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Lord Viscount Bolingbroke**

In Five Volumes, complete.

Bolingbroke, Henry St. John

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XIX.

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for as little as we know what the practice of christians was during the first three hundred years, we know in general, that great relicts of judaism remained long amongst them; that divorces were in use, even those which wives signified to their husbands; that the meaning of the word fornication was extended from the flesh to the spirit; and that this institution was observed, admitted, denied, to the time of CONSTANTINE, without any certain rule at all; "aliter atque aliter†," says SELDEN. From that time downwards, emperors published edicts; councils made decrees; fathers, and after them schoolmen, advanced opinions; ecclesiastical and principally papal power increased; a new jurisprudence, the child of usurpation, of ignorance, and bigotry, grew up under the care of the canonists; marriage was declared a sacrament, and this tie indissoluble.

XIX.

BEFORE we leave the subject of positive laws, ecclesiastical and civil, that forbid those things arbitrarily, and by mere will, which the laws of nature permit; we may properly enough take notice of some restrictions relatively to marriages, which have not been so hard to impose as the obligation of single marriages. Polygamy had been allowed in most nations, divorces I believe in all. It required time, therefore, to abolish institutions, both of which had revelation and reason on their side, and the last of which had been confirmed by universal practice. But it required neither time nor pains to continue the prohibition of marriages within certain degrees of consanguinity and affinity. The Jews, among whom christia-

† lb. c. 28.

nity arose, held such incestuous marriages to be forbidden as much as adultery, sodomy, and bestiality. The Greeks, and the Romans, among whom christianity had the greatest increase, and the firmest establishment, seem to have held different opinions, at different periods, about the remoter degrees, but not to have varied about those in the ascending or descending lines; and the Romans, who made one state, were more uniform on this head than the Greeks, who were divided into many, and whose country produced many a whimsical philosopher that affected law-giving, besides PLATO. The nations among whom no regard was paid to these degrees, but brothers mixed with sisters, fathers with their daughters, and sons with their mothers, were held in abomination, like all other nations, by the Jews, who were in return held in contempt by these and all others. These, and all others, were deemed barbarous by the Greeks and the Romans; so that their example might well have, as it had, no effect, in this respect, either on the Jews, the Greeks, or the Romans; the two of them at least, the egyptian and babylonian, had been masters of the former in every sense, and tho the second and the third had received the first principles of all their knowledge, and perhaps the first use of letters, from the same, either immediately like the Greeks, or mediately thro the Greeks, like the Romans.

THAT the abhorrence of incestuous marriages should prevail among the Jews, is easily accounted for, since they founded it on a positive law of God. But how it came to prevail among the Greeks and the Romans, is not so clear. Was it founded among them on a law, and is it even an instinct of nature? This has been said, but cannot be maintained. They scarce deserve an answer, who would prove these marriages prohibited by the law of nature, on the supposition that there

is a repugnancy in nature to any such copulations; as if confanguinity, like fire, produced an agreeable sensation at certain distances, and pain and abhorrence at a nearer approach; as if a multitude of nations, civilised and uncivilised, could have been determined to act unnecessarily against so strong an instinct of nature, as this repugnancy or abhorrence is assumed to be; and finally, as if the first men, who could not increase and multiply without committing incest, had been commanded to do it by the author of nature, against the law of that nature he had just before given them.

A GREAT deal of dull pains has been taken to inquire into the nature of shame, and to discover the motives of that modesty with which almost all mankind, even the most savage, conceal the parts, and remove out of sight to perform the act of generation. How comes this about, say such writers, "when the propagation of so noble a creature as man " is in itself a work of honor and credit*?" The question might be sufficiently answered by saying, that the parts, destined to this pleasant, and honorable use, are destined likewise to uses that are offensive to our senses; and that they shew, by the necessity they are of to our being in one destination, and to the propagation of our species in another, a certain mortifying identity of nature with the vilest of the animal kind. These parts are placed, as it were, out of the way in the human fabric; and, in conformity to this indication, the custom of hiding them, and of retiring from the sight of others when we employ them to any purpose, has grown up in both sexes, and been confirmed by education. "Hanc naturae tam diligentem fabricam imitata est hominum. "verecundia †." Shame or modesty, according to TULLY,

* PUF. l. vi. c. 1.

† CIC. Offic. l. i.

makes

makes us imitate nature in this instance: but I think that the latent principle of this shame, or modesty, is a vanity inherent in our nature, derived from an opinion of excellence and dignity. It is this that makes us fond of shewing, wherever we can shew it, how superior we are to other animals, and to hide, wherever we can hide it, how much we participate of the same nature.

OTHER reflections might be added to these, such particularly as furnish reasons for the solitude wherein the two sexes affect to copulate; among which perhaps an uncontrouled and undisturbed indulgence to their mutual lust would not be found the least. But to what purpose should this be done, when there is nothing in the assumed shame, even if we allow it to be natural, that has any more relation to incestuous than to other marriages? The shame of exposing their secret parts, and of copulating in public, was, to be sure, just as strong in those who contracted the first, as in those who contracted the second; and it is impossible to conceive that it can cause any natural abhorrence of one of these conjunctions more than of the other, or indeed of either. It remains therefore that this abhorrence is artificial, and that it has been inspired by human laws, by prejudice, and by habit.

BUT tho this be evidently true, yet is it true likewise, that the degrees spoken of are to be distinguished; for tho the prohibition cannot be deduced, in any of them, from instinct, or animal nature; yet it is favored by reasonable nature in some. The permission, that her laws give to conjunctions necessary to the propagation of the species of animals, may be conceived to be in the human less and more full, or absolute, according to the received distinction of legal permissions that I have somewhere mentioned. The conjunctions of fathers
with

with their daughters, and of fons with their mothers, if they are thought permitted, must be thought to be so by the lowest sort of natural permission, not only for the reason SOCRATES gives in XENOPHON, the disparity of age, from which he supposed, not weakly, as it has been objected, but wisely, and providently, that several inconveniencies would arise; but for a reason of more importance, and of universal extent. The first societies, and those which compose all others, are family societies. These are natural, and the better they are regulated the more easily and the more surely will political societies, whose component parts they are, be put and maintained under good regulations. Parents are the chief magistrates of families, and every thing that tends to diminish a reverence for them, or to convert it into some other sentiment, diminishes their authority, dissolves the order of those little commonwealths, and introduces a licentiousness of manners, which they carry with them and diffuse in the greater. This now must happen in some degree wherever the custom prevails, that fathers take their daughters, and fons their mothers for wives or mistresses, whenever they do it actually, or may do it lawfully. I need not stay to prove and to illustrate this; but may conclude on what has been said, that if natural law does not directly prohibit such conjunctions as these, it does not permit them neither in so full a manner, as to give them that sanction which other marriages, that are reputed to be contrary to the law of nature, and that are called alike incestuous, have.

THE marriages of brothers and sisters, for instance, which stand in the very next degree, may be objected to, as they may be defended, by probable arguments drawn from political considerations; but no color of an argument can be drawn against them from the constitution of nature, in which

all her laws are contained, and by which they are all promulgated. It may be said, and I find that something of this kind has been said, that the intention of reasonable nature being not only to strengthen the bonds of society as much, but to improve sociability among men, and to extend it as wide as possible, in opposition to that infociability which is so apt to grow up between distinct families and states, those positive laws, which forbid marriages in near degrees of consanguinity and affinity, are conformable to nature, and drawn by necessary consequences from her laws. For this reason it may be said, that such marriages were forbidden among several of the most civilised nations in the pagan world, and that we find so many prohibitions in cases of affinity, as well as of consanguinity, in the eighteenth chapter of Leviticus. The more remote degrees were prohibited perhaps to fence in, and to secure the better an observation of the nearest; and this might be the more necessary because of the precedent practice of mankind, who had been constituted by God, at the creation, in a necessity of committing what was now forbidden, since they could not otherwise have obeyed his first and great precept, to increase and multiply. EVE was in some sort the daughter of ADAM. She was literally bone of his bone, and flesh of his flesh, by birth, if I may call it so, whereas other husbands and wives are so in an allegorical manner only. But to pass this over, the children of the first couple were certainly brothers and sisters, and by these conjunctions, declared afterwards incestuous, the human species was first propagated. If you accept rabbinical authority, you may believe that EVE brought forth constantly twins, a male and a female, as pigeons, I think, are said to do; so that CAIN might marry the twin sister of ABEL, and ABEL the twin sister of CAIN. Whether this institution alters, and softens the case any more than that of the Lacedaemonians, who were permitted to marry their

their sisters on the mother's side, but not on the father's; or than that of the Athenians, who might by law, or who did by custom, marry their sisters on the father's side, but not on the mother's, as we find by the example of ABRAHAM and SARAH, it was reputed lawful to do in the days of the patriarchs, let the great casuists of law and gospel decide. It may be said, on the other hand, that, if it be agreeable to the law of nature and of right reason, in many cases, to extend the bonds of society by a prohibition of marriages between persons too near a-kin, it is in many cases at least as agreeable to this law, to preserve possessions and wealth in the families to which they belong, and not to suffer them to be carried by any female caprice into others. Precautions to this effect have been taken by wise legislators; and that which MOSES took is remarkable in all its circumstances. He had made a law, on the application of the daughters of ZELOPHEHAD, "whose cause" he is said to have "brought before the Lord,*" by which if a man died and had no son, his inheritance was to "pass unto his daughter.†" But when the chief fathers of the families of the sons of JOSEPH came before MOSES and the elders of Israel, to complain of this law, the precaution we speak of here was immediately added, and the law amended. MOSES declared in the name of God, that "every daughter, who possessed an inheritance" by virtue of the former law, should be obliged to marry one of the family of the tribe of her father, and no other: and the reason is annexed, "that the children of Israel may enjoy every man the inheritance of his fathers." In obedience to this law, the daughters of ZELOPHEHAD "were married unto their father's brother's sons."

It is evident on the whole, that marriages, within certain degrees of consanguinity and affinity, are forbid by political

* Num. c. 27,

† Ibid. c. 36.

institutions, and for political reasons; but are left indifferent by the law of nature, which determines nothing expressly about them. The laws of nature are general; and in this case, as in all others, the particular application of them, and the means of securing their effect, are left to human prudence. "Increase and multiply" is the law of nature. The manner in which this precept shall be executed with greatest advantage to society, is the law of man. When the latter promotes the execution of the former, without breaking any other general law of nature, it is conformable to this law. This may be done, and has been done, by different institutions of marriage. Which of these is the most effectual relatively to the precept of increasing and multiplying, and at the same time consistent with the whole tenor of natural law, reason and experience must decide. In the mean time, we may venture to assert, that the most effectual to this purpose, under this condition, which ever it be, is the most conformable to nature, tho it be not a law of nature. To marry among our kindred, or to marry strangers, is equally effectual to the propagation of the species, altho polygamy and monogamy may not be so: and therefore since there are political reasons for and against the marriages referred to, the prohibition of either is merely arbitrary. It may be expedient on some occasions; but however the prohibition turns, it is a law of will that forbids what the law of nature permits. As occasions are various, circumstances different, and will above all uncertain, so have these restraints on marriage been very inconsistently laid. In some places or times, it was unlawful to marry a sister by the father's, and in others by the mother's side; or it was lawful to marry a cousin-german, and not an aunt, as among the Jews by their mosaical law. But the most ridiculous of all these inconsistencies, is to be found in that great repertory of inconsistencies and absurdities, the rabbinical

binical system of religion and law. When a gentile became a "profelyte of justice*," he became, according to this system, a new man, and lost all his former relations by this regeneration. He could not be affected, therefore, by the law that forbid the marriage of a mother, a daughter, or a sister, for he had none; and yet the prohibition was extended to him by the blundering casuistry of the rabbins, as it may seem, even when these relations were doubly dissolved, and the mother, the daughter, or the sister was a profelyte of justice, as well as himself.

XX.

AFTER saying thus much of ecclesiastical and civil laws, that forbid what the laws of nature permit, something must be said of those which permit, or enjoin, what the laws of nature forbid, such things as are in direct opposition not only to reasonable nature, but to physical instinct. Sodomy was permitted among several nations, and if we dare not say that the moral SOCRATES practised it, we may say that the divine PLATO recommended it, in some of his juvenile verses at least: and yet sodomy is very inconsistent with the intention of nature, which can be carried on by the conjunction of the two sexes only. Of bestiality I say nothing, because I do not remember any proof that it was used by any people except the Israelites, who must have been very prone to this unnatural crime, since so great severity of law was necessary to restrain them from it. Castration and celibacy may be cited on this occasion. They are both contradictions to the law of nature; the first wantonly permitted, the second deceitfully and ambitiously commanded. The first makes obedience to the law impracticable, for two the most

* SELD. de Jure, &c. l. 5.