V.—*The Law of Marriage in its Bearing on Morality.* By Rev. Nathaniel W. Carre, A.B., Chaplain, Dublin Female Penitentiary.

BOTH Church and State have the highest reasons for endeavouring to regulate the laws and customs regarding marriage as it is so intimately connected with morality and property.

In all Christian times those who had the moral welfare of the people at heart urged, and in a large measure succeeded, in having a due celebration of marriage; but its validity was under the old Canon Law held to depend on the consent of the parties without the intervention of Church or State. It was not until the Council of Trent that this old law was set aside, and the benediction of the priest was declared necessary to the sacramental element now first defined in it.

As regards the three kingdoms, after the reformation, ecclesiastical sanction remained essential in England. In Scotland the essence of marriage consisted in the consent and completion of conjugal union by the parties, and of this any proof was admissible. In Ireland there was the same rule for the majority of the inhabitants until a late period; Dr. Leahy, a Roman Bishop in Ireland wrote to the Royal Commissioners in 1865:—

> "Marriages contracted in private, without the presence of a priest and witnesses, were at all times forbidden as sinful; yet they were not invalid until the Council of Trent. . . . But the Council added that this law should not come into operation until thirty days after its publication in each parish. The law has been published in all the parishes of Ireland; in some, however, not until the 2nd day of December, 1827."

After that date he considers a marriage with a Protestant by a Roman Catholic sinful, but valid though without the priest and witnesses. It appears that in Scotland the same rule prevailed as to clandestine Roman marriages. Besides these different modes of constituting marriage there were the numerous varieties of mixed and of non-conformist marriages, and also those contracted in the Registrar's offices.

Within the last few years there has been an attempt made at introducing one uniform enactment; yet, notwithstanding this, there still exists the four great divisions, as to what constitutes marriage. (1) The state appointments as regards forms, which are accepted by the churches and Protestant bodies of England and Ireland. (2) The consensual basis of marriage which is maintained in Scotland. (3) And the sacramental theory which is upheld by the Romanists. In addition to these (4) the state is pushing the acceptance of marriage as a civil contract.

In the legislation which has emanated from the British Parliament there has been no consistent principle as to what should constitute marriage; accordingly the anomalies were numberless, and the cases in which it would be impossible to state where there was any legal bond, were only limited by the ingenuity of the lawyers, and the property for which a struggle might be raised. What was marriage between two subjects was felony between other two. What was marriage in a building at one time might be null and void in it a week later. There are certain conditions of marriage lawful now, which were never lawful before; there were certain conditions of marriage lawful before which are not lawful now; there are requisites for legitimating offspring now, which, if made retrospective, would bastardise all our ancestry. The nullity or validity of marriage was made to depend on certain arbitrary, recent, dissimilar, changing, and changeable adjuncts.

The great and crying evil of this anomalous state is that it tampers with the moral relations of the subjects. The state may be anxious to get rid of its cognizance of any religious ceremonies and have a uniform civil contract for all, but it cannot get rid of the moral affinities of this contract; and the more universal it seeks to make the mere civil requisites of marriage, the more anxious should it be to have those built on the moral lines of the conjugal union.

I. It is admitted by all the Churches, Jew and Gentile, Protestant and Romanist, that the conjugal union of the man and woman was established by God, and not by ecclesiastical or legislative enactment. The service of the English and of the Irish Churches uses the words respecting it, "An honourable estate instituted of God in the time of man's innocency." According to the Council of Trent, "The faithful are to be taught in the first place that marriage was instituted by God," and the Scripture words, "They shall be two in one flesh," as quoted by our Lord, "establishes the Divine institution of marriage on his authority." The Church of Scotland in the directory for public worship gives an authoritative exposition of her view, and teaches that "Marriage is not peculiar to the Christian Church," but is common to mankind, and of public interest in every commonwealth. A committee of the United Presbyterian Church write that they "would firmly maintain the principle of the Scotch marriage law that mutual consent, voluntarily and deliberately given constitutes marriage, irrespective of religious solemnities, or of any ceremony whatever; and that such consent may be established by competent proof of any kind."

There is a consensus that consent to sexual union and consummation are the essence of marriage; and all these churches hold that where this union has taken place, there is a moral obligation making it always binding: "Whom God hath joined together, let not man put asunder."

What does the state do? It enacts that nothing shall constitute marriage, except arbitrary requirements of time and place, of publication and registration!

But the state is to take cognizance solely of the civil contract. First then let me point out that the state recognizes it as more than a civil contract: it recognizes the fact that the conjugal union of man and woman does not originate from it; it admits the perfect freedom of the man and woman to unite as choice directs, and only claims as its right to brand it as immoral, unless the arbitrary additions of the statute book be complied with. The essence of marriage may be there in the consent to an objectionable union, but if it be not stamped by the government stamp, it is illicit, and, therefore, immoral.

There is, perhaps, no other instance where morality is made a mere question of form. A trader is not immoral simply because he has not got a licence. If a licence be requisite, he is not left at perfect liberty to have one or not as he pleases, only that if he trades with a licence he is a moral, but if without, an immoral man. We don't give a licence to act as a drunkard or a thief, and only count him immoral who is intemperate or thievish without the sanctioning licence.

Yet this is the position of the conjugal relationship. The state says "I cannot interfere with your liberty; I fully recognize the natural law of selection and choice by which you take that woman to live with you, but whether that woman shall be your mistress or your wife, depends not on your consent, not on the faithfulness of your attachment, not on the purity of the bond you plight one to another, but altogether on your paying 5s., and notifying your wishes, intentions, and names. I cannot hinder the connection, but I can make it disreputable or respectable."

In all other positions, the licence is a permission to engage in a call-

ing, and without it a man is not allowed to carry it on. In this he is as free to engage without the licence as with it, only the engaging in it must be immoral. He may lavish on his partner and her offspring all he possesses, or leave them in penury: it is immoral, says society, but it is not illegal. The laws leave untouched the parent who does not comply with the forms, he is only morally guilty, and they leave him to the moral laws; but the innocent children are branded by the state with a stigma as indelible as in its power, and it insists on the record of illegitimacy being produced during life, and publishes it after death.

Again, modern legislation propounding the idea that marriage is only to be dealt with by the state as a civil contract, proceeds at once to set this aside, and legislates for marriage as being more, and, therefore, requiring caution and protection different from all other contracts. There are apron-string regulations with regard to notices, and hours, and places; there is a grasping at a shadowy and delusive publicity; there is an utter ignoring of whether there was an inchoate contract, and a fatuous determination only to see were the aribitrary preliminaries right. "The law makes clear and full provision for contracts affecting the sale of houses and lands, horses and dogs, and goods and chattels of every description, and why marriage, the most important of all contracts, should not be as anxiously defined and provided for, and thus placed beyond the reach of fraud and doubt, appears to be one of the greatest anomalies in the law of a Christian country." The abstract justice of this sentiment is declared by the Royal Commissioners to be impossible of denial, and yet these Royal Commissioners added their influence to defraud of justice those entering on the conjugal union to such a degree, as would be inconceivable in any of the contracts spoken of. I may sell my dog or horse, my goods and chattels, at any hour, in any place, without any witnesses, without any notice, and no pen touch paper, yet afterwards, if need be, I can claim the law's assistance to protect my right under such contracts, and not be scouted from court as an outlaw without redress. I may commence, as secretly as may be, a sale of house or land, and if need be, I may afterwards come into public court, and enforce the completion of the contract as having carried out my part of the agreement, and not be robbed of my character; but under modern legislation, a woman who has entered into the conjugal relation with a man, is an outlaw and an outcast. Unless the state regulations have been observed, she has no *locus standi*, except that of a fallen woman, who can never be reinstated in her place; she cannot prove her inchoate contract. Under the present law a man may exert every possible means to induce a woman to live with him; he may win over all those feelings by which God intended the conjugal consent to be obtained; he may show the strongest reasons why a publication through state forms should not take place yet; he may give a written promise that marriage will ensue at a future time; in such a case all the essentials of marriage are fulfilled; consent to the conjugal union and consummation, yet here the state says there is no marriage, nor any enforceable bond that there should be marriage. A man may have fraudulent intentions, or changeable feelings with regard to the essence of marriage, and the state puts no bar in his way; but in dealing with the legal adjuncts of marriage, a man cannot by fraudulent intentions, or in consequence of changed feelings, invalidate a woman's rights.

A proper marriage law which in justice recognised the fact of conjugal union between man and woman, instead of making marriage depend upon forms and registries, and which bound parties to that union, would be the saving of countless women who are lost to the community for good, and who are a lasting scourge and curse to the state which has injured them.

One fact proved by statistics gives an unanswerable support to the correctness of this opinion; namely, that nine-tenths of those who are driven into the ranks of that terrible array of thousands of unfortunates who prowl about our cities, enter it at the early age of sixteen and under. Anyone who would maintain that these are enlisted by aught else than by the affections of ignorant girlhood, must be of strange construction. To say that in all these cases, instead of allowing them to be trampled in the mire, and in their turn to trip others in the slippery places, increasing the transgressors among men, the state should have presented them with their marriage certificates, will sound, as opinion has been latterly guided, to be proposing a premium on immorality. I open an old book—old, but not obsolete—and read:—"If a man entice a maid that is not betrothed, and lie with her, he shall surely endow her to be his wife."—*Ex.* xxii. 16. The course of all our legislation has been running counter to that. It has been becoming more of red-tapery. It tempts the man, and ruins the woman; it prefers statistics to morality; it preserves property and destroys character.

II. The reasons assigned for the apron-string regulations with regard to the celebration and registration of marriage, are the desirability of preventing unnatural, improvident, and clandestine marriages; this would be most desirable if possible. It was proved almost to demonstration before the Royal Commissioners of 1868 that there was then no available machinery to effect these objects. There has not been any appreciable change for effecting them introduced since. It might be argued that it was easier since to carry out clandestine, unnatural, and improvident marriages.

(1) In the report of 1868 such marriages are mentioned as having taken place; a man marrying his niece, another his father's widow, another his grandmother. Since these could be celebrated, it only requires that the parties should be desirous of overcoming the difficulties, and they can be surmounted.

(2) With regard to bigamy, it may be safely averred that its discovery never originated with the registry. For the mass of the people, registration is a delusion and a snare, if the idea is held that it protects against bigamy. The Registry of Deeds may be searched against a property, and trustworthy evidence be obtained; but what search could there be against John Smith, or Jones, or even Robinson?

(3) With regard to improvident marriages, and the need of preventing them, there is much talk. But the much talk ignores the fact that there is no power to prevent such, or even to stay the issue of the licence of a man and woman who cannot muster the one "brass farthing" of repute. There is no requirement that those entering the state of matrimony should satisfy the surrogate or registrar of their economical arrangements.

(4) With regard to property; if our laws confined the marriage rights exclusively to those of the person, and denied all other interest to be conveyed except by special agreement, as if there were no connubial bond between the parties, it would take away the danger of attempts to entrap the unwary possessor of means. A woman may now, according to our laws, have her property protected by settlement before marriage, and in some cases after marriage. The unequal treatment of the woman, by which she needs to have herself so protected ought to be swept from the statute book, and she be no longer deprived by marriage from holding her own property or earnings. It is not by reducing one of the parties to nonentity that you can justly and properly make of twain one. The New York code sets a good example in the following:—"The husband must support himself and his wife out of

his property or by his labour;" if he is unable to do so she must assist him as far as she is able, with this exception—"Neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling."

(5) The noise which is made in the world by a suit occasioned by the alleged trapping of some titled youth into a low alliance has caused a nameless dread in some minds, so that they are content if this danger be guarded against, uncaring that for one case of such a nature there will be 999 where the heir should be counted as having done more dishonour to the family name by degrading and deserting the daughter of an humble home, than he would have done by taking a low-born wife.

(6) With regard to publicity, the requirements for attaining it are credited with more advantage than they merit. Where a man has honourable intentions and right purposes, they are needless; where he has the opposite he can set them at defiance.

It was proved to demonstration that neither banns nor licences, either from a surrogate or registrar, really gave publicity.

Bishops, deans, archdeacons, clergymen of important parishes, surrogates, registrars, Presbyterian and Dissenting ministers, one and all testified to this. Persons who had no wrong intentions were annoyed by publicity which exposed them to unpleasant observation; persons who had wrong purposes published their names amid a hundred others, and publicly contracted a clandestine marriage. It was proved that instead of having one Gretna-green over the border, there was a Gretna-green in every populous parish. The Lord Bishop of Ely wrote:—"If any persons desire to contract an illegal marriage, they choose one of the populous parishes of our large towns, where they easily escape notice, and where they know the clergyman is too busily occupied, too overworked to be able to investigate all the questions. . . . And always it will be so; for one man can only do one man's work." When marriages were legalised in the registrar's office, numbers went there for the greater privacy it offered. It was proved and admitted that there was no real publicity in the registrar's office. Unreliable as the banns were, the office was less so. The Roman archbishop and bishops of England wrote:—"Persons who have some impediment . . . will have recourse to the registration office for celebrating their marriage, well aware that they there have but little chance of detection."

The means which were then proved to be so deceptive and illusory remain still in the main the only ones—the church and the office, the ministers of religion and the registrars. The registrars admittedly have but little personal knowledge of all in their wide districts. They must notify the clergy of the parties giving notice of marriage; but by the direction of the law officer they can take no note of any warning the clergy give, unless it be on a five shilling caveat, duly entered. Where law can only attain to such certitude in questionable cases, it may be well doubted whether it is right to make such uncertainties the ground of constituting marriage. It may be confidently stated that the difficulty which stands in the way of contracting illegal marriages is not that of running the gauntlet of the preliminaries, but is the difficulty of living afterwards without detection.

III. The grounds on which the laws relating to the sexes is alleged to be impolitic, unjust, and immoral, may be classed under three heads:—(1) The state; (2) the woman; (3) society.

(1) The state. It is considered good and right policy that a man entering the marriage relation should be under pledge to the state to maintain his wife and offspring. If he neglects to do so, he may be

punished for the failure; and if he have property sufficient, a portion may be assigned for their support. It must be impolitic, then, to allow persons by simply evading the licence of the laws to surround himself with an illegitimate family, and leave them to be a burden to the rates or to the charitable. Of course we are aware that there is a statute under which poor-law guardians may seek a refund for the expense of a child so long as it be in the workhouse; but this law is naturally a dead letter. The mainspring of such a suit is the woman. Without her evidence it cannot proceed, and why should she expose herself to the disgrace of a public prosecution merely to recoup the guardians for the expense of her child. She is not benefited; her child is not benefited.

(2) The woman. It is unjust to her that where there is the proof of her having given consent, which is the essence of the contract, she should not have the opportunity of proving this, in order to the carrying out of the contract and preserving her status. In almost all cases she is won over, if not by the promise, by the impression made on her, that the man has such a feeling towards her that he will never desert her. In this case there is what Lord Braxford stated to be, "a part performance on the faith of an inchoate contract, and that completed the contract and made it binding." In the present state of the law she has no right; she must bear all the burden of the law-manufactured guilt and the maintenance of the child—the guilt and the child belonging to both. Instead of allowing the man to be irresponsible in the case of what is called an illegal connection, the just course would be as regards the woman to lay on the man the onus of proving in writing or by witnesses that he was not bound to a husband's duties since he is proved to have taken a husband's place—as regards the state, that a man must be liable for the maintenance of his child under all circumstances.

With regard to bigamy the law holds a most inconsistent position. A man is punishable if he endeavours to establish by a legal form a connection with two women; yet, without fear of penalty, he may establish one legal connection and as many unlegalised connections as he pleases. Adultery is no breach of the common law, though bigamy is. A man may not, without fear of prosecution, marry a second wife; but he may seduce numbers, and fear nothing, except from individual vengeance, which he knows well is but a small risk; for the defenders of a fallen woman are few, and her own desperation of spirit drives her to ruin herself rather than seek damages against her betrayer.

(3). Society. There is no more fruitful source of immorality than this division by arbitrary rules into legal and illegal, moral and immoral connections between men and women, and the protection, if not sanction, given to the unchastity of men.

The fact that a man knew he would be held liable for the maintenance of his child and its mother would put an end to the seduction of females scarce emerged from girlhood, and would introduce into sexual relations the same caution as men evince in matrimonial matters. Seductions are many, but breaches of promise are few; and for the numerous instances in the one class the law is as accountable as it is for the infrequency of the other.

IV. What then should be required in a good system of laws regulating matters between the sexes.

Modern legislation has gone on the idea that marriage is only a civil contract. While the state holds to that, let it act it out consistently. Endless mischief arises from the state propounding that as its fundamental idea for dealing with marriage, and then harking back on the

statement that it is a great deal more than that, and therefore must be legislated for in a different manner. It is from this jumble of a civil, legal contract, and a social moral contract, that there emerges the absurdity of making the constitution of marriage be based on a question of form, and never on the matter of fact. As marriage is an institution of God's appointment since the days of man's innocency, before there was Church or State, it should, as the Scotch act claims for it in 1567, "as lawful and as free as the law of God has permitted the samen." There are three things which God in nature and Scripture has forbidden, and only three :—(1st), that the parties should not be under age; (2nd), that they should not be of too close kin; (3rd), that there should not be a prior existing union. If there be no infringement of those limits then the twain whom God hath joined together into one flesh, let not man put asunder. As marriage is a matter of so great moral and social importance, its validity ought not to be made to depend on anything but what constitutes its moral and social importance. It is of God's appointment that the man and the woman may be one; it is not of his appointment that they should be published beforehand and registered afterward, or else become two again. It is not of moral or social importance at what hour, in what place, in what way they agree to enter on the conjugal union; it is of moral and social importance that they have agreed so to do. If the state infringes the liberty which God has given, and ignores the facts of social and moral importance, there can only result the social evil which is the reproach and the curse of our civilization and Christianity. The state, then, taking as the basis of its legislation that marriage is for it simply a civil contract, (1st), should define what constitutes marriage to be the consent of parties being free, irrespective of any ceremony, religious or otherwise; (2nd), should declare that the consummation of this consent should be provable by any admissible evidence, by agreement in words before witnesses, by writing; or by parentage of a child, or by cohabitation for any period; (3rd), that registration be enforced on all alike by the proper officer in the same manner as the registration of births and deaths. In Ireland the dispensary doctor registered the Roman Catholics, and summoned to petty sessions and had fined those who neglected to forward their certificates; (4th), that the woman should always have the right to set the law in motion to prove parentage of a child or cohabitation in order to have the consent, afterwards consummated, to be registered as marriage. Such is mainly the case in Scotland; (5th), that every man cohabiting with a woman be registered, and thereby made responsible to the state for her maintenance and his offspring by her. In this way the state would recognize all conjugal unions of man and woman as nature allows, and not accept some as formal and moral, and be forced to permit others as informal and immoral, while all the churches, untrammelled by mere arbitrary and often vexatious requirements, could better urge the decent celebration of marriage in all cases. But the chief gain to Church and State would lie in this: that whereas the man who had won the consent of a woman to live with him had held out to him by the law the temptation of freedom to break his moral obligation to make her his wife, would now feel that his obligations and duties were the same, and that the lawful and moral course was the best.

The law of legitimation *per subsequens matrimonium*, which prevails in France, Holland, Germany, and most countries in Europe, in Jersey, Guernsey, and the Isle of Man, in some of the British colonies, in many of the states of America, and throughout the Roman church in the case of marriage by a priest, practically permits the postponement of the

marriage rite to any period, but postpones it with contempt to the law which is evaded, and which afterwards must condone the evasion; with risk to the state which may be burdened by an illegitimate offspring for whom the father escapes responsibility; with offence to society which must tolerate an unlicensed union that may end in the casting off upon it a blemished character; but worst of all, with moral injury to the woman who is kept in an illicit union, and who may be repudiated at the whim of her *de facto* husband.

In Scotland alone of all the world, as far as I have been able to discover, is woman given any title whatsoever to consideration, so that she may enforce a declaration of a marriage which has existed in fact and in repute. That is not one of the least of the honours Scotland can claim.

And I mistake much the movement of the age if women will, as undoubtedly they should not, allow the marriage laws to remain so much as they are protective only of wealth and rank and the male sex. It is in the union of man and woman that they both reach the highest development of all their powers; but the union is immeasurably more to a woman. If she fails in that, she fails in all. If by a deceptive, faithless union she loses her name, she loses her heart. The widow and the deserted wife have times without number shown examples of courage, endurance, energy, and skill in fighting against countless odds the battle of life for herself and her children, such as men have never equalled; but robbed of her good name, deceived where she has trusted, she sinks lower and lower; baser and still baser paths she treads, until ruined in this life, she falls a lost soul into the deeps that lie under.

VI.—*Suggesstions for Remedying Defects in International Marriage as affects Women Married in the United Kingdom to Foreiguers.* By W. Neilson Hancock, LL.D. Q.C.

At a public meeting in the Mansion House, in this city, Miss Ada M. Leigh, the Lady President of the Association of Mission Homes for the protection of Englishwomen and Children, at 17 Avenue Wagram, Paris, called attention to the hardships suffered by Irish, English, and Scotch women who are married to Frenchmen or other foreigners, in cases where all the conditions of the English law of marriage are complied with, but those of foreign law not attended to.

The importance of the question thus raised is indicated by the following figures:—Out of 128 admissions to the Parisian Orphanage of the Association since 1877, "47 have been children of mixed parentage (so far as the managers can judge properly married), 21 illegitimate, and 24 deserted."

Miss Leigh's association has been very successful in their efforts to check the celebrating of marriages legal according to English law, but for want of the proper publicity and consent, illegal according to French law.

A description of what has been done, however, only shows how ripe the question is for legislation and international treaty.

In December, 1879, the Association obtained the opinion of M. Napias,