many others who may be called on to give a verdict on the marriage of some offending brother if the law remains in our Book." The problem, according to Jacobs, is that Presbyterians were not convinced that a deceased wife's sister marriage was sinful. The article ends with a quote from Thornwell calling for the change of the *Confession* if there is not conviction concerning the affinity sentence and its application.<sup>687</sup>

In summary, Ferdinand Jacobs's presentation and analysis takes some different perspectives on the issues. His view on Old Testament marriage law restricted Leviticus to prohibiting incestuous fornication and not marriage. In addition to this, he saw these laws as irrelevant to Christians since they were civil rubrics for the Hebrew nation. Though not specific to the near-kin issue, Jacobs's association of divorce with no longer binding Hebrew civil legislation is unusual. Jacobs saw the legitimacy and applicability of a law to be dependent on an inherent, fundamental, moral principle behind the law.

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<sup>686</sup> Ibid., 701.

<sup>687</sup> Ibid., 702; this quote was seen in the discussion of J. H. Thornwell and the McQueen case in chapter 4 of this dissertation.

How one is to know whether there is a fundamental moral principle behind the law is not stated. Jacobs “fundamental moral principle” is reminiscent of William Marshall’s “law behind the law.” Jacobs concluded that marriage to a deceased wife’s sister is legitimate because the widower is no longer bound to his wife and vice-versa. Death ended the kinship relationship of the man and his wife’s sister and they are free to marry. Ferdinand Jacobs ended his article by calling for the erasure of the affinity sentence from the *Confession* because it confuses people and they do not know what to do with it. The conclusion of his article rests his case for erasure on the physically diminutive, though massively orthodox, shoulders of James Henley Thornwell.

The perspective on the law presented in this article could not have been an acceptable view for the Presbyterian Church in the United States because it is contrary to the *Westminster Confession*’s teaching on the law in chapter 19 and the marriage teaching in 24:4. Jacobs’s contention that marriage to a brother’s wife is not inherently immoral also contradicts the *Confession*’s use of Mark 6:18 as a proof text in which John the baptizer condemned Herod for having his brother’s wife. Mr. Jacobs’s appeal to Thornwell’s comments on revision failed to mention Thornwell’s contention that the McQueen marriage was incestuous, that it was wrong for his suspension to be removed, and it was wrong for the McQueens to continue as man and wife. It is as if Jacobs felt it necessary to baptize his dissonant tune with a few melodious notes of southern orthodoxy. With such a non-confessional perspective, why did Charleston Presbytery recommend the committee’s report to be published? Jacobs’s work will not be the last word on the subject in the *Review*.

### **“Brief in the Case of Marriage with a Deceased Wife’s Sister,” L. G. Barbour, 1884**

L. G. Barbour’s April article addressed Ferdinand Jacobs’s contention that Lev 18 and 20 have nothing to do with marriage and are instead directed against fornication. Lewis Green Barbour (1829-1907) was from Danville, Kentucky and a Princeton Seminary graduate who ministered for many years in both the Blue Grass State and Missouri. At the time of this article he was Professor of Mathematics and Astronomy at Central University in Kentucky.<sup>688</sup> Contrary to Jacobs, Barbour believed that the Levitical stipulations were “unquestionably leveled specially at incest” and he based his view on three factors.<sup>689</sup> The first factor stipulated that the view was historically held by a majority of the church, “both Jewish and Christian.” The second factor contended that if the passages did not address incest, then the Hebrews would have had no written law against it. The final factor noted that the preamble to the Lev 18 prohibitions restricts approaching any that is “near of kin to him” which means “flesh of his flesh;” the Levitical preamble itself shows that incestuous marriage was the primary target of the verses and not fornication or adultery.<sup>690</sup>

Contrary to Jacobs, Barbour took the position that Leviticus is applicable to the New Testament church and he based this interpretation on five reasons. The first reason Leviticus applies to the church is that the sins forbidden Israel were those forbidden the Gentile nations; the Leviticus marriage laws are moral laws that apply to Jews and Gentiles, believers and unbelievers alike. The second reason near-kin laws apply to the

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<sup>688</sup> *Necrological Reports and Annual Proceedings of the Alumni Association of Princeton Theological Seminary*, vol. 3, 1900-1909 (N.p., 1909), 514-515; E. C. Scott, *Ministerial Directory of the P.C.U. S.*, 35.

<sup>689</sup> Barbour, “A Brief in the Case of the Marriage with a Deceased Wife’s Sister,” *The Southern Presbyterian Review* 35, no. 2, (April, 1884), 191.

<sup>690</sup> *Ibid.*, 191.

church, is that the laws are not ceremonial because they involve “the relations of man to man” and not of “Jew to Jew.” The third reason Leviticus applies to the church is that the New Testament has recorded cases where near-kin marriages were condemned. For example, John the Baptist condemned marriage to a brother’s wife in Mark 6:18, and Paul condemned marriage with a father’s wife in 1 Cor 5:1. The Fourth reason the Old Testament restrictions apply to the church is that the consciences of the Gentiles have always acknowledged the sinfulness of incest. The last reason the laws apply is that if the Levitical chapters do not address incest, then there is “no law written in the Bible against incest.”<sup>691</sup> Barbour found the Levitical prohibitions irrefutably directed against incestuous marriage and authoritative for the Christian.

The restrictions of Lev 18 and 20 are not limited to those specifically stated. These laws must be applied not only specifically but also by “parity of reasoning.” Limiting the prohibitions to only those specifically stated would allow a man marrying his daughter, while the woman would be prohibited her son and her step-son. A woman would be prohibited her brother’s son, her sister’s son, and her husband’s brother’s son, but a man could marry his own brother’s or sister’s daughter.

Barbour then turned his analysis specifically to the deceased wife’s sister marriage. He argued that it is just as proper to prohibit the marriage of a woman to her deceased sister’s husband as to prohibit the marriage of a woman to her deceased husband’s brother. Barbour used reciprocal application to justify the prohibition of the deceased wife’s sister marriage. He contended further that the near universal consent of

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<sup>691</sup> Ibid., 193.

Christians and Jews, including the “lax Talmudists” and the “rigid Karaites,” shows that the restrictions extend beyond the literal stipulations and include similar relationships.<sup>692</sup>

Barbour then addressed Jacobs’s idea that the bond of marriage is broken by death and changes the relationship the widower had to his deceased wife’s kindred. Barbour addressed this view with an example. If a man died while married to his second wife, then his widow would become a legitimate marriage partner for a son from the first marriage. However, this marriage is expressly forbidden in Lev 18:8. Barbour concluded that Jacobs’s contention that death breaks the marital bond with respect to non-directly ascending and descending relations to be against good sense.<sup>693</sup>

Following a presentation of the historical perspectives of churches and governments that have condemned marriage to a deceased wife’s sister,<sup>694</sup> Barbour turned to the *Westminster Confession of Faith* to assist his analysis as he applied the affinity sentence’s “in blood” principle to the wife’s sister relationship to determine its illegitimacy.<sup>695</sup> Arguing against Jacobs, he believed that even though Lev 18:18 prohibits marriage to a sister while the first sister is alive, the deceased wife’s sister marriage is still condemned by application of the affinity sentence. Barbour then asked his readers that they not allow “the Southern Presbyterian Church in the United States, a body hitherto so conservative, so zealous for maintaining the old landmarks, so proud of its orthodoxy of the genuine Westminster type” to take the lead in erasing the affinity sentence. Barbour then expressed his deep concern for the near-kin issue as he said

<sup>692</sup> Ibid., 193, 194.

<sup>693</sup> Ibid., 194-95.

<sup>694</sup> Ibid., 200-203.

<sup>695</sup> Ibid., 203-204.

"Woe is me if ... [the] day should come" when the P.C.U.S. would remove the affinity sentence.<sup>696</sup>

As Barbour drew his article to its conclusion, he recounted a story told him by a friend. The friend was traveling with Dr. N. L. Rice and they were discussing the deceased wife's sister issue, which Dr. Rice contended was an incestuous marriage.<sup>697</sup> The friend related to Dr. Rice that they were going to eat with a Presbyterian elder married to his deceased wife's sister. Dr. Rice responded in silence due to the dilemma he faced—how could he eat with this man so obviously in sin?<sup>698</sup> Barbour's response to Rice's conundrum was that even though one might not dine with one recently released from the penitentiary, it would be permissible to eat with one guilty of lesser offences. After all, if "we are never to dine with any man who daily sins against God, we shall never dine out at all, and nobody can ever dine with us."<sup>699</sup> The issue of near-kin marriage was taken quite seriously and Rice's dilemma may appear to be a non-issue at the beginning of the twenty-first century, but the deceased wife's sister marriage was a point of contention and concern for the Presbyterians of that era.

The essay ends with the contention that Barbour did not know of any council of the Christian Church at any time or in any place that had upheld the marriage of a man to his wife's sister. He stated further that "if the General Assembly of our Church should uphold this marriage, it will be, of all Church Councils, oecumenical or provincial, orthodox or heretical, the first to do so, to the confusion and sorrow of some that greatly

<sup>696</sup> Ibid., 204.

<sup>697</sup> Dr. Rice was mentioned with respect to the McQueen case in chapter 4.

<sup>698</sup> Barbour, "A Brief in the Case," 211.

<sup>699</sup> Ibid., 211-12.

love that honored branch of the Church universal” and it would be contrary to the work of “the great scholars of the Westminster Assembly.”<sup>700</sup>

In summary, L. G. Barbour’s perspective on the deceased wife’s sister issue upheld the teaching of the affinity sentence. Barbour saw the prohibition in Lev 18:16 as reciprocally applied to the woman so that it prohibited her marriage to her deceased sister’s husband, but this was not the key point condemning the deceased wife’s sister marriage for him. For Barbour, the nail in the coffin of the proponents of sister-in-law marriages was the *Confession*’s “in blood” principle in the affinity sentence. The sentence prohibited a man’s marriage to his wife’s kin standing in the same consanguine relationship to her as his own consanguine relations to himself; a man does not marry his wife’s sister because he does not marry his own sister. His perspective made Lev 18:18 irrelevant to the issue; whether this verse condemned marriage to two sisters or two non-sisters at the same time it did not affect the deceased wife’s sister marriage. The Presbyterian Church, in this case the southern body, continued to be divided over near-kin issues. This article was written in the midst of debates taking place in the P.C.U.S. concerning the removal of the affinity sentence.

#### **“Marriage Between Near of Kin,” by C. W. Humphreys, Spring 1884**

C. W. Humphreys opened his article with a quotation of the entirety of the *Confession*, 24:4, noting that the Presbyterian Church in the United States was contemplating the removal of the affinity sentence per its decision at the 1883 Assembly.<sup>701</sup> Cavet Wiley Humphreys (1844-1934) studied at Hampton Sydney College

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<sup>700</sup> Ibid., 214-15.

<sup>701</sup> C. W. Humphreys, “Marriage Between Near of Kin,” *Southern Presbyterian Review* 35, no. 2, (April 1884), 315.

and graduated from Union Theological Seminary in Virginia following his four years of military service in the Confederate Army. He pastored congregations in Virginia, Missouri, and South Carolina.<sup>702</sup> In his article he was particularly concerned that the levitical law be interpreted appropriately with respect to near-kin unions. He contended that the arguments used for removal of the affinity sentence can just as readily be used to erase the entirety of the *Confession* 24:4. If Lev 18 and 20 did not address marriage, as Jacobs contended, then why not remove all of 24:4 seeing that its teaching is built on the principle that these portions of Leviticus speak to marriage?<sup>703</sup> If the law does not speak to marriage, then all of chapter 24, section 4, is errant and all of it should be removed.

Humphreys then moved on to show that Lev 18 relates to marriage and that it defines illicit near-kin marriages. He believed that if the verses of Lev 18 did not prohibit incestuous marriage, then there would be no reason for their inclusion in the Bible.<sup>704</sup> Other Mosaic legislation makes it abundantly clear that fornication and adultery are wrong in any situation, so why would God delimit the specifics of Lev 18 with respect to fornication or adultery with near-kin? The only way that sense can be made of these verses is if they apply to marriages of consanguinity and affinity.<sup>705</sup> To remove the levitical prohibitions from the category of incestuous marriages leaves the Bible without prohibitions against marriages of consanguinity and affinity. The prohibitions of Lev 18 and 20 are primarily directed against near-kin marriage and they provide secondary prohibitions against fornication and adultery. These laws cannot be deemed civil and limited only to the “Jewish dispensation” because the context demands their application

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<sup>702</sup> E. C. Scott, *Ministerial Directory of the P.C.U.S.*, 337.

<sup>703</sup> Humphreys, “Marriage Between Near of Kin,” 316.

<sup>704</sup> Ibid., 322.

<sup>705</sup> Ibid., 324.

to all people. God specifically mentioned the Gentiles as examples of those who had broken the incest laws (Lev 18:3, 24-28). If the laws are not applicable to all, then how can the Gentiles be condemned for their practices?<sup>706</sup>

Humphreys addressed the wife's sister marriage when he pointed out that the union is forbidden by Lev 18:16 because the reciprocal application of the verse to the woman prohibits her marrying her deceased sister's husband.<sup>707</sup> The union is rebuked further by Lev 18:17, which condemns the marriage of a man to his wife's daughter. If this relation to the man through the wife is forbidden, then the sister must likewise be forbidden since she relates to the husband through the deceased wife. The daughter is half-blood kin and the sister is full blood kin; if the lesser blood relation of the daughter is prohibited, then the greater relation of the sister must also be forbidden.<sup>708</sup> The affinity sentence's "in blood" perspective condemns the marriage because a man cannot marry his sister, so he cannot marry his wife's sister because she bears the same relationship to his wife. Humphreys saw three strikes against the deceased wife's sister marriage: the first involved the reciprocal application of Lev 18:16 from the man to the woman, the second argued from the lesser blood relation of the daughter to the greater blood relationship of the sister, and the third, was the affinity sentence.<sup>709</sup>

Humphreys raised several points of disagreement with those seeking the removal of the *Confession's* affinity sentence. He argued that if the levitical law does not pertain to marriage, then why do the proponents of erasure limit their revision efforts and leave half of the unscriptural paragraph of the *Confession* in place? It is inconsistent of those

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<sup>706</sup> Ibid., 325.

<sup>707</sup> Ibid., 326-27.

<sup>708</sup> Ibid., 335.

<sup>709</sup> Ibid.

seeking a change to call for removal of the Levitically based affinity sentence, but leave the first part of the paragraph that is also based on the same Leviticus text. If Leviticus does not speak to marriage then it speaks to neither affinity nor consanguinity. The biblical passages cited to support the consanguinity and affinity paragraph of the *Confession* are Lev 18 and 20, Mark 6:18, and 1 Cor 5:1, all of which embody principles that determine what is incestuous. Abrogating any part of 24:4 will effectively abrogate the whole. The decisions of many state governments allowing wife's sister marriages is irrelevant to the Presbyterian Church because it follows the Bible and not the whims of men. Humphreys added that in "Paris the State legalizes brothels; in Louisiana, lotteries," but does this mean the Presbyterian General Assembly should approve of these practices?<sup>710</sup> To remove the affinity sentence would be removing the only theory of interpretation that can be "applied, candidly and intelligently" to the levitical prohibitions "without palpable violence either to itself or the text."<sup>711</sup> The analysis by C. W. Humphreys recognized the importance of the affinity sentence for maintaining the integrity of the 24:4 paragraph; without the affinity sentence the paragraph would become an incomplete rule and it would not accurately reflect the Bible's teaching cited in the *Confession*'s proof texts.

### **Summary of the *Southern Presbyterian Review* Articles**

The series of six articles spanned three and one-half years between October 1880 and April 1884. During this time, as will be seen in the next section, the P.C.U.S. was debating the deceased wife's sister marriage. Four of the six articles condemned the marriage while two saw it as acceptable. The four opposing the union did so on the basis

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<sup>710</sup> Ibid., 338.

<sup>711</sup> Ibid., 335.

of the continuing authority of the Mosaic legislation as Divine moral law. The opposing perspective of Stoddert maintained a conservative use of the levitical laws but he excluded the deceased wife's sister prohibition. Ferdinand Jacobs saw the rubrics as no longer authoritative for the church and he spoke for the acceptability of the sister-in-law union. In the case of the *Southern Presbyterian Review* articles four of the five authors held to using the levitical law at least partially, while one of the four denied that the wife's sister marriage was wrong. The one view, Ferdinand Jacobs's, which rejected Mosaic legislation for the church's use also accepted the marriage of a widower to his wife's sister. The discussion in the *Review* did not address the discipline issue except for C. W. Humphreys's comment that if the affinity sentence should be removed, then all of 24:4 should be excised. The debate in the P.C.U.S. involved interpretation and application of the law of God.

### **The Presbyterian Church in the United States**

Following the Civil War the Presbyterian Church in the south became the Presbyterian Church in the United States. As in the Northern Church, the P.C.U.S. General Assembly did not face the continued recurrence of near-kin cases following the war that it had before the war. However, several years after the War Between the States ended, an overture from the Presbytery of West Hanover came before the 1881 Assembly requesting the appointment of a "judicious" committee for the purpose of studying the lawfulness of a man marrying his deceased wife's sister.<sup>712</sup> The Assembly adopted the report of the Bills and Overtures Committee which recommended "that the request be not

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<sup>712</sup> *Minutes of the P.C.U.S., 1881*, 358.

granted.”<sup>713</sup> The southern Presbyterians were continuing to uphold the affinity sentence and stand by the decisions made in cases prior to the war. However, the 1881 decision did not end inquiries from the lower courts.

The conditions that contributed to the occurrences of near-kin unions still existed in the decades following the Civil War. The overture for revision was precipitated by a near-kin marriage within Concord Presbytery at the Prospect Presbyterian Church, of Mooresville, North Carolina. Mr. Kilpatrick had married his wife’s sister and he was seeking a letter of transfer to move her membership from the Prospect Church to the Mooresville Church.<sup>714</sup> Presumably, the man and his deceased wife had attended the Mooresville Church together, and the widower’s recent marriage to his wife’s sister necessitated transferring her to the Mooresville congregation. Initially the session was willing to grant the certificate of good and regular standing, but after further discussion, it was decided to refer the matter to Concord Presbytery for their deliberation and decision. The question to their presbytery was, “Whether or not it is a sin for a woman to marry the husband of her deceased sister?”<sup>715</sup>

When Concord Presbytery met, April 27, 1882, the Bills and Overtures Committee presented the inquiry from Prospect for disposition. A committee was appointed and when their recommendation was reported the presbytery responded by adopting a substitute which read:

While the marriage in question is directly opposed to the Confession of Faith, and therefore technically an offence, yet as the General Assembly has made such variant decisions in reference to this matter, and there is so much doubt in the minds of many as to its being the teaching of the Scriptures; the parties to a

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<sup>713</sup> Ibid.

<sup>714</sup> *Minutes of Prospect Presbyterian Church, 1857-1883*, March 18, 1882, 164, PHSMS.

<sup>715</sup> Ibid., April 8, 1882, 165.

marriage of this sort should not be debarred from the privileges of church membership, and when otherwise worthy should be allowed letters of dismission when removing to another church.<sup>716</sup>

This answer to the Prospect Church's question ended their conundrum, but it did so at the price of directly contradicting the second sentence of the consanguinity and affinity paragraph. The Presbytery went on to adopt an overture to the General Assembly meeting scheduled for that summer that called for the removal of the affinity sentence. Concord Presbytery listed eight reasons for the overture and in summary they were: churches, scholars, lay persons, the Septuagint, the laws of the nation, and the "common understanding" of men all deny the evil of such marriages.<sup>717</sup>

When the P.C.U.S. Assembly met in 1882, it was confronted with the issue of confessional revision due to a near-kin marriage case.<sup>718</sup> The Assembly disposed of the Concord overture by adopting the Bills and Overtures Committee recommendation that because the overture was of "such grave and general interest" it should be published in the 1882 minutes for the purpose of calling the issue to the "special attention of the Presbyteries."<sup>719</sup> The Assembly adopted the recommendation.<sup>720</sup> The Assembly left the excision issue open for additional overtures from the presbyteries as they responded to Concord's appeal in the 1882 minutes. The Assembly wanted the churches to be informed about the situation in order to give them time to consider the issue. It was this action of the General Assembly that contributed to the debate in the *Southern Presbyterian Review*.

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<sup>716</sup> *Records of Concord Presbytery*, vol. 8, 1874-1886, April 27, 1882, 587, PHSM.

<sup>717</sup> *Minutes of the P.C.U.S.*, 1882, 570.

<sup>718</sup> *Ibid.*, 570.

<sup>719</sup> *Ibid.*, 571.

<sup>720</sup> *Ibid.*

Response from the presbyteries came to the 1883 General Assembly in the form of another overture from Concord Presbytery calling for removal of the affinity sentence.<sup>721</sup> The Assembly adopted the recommendation and sent the proposed revision down to the presbyteries “by way of overture.”<sup>722</sup>

There is some confusion at this point since the 1884 Assembly is said to have recommended an amended form of the revision “to the Presbyteries for their advice and consent.”<sup>723</sup> It appears that the presbyteries were asked to vote on confessional revision two years in a row, when in fact, the second vote was on the amended form of the first year’s proposed change. The reason for the amendment was the problematic use of the term “by way of overture” in 1883. Proper terminology is expressed in the 1884 revision because it recommended the change “to the Presbyteries for their advice and consent.”<sup>724</sup> The General Assembly could not *overture* the presbyteries regarding constitutional changes but it could seek their *advice and consent*. The procedural error was ascertained by the presbyteries and the 1884 action put the 1883 decision into the proper terminology. The amended statement seeking revision was recommended to the presbyteries in 1884. By the time of the 1885 meeting only fifty-five of the sixty-nine

<sup>721</sup> Concord Presbytery adopted this action at its Fall 1882 meeting. See: *Records of Concord Presbytery*, vol. 8, 1874-1886, September 25, 1882, 639, PHSM.

<sup>722</sup> *Minutes of the P.C.U.S.*, 1883, 51.

<sup>723</sup> *Minutes of the P.C.U.S.*, 1884, 248.

<sup>724</sup> Ibid. Earlier in the Assembly, *Minutes of the P.C.U.S.*, 1884, 245, an overture dealing with constitutional revision of the *Form of Government* puts the terms “recommended” and “advice and consent” in quotes as if to draw attention to their proper form. This may indicate some earlier discussion of the confessional revision’s improper 1883 form.

presbyteries had responded. Revision of the *Confession* required a three-quarters majority, so the Assembly referred the issue to the 1886 Assembly.<sup>725</sup>

When the Assembly met in 1886, the near-kin issues related to the affinity sentence were finally decided by the Presbyterian Church in the United States. Because of an error in the 1885 minutes, a committee was appointed to ascertain the nature of the error and make a recommendation to the Assembly concerning proper disposition.<sup>726</sup> The committee reported that the error involved a miscount of the votes in 1885 and the issue was immaterial since reports had been received in 1886 from all the presbyteries but two, and the vote in favor of removing the affinity sentence was fifty-seven which exceeded the fifty-two necessary.<sup>727</sup> The change was adopted and the sentence removed.<sup>728</sup>

Four members of the Assembly submitted a protest against the removal of the sentence. The men presented four supporting reasons for their action, which in summary were: (1) the Presbyteries did not comprehend the nature and gravity of the decision they were being asked to make; (2) the Assembly had not clearly presented an accurate statement of the proposed change; (3) the intention of Concord Presbytery's overture was to eliminate the prohibition against a man marrying his deceased wife's sister and not to eliminate all degrees of illegitimate marriage; and (4) the matter of marriage of kin-in-

<sup>725</sup> *Minutes of the P.C.U.S.*, 1885, 427-28; the necessary number of votes for revision was 52, but by 1885 only 47 had agreed to remove the affinity sentence.

<sup>726</sup> *Minutes of the P.C.U.S.*, 1886, 13; the committee had only two members, the Reverend Dr. W. T. Richardson and Ruling Elder W. W. Henry.

<sup>727</sup> *Minutes of the P.C.U.S.*, 1886, 49.

<sup>728</sup> Ibid. Morton Smith, *Harmony of the Westminster Confession and Catechisms* (Greenville: Southern Presbyterian Press, 1997), 125, notes the removal of the affinity sentence by the P.C.U.S. in his parallel presentation of the *Confession of Faith* and the *Catechisms*.

<sup>728</sup> *Minutes of the P.C.U.S.*, 1886, 48-49.

law as well as kin-in-blood had not been settled for the church.<sup>729</sup> The Assembly did not respond to the protest.<sup>730</sup>

### **The Presbyterian Church in the United States of America**

Developments among northern Presbyterians followed a similar course the following year.<sup>731</sup> After the Civil War the Old and New Schools reunited into the Presbyterian Church in the United States of America in 1869.<sup>732</sup> Confessional revision regarding the affinity sentence began in 1886 with an overture from the Presbytery of Rio de Janeiro requesting the Assembly to strike “out the last period” of the *Westminster Confession*, 24:4.<sup>733</sup> The Bills and Overtures Committee recommended that the overture “be sent down to the Presbyteries” so that the removal may be achieved.<sup>734</sup> When the Committee to Canvass Overtures reported the vote, it was, 156 for removal and 11 against the change. Four presbyteries took no action, and 31 had not reported. The two-thirds vote required for confessional revision was achieved and the sentence was removed by a substantial margin.<sup>735</sup> The Committee to Canvas was then instructed to determine if “any further action is necessary to accomplish the purpose aimed at,” and they reported

<sup>729</sup> Ibid., 49-51.

<sup>730</sup> Ibid., 51.

<sup>731</sup> The minutes do not indicate that the 1886 removal by the P.C.U.S. was used as support for removal by the P.C.U.S.A., but it is unlikely that the southern decision would not have entered the debate.

<sup>732</sup> Both bodies maintained separate minutes in 1869 which was the year they voted to unite. The first minutes as the reunited P.C.U.S.A. were in 1870.

<sup>733</sup> *Minutes of the P.C.U.S.A.*, 1886, 38; the P.C.U.S.A. began its Brazil work in 1859 (*Minutes*, 160), and the first congregation was received on Jan. 12, 1862 (*Minutes*, 54).

<sup>734</sup> *Minutes of the P.C.U.S.A.*, 1886, 38.

<sup>735</sup> *Minutes of the P.C.U.S.A.*, 1887, 97.

later in the meeting that “any obstacles that may have existed to the marriage of a deceased wife’s sister” were removed by deleting the sentence.<sup>736</sup>

### **Further Implications of the Excision of the Affinity Sentence**

As the Victorian era entered its final decade, those holding to the doctrinal and Scriptural integrity of the *Westminster Confession of Faith* were able to maintain its use, minus the affinity sentence, for subscriptional requirements. This revision was the first confessional revision in nearly one-hundred years. Could this seemingly minor excision have led to the attempts at greater changes later? An illustration may help. When a manager wants to make significant changes in the way personnel do their jobs he might begin with a small and seemingly insignificant change to acclimate them to the idea of change. After successful accomplishment of the singular, lesser, procedural revision, then greater and more numerous changes are attempted. Did presbyters seeking greater changes see this revision as an opportunity to bring constitutional revision into the active vocabulary of the P.C.U.S.A. and sow the seeds for more comprehensive changes? Was this revision seen as a common ground with those who would oppose greater changes but accept the removal of the affinity sentence? This domino theory of confessional revision was tested rather quickly.<sup>737</sup>

Following the reunion of the Old and New Schools in 1869 there had been a growing movement for general revision of the *Westminster Confession of Faith* which gained more adherents in the 1880s. Between 1877 and 1884 The Alliance of Reformed

<sup>736</sup> Ibid., 138.

<sup>737</sup> One near-kin relationship involved President Woodrow Wilson whose father and grandfather were both Presbyterian ministers. Wilson dated his cousin and proposed to her in September of 1881 and was turned down, as noted by John Milton Cooper, Jr., *The Warrior and the Priest: Woodrow Wilson and Theodore Roosevelt* (Cambridge: Belknap Press, 1983), 45.

Churches Holding the Presbyterian System considered drafting a creed agreeable to a consensus of its members.<sup>738</sup> In 1888 an overture seeking revision of the *Westminster Confession* was brought before the General Assembly of the Presbyterian Church in the U.S.A.<sup>739</sup> The key points of discussion involving the *Confession* concerned its doctrine of reprobation, its use of “elect infants,” and the absence of any clear statement expressing the universal free offer of salvation in Christ.<sup>740</sup> Efforts for revision led to the appointment of a Committee of Revision at the 1890 General Assembly. The committee was assigned the task of proposing amendments which would not detract from the Reformed and Calvinistic system of doctrine presented in the *Confession*.<sup>741</sup>

B. B. Warfield, despite the restraints placed on the committee, opposed any revision and viewed the committee reports skeptically.<sup>742</sup> Charles Augustus Briggs sided with those desiring confessional changes and advocated requiring adherence to the essential and necessary articles of the *Confession*.<sup>743</sup> When the votes were tallied at the 1893 General Assembly—the same meeting that suspended Briggs—the votes for all eleven proposed changes to the *Confession* fell short of the two-thirds required for constitutional change.<sup>744</sup> Even though the removal of the affinity sentence could have opened the psychological door to more extensive confessional revisions, the failure of the 1893 proposed changes shows that the majority was able to distinguish between the

<sup>738</sup> Loetscher, *Church*, 41.

<sup>739</sup> Ibid.

<sup>740</sup> Ibid., 43.

<sup>741</sup> Ibid., 45-46.

<sup>742</sup> Ibid., 46-47.

<sup>743</sup> Armstrong et al., pp. 248-249 as in Jack B. Rogers, *Scripture in the Westminster Confession: A Problem of Historical Interpretation for American Presbyterianism* (Kampen: J. H. Kok, 1966), 44.

<sup>744</sup> Loetscher, *Church*, 47.

essentials of Calvinism and the lesser issue of near-kin marriages. The presbyters saw the affinity sentence removal as a legitimate and necessary change, but the 1893 proposed changes were seen to cut at the heart of the *Westminster Confession*.

### **Summary of Chapter 5**

Following the War Between the States the after-taste of conflict left the near-kin marriage issue out of the General Assembly adjudication picture for roughly fifteen years. When removal of the affinity sentence was proposed at the P.C.U.S. General Assembly it was due to a deceased wife's sister marriage in North Carolina. The debate in the *Southern Presbyterian Review* did not directly address the issue of appropriate discipline for near-kin marriages, but rather revolved around the legitimacy of applying Mosaic legislation to the church. Those supporting the affinity sentence used it to validate their contention that it should remain in the *Confession* and they argued for reciprocal application of Lev 18:16 to the woman for the continued prohibition of the deceased wife's sister marriage. A disciplinary issue gave rise to the removal in the P.C.U.S., but the appeal of Concord Presbytery for removal essentially argued that the sentence was no longer valid. The northern Church followed the southern Presbyterian Church's excision of the sentence in short order and left the great majority of American Presbyterianism with an incomplete fourth section of the marriage chapter. The Presbyterian Church, north and south, had removed all justification for the prosecution of deceased wife's sister marriages when it erased the affinity sentence—or so it thought.

## Conclusion

The history leading up to the eventual removal of the affinity sentence in America shows that the Reformers, the Church of England, the Puritans, and the Presbyterians held that a man's marriage to his deceased wife's sister was incestuous. Martin Luther, who developed his near-kin views over an extended period, as well as Zurich's Heinrich Bullinger, and Geneva's John Calvin all condemned a man's marriage to his wife's sister, while Martin Bucer's view in *De Regno Christi* neither condemned nor condoned the marriage. The Church of England's teaching, exemplified in Matthew Parker's sixteenth-century list, prohibited the marriage and continued to do so into the twentieth century. William Perkins saw the deceased wife's sister marriage as incestuous based on the reciprocal application of Lev 18:16 to the woman. Andrew Willet and Peter Smith's monumental *Hexapla in Leviticum* continued the chain of theologians who saw the deceased wife's sister marriage as forbidden by the law of God. The near-kin history leading up to the Westminster Assembly condemned the wife's sister marriage, and the Assembly's inclusion of the affinity sentence showed its conviction that the marriage transgressed biblical law.

In the early years of the American colonies deceased wife's sister marriages were judged to be contrary to God's law not only by the Presbyterians, but also by the New England Puritans, the Reformed Dutch, and the Congregationalists as well. The short Puritan tract published by the New England Mathers in the seventeenth century showed the use of the affinity sentence to condemn wife's sister marriages. The Reformed Dutch Church was also divided by the wife's sister issue. The patriarch of the Reformed Dutch

in America, John Henry Livingston, expressed the sentiments of the affinity sentence in his book on the deceased wife's sister marriage even though the *Westminster Confession* was not a constitutional document for his denomination. Dr. Livingston was fighting a movement in the Dutch Church to legalize wife's sister marriages, but despite his efforts the marriage was deemed acceptable and not contrary to the law of God in 1842. Wife's sister marriages were a problem for Congregationalists in the new Republic as well. Jonathan Edwards's son addressed new graduates at Yale as he made his case against deceased wife's sister marriages and exhorted them to avoid such unions. In two of these denominations, the Reformed Dutch and the Congregationalists, the theologians addressing the marriage had been requested to do so by their denominational leadership. The problem was severe enough that the leaders of the two denominations requested their most respected theologians to address the marriages. Through the colonial years and into the first decades of the nineteenth century, the hermeneutical, historical, and ecclesiastical historical records are decidedly against a man's marriage to his deceased wife's sister.

Interpretations of God's law varied, but there were two fundamental perspectives that contained all the views—those who believed Leviticus and Deuteronomy applied to the Christian, and those who did not. Several Presbyterians argued for the continuing authority of the Mosaic near-kin legislation. James Finley said that without the law of Moses to delineate the specific prohibitions, man would not be able to properly define the prohibited degrees. Finley believed near-kin unions to be contrary to nature, but he also believed the Mosaic legislation was essential to understanding the specifics of what

nature condemned. Finley believed Moses' law condemned the wife's sister marriage. Ezra Stiles Ely contended that the only proper near-kin prohibitions were those specifically enumerated in Leviticus and Deuteronomy and he believed they were applicable to the Christian church. Since he believed only the specific prohibitions to be unlawful, he accepted the legitimacy of the deceased wife's sister marriage and wrote in favor of removing the affinity sentence. The Scot, Colin McIver, emphasized the continued authority of the Mosaic near-kin legislation and its applicability to both the McCrimmon and the McQueen cases. The Princetonian, Charles Hodge, believed that Leviticus and Deuteronomy provided a sample enumeration that defined the parameters within which all the prohibitions must be established; the Mosaic case laws illustrate the principles of the decalogue, but the cases presented are by no means comprehensive and inclusive of all possible infractions. Hodge's view reflects the teaching of the Westminster Assembly's instruction in its *Larger Catechism*, 99:6, which says that, "under one sin or duty, all of the same kind are forbidden, or commanded; together with all the causes, means, occasions, and appearances thereof, and provocations thereunto." According to the *Larger Catechism*, the specific Mosaic near-kin laws define the "one sin or duty" that establishes the bounds for near-kin prohibitions, and the affinity sentence defines "the same kind" that are "forbidden" within the defined bounds. James Henley Thornwell believed the Leviticus prohibitions were still authoritative and he opposed deceased wife's sister marriages. L. G. Barbour, C. W. Humphreys, and an anonymous penman all wrote in the *Southern Presbyterian Review* and defended the continuing authority of Moses' near-kin laws for the church. Each of these ecclesiastical leaders,

along with some of those who wrote anonymous pamphlets, affirmed the applicability of Lev 18 to the Christian church while others contended with this view.

Those contending against the continuing authority of near-kin legislation represent several interpretive perspectives. Citizen, a pseudonymous pamphleteer, contended that the Mosaic legislation was for the Jews and that the deceased wife's sister marriage was acceptable because Christ made no statement against it. The most prominent contender against the abiding authority of Leviticus was William Marshall of New York. Marshall's two publications showed his belief that the book of Leviticus was a mixture of ceremonial, civil, and moral law. He believed the three types of law were so intermingled and confused that it would be impossible to extricate the moral rubrics regarding near-kin marriage from Leviticus. Marshall concluded that the particulars of Leviticus must be put aside because they were for Old Testament Israel, but he believed there was a moral principle behind the near-kin legislation that required the use of incest prohibitions by the church. He believed the wife's sister marriage was illicit because it was contrary to both the moral principle behind the law and domestic decency. In the later years of the debates, Ferdinand Jacobs wrote that the Mosaic near-kin laws have no more relevance to the New Testament Church than does the law of divorce. He saw the marriage laws as civil legislation for Israel and not for the church, and he thought Lev 18 dealt with incestuous fornication and not marriage. Jacobs also accepted the wife's sister marriage as legitimate. These writers, and some of the anonymous pamphleteers, believed that Lev 18 and the associated texts were not applicable to the church.

The line between those who were against the wife's sister marriage and those who were for it did not completely coincide with the line between those who believed in the continuing authority of Moses' law and those who did not. People on both sides of the law debate condemned the union, and people on both sides of the law issue accepted the marriage. However, those *against* the marriage tended to believe in the continuing authority of Moses' law, while those *allowing* the marriage tended towards the non-applicability of Mosaic legislation to the church.

The Westminster Assembly's affinity sentence restrained attempts to expand affinity prohibitions. Events in England leading up to the Assembly show the propensity for near-kin marriage prohibitions to increase in number by including relations that are more distant. From Bullinger, to Matthew Parker, and on to the *Hexapla in Leviticum*, English Protestants increased the number of prohibited relations and moved Protestant marriage law toward the many prohibited degrees taught by Roman Catholicism. One can see man's propensity to add to God's law exemplified in the increasing prohibited degrees in sixteenth and seventeenth-century Protestant England.<sup>745</sup>

The version of the affinity sentence approved by the Westminster Assembly, which did not have the "in blood" restriction, would have reciprocally prohibited the woman *all* the affine and consanguine relations that Leviticus forbids the man, while the form published with the "in blood" qualifier in the *Confession* prohibited only the

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<sup>745</sup>Murray, *Principles of Conduct*, 53, notes that, "The disposition has been widespread to add to the list of prohibited degrees. But this tendency is but an example of the iniquity of human thought when it seeks to be a legislator. After all, when we examine the Mosaic provisions and compare them with the restrictions which ecclesiastical and political tradition would impose, it is not the severity of the Mosaic provisions that impresses us but their liberality."

consanguine relations of one spouse to the other. Two examples of the use of the two affinity sentence versions will help to show the different interpretive principles. The first example applies the two principles to Lev 18:9 and 11. Lev 18:9 and 11 condemn a man's marriage to his sister whether she is a full or half-sister. In this example, since the relationship is one of consanguinity, it does not matter which version of the affinity sentence is used because both would prohibit his marriage to his wife's like relations. The second example is Lev 18:14 which prohibits a man marrying his father's brother's wife (uncle's wife). The relationship between a man and his uncle's wife is one of affinity based on the uncle's marriage; there is no blood connection between the nephew and his uncle's wife.<sup>746</sup> The affinity sentence version without the "in blood" qualifier would prohibit his marriage to his wife's uncle's wife, but applying the "in blood" version to the marriage would exclude the relation from the prohibited list because the relationship between a man and his father's brother's wife is not consanguineous. The affinity sentence restrained the number of affine marriages prohibited to both the man and the woman, and removing the sentence took away the hermeneutical principle necessary for keeping the number of affinity prohibitions consistent with the "in the word" principle of the first sentence of the consanguinity and affinity paragraph of the *Confession*.

Even though the affinity sentence controlled the expansion of affinity prohibitions, its utility is not the only justification for its inclusion in the *Westminster Confession*. The affinity sentence provided a good interpretive tool because the

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<sup>746</sup> Of course, if his uncle had married a near-kin woman it would be possible that there might be a blood connection.

Westminster Assembly derived its interpretive principle from some of the affine prohibitions specifically listed in the Mosaic near-kin laws. God's law specifically prohibits a man marrying his mother (Lev 18:7), his whole and half blood sisters (Lev 18:9, 11, 20:17; Deut 27:22), his son's or daughter's daughter (Lev 18:10), his father's sister (Lev 18:12, 20:19), and his mother's sister (Lev 18:13, 20:19). The law also specifically forbids the man's affine marriage to his wife's mother (Deut 27:23), her daughter, and her son's or daughter's daughter (Lev 18:17).<sup>747</sup> Since a man is specifically prohibited consanguine marriage with his mother (Lev 18:7) and his son's and daughter's daughter (Lev 18:10), which prohibitions likewise are specifically forbidden him of his wife's relations, then the affinity sentence is an interpretive principle derived from Scripture itself. That is, just as God forbids the man his own consanguine mother, he also forbids, by affinity, his wife's consanguine mother; "the man may not marry any of his wife's kindred nearer in blood than he may his own." The Mosaic law does not specifically forbid a man to marry his wife's whole and half blood sisters, but it does forbid him to marry his own sisters (Lev 18:9, 11, 20:17; Deut 27:22), and since the consanguineous relationship between a man and his sisters, and a woman and her sisters, is the same, the man and the woman are both prohibited their spouse's sibling. The affinity sentence is a good interpretive tool for determining additional prohibitions of similar relationship that fall within the specific Mosaic parameters. The affinity sentence provided a hermeneutic that used Scripture to interpret Scripture.

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<sup>747</sup> Deut 27:22 and Lev 18:17.

The confusion regarding the legitimacy of near-kin marriages was exemplified in Archibald McQueen's defense of his affine marriage when he contended that there were differing opinions regarding the error of his connubial union. The Fayetteville Presbytery responded that it was the task of a judicatory to work through the confusion and bring a just and fair resolution by applying the Bible and the *Confession* to the situation. The *Confession's* affinity sentence provided the principle necessary for interpreting the Bible's near-kin affinity laws and how they were to be applied to each spouse.

The removal of the affinity sentence did not eliminate all confessional justification for condemning a man's marriage to his wife's sister. The first sentence of the consanguinity and affinity paragraph says that, "Marriage ought not to be within the degrees of consanguinity and affinity forbidden in the word." The removal of the affinity sentence ended its status as *the* constitutional, authoritative way to interpret the law and limit the number of relations prohibited to the surviving spouse, but it did not exclude the use of the affinity sentence's *principle* to interpret the Mosaic near-kin legislation. Remember, in the history of the near-kin debates, some people prohibited deceased wife's sister marriages by reciprocal application of Lev 18:16 to the woman, while others prohibited the marriage because they believed the "wife to her sister" expression in Lev 18:18 condemned the union. There is no reason why an interpreter could not prohibit the marriage using the affinity sentence's principle even though the principle no longer has constitutional authority. The consanguinity and affinity prohibitions "in the word" include some not specifically listed in Leviticus that are derived by good and necessary inference from the levitical laws. The affinity sentence may no longer be constitutional

for some Presbyterians but it is not dead as an interpretive view. There is no reason why a zealous minister or elder could not pursue a deceased wife's sister marriage using the revised consanguinity and affinity paragraph if he believed that a marriage was prohibited "in the word."

An example of how a deceased wife's sister marriage could still be condemned using 24:4 is seen in John Murray's *Principles of Conduct*. Professor Murray specifically appealed to the reciprocal application of Lev 18:16 to the woman in order to prohibit the deceased wife's sister marriage. The text reads:

Hence the conclusion to which the present writer is driven is that the prohibition of marriage to a deceased wife's sister is implicit in the prohibition of marriage with a deceased husband's brother (Lev 18:16; 20:21).<sup>748</sup>

Professor Murray established the prohibition of the wife's sister marriage by reciprocally applying Lev 18:16 to the woman. John Murray was a minister in the Orthodox Presbyterian Church, and the version of the *Westminster Confession* he subscribed to did not have the affinity sentence.<sup>749</sup> Murray found justification for prohibiting the marriage "in the word," as the first sentence of 24:4 requires, and his interpretation could be used to prohibit deceased wife's sister marriages today. John Murray's prohibition of the wife's sister marriage shows that even though the excision of the affinity sentence was believed to have ended confessional justification for condemning the marriage, the fact is, the door is still open to prohibiting the marriages.

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<sup>748</sup> Murray, *Principles of Conduct*, 256.

<sup>749</sup> James T. Dennison, ed., *A Ministerial Register of the Orthodox Presbyterian Church, 1936-1996* (Philadelphia: Committee for the Historian of the Orthodox Presbyterian Church, 1996), 96-97.

It might be contended that the potential for present day prosecution of deceased wife's sister marriages is a moot point since people no longer enter into such unions. Some would contend that the modern, highly mobile western world no longer sees the marriages take place because near-kin do not live geographically near to one another as often. This is not the case, because these marriages have occurred in the twentieth century. A few examples will illustrate the point. One Presbyterian minister who died in 1950, Robert Childress, encountered a man who had married three sisters in succession in an Appalachian mountain community.<sup>750</sup> Rev. Childress ministered during both the depression and the Second World War. The writer of this dissertation grew up down the street from a man who, in the 1960s, married his deceased wife's sister. This writer also knows a Presbyterian minister, in a denomination that subscribes to the affinity sentence excised form of the *Westminster Confession*, who has a twentieth century family ancestor who married his deceased wife's sister. Most recently and most strikingly, though, the Associate Reformed Presbyterian Church had to deal with the case of a man who married his deceased wife's sister. In response to this marriage, and after considerable deliberation, the A.R.P.C. Synod removed the affinity sentence effective June 11, 2001.<sup>751</sup> Though the marriages may not be common occurrences in the United States in

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<sup>750</sup> Richard C. Davids, *The Man Who Moved a Mountain* (Philadelphia: Fortress Press, 1970), 106.

<sup>751</sup> The author is thankful to Rev. John H. Ball, III, Ph.D., of the Associate Reformed Presbyterian Church for providing this information by e-mail. Dr. Ball was the clerk of the presbytery when it formulated a memorial regarding the marriage and sent it to Synod.

the present day, they certainly occur, and they may occur more frequently in other nations.<sup>752</sup>

If the removal of the affinity sentence did not eliminate all confessional justification for condemning the wife's sister marriage, why did the Presbyterians, north and south, think it did? How could near-kin issues have been debated for so many years, by so many people, and how could so many books and tracts have been published, and yet Presbyterians failed to grasp the fact that removal of the affinity sentence did not eliminate the potential for other wife's sister cases in the Presbyterian Church? Why did the many people involved in the debates not comprehend that the third sentence is necessary to properly interpret the Mosaic legislation according to the first sentence?<sup>753</sup> A possible answer is that the parties involved were afflicted with an intellectual tunnel vision focused on the affinity sentence. Since the affinity sentence condemned the incestuous marriage, the presbyters believed the sentence was the only way to condemn the deceased wife's sister marriage. Another possibility is that some of the older ministers and elders would have remembered the many hours spent adjudicating the McQueen case and this would have contributed to their desire to avoid any further

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<sup>752</sup> James Stephen Brown's sociological study of the Beech Creek mountain community in Kentucky shows that of 107 marriages, seven involved first cousins and twelve involved second cousins. See: "Social Class, Intermarriage, and Church Membership in a Kentucky Community" *The American Journal of Sociology* 57 (1951): 234; (the date of his study is July 1, 1942).

<sup>753</sup> The article by C. W. Humphreys in the *Southern Presbyterian Review*, discussed in chapter 5, noted that if the affinity sentence needed to be removed, then the whole of 24:4 should be removed as well. Humphreys based his idea on the fact that all three sentences of 24:4 were dependent on the Scripture passages cited. He argued that if the affinity sentence was not biblical, then neither were the other two sentences. Humphreys comprehended the unity of the paragraph, but he did not see the unity on the basis of sentence three being required to properly interpret sentence one.

interminable adjudication. The older presbyters would also have remembered the place the affinity sentence played in the arguments of Colin McIver and others. Yet another resolution to the dilemma may be that the earlier attempts to remove the sentence predisposed the presbyters to take the route of affinity sentence erasure once again. A final possible resolution to the dilemma comes from a professor at Princeton Theological Seminary.

In 1904, B. B. Warfield published a pamphlet responding to the Presbyterian Church in the United States of America's recent revisions to the *Westminster Confession of Faith*.<sup>754</sup> The changes adopted included the addition of a "Declaratory Statement" that explained the text of the *Confession*, the addition of two new chapters, and alterations to the text of three existing chapters. He believed that the "Declaratory Statement" erred in saying that "all dying in infancy are included in the election of grace" and that the change to the chapter on good works watered down the *Confession*'s teaching on the sinfulness of works done by the unregenerate.<sup>755</sup> Warfield stated that, on the whole, the revisions did not affect the *Confession*'s system of doctrine, but instead merely clarified, reaffirmed, and enforced existing confessional teaching.<sup>756</sup> At this time, the Cumberland Church and the Presbyterian Church in the United States of America were contemplating reunion. Many in the Cumberland Church believed the confessional revisions had undercut the soteriological particularism of Calvinism making it possible for the Cumberland Church and the P.C.U.S.A. to reunite. Warfield believed the Cumberland

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<sup>754</sup> B. B. Warfield, "The Confession of Faith as Revised in 1903," in John E. Meeter, ed., *Selected Shorter Writings* (Phillipsburg: Presbyterian and Reformed, 1970, 1973), 2:370-410.

<sup>755</sup> Ibid., 380, 394.

<sup>756</sup> Ibid., 394-95.

assessment of the revisions was grossly wrong, and to make his point he interacted with an official Cumberland Church paper by S. M. Templeton. Warfield defended the Calvinistic nature of the revisions and opposed the Cumberland minister's contention that the revisions made it possible for the Cumberland Church to subscribe to the *Confession*. Templeton argued that the revisions changed the *Confession* so that it could accommodate both Calvinists and Arminians.<sup>757</sup> Warfield said of Templeton's view that:

For men who find the unrevised Confession unacceptable because of its Calvinism, to profess to "adopt" the Revised Confession because of the clauses by which it reiterates, defends, and explicates that Calvinism, is a procedure which, as the French say, "gives stupefaction."<sup>758</sup>

Warfield is saying that the people in the Cumberland Church saw what *they wanted to see* in the revised *Westminster Confession*. The revisions did not put Calvinistic soteriology along side of Arminianism—the Cumberland people just thought they did. It did not really matter if the revised edition still taught Calvinism, what mattered was they *believed* their Arminianism had been put alongside Calvinism.<sup>759</sup> The Cumberland Church wanted to reunite with the P.C.U.S.A. and they believed the revised *Westminster Confession* was compatible with their Arminian views.

Therefore, with the help of B. B. Warfield's analysis of his own historical situation, it seems that the removal of the affinity sentence ended the occurrence of near-

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<sup>757</sup> Ibid., 406-408.

<sup>758</sup> Ibid., 409.

<sup>759</sup> This Warfield article has sometimes been criticized as an unfaithful representation of the severity of the revisions made in 1903. It should be remembered that Warfield wrote this work as an apologetic *for* the Calvinistic nature of the changes and *against* the Cumberland Church's Arminianism. He may have made the changes to appear less severe because he wanted to show the Cumberland Church that the P.C.U.S.A. was still strongly Calvinistic and against Arminianism. Maybe Warfield thought it was better to downplay the confessional revisions than to admit the Cumberland Arminians into the Presbyterian Church.

kin cases in the northern General Assembly because the Presbyterians believed it would. Though Warfield's article was written in the context of the P.C.U.S.A., his perspective could be equally applied to the P.C.U.S. and its resolution of the affinity sentence dilemma. The presbyters may have had their attention focused on the affinity sentence, they may also have been fearful at the prospect of adjudications like the McQueen case arising in the Assemblies again, but the presbyters *believed* that when the sentence was eradicated it would end the occurrence of deceased wife's sister cases. The removal of the affinity sentence ended deceased wife's sister adjudication because the Presbyterians believed it would.

The history of near-kin adjudication shows that the Presbyterian courts often had difficulty resolving whether an illicit marriage was also an invalid one. In the McQueen case, the extended adjudication was a result of Fayetteville Presbytery's application of the *Confession's* discipline sentence to the marriage. The sentence specifically states that incestuous marriages can never "be made lawful by any law of man, or consent of parties, so as those persons may live together as man and wife." The *Westminster Confession*, regardless of the removal of the affinity sentence, still judges near-kin marriages both illicit and invalid.

The removal of the affinity sentence did not contribute anything toward resolving the discipline problem, which was the most contested issue in near-kin marriage cases in the late eighteenth and the nineteenth centuries. Through the Cathey marriage in the Old School in 1848, and the New School near-kin case in 1853, the Presbyterians affirmed the error of near-kin unions. Discipline became the key point of contention in the McQueen adjudication. As long as the affinity sentence was constitutional, the judicatories were

agreed that the deceased wife's sister union was wrong, but they could not agree concerning the validity of the marriages and how discipline should be administered. Colin McIver pursued the McQueens' separation because the *Confession* said the marriage was invalid; the second sentence of 24:4 says the union was not a marriage and the couple could not "live together as man and wife." The ending of Archibald McQueen's suspension by Fayetteville Presbytery, at the suggestion of the General Assembly, directly contradicted the discipline sentence. A disturbing aspect of the McQueen case is that the Assembly's recommendation to end McQueen's suspension implied that a minister who married his deceased wife's sister did not have to separate, but Elder Donald McCrimmon in the 1820s and layman John Cathey in 1848 had to remain suspended, presumably, until they separated or they were excommunicated.

Contemporary Presbyterian and Reformed churches have either removed the sentence or restricted its use. Both the Presbyterian Church in America and the Orthodox Presbyterian Church adopted a version of the *Westminster Confession* that did not have the sentence.<sup>760</sup> As has been seen earlier in this conclusion, the Associate Reformed Presbyterian Church removed the sentence effective in 2001. The Reformed Presbyterian Church of North America has kept the sentence in parentheses in its *Confession*, but in its near-constitutional *Testimony* it says, "We reject the last sentence in Paragraph 4 ... [because it] is not warranted by Scripture."<sup>761</sup> The Reformed Presbyterian Church of Ireland has adopted the perspective that a man's marriage to his wife's sister and a

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<sup>760</sup> *The Westminster Standards* (Suwanee: Great Commission Publications, 1999), 81.

<sup>761</sup> *The Westminster Confession of Faith and the Testimony of the Presbyterian Church of North America, In Parallel Columns* (Pittsburgh: Board of Education and Publication, 1980), 67.

woman's to her husband's brother do not warrant any discipline. Specifically, their interpretation says that, "due to the uncertainty amongst students of Scripture as to the true interpretation of the injunctions laid down, no disciplinary action is taken by the Church against those who contract such marriages or ministers who perform them."<sup>762</sup> Moving to a Welsh context, one session has said of the affinity sentence that, "the law's prohibition of marriage within the same degrees of affinity as consanguinity remains in force for the New Testament church but that it does not prohibit marriage to one's deceased wife's sister." This perspective has a footnote quoting the *Book of Church Order* of the Evangelical Presbyterian Church in England and Wales, which says that, "the forbidding of marriage to a relative of a deceased spouse any nearer than to those of one's own relatives is a matter for the interpretation of individual elders and sessions."<sup>763</sup> The versions that have removed the sentence could face the use of other arguments to achieve the prohibition of the deceased wife's sister marriage. Those who have qualified the meaning of the affinity sentence and its prohibitions have in some cases expressed guidance contrary to the *Confession*'s teaching in the second and/or third sentences of the consanguinity and affinity paragraph.

In the course of the development of this dissertation, the issue of confessional subscription was touched upon at several points. When Samuel Miller was examined for licensure and ordination he took exception to the affinity sentence, but later in his ministry his view changed and he became convinced of the accuracy of the sentence.

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<sup>762</sup> "Statement of Adherence to the Westminster Confession of Faith," at, <http://www.rpc.org/beliefs/testimony/statement.htm>, as of October 10, 2001, p. 2.

<sup>763</sup> "Llandaff Presbyterian Church (Reformed)," at, <http://www.lpcr.org.uk/statemen.htm>, December 15, 2001, p. 1.

When Louisville Presbytery allowed H. L. Dickson's exception to the affinity sentence, the minority appealed to the Synod of Kentucky but it referred the issue back to the presbytery. The Louisville Presbytery allowed the exception even though a vocal minority deemed *any* exceptions to the *Confession* as unacceptable. The McQueen case also touched upon subscription as some encouraged McQueen to express an exception to the affinity sentence even though he was already being tried for marrying Mary. Others believed that removing the affinity sentence through constitutional processes would free the McQueen case from the judgment against it by the *Confession*. Despite the variety of opinions, Fayetteville Presbytery prosecuted McQueen because it believed that he broke the law of God as interpreted by the *Confession*. McQueen's failure to take exception to the affinity sentence meant that he was responsible for his marriage as a minister who subscribed to the *Westminster Confession of Faith*. The subscriptional asides in the course of this dissertation show that presbyteries allowed exceptions, but they also show that if no exception was taken, the subscriber was responsible to uphold the entire *Confession* as containing the system of doctrine taught in Scripture.

When ministers and elders subscribe to the *Westminster Confession* today, whether chapter 24 is the revised version or not, they are agreeing to pursue the dissolution of near-kin marriages unless an exception is taken in those denominations where it is permitted. Are ministers prepared to pursue the full measure of discipline to congregants who marry incestuously? The *Confession* is not ambiguous about how to handle near-kin marriages, the couple's cohabitation is not a marriage and it is incestuous. The discipline sentence is based upon Paul's instruction to the Corinthians in

chapter five that a man who married his father's wife must be excommunicated for his marriage. The marriage cannot "be made lawful by any law of man, or consent of parties, so as those persons may live together as man and wife."

The thesis of this dissertation proposed to prove that the American Presbyterian Church removed the affinity sentence from the *Westminster Confession* despite having repeatedly affirmed the legitimacy of its "in blood" interpretive principle in numerous affinity marriage cases including those involving a man's marriage to his deceased wife's sister. It also proposed to show that though this excision ended the occurrence of near-kin judicial cases at the General Assembly level, it neither eliminated all confessional justification for prohibiting these marriages, nor did it solve the contested issue of appropriate discipline and the validity of the marriages. A final aspect of the proposed thesis is that the excision left Presbyterians with an incomplete near-kin marriage paragraph that could still be interpreted to prohibit a wife's sister marriage as well as expand the number of near-kin prohibitions beyond the number prohibited by the original, unedited consanguinity and affinity paragraph. The points considered in the conclusion to this dissertation demonstrate that the thesis is proven.

A closing word on confessional revision will hopefully provide food for thought. If it is true that near-kin cases ended in the Presbyterian Churches because the Presbyterians believed the removal of the affinity sentence resolved the issue, then what lesson should contemporary confessional churches learn from their predecessors resolution of the affinity problem? When Presbyterians contemplate revision, they may see a proposed change as a convenient course of action for a reoccurring or existing

aggravation. The problem is that the Westminster Assembly's teaching on near-kin marriage was included in the *Confession* because it was believed to accurately summarize the precepts of Scripture. Though the extant records of the deliberations of the Westminster Assembly relevant to the affinity sentence are minimal, it should be assumed that the commissioners were as thoughtful, careful, and deliberative about the marriage chapter as the chapters on Scripture, justification, and those relevant to the ecclesiastical polity issue. The *Westminster Confession* is a revisable document, but revision should not be taken lightly, nor should it be seen as a way to end the difficulties associated with pursuing the purity and peace of a confessional church. When those who subscribe to the *Westminster Confession* contemplate a revision, they should ask themselves if the change is needed because the confessional teaching inaccurately summarizes the doctrine of Scripture, or is the proposed change seen as the way to alleviate the complexities and problems associated with the application of the particular confessional issue to the practice of the church. If a revision is determined to be biblically justified, then it must also be discerned whether the revision deals with a *perceived* confessional problem or the *actual* problem.

**Appendix - Near-Kin Marriage Cases Adjudicated in the American Presbyterian Church**

Case	Relationship	Dates	Judicatory	Comments
Van Dyke SP*	Deceased Brother's Wife	1717-18	New Castle Presbytery	Suspended from sealing ordinances until he separated from his brother's wife.
(unnamed) SNYP*	Half-Brother's Widow	1758	(not given)	Synod judged that Leviticus and civil laws condemn such marriages. Such marriages "are to be accounted unlawful, and the persons suspended from special communion while they continue in this relation."
(unnamed) SNYP	Brother's & Sister's Relicts	1760	Donegall Presbytery	"The Synod judged that such a marriage, however inexpedient it may be, cannot be found to be prohibited by Levitical law, it is not to be condemned as incestuous."
(unnamed) SNYP	Deceased Wife's Sister	1760-61	(not given)	(same judgment as the 1758 Half-Brother's Widow case)
(unnamed) SNYP	Wife's Brother's Daughter	1771-72	(not given)	Following the 1771 deferral, the next Synod issued a general statement condemning near-kin marriages.
Dushane SNYP	Deceased Wife's Sister	1779-84	New Castle	Synod of NY and Philadelphia decided in 1782 that Dushane and his wife could have full privileges "their marriage notwithstanding." But in 1783 the Synod condemned such marriages and described them as "highly censurable." Though such unions are "imprudent and unseasonable" it is not necessary that the couple separate, but the couple should not be received into the church without a solemn admonition.

\* SP - Synod of Philadelphia  
SNYP - Synod of New York and Philadelphia

Case	Relationship	Dates	Judicatory	Comments
Mitchel PCUSA	Wife's Half-Brother's Daughter	1797	Synod of Virginia	The marriage "is not of such a nature as to render it necessary to exclude the parties from the privileges of the Church."
Latham PCUSA	Deceased Wife's Sister's Daughter	1799	Synod of Carolinas	GA sent it back to Synod with direction to "review the case, and, if they shall judge it to be consistent with the existing Laws of the State and the peace of the Church, they may admit the parties...to privileges."
(unnamed) PCUSA	Deceased Wife's Sister's Daughter	1802	Westminster Church, Jefferson County, Tennessee	GA precedent said that such marriages are not "forbidden by the laws of God" but are contrary to the general practice of Protestant churches. The case should be judged in the context of State law & with a mind to "Christian tenderness."
Gaston PCUSA	Deceased Wife's Sister's Daughter	1804	Synod of Pittsburgh	GA said it had "given repeated decisions on similar cases" having determined that such marriages do not necessitate exclusion of the couple from church privileges. The lower courts were encouraged to decide the cases themselves.
Adams PCUSA	Brother's Widow	1805	Synod of Pittsburgh, Erie Presbytery	GA stated "this Assembly consider the subject doubtful and delicate, and do not think it expedient to express any opinion on the ... Rocky Spring Church case." The GA referred "the case ... to the session of the church."
Brown PCUSA	Brother's Widow	1810	Synod of Pittsburgh, Lancaster Presbytery, Church of Ten-Mile	Synod dismissed the case leaving it to the lower court's discretion.
Gass PCUSA	Mother's Brother's Widow	1810	Synod of Pittsburgh, Lancaster Presbytery	The marriage is wrong & those involved can't be admitted to communion without evidence of repentance.

Case	Relationship	Dates	Judicatory	Comments
(unnamed) PCUSA	Deceased Wife's Sister's Daughter	1810	Bethel Church, South Carolina	GA resolved that the case be answered "by the decision of the Assembly of 1804."
(unnamed) PCUSA	Deceased Brother's Wife	1817-18	Presbytery of West Tennessee	GA appointed a committee in 1817 and deferred decision until its report in 1818.
(unnamed) PCUSA	"certain marriages"	1818	(unnamed)	GA referred the case to the committee appointed in 1817 for the deceased brother's wife case.
Vance PCUSA	Deceased Wife's Sister	1821-22	Washington Presbytery, Cross Creek Church	GA decided the marriage was "highly inexpedient, unfriendly to domestic purity, and exceedingly offensive to a large portion of our Churches." But GA was unwilling to call such unions "undoubtedly incestuous" requiring separation from church privileges. Case was referred back to the Cross Creek session. Reaffirmed 1822.
Elder McCrimmon PCUSA	Deceased Wife's Sister	1824-28	Synod of North Carolina, Fayetteville Presbytery	GA decided that the elder could be given no relief from his suspension without erasure of the affinity sentence. <b>Erasure attempt failed, 18 for and 50 against, 1827 GA.</b>
The Rev. A. McQueen PCUSA-OS	Deceased Wife's Sister	1841-48	Synod of North Carolina, Fayetteville Presbytery	GA upheld the suspension of McQueen from the ministry and sealing ordinances by a vote of 68 to 11, but later advised Fayetteville to remove suspension. Erasure attempt failed.

Case	Relationship	Dates	Judicatory	Comments
Rev. Huber PCUSA-OS (2 near-kin marriages)	Deceased Wife's Niece Deceased Wife's Sister	1840 (prior to 1840)	Presbytery of Louisville (Another Kentucky Presbytery)	Huber had married his deceased wife's niece, but prior to this marriage, in another presbytery, he was disciplined for marrying his deceased wife's sister. Louisville divested and excommunicated Huber for the 1840 marriage. This case established the excommunication rule in Louisville Presbytery for those marriages contrary to 24:4.
Carr PCUSA-OS	Deceased Wife's Sister	1846	Synod of Kentucky, Louisville Presbytery	Mr. Carr was excommunicated based on the standing rule of Louisville Presbytery established by the Huber case of 1840.
Cathey PCUSA-OS	Deceased Wife's Sister	1848	Synod of North Carolina, Concord Presbytery	GA upheld his suspension. Synod of West Tennessee's overture to GA for removal of the affinity sentence failed. Another attempt for removal, at the same GA, following the West Tennessee effort also failed.
(unnamed) PCUSA-NS	Sister's Daughter	1853	[New School]	GA resolved that such marriages were incestuous per Lev 18:6, 12, 13 and that such marriages must be "disciplined with Church censure" if the couple did not repent.
Kilpatrick PCUS	Deceased Wife's Sister	1882	Concord Presbytery, Prospect Church	The case was not tried as a prohibited marriage by GA. Prospect session sought advice concerning whether a woman married to her deceased sister's husband could be considered in good standing in her church. Concord said yes, then overruled the GA for removal of the affinity sentence. Erasure attempt succeeded 1886.

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