

ST. LUKE’S INN OF COURT

“Law & Religion Forum”

Volume 1, Apostolate Paper #45 (Section Two)

“A History of the Anglican Church—Part XXIX: An Essay on the Role of Christian Lawyers and Judges within the Secular State”©

By

Roderick O. Ford, Litt.D., D.D., J.D.

TABLE OF CONTENTS

Preface

Introduction

Summary

**Part XXIX. Anglican Church: “Puritanism, the Family, and Family
Government—Section Two”**

B. Puritanism and Family Law: Christian Theology (Section Two)

4. General Duties and Obligations during Marriage

- a. Duty to Help Each Other to Salvation**
- b. Duty to Guard against Dissension and Discord**
- c. Duty to Maintain Conjugal Love**

5. Specific Duties and Obligations during Marriage

- a. Husband’s duties to wife**
- b. Wife’s duties to husband**
- c. Wife’s duties regarding, and control over, marital property**

6. Cases of Conscience: Marriage, Separation and Divorce

Bibliography

Appendix A—“Anglo-American Common Law of Family, Husband and Wife (Am Jur; Am Jur 2d)”

Appendix B— “Anglo-American Doctrine of Coverture”

Appendix C—“England’s Ecclesiastical Courts (General and Limited Jurisdiction), 1534-1800”

Appendix D— “The American Slave Code: Systematic Denial of Anglo-American Common Law of Family, Husband and Wife to African Americans, 1619-1865”

The ideas expressed in this Apostolate Paper are wholly those of the author, and subject to modification as a result of on-going research into this subject matter. This paper is currently being revised and edited, but this version is submitted for the purpose of sharing Christian scholarship with clergy, the legal profession, and the general public.

INTRODUCTION (Section Two)

Section Two on “Puritanism and Family Law” is dedicated to the memory of my great uncle, Rev. Andrew Lee Ford (1913-2014) of the African Methodist Episcopal Church, and to all of the courageous clergymen within the historic “Black Church” who labored and tried to glue the fractured African American family structure together since the end of American slavery and during the heyday of racial segregation.¹ Two decades ago, when I sat to write what eventually became *Bishop Edwards: A Gospel For African American Workers* (2015), the plight of the African American family structure—nay, the deteriorating relations between black men and women— lay at the heart of my conceptualization of the race crisis in the United

¹ See, e.g., Appendix D-- “The American Slave Code: Systematic Denial of Anglo-American Common Law of Family, Husband and Wife to African Americans, 1619-1865.”

States. Here, the Black Church, the Christian faith, and the traditional Anglo-Catholic family structure (e.g., the Puritan idea of the family in colonial New England), were the primary basis for my understanding of the solution to this crisis:

The family structure of African-Americans has long been a matter of national public policy interest. A 1965 report by Daniel Patrick Moynihan, known as *The Moynihan Report*,² examined the link between black poverty and family structure. It hypothesized that the destruction of the Black nuclear family structure would hinder further progress toward economic and political equality.

When Moynihan wrote in 1965 on the coming destruction of the Black family, the out-of-wedlock birth rate was 25% among Blacks. **In 1991, 68% of Black children were born outside of marriage. In 2011, 72% of Black babies were born to unmarried mothers. In 2015, 77% of Black babies were born to unmarried mothers.**

Among all newlyweds, 18.0% of Black Americans in 2015 married non-Black spouses. 24% of all Black male newlyweds in 2015 married outside their race, compared with 12% of Black female newlyweds.³

² See, e.g., "African-American family structure," https://en.wikipedia.org/wiki/African-American_family_structure, stating:

The breakdown of the Black family was first brought to national attention in 1965 by sociologist and later Democratic Senator Daniel Patrick Moynihan, in the groundbreaking Moynihan Report (also known as "The Negro Family: The Case For National Action"). Moynihan's report made the argument that the relative absence of nuclear families (those having both a married father and mother present) in Black America would greatly hinder further Black socio-economic progress.

The current most widespread African American family structure consisting of a single parent has historical roots dating back to 1880. Data from U.S. Census reports reveal that between 1880-1960, married households consisting of two-parent homes were the most widespread form of African-American family structures. Although the most popular, married households decreased over this time period. Single-parent homes, on the other hand, remained relatively stable until 1960; when they rose dramatically. A study of 1880 family structures in Philadelphia, showed that three-quarters of Black families were nuclear families, composed of two parents and children.

In New York City in 1925, 85% of kin-related Black households had two parents. When Moynihan warned in his 1965 report on the coming destruction of the Black family, however, the out-of-wedlock birthrate had increased to 25% among the Black population. This figure continued to rise over time and in 1991, 68% of Black children were born outside of marriage. U.S. Census data from 2010 reveal that more African-American families consisted of single mothers than married households with both parents. Most recently, in 2011; it was reported that 72% of Black babies were born to unmarried mothers.

³ Ibid.

This social crisis has engulfed, intrigued, defined, and propelled me to heroic thought and deed, all in an effort to improve the plight of the African American family in the United States and the world. To that effort I owe much to the great theologians of the Roman Catholic Church, the Church of England, and the Puritans of colonial New England.

SECTION TWO

B. Puritanism and Family Law: Christian Theology (Sec. 2)

The common law of England (customary, ecclesiastical, and statutory law) regarding marriage was extracted from the Bible and developed by English theologians within a system of ecclesiastical courts. See, e.g., APPENDIX C. England’s Ecclesiastical Courts (General and Limited Jurisdiction)—1534-1800. Within these ecclesiastical courts, the Parish priests and Bishops interpreted the Sacred Scriptures and applied the “Law of Christ”⁴ to real-world problems regarding family, children, marriage, separation, divorce, and a variety of related legal problems. See, below, Table 1, “The Priest, the Pastoral Ministry, and Cases of Conscience.”

Table 1. The Priest, the Pastoral Ministry, and “Cases of Conscience”

<u>The Church:</u>	-----→	<u>Law of God; Law of Christ:</u>	-----→	<u>Ecclesiastical Court/ Pastoral Judge/ Pastoral Counsellor or Advisor:</u>	-----→	<u>Problem Solving/ Conflict Resolution</u> :
Christian laymen/ lay Church members		Lay Church Members encounter life challenges in the form of: Questions/ Problems/ Social or Political Problems		Priests/ Pastors/ Elders/ Bishops/ Clergymen, etc.		Priest’s Application of moral laws of God; Law of Christ to Practical Questions/ Problems

⁴ The Law of Christ is to “love ye one another” (John 15:12); to do justice and judgement (Genesis 18:18-19; Proverbs 21: 1-3); to judge not according to appearance but to judge righteous judgments (John 7:24); and to do justice, judgment, and equity (Proverbs 1:2-3).

These ecclesiastical courts were called upon to develop an English family-law jurisprudence that gave practical meaning to the most salient portions of the Sacred Scriptures, to wit:

- (a). **Law of Moses(Genesis 5:1-2):** “This *is* the book of the generations of Adam. In the day that God created man, in the likeness of God made he him; Male and female created he them; and blessed them, and called their name Adam, in the day when they were created.”
- (b). **Law of Moses (Genesis 2: 21-24):** “And the LORD God caused a deep sleep to fall upon Adam, and he slept: and he took one of his ribs, and closed up the flesh instead thereof; And the rib, which the LORD God had taken from man, made he a woman, and brought her unto the man. And Adam said, This is now bone of my bones, and flesh of my flesh: she shall be called Woman, because she was taken out of Man. Therefore shall a man leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh. And they were both naked, the man and his wife, and were not ashamed.”
- (c). **Law of Christ (Matthew 19:3-9):** “The Pharisees also came unto him, tempting him, and saying unto him, Is it lawful for a man to put away his wife for every cause? And he answered and said unto them, Have ye not read, that he which made *them* at the beginning made them male and female, And said, For this cause shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh? Wherefore they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder. They say unto him, Why did Moses then command to give a writing of divorcement, and to put her away? He saith unto them, Moses because of the hardness of your hearts suffered you to put away your wives: but from the beginning it was not so. And I say unto you, Whosoever shall put away his wife, except *it be* for fornication, and shall marry another, committeth adultery: and whoso marrieth her which is put away doth commit adultery.”
- (d). **Law of Christ (1 Peter 3: 1-7):** “Likewise, ye wives, *be* in subjection to your own husbands; that, if any obey not the word, they also may without the word be won by the conversation of the wives; While they behold your chaste conversation *coupled* with fear. Whose adorning let it not be that outward *adorning* of plaiting the hair, and of wearing of gold, or of putting on of apparel; But *let it be* the hidden man of the heart, in that which is not corruptible, *even the ornament* of a meek and quiet spirit, which is in the sight of

God of great price. For after this manner in the old time the holy women also, who trusted in God, adorned themselves, being in subjection unto their own husbands: Even as Sara obeyed Abraham, calling him lord: whose daughters ye are, as long as ye do well, and are not afraid with any amazement. Likewise, ye husbands, dwell with *them* according to knowledge, giving honour unto the wife, as unto the weaker vessel, and as being heirs together of the grace of life; that your prayers be not hindered.”

(e). **Law of Christ (Ephesians 5:22-33):** “Wives, submit yourselves unto your own husbands, as unto the Lord. For the husband is the head of the wife, even as Christ is the head of the church: and he is the saviour of the body. Therefore as the church is subject unto Christ, so *let* the wives *be* to their own husbands in every thing. Husbands, love your wives, even as Christ also loved the church, and gave himself for it; That he might sanctify and cleanse it with the washing of water by the word, That he might present it to himself a glorious church, not having spot, or wrinkle, or any such thing; but that it should be holy and without blemish. So ought men to love their wives as their own bodies. He that loveth his wife loveth himself. For no man ever yet hated his own flesh; but nourisheth and cherisheth it, even as the Lord the church: For we are members of his body, of his flesh, and of his bones. For this cause shall a man leave his father and mother, and shall be joined unto his wife, and they two shall be one flesh. This is a great mystery: but I speak concerning Christ and the church. Nevertheless let every one of you in particular so love his wife even as himself; and the wife *see* that she reverence *her* husband.”

As an example of Anglican and Puritan practical theological application of the Sacred Scriptures to English family law, the writings of the Reverend Richard Baxter (1615-1691) are exemplary.⁵ Known as the “chief of the English Protestant schoolmen,” Rev. Baxter was an influential Anglican theologian who laid the theological foundations within the Church of England that eventually gave rise to the Wesleyan/ Methodist theological system within that same church. Like John Wesley (1703-1791), Rev. Baxter’s theological system rejected the Calvinist system of predestination and embraced a doctrine of sanctification that required a degree of individual freedom of choice, individual willful effort, and individual intentional acceptance of Christ as personal Saviour.

Perhaps Baxter’s theological system came closer to that of St. Augustine of Hippo and of Jacobus Arminius (1560-1609). Because Rev. Baxter’s ministry

⁵ “Richard Baxter is commemorated in the Calendar of saints of the Episcopal Church in the United States of America with a feast day on 8 December, but his feast day in the Church of England's Calendar of Saints is 14 June.” https://en.wikipedia.org/wiki/Richard_Baxter

covered the period of the tumultuous English Civil War (1642-1651), he was forced to abandon the pulpit and to write down many of his theological ideas in the form of essays, chapters, and books, in lieu of the sermons which he had been barred from delivering. As a consequence, Rev. Baxter's published theological writings were most influential of all other Puritan pastors and theologians. Rev. Baxter's work was encyclopedic and voluminous, covering a wide variety of topics regarding the practical application of Scriptures to practical, everyday human activities. According to the renowned British economist R. H. Tawney, author of *Religion and the Rise of Capitalism*, Rev. Baxter's work both influenced and reflected the religious and traditional customary ideals and practices that undergirded the English common law throughout the British Empire. For this reason, this paper is concentrated upon Rev. Baxter's theological ideas and ideals regarding marriage and related duties of husband and wife.

4. General Duties and Obligations during Marriage⁶

The most important thing to remember about the institution of marriage within English common law is that it was believed to be instituted by the Church, to reflect the relationship of Christ to the Church. The husband and the wife were entered into a "sacramental" relationship that was necessary—in terms of sexual activity and procreation—for salvation. The husband and the wife owed each other the reciprocal ministerial duty of assisting one another to attain salvation.

a. Duty to Help Each other to Salvation

Directive I. "If you would help to save each other's souls, you must each of you be sure that you have a care of your own; and retain a deep and lively apprehension of those great and everlasting matters, of which you are to speak to others."⁷

Directive II. "Take the opportunities which your ordinary nearness and familiarity affordeth you, to be speaking seriously to each other about the matters of God, and your salvation."⁸

Directive III. "When either husband or wife is speaking seriously about holy things, let the other be careful to cherish and not

⁶ Richard Baxter, *A Christian Directory (or, A Sum of Practical Theology, and Cases of Conscience), Part 2, Economics* (reprinted in Columba, S.C. on January 18, 2019).

⁷ *Ibid.*, p. 56.

⁸ *Ibid.*

extinguish and put an end to the discourse.”⁹

Directive IV. “Watch over the hearts and lives of one another, and labour to discern the state of one another’s souls, and the strength or weakness of each other’s sins and graces, and the failings of each other’s lives, that so you may be able to apply to one another the most suitable help.”¹⁰

Directive V. “See that you neither flatter one another through fond and foolish love, nor exasperate one another by a passionate or contemptuous kind of reprehension.”¹¹

Directive VI. “Be sure that you keep up true conjugal love to one another, and that you grow not to disaffect the persons of each other.”¹²

Directive VII. “Discourage not each other from instruction or reproof by taking it ill, or by churlish reflections, or by obstinate unreformedness.”¹³

Directive VIII. “So far as you are able to instruct or quicken one another, call in for better helps: engage each other in the reading of the most convincing, quickening books, and in attendance on the most powerful ministry, and in profitable converse with the holiest persons.”¹⁴

Directive IX. “Conceal not the state of your souls, nor hide your faults from one another. You are as one flesh, and should have one heart...”¹⁵

Directive X. “Avoid as much as may be contrariety of opinions in religion: for if once you be of different judgments in matters which you take to be of great concernment, you will be tempted to disaffect, contemn, or undervalue one another; and so to despise the help which

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid., p. 57.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

you might receive....”¹⁶

Directive XI. “If difference in judgment in matters of religion do fall out between you, be sure that it be managed with holiness, humility, love, and peace, and not with carnality, pride, uncharitableness, or contention.”¹⁷

Directive XII. “Be not either blindly indulgent to each other’s faults, nor yet too censorious of each other’s state, lest Satan thereby get advantage to alienate your affections from one another.”¹⁸

Directive XIII. “If you are married to one that is indeed an infidel, or an ungodly person, yet keep up all the conjugal love which is due to the relation’s sake. Though you cannot love them as true Christians, yet love them as husbands or wife. Even heathens are bound to love those that are thus related to them.”¹⁹

Directive XIV. “Join together in frequent and fervent prayer.”²⁰

Directive XV. “Lastly, help each other by an exemplary life. Be that yourselves which you desire your husband or wife should be; excel in meekness, and humility, and charity, and dutifulness, and diligence, and self-denial, and patience, as far as you do excel in profession of religion.”²¹

b. Duty to Guard Against Dissension and Discord

The Puritans understood that marriage required spiritual discipline and forethought as to how to avoid marital conflict, dissension and discord. They were very proactive in teaching married couples as to how to prevent arguments, spite, and tensions within the marital relationship. The following directives are from the Rev. Richard Baxter, as follows:

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid., p. 58

²⁰ Ibid.

²¹ Ibid., p. 58.

Directive I. “Keep up your conjugal love in a constant heat and vigour. Love will suppress wrath...”

Directive II. “Both husband and wife must mortify their pride and passion, which are the causes of impatency; and must pray and labour for a humble, meek, and quiet spirit.”

Directive III. Remember still that you are both diseased persons, full of infirmities; and therefore expect the fruit of those infirmities in each other; and make not a strange matter of it, as if you had never known of it before.

Directive IV. “Remember still that you are one flesh; and therefore be no more offended with the words or failings of each other, than you would be if they were your own.”

Directive V. “Agree together beforehand, that when one is in the diseased, angry fit, the other shall silently and gently bear, till it be past and you are come to yourselves again.”

Directive VI. “Look before you, and remember that you must live together until death, and must be the companions of each other’s fortunes, and the comforts of each other’s lives, and then you will see how absurd it is for you to disagree and vex each other.”

Directive VII. “As far as you are able, avoid all occasions of wrath and failing out, about the matters of your families.”

Directive VIII. “If you cannot quickly quench your passion, yet at least refrain your tongues; speak not reproachful and provoking words: talking it out hotly doth blow the fire, and increase the flame; be but silent, and you will the sooner return to your serenity and peace.”

Directive IX. “Let the sober party condescend to speak fair and to entreat the other (unless it be with a person so insolent as will be the worse).”

Directive X. “Confess your fault to one another, when passion hath prevailed against you; and ask forgiveness of each other, and join in prayer to God for pardon; and this will lay a greater

engagement on you the next time to forbear....”

c. Duty to Maintain Conjugal Love

Of course, the Puritans admonished married men and women to intentionally conjure up the heat and passion of sexual appetite for the other spouse, in order to maintain the flames of passionate love throughout the marriage, as reflected here as follows:

Directive I. “The first duty of husbands is to love their wives (and wives their husbands) with a true, entire, conjugal love. Eph. V. 25, 28, 29, 33, “Husbands, love your wives, even as Christ also loved the church, and gave himself for it.—So ought men to love their wives as their own bodies; he that loveth his wife, loveth himself. For no man ever yet hated his own flesh; but nourisheth and cherisheth it, even as the Lord the church.—Let every one of you in particular so love his wife, even as himself.’ See Gen. ii. 24.”²²

Directive II. “Another duty of husbands and wives is, cohabitation and (where age prohibiteth not) a sober and modest conjunction for procreation: avoiding lasciviousness, unseasonableness, and whatever tendeth to corrupt the mind, and make it vain and filthy, and hinder it from holy employment.”²³

Directive III. “Abhor not only adultery itself, but all that tendeth to unchasteness and the violation of your marriage-covenant.”²⁴

Directive IV. “Husband and wife must take delight in the love, and company, and converse of each other.”²⁵

Directive V. “It is a great duty of husbands and wives to live in quietness and peace, and avoid all occasions of wrath and discord.”²⁶

²² Ibid., p. 51.

²³ Ibid, p. 52.

²⁴ Ibid.

²⁵ Ibid., p. 53.

d. Other General Mutual Duties

The duty of Christian love also carried with it solemn obligations to care for and to support the other spouse, in every positive and wholesome endeavor, such as the following:

Directive I. “Duty to be helpful to each other in sickness and comfort of their bodies.”

Directive II. “Duty to be helpful in worldly business and with managing affairs of the estates.”

Directive III. “Duty to be helpful in the education of their children and in the government of family servants.”

Directive IV. “Duty to be helpful in the performance of works of hospitality and charity.”

Directive V. “Duty to comfort during periods of terminal illness in order to ensure a “happy death.”

5. Specific Duties and Obligations during Marriage

In addition, the husband as head of the household and leader of the family had specific, unique obligations towards the wife, such as the following:

a. Husband’s Specific Duties toward Wife

Directive I. “The husband must undertake the principal part of the government of the whole family, even of the wife herself.”²⁷

Directive II. “The husband must so unite authority and love, that neither of them may be omitted or concealed, but both be exercised and maintained.”

Directive III. “It is the duty of husbands to preserve the authority of their wives, over the children and servants of the family.”

²⁶ Ibid.

²⁷ Ibid., p. 60.

Directive IV. “Husbands must preserve the honour as well as the authority of their wives.”

Directive V. “The husband is to excel the wife in knowledge, and be her teacher in the matters that belong to her salvation.”

Directive VI. “The husband must be the principal teacher of the family.”

Directive VII. “The husband is to be the mouth of the family, in their daily conjunct prayers unto God.”

Directive VIII. “The husband is to be the chief provider for the family (ordinarily).”

Directive IX. “The husband must be strongest in family patience; bearing with the weakness and passions of the wife; not so as to make light of any sin against God, but so as not to make a great matter of any frailty as against himself, and so as to preserve the love and peace which is to be as the natural temper of their relation.”

Directive X. “The manner of all these duties must also be carefully regarded.”

b. Wife’s Specific Duties toward Husband

Likewise, the wife retained certain and special unique obligations towards her husband, as follows:

Directive I. “Honour your husbands according to their superiority. Behave not yourselves towards them with unreverence and contempt, in titles, speeches, or any behavior....”²⁸

(A). “Although a husband has a duty to love his wife no matter what, the wife must understand that husbands are human beings.”²⁹

(B). “Comfort and duty go together. That a wife should

²⁸ Ibid., p. 62.
²⁹ Ibid., p. 62.

not expect ‘comfort,’ companionship, and consortium, without first being diligent in discharging her duties toward her husband.”³⁰

(C). “Be content with what you have. Be thankful towards your husband for what he is able to provide. ‘Live in a cheerful contentedness with your condition; and take heed of an impatient, murmuring spirit.’³¹ ... speak and do all in meekness and sobriety.”³²

(D). “Be specially loving to your husbands: your natures give you the advantage in this....”³³ Wife should be patient towards her husband.

(E). Wives should remember “that it is God that hath appointed them to be your heads and governors.”³⁴ And even if the husband is not a wise head or governor, it is still nevertheless the wife’s duty to obey him and to assist him with governing. “A servant that hath a foolish master, may help him without becoming master.”³⁵

Directive II. “Learn of your husbands as your appointed teachers, and be not self-conceited and wise in your own eyes, but ask of them such instructions as your case requireth.”³⁶

(A). Wives should anticipate both instruction and reproof from their husbands—especially if he is an able and wise husband. “Learn of your husbands as your appointed teachers....”³⁷

(B). “Set yourselves seriously to amend all those faults which they reprove in you. Do not take it ill to be reprov’d: swell not against it, as if they did you harm or wrong....”

(C). Against pride: “Take heed of a proud and

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

contentious disposition; and maintain a humble, peaceable temper. Pride will make you turbulent and unquiet with your husbands.... Proud women oft ruin their husbands' estates, and quietness, and their own souls."³⁸

(D). "But to be proud of fashions and fine clothes, of spots and nakedness, of sumptuous entertainments and neat rooms, is to be proud of your shame, and not your virtue; and of that which you are not so much as commendable for."³⁹

Directive III. Against gossip: "... a woman that is cautelous and sparing of her words, is commonly revered and supposed to be wise. So that if you had no higher design in it, but merely to be well thought of, and honoured by men, you can scarcely take a surer way, than to let your words be few and weighty; though the avoiding of sin, and unquietness, shall prevail with you much more."⁴⁰

Directive IV. "As the primary provision of maintenance belongeth most to the husband, so the secondary provision within doors belongeth specially to the wife. Read over and over the thirty-first chapter of Proverbs. Especially the care of nurshing your own children, and teaching them, and watching over them when they are young; and also watching over the family at home, when your husbands are abroad, is your proper work."⁴¹

c. Wife's Duties Regarding, and Control Over, Marital Property

On the subject-matter of the wife's solemn obligations to respect the husband's senior status and authority over the marital res, Rev. Baxter writes: "Dispose not of your husband's estate, without his knowledge and consent."⁴² For the most part, the wife retained complete control over property which she brought to the marriage, but otherwise all property which came into the estate after the

³⁸ Ibid., p. 63.

³⁹ Ibid., p. 63.

⁴⁰ Ibid., P. 63

⁴¹ Ibid., p. 63

⁴² Ibid., p. 63.

marriage was controlled by the husband. For this reason, the wife owed special duties regarding the management of this marital property, as follows:

Question I. “But as the case standeth with us in England, hath the wife a joint-propriety, or not?”

Real Estate: “Or, if the law, or his consent, do give her any propriety in any part of his estate, or make her a joint-proprietor, she may proportionably dispose of it in a necessary case. The husband is considerable, either as a proprietor, or as her governor. As a proprietor, he only may dispose of the estate, where he is the sole proprietor: but where consent or the law of the land doth make the woman joint-proprietor, she is not disabled from giving for want of a propriety. But then no law be her own: except when he forbiddeth that which is her duty, or which he hath no power to forbid. So that in case of joint-propriety she may give without him... But if the thing be wholly her own, excepted from his propriety, and she be sole proprietor, then she need not ask his consent at all, any other way than s he is her guide, to direct her to the best way of disposing of it....”⁴³

“Three ways (at least) she may have a propriety. 1. By a reserve of what was her own before; which (however some question it) may in some cases be done in their agreement at marriage. 2. By the law of the land. 3. By the husband’s consent or donation.”⁴⁴

Question II. “If the husband live upon unlawful gain, as cheating, stealing, robbing by the high-way, etc., is not the wife guilty as a joint-proprietor, in retaining such ill-gotten goods, if she know it? And is she bound to accuse her husband, or to restore such goods?”⁴⁵

A. The wife’s duty is to admonish her husband. If the husband’s conduct continues, in order prevent harm to innocent victims, then she has the moral and legal duty to report her husband’s unlawful conduct

⁴³ Ibid., p. 64.

⁴⁴ Ibid., p. 64.

⁴⁵ Ibid., p. 64.

to the civil authorities. If, however, the magistrate is himself a ruthless tyrant, then the wife may chose to not so report her husband's conduct to the civil authories.⁴⁶

Question III. "May the wife go hear sermons the husband forbiddeth her?"

A. Yes, but only if the sermons are clearly within the parameters of customary, orthodox Christianity.⁴⁷ A husband's refusal to permit the wife to hear lawful sermons could be grounds for separation and even divorce. Even thus, remarriage would not be permissible.

Question IV. "If a woman have a husband so incorrigible in vice, as that by long trial she findeth that speaking against it maketh him worse, and causeth him to abuse her, is she bound to continue her dissuasion, or to forbear?"

A. Christ has admonished Christians not to throw pearls before swine, and so the wife may forbear under these circumstances.⁴⁸

Question V. "What should a woman do in controverted cases of religion, when her judgment and her husband's differ?"

A. This is a difficult question that turns upon the totality of circumstances:

"(1). In all differences of judgment the wife must exercise such self-suspicion, and modesty, and submission, as may signify her due sense, both of the weakness of her sex, and of her subjection to her husband.

"(2). In things indifferent she must in practice obey her husband; unless when any superior powers do forbid it, and that in

⁴⁶ Ibid., p. 64.

⁴⁷ Ibid., pp. 64-65.

⁴⁸ Ibid., p. 65.

cases where their authority is greater.

“(3). She may modestly give her reasons of dissent.

“(4). She must not turn it to an unpeaccable quarrel, or matter of disaffection, or pretend any differences against her conjugal duties.

“(5). In dark and difficult cases she should not be peremptory, and self-conceited, nor importunate; but if she have faith (that is, some more knowledge than he) have it to herself, in quietness and silence; and seek further information lest she err.

“(6). She must speak no untruth, nor commit any known sin, in obedience to her husband’s judgment.

“(7). When she strongly suspecteth it to be sin, she must not do it merely in obedience to him, but seek for better satisfaction. For she is sure that he hath no power to force her to sin; and therefore hath no more assurance of his power in that point than she hath of the lawfulness of the thing.

“(8). But if she prove to be in the error, she will sin on either side, till she recover.

“(9). If a husband be in dangerous error, she must wisely, but unweariedly, seek his reformation, by herself or others.”⁴⁹

6. Cases of Conscience: Marriage, Separation and Divorce

Lastly, the Sacred Scriptures especially came to bear upon English common law when the issue of separation and divorce were at issue. Englishmen and women needed special guidance as to how to interpret and to apply the Sacred Scriptures to real-world problems such as cheating, infidelity, spousal abuse, and the like. Here we find samples of how the erudite Anglican theologian Richard Baxter applied the Scriptures to these matters:

Question I. “Is it lawful for husband and wife to be long

⁴⁹ Ibid., p. 65.

absent from each other? And how long, and in what cases?”

A. Yes. For example, in cases of separation for prayer or to take care important affairs of the estate, the spouses may separate for a reasonable period of time.⁵⁰

Question II. “May husband and wife be separated by the bare command of princes, if they make a law that in certain cases they shall part: as suppose it to ministers, judges, or soldiers?”

A. “If a king command a separation without sufficient cause, so that you have no motive but his authority, and the question is, whether formally you are bound to obedience: I answer, No; because what God hath joined no man hath power to put asunder. Nor can either prince, pope, or prelate dispense with your marriage covenant. In such a case it is a private act, because God hath given them no authority for it; and therefore their commands or laws are nullities: only if a prince say, he that will be a judge or a justice shall part with his wife, it is lawful to leave the office, and so obey the law. But if he say to all ministers of the gospel, you shall forsake your wives or your ministry, they should do neither, because they are divinely obliged to both, and he hath no power to forbid them, or to dispense with that obligation.⁵¹

Question III. “May ministers leave their wives to go abroad to preach the gospel?”

A. Yes, but only if “they can neither do God’s work as well at home, nor yet take their wives with them, nor be excused from doing that part of service, by other men’s doing it who have no such impediment; they may and must leave their wives to do it.”⁵²

Question IV. “May one leave a wife to save his life, in case of personal persecution or danger?”

⁵⁰ Ibid., p. 65.

⁵¹ Ibid., p. 66.

⁵² Ibid., p. 66.

A. Yes, but only if she cannot be taken with him.⁵³

Question V. “May husband and wife part by mutual consent, if they find it be for the good of both?”

A. Yes. But divorce under such circumstances is not permitted.⁵⁴

Question VI. “May not the relation itself be dissolved by mutual, free consent, so that they may marry others?”

A. Separation or divorce under such circumstances is permitted. “[T]hey may not consent to marry others: 1. Because the contracted relation was for life, Rom. vii.”⁵⁵

Question VII. “Doth adultery dissolve the bond of marriage, or not?”

A. Not automatically. It is grounds for divorce. The innocent spouse is free to remain married.⁵⁶

Question VIII. “But is not the injured party at all obliged to separate, but left free?”

A. The injured or innocent spouse is not obliged to separate, but is left free to remain married, to separate, or to divorce.⁵⁷

Question IX. “Is it only the privilege of the man, that he may put away an adulterous wife? Or also of the woman, to depart from an adulterous husband? The reason of the doubt is, because Christ mentioned the man’s power only, Matt. V and XIX.”

A. A woman or man may put away an adulterous spouse. “The reason why Christ speaketh only of the man’s case is, because he was occasioned only to restrain the vicious custom of men’s causless

⁵³ Ibid., p. 66.

⁵⁴ Ibid., p. 66.

⁵⁵ Ibid. p. 67.

⁵⁶ Ibid., p. 67.

⁵⁷ Ibid., p. 67.

putting away their wives; having no occasion to restrain women from leaving their husbands.”⁵⁸

Question X. “May the husband put away the wife without the magistrate, or the wife depart from the husband, without a public legal divorce or license?”

A. No. “For the civil governors are to provide against the private injuries of any of the subjects. And if persons might put away or depart at pleasure, it would introduce both injury and much weakness into the world. But where the laws of men do leave persons to their liberty in this case, they need then to look no further than to the laws of God alone.”⁵⁹

Question XI. “Is not the case of sodomy or buggery a ground for warrantable divorce as well as adultery?”

A. Yes.⁶⁰

Question XII. “What if both parties commit adultery? May either of them put away the other, or depart; or rather must they forgive each other?”

A. The innocent spouse has the choice to remain in the marriage, to separate, or to divorce. The innocent spouse may re-marry if she or he elects to divorce.⁶¹

Question XIII. “But what if one do purposely commit adultery, to be separated from the other?”

A. The innocent spouse has the choice to remain in the marriage, to separate, or to divorce. The innocent spouse may re-marry if she or he elects to divorce.⁶²

Question XIV. “Doth not infidelity dissolve the relation or

⁵⁸ Ibid., p. 67.

⁵⁹ Ibid., p. 68.

⁶⁰ Ibid., p. 68.

⁶¹ Ibid., p. 68.

⁶² Ibid., p. 68.

obligation; seeing there is no communion between light and darkness, a believer and an infidel?”

A. The union between a believer and an infidel is not nullified simply by the unbelief of the infidel. The believe, however, is cautioned to not marry an infidel, in order to avoid future conflict, confrontation, and confusion.⁶³

Question XV. “Doth not the desertion of one party disoblige the other?”

A. This is a difficult question to be determined by the totality of circumstances involving each particular case. Is it really true permanent desertion or a temporary separation? What is the mental state of the deserter?⁶⁴

Question XVI. “What if a man or wife know that the other in hatred doth really intend by poison, or other murder, to take away their life? May they not depart?”

A. Yes. Separation or divorce is permissible. Remarriage after divorce may be permissible, since “killing is the grossest kind of desertion, and a greater injury and violation of the marriage covenant than adultery.” However, the innocent party must have clear evidence that his or her spouse had intended to murder them; the evidence must not be based upon speculation.⁶⁵

Question XVII. “If there be but a fixed hatred of each other, is it inconsistent with the ends of marriage? And is parting lawful in such a case?”

A. Generally, the parties must wait, pray, hope, love and persevere. So long as there are no serious threats to safety, separation is not recommended but permissible. Divorce is available only as a last

⁶³ Ibid., p. 68.

⁶⁴ Ibid, pp. 68-69.

⁶⁵ Ibid, p. 69.

resort. Remarriage after divorce is impermissible.⁶⁶

Question XVIII. “What if a woman have a husband that will not suffer her to read the Scriptures, nor go to God’s worship public or private, or that so beateth or abuseth her, as that it cannot be expected that human nature should be in such a case kept fit for any holy action; or if a man have a wife that will scold at him when he is praying or instructing his family, and make it impossible to him to serve God with freedom, or peace and comfort.”

A. Generally, since the woman is the weaker than her husband, she may depart from her husband under these circumstances. If she divorces, she may not remarry.⁶⁷ Since the man is generally better able to protect himself against a cruel, unbelieving wife, the question of whether a husband may put away his wife, or depart from her, is much more difficult to answer.⁶⁸

Question XIX. “May one part from a husband or wife that hath the leprosy, or that hath the French pox by their adulterous practices, when the innocent person’s life is endangered by it?”

A. If the venereal disease is the fruit of adultery, then the innocent spouse may separate and divorce.⁶⁹

Question XX. “Who be they that may or may not marry again when they are parted?”⁷⁰

A. Those who divorce because of adultery or sodomy, etc., may marry again. Those who divorce for other reasons generally may not remarry.⁷¹

END OF SECTION TWO

⁶⁶ Ibid, p. 69.

⁶⁷ Ibid., p. 70.

⁶⁸ Ibid., p. 70.

⁶⁹ Ibid. p. 70

⁷⁰ Ibid., p. 70.

⁷¹ P. 70.

Bibliography:

Barry, John M. *Roger Williams and the Creation of the American Soul: Church, State, and the Birth of Liberty*. New York, N.Y.: Viking Press (2012).

Baxter, Richard, *A Christian Directory or, A Sum of Practical Theology, and Cases of Conscience. Part 2 Christian Economics* (reprinted in Columbia, S.C. on January 18, 2019).

Smith, Goldwin. *A History of England*. New York, N.Y.: Charles Scribner's Sons (1957).

References:

Aquinas, Thomas (Saint). *Summa Theologica*. New York, NY: The Catholic Primer (2005).

Augustine, Aurelius (Saint). *Confessions*. New York, N.Y.: Barnes & Nobles Classics (2007).

_____. *On Grace and Free Will*. Louisville, KY: GLH Publishing (2017).

_____. *The City of God*. New York, NY: The Modern Library (1950).

Bode, Carl. *The Portable Emerson*. New York, NY: Penguin Books (1981).

Burt, Edwin A. *The English Philosophers From Bacon To Mill*. New York, NY: The Modern Library (1967).

Catechism of the Catholic Church (New York, NY: Doubleday, 1997).

Daniell, Timothy Tyndale. *The Lawyers: The Inns of Court: The Home of the Common Law*. New York, N.Y.: Oceana Publications, Inc. (1976).

Doe, Norman. *Christianity and Natural Law*. Cambridge, U.K.: Cambridge Univ. Press. (2017).

Ford, Roderick. *Jesus Master of Law: A Juridical Science of Christianity and the Law of Equity*. Tampa, Fl.: Xlibris Pub. (2015).

Russell, Bertrand. *A History of Western Philosophy*. New York, NY: Touchstone, (2007).

Smith, Adam. *The Wealth of Nations*. New York, N.Y.: The Modern Library (1994).

The Federalist Papers. Nashville, TN: Thomas Nelson, Inc. 2014.

Witte, John, Jr. and Frank S. Alexander. *Christianity and Law: An Introduction*. Cambridge, UK: Cambridge Press, 2008.

Woods, Thomas E. *How The Catholic Church Built Western Civilization*. Washington, D.C.: Regnery Publishing, Inc., 2005.

**APPENDIX A: Anglo-American Common Law of Family, Husband and Wife
(Am Jur (1st Edition); Am Jur (2d Edition)).**

Am Jur (First Edition)

§ 2 Marital and Family Relationship

“The relationship of husband and wife is at once a natural and a legal relationship. [citing Blackstone’s Commentaries, Chap. 15, p. 433] The rights and duties growing out of the natural relation are of a kind that must vary with changing circumstances, and many of them are of a nature in the main impracticable of enforcement by positive law....

The group of husband, wife, and children, including stepchildren, when living together, as they are presumed to do, constitutes the family. The family includes a parent of one of the spouses living with it under the headship of the husband.”

§3 Unity of Husband and Wife. –

“Under the common law, husband and wife become by marriage one person, and the entire legal existence of the woman is completely merged or incorporated in that of the husband.

“This fundamental principle is the foundation of the common-law theory and rules of rights, duties, and disabilities of marriage.

“Equity, however, has long recognized the separate existence of the wife with respect to her equitable separate estate, and under the Married Women’s Acts, in force in most if not all states, the unity of the spouses is severed, and each is a separate legal personality in so far as the disabilities of the wife are abolished; but such acts are to be construed as not otherwise impairing the unity of the spouses....

“The civil law has, generally speaking, recognized the separate existence of the wife.”

§ 4 Legislative Power; Constitutionality and Construction of Statutes

“Legislative power over the marriage relationship exists in the state of the matrimonial domicil, and not in the United States, except in territories thereof.

“The public interest in the marriage relationship is greater even than the private interest of husband and wife in their relationship. The law favors the marital relation and the permanence of the family.

“The family, with the obligations and privileges pertaining to it, reaches back of all state regulations, although it is necessarily regulated by positive law.” [It predates the state and state law, but it is regulated by positive law].

§ 8 Rights of Wife and Duties of Husband

“Consortium includes, at least according to some cases, the wife’s right to support by the husband, and among the duties assumed by the husband are his duties to love, cherish, and protect his wife, to give her a home, to provide her with comforts and the necessities of life within his means, to treat her kindly and not cruelly or inhumanly, and to discharge all the duties growing out of the relationship which has been created by the marriage.

“He is bound to honor her, accord to her freely and liberally all her rights, and guarantee to her the full and free enjoyment of all her just privileges and prerogatives as the mistress of his family and of the home that he provides for her. It is his duty not only to maintain and support her, but also to protect her from oppression and wrong.”

§ 9 Rights of Husband and Duties of Wife

“Consortium includes the husband’s right to the services of his wife as a wife, and this involves her duties to be his helpmeet, to love and care for him in such role, to afford him her society and her person, to protect and care for him in sickness, and to labor faithfully to advance his interests.

“Consortium includes the performance by a wife of her household and domestic duties, in the sense of whatever is necessary in such respect according to their station in life, without compensation therefor.

“A husband is entitled to the benefit of his wife’s industry and economy, and a contract for the performance of such services by her for compensation is void and of no effect.

“It has been said that by entering into the marriage she impliedly agrees to perform such services without compensation. The right of the husband to such services is a right of property. A wife is, however, under no duty to her husband at common law or under statute to perform services other than those usual marital services of a wife; and while the books abound in statements that the wife’s services are the husband’s, and that it is her duty to render them, the common law, it has been contended, gives him no remedy if she chooses not to perform them.”

§ 10 Head of Family

“The husband, unless incapacitated from executing the authority and performing the duty, is head of the family. This is so, not only at common law, but under the Married Women’s Acts. It is not the purpose of these acts to depose the husband from the position given him by the common law as the head of the family. It is necessary to the unity and preservation of the family, which is regarded as the basis of the state, to have a single head with control and power, and the husband is made that head and, in return, is made responsible for the maintenance and, at common law, for the conduct of his wife. Such fundamental authority is necessary to his duty to protect and provide for his wife and children.

“The authority of the husband as the head of the family gives him the right, acting reasonably, to direct the family’s affairs and to determine where and what the home of the family shall be, and thus, to establish the matrimonial and family domicil. The view has been taken that this right of the husband is not limited to the state or country in which the parties live at the time of their marriage, but in these days of easy communication between different countries and different parts of the same country, he may exercise it, where acting reasonably, in a way which will change his citizenship and allegiance.

“But he must act with due regard to the welfare, comfort, and peace of mind of his wife, and to her legal status as the mistress of his home, his companion, the sharer of his fortune, and not his serevant. She is under duty to submit to such reasonable governance of the family by the husband.

“A husband is responsible to society for the good order and decency of the household, and this is true under Married Women’s Acts endowing married women with separateness and equality of legal responsibility.

“The wife is the head of the family in so far as the husband is incapacitated from performing the duty.”

§ 11 Authority of Husband over Wife

“At early common law, however, the husband had authority, in many things, over the person of the wife. She performed everything under the wing, protection, and cover of the husband. She was in a condition of complete dependence and the inferior of her husband in all respects. She was under duty to obey him, at least, in so far as he was head of the family, and he could restrain her from gross misbehavior.

§ 14 Presumption that Spouses Do Duty and Kindness to Each Other

“It is a fundamental presumption of the law of husband and wife that both husband and wife do their marital duty to each other. Such presumption follows from the general presumption of the law that persons do their duty. It is presumed that a wife lives with her husband. One spouse ought to be presumed to entertain dispositions of kindness toward the other.”

Am Jur 2d

§ 2 Unity of Husband and Wife and Disability of Wife at Common Law

“At common law, husband and wife were regarded as one, and the legal existence of the wife during coverture was merged with that of her husband; as such, the wife was incapable of making contracts of acquiring property or disposing of property without her husband’s consent. As to her personal and property rights, the very legal existence of the wife was regarded as suspended for the duration of the marriage and merged into that of the husband, so that she lost the capacity to contract for herself, or to sue and be sued without joining the husband as plaintiff or defendant. The husband acquired the right to possession and use of his wife’s real and personal property, and he was entitled to all of her choses in action provided that he reduced them to possession during marriage by some act by which

he appropriated them to himself. In turn, he became liable for the torts of his wife, committed either before or during the marriage.”

§ 3 Statutory supersession of common-law status of married women

“The social order upon which the concept of legal unity between husband and wife was predicated no longer exists. During the 19th century Married Women’s Emancipation Acts were passed in all American jurisdictions. These were designed to confer upon married women a separate legal personality and to give them a separate legal estate in their own property. They conferred upon a wife the capacity to use or be sued without joining the husband and, generally, as far as third persons were concerned, made the wife separately responsible for her own torts. From an early date it was recognized that a primary purpose of these statutes was to free the wife’s property from the control of her husband. **The emancipation of a married woman from the legal disabilities of coverture does not merely place her on an equality with her husband, but it places her on an equality with a single woman and gives her all the rights that she would have had under the same facts as if she were single instead of married.** The modern conception of a married couple is not as an independent entity with a mind and heart of its own, but as an association of two individuals, each of whom controls or has the right to control his or her own life, association, finances, and affairs generally. Marriage does not destroy one’s constitutional right to personal autonomy.”

APPENDIX B: The Anglo-American Doctrine of Coverture

I. England's "Common Law of Coverture" was based upon the Sacred Scriptures, such as Gen. 2:21-24; Gen. 5:1-2; Matt. 19: 3-9; 1 Peter 3: 1-7; Eph. 5:22-33. The principle of coverture was described in William Blackstone's *Commentaries on the Laws of England* in the late 18th century:

By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs every thing; and is therefore called in our law-French a feme-covert; is said to be covert-baron, or under the protection and influence of her husband, her baron, or lord; and her condition during her marriage is called her coverture.

Upon this principle, of a union of person in husband and wife, depend almost all the legal rights, duties, and disabilities, that either of them acquire by the marriage. I speak not at present of the rights of property, but of such as are merely personal.

For this reason, a man cannot grant anything to his wife, or enter into covenant with her: for the grant would be to suppose her separate existence; and to covenant with her, would be only to covenant with himself: and therefore it is also generally true, that all compacts made between husband and wife, when single, are voided by the intermarriage.⁷²

The Puritans of England and Colonial New England

The common law theory of coverture, first developed in England and brought to America... grew directly from the Christian belief of the unity of the spouses described above....⁷³

⁷² <https://en.wikipedia.org/wiki/Coverture>

⁷³ Judith R. Gething, Ph.D., "Christianity and Coverture: Impact on the Legal Status of Women in Hawaii, 1820-1920," [Citation omitted], pp. 188-220.

Christianity, as interpreted by a line of thinkers from John Calvin through John Winthrop, to the preachers of the early 1800s, detailed an important but subservient role for women. As opposed to other interpretations of the Bible, the Congregationalists believed all souls, those of women as well as those of men, were important and worthy of salvation. This is an essential key to understanding the role of women because part of the result of this belief was a sincere respect for women and their work within their own sphere. Their own sphere, however, was almost totally separate from and subservient to men's'. The Bible was the key to this subservient status and the basis for it started with the beginning, the book of Genesis....⁷⁴

Woman was to be man's helpmate, his subordinate, whose Christian duty was to fulfill the roles of wife and mother. Marriage was a solemn sacrament. Jesus had said, "For this cause shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh. Wherefore they are no more twain, but one flesh, what therefore God hath joined together, let no man put asunder." A woman was not to be a preacher or hold lay offices, except perhaps in the Sunday or church school....⁷⁵

In addition to establishing the father as the head of the household, Christianity had an impact on the lives of women in many other ways. Divorce, adultery, and fornication had been proscribed by Jesus in the Sermon on the Mount. Divorce on grounds of adultery was permissible; remarriage, however, was not. Divorce, adultery, and fornication, along with sodomy, rape, statutory rape, and prostitution were all illegal in New England in the early 1800s. Opinion varies on the question of what the Bible requires in relation to abortion, but in 1800 abortion after quickening was generally considered murder and was illegal. A modest Christian woman wore conservative clothes and covered her head in church in respect to Paul's command.⁷⁶

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

II. The Biblical Origins of the Anglo-American Common Law of the Doctrine of Coverture

1. **Law of Moses(Genesis 5:1-2):** “This *is* the book of the generations of Adam. In the day that God created man, in the likeness of God made he him; Male and female created he them; and blessed them, and called their name Adam, in the day when they were created.”

2. **Law of Moses (Genesis 2: 21-24):** “And the LORD God caused a deep sleep to fall upon Adam, and he slept: and he took one of his ribs, and closed up the flesh instead thereof; And the rib, which the LORD God had taken from man, made he a woman, and brought her unto the man. And Adam said, This is now bone of my bones, and flesh of my flesh: she shall be called Woman, because she was taken out of Man. Therefore shall a man leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh. And they were both naked, the man and his wife, and were not ashamed.”

3. **Law of Christ (Matthew 19:3-9):** “The Pharisees also came unto him, tempting him, and saying unto him, Is it lawful for a man to put away his wife for every cause? And he answered and said unto them, Have ye not read, that he which made *them* at the beginning made them male and female, And said, For this cause shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh? Wherefore they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder. They say unto him, Why did Moses then command to give a writing of divorcement, and to put her away? He saith unto them, Moses because of the hardness of your hearts suffered you to put away your wives: but from the beginning it was not so. And I say unto you, Whosoever shall put away his wife, except *it be* for fornication, and shall marry another, committeth adultery: and whoso marrieth her which is put away doth commit adultery.”

4. **Law of Christ (1 Peter 3: 1-7):** “Likewise, ye wives, *be* in subjection to your own husbands; that, if any obey not the word, they also may without the word be won by the conversation of the wives; While they behold your chaste conversation *coupled* with fear. Whose adorning let it not be that outward *adorning* of plaiting the hair, and of wearing of gold, or of putting on of apparel; But *let it be* the hidden man of the heart, in that which is not

corruptible, *even the ornament* of a meek and quiet spirit, which is in the sight of God of great price. For after this manner in the old time the holy women also, who trusted in God, adorned themselves, being in subjection unto their own husbands: Even as Sara obeyed Abraham, calling him lord: whose daughters ye are, as long as ye do well, and are not afraid with any amazement. Likewise, ye husbands, dwell with *them* according to knowledge, giving honour unto the wife, as unto the weaker vessel, and as being heirs together of the grace of life; that your prayers be not hindered.”

5. **Law of Christ (Ephesians 5:22-33):** “Wives, submit yourselves unto your own husbands, as unto the Lord. For the husband is the head of the wife, even as Christ is the head of the church: and he is the saviour of the body. Therefore as the church is subject unto Christ, so *let the wives be* to their own husbands in every thing. Husbands, love your wives, even as Christ also loved the church, and gave himself for it; That he might sanctify and cleanse it with the washing of water by the word, That he might present it to himself a glorious church, not having spot, or wrinkle, or any such thing; but that it should be holy and without blemish. So ought men to love their wives as their own bodies. He that loveth his wife loveth himself. For no man ever yet hated his own flesh; but nourisheth and cherisheth it, even as the Lord the church: For we are members of his body, of his flesh, and of his bones. For this cause shall a man leave his father and mother, and shall be joined unto his wife, and they two shall be one flesh. This is a great mystery: but I speak concerning Christ and the church. Nevertheless let every one of you in particular so love his wife even as himself; and the wife *see* that she reverence *her* husband.”

APPENDIX C. England’s Ecclesiastical Courts (General and Limited Jurisdiction)—1534-1800⁷⁷

England’s Ecclesiastical Court System (1534-1800)	Jurisdiction	Court Type
Archbishop (York; Canterbury)	Province (includes several Dioceses)	Audience Court/ Appeals Courts/ Prerogative Court ⁷⁸
Bishop	Diocese (includes several Parishes)	Bishop’s Courts/ Consistory Courts ⁷⁹
Priests	Parishes	Church Courts/ Ecclesiastical Courts ⁸⁰

ARCHBISHOPS (York; Canterbury):

In England and Wales two leading bishops developed at York and Canterbury with powers to supervise their fellow bishops and to hear appeals in disputes. The areas of jurisdiction of these ‘archbishops’ were called ‘provinces’ and the province of Canterbury came to include all Wales (until the Archbishopric of Wales was created in 1920), the northern province of York covering the counties of Cumberland, Durham, Lancashire, Northumberland, Nottinghamshire

⁷⁷ “Church Courts in England and Wales,”

https://www.familysearch.org/wiki/en/Church_Courts_in_England_and_Wales

⁷⁸ https://www.familysearch.org/wiki/en/Church_Courts_in_England_and_Wales

⁷⁹ Ibid.

⁸⁰ Ibid.

(prior to 1839), Westmorland and York, and that part of the Cheshire north of the River Ribble.

The archbishops had several courts. Each had an audience court that heard cases against the clergy and each had an appeal court that heard cases of every description referred from the bishops' and other lower courts.

Both archbishops also had a prerogative court which proved wills but also heard cases about the validity of wills that were in dispute. Cases about the interpretation of wills usually went to the Court of Chancery, though it was not uncommon for cases about a will to run in parallel in both a prerogative and the Chancery Court.⁸¹

BISHOPS (Church of England):

From its earliest days the Church of England was ruled by bishops and their areas of jurisdiction were called dioceses or sees. They ordained priests and allotted them to churches which likewise came to be called parishes. The bishops oversaw the spiritual welfare of the people as well as the property and income given to the church and its clergy, enforcing the rules and regulations of the mother church.

To this end the bishops visited their dioceses on appointment and then again every three or four years. They did not go out to every parish but held court in one church for each group of three or four rural deaneries, each of which contained perhaps a dozen parishes. Before his 'visitation' the churchwardens of each parish in the diocese were given notice to submit a 'presentment' of things that needed attention.

The bishops' courts came to be called consistory courts and were held regularly throughout the year as well as during visitations. The bishop did not necessarily preside in person and much of the business was carried out by his chancellor or, as mentioned below in the larger archdeaconries, by his 'commissary'.

From the sixteenth century the churchwardens were provided with a printed list of 'articles of inquiry' to which they, as 'presenters', were

⁸¹ Ibid.

required to give answers. These may not be very helpful, the words 'all is well' or 'omnia bene' often being used in reply. However, from the 1670s, the numbers of communicants and the names of the recusants and dissenters in the parish as well as details of schools and charities often appear. Bishop Turner, of Ely, for instance, in 1686 asked for a census of people in his dioceses over the age of sixteen. Sadly, in this case only the statistics and not the names survive. From the early and mid-eighteenth century these visitation articles of inquiry may be much more detailed and informative. A few, for example the diocese of Oxford in 1738 and 1854, the diocese of Exeter in 1821, and the diocese of Yorkshire in 1743, have been printed.⁸²

PARISH COURTS (i.e., the Ecclesiastical Courts)(BEFORE 1641):

Because of the many cases of sexual misconduct and defamation which the church courts heard, they have become known as the 'bawdy courts', but there is much in the records that is of great value genealogically and which deserves wider attention.

The matters 'presented' by the churchwardens and their sidesmen at the visitations of archdeacons and bishops touched on many aspects of parish life. Thus attendance at, and especially behaviour in, the church or churchyard, the conduct of parish officers, matters connected with the church fabric, furniture and its maintenance, parish dues and tithes, were considered, as well as all aspects of betrothal, marriage and wills. Offences such as libel, slander, defamation, bastardy, bigamy, incest and adultery were also dealt with.

In the sixteenth century the Act Books kept by the archdeacon's clerk would show, in a typical example, that some thirty per cent of his cases would be to do with wills and administrations, sixteen per cent with non-payment of tithes, eleven per cent with the non-presentment or concealment of offences at and absences from the archdeacon's visitation, nine per cent with defamation and libel, eight per cent with non-payment of fees, four per cent with working on Sundays or, more

⁸² https://www.familysearch.org/wiki/en/Church_Courts_in_England_and_Wales

often, on holidays, and the remainder to do with licences for curates, preaching or teaching, and with offences committed by the clergy, parish officers and the laity. However, in about twelve per cent of the cases the actual offence would not be specified in the record.

The matters dealt with by the church courts changed slowly following the Reformation in 1530 but it had no effect at all on the forms of the records maintained. Many of the semi-secular cases which the courts would have dealt with in the sixteenth century passed, however, to the courts of Quarter Sessions in the seventeenth century.

Following presentment by the churchwardens or constables of the appropriate parish the accused person was then 'cited' to appear. This was done by notice sent to the clergy and read out in church. The notice was endorsed to that effect and returned to the bishop. The witnesses made depositions on oath that they might purge the accused by proving his or her innocence. Failure to appear usually involved excommunication, notice again being sent via the clergy, read out, sign and returned.

The church courts were abolished in 1641 and some losses in the earlier records then occurred. Some of the pre-1641 Act Books seem to have been preserved merely for use as precedents and the subsidiary papers do not often survive for this period.⁸³

PARISH COURTS (i.e., Ecclesiastical Courts) (AFTER 1661):

Although the church courts were restored in 1661, their authority was never quite the same again. By the end of that century, with the continued decline in the power of the Church of England, there were only a few matters which came regularly to their attention. Aside from the regular probate of wills and the granting of marriage licences about a third of all the cases concerned probate disputes, fifteen per cent matrimony, fifteen per cent dilapidations, faculties, pews, tithes, rates and fees, ten per cent defamation, and the remainder mostly

⁸³“Church Courts in England and Wales,”
https://www.familysearch.org/wiki/en/Church_Courts_in_England_and_Wales

concern the clergy, churchwardens and the misbehaviour of parishioners in church and matters arising from the work of the court itself. The presentments of non-attenders at church down to about 1760 may be a valuable source of information about nonconformists and Catholics in each parish.

In this later period, although again the Act Books remain the chief guide to what was happening, there may be digests of presentments (files made up by parishes in deaneries for each visitation) and the important depositions of witnesses which show age, occupation and length of residence, are more likely to survive.

Some cases which appear on the surface to be merely of a technical nature, for example those to do with tithes or with the pews in the church, may produce whole groups of elderly local witnesses. A dispute about the right to nominate a curate at Saltash which went to appeal in 1752, for instance, produced twenty such witnesses. Tithe cases may be of value in tracing nonconformist families and those to do with seating in the pews may provide details of old family rights and ancestral claims.

The records of the various church courts are usually with the other diocesan records in the appropriate county record office. The existence of indexes or calendars varies enormously from place to place. If possible depositions are to be found much searching of files may be required. At all times cases dragged on, often with no clear purpose or stated outcome.⁸⁴

⁸⁴ Ibid.

Appendix D-- “The American Slave Code: Systematic Denial of Anglo-American Common Law of Family, Husband and Wife to African Americans, 1619-1865”

The Puritans of seventeenth-century colonial New England believed that the “family unit” is the cornerstone of the secular civil society, as well as the foundation of the church. They also believed that a properly functioning family structure also required “family government”—that is to say, proper training, adequate preparation, and the highest public-policy priorities of both the Church and the State. **When we compare the regulation of African slaves and slave families in British North America to the standards of “family government” established by the Puritans, we can easily see how the African American family structure was seriously crippled by the system of slavery and lingering racial discrimination. Whereas Puritan and Anglican ideals of the family unit required strict conformity of Christian standards and ideals, the institution of American slavery stripped the African slaves of having any of these conjugal privileges.**

1. A publication of the American and Foreign Anti-Slavery Society is titled, *The American Slave Code*, provides a compilation of the laws that governed and regulated the conjugal relationship among African American slaves in the United States. For example, **Chapter VII, “Slaves Cannot Marry,” of The American Slave Code**⁸⁵, says:

a. “Men may forget or disregard the rules of logic in their reasonings about slavery, but the genius that presides over American slavery never forgets or disregards them.”⁸⁶

b. “The slave has no rights. Of course he, or she, cannot have the rights of a husband, a wife.”⁸⁷

⁸⁵ William Goodell, *The American Slave Code in Theory and Practice: Its distinctive features shown by Its Statutes, Judicial Decisions, and Illustrative Facts* (New York: American and Foreign Anti-slavery Society, 1858)[reprinted by the University of Michigan], pp. 106-112.

⁸⁶ Ibid.

⁸⁷ Ibid.

c. “Slaves are not people, in the eye of the law. They have no legal personality.”⁸⁸

d. “The slave is one who is in the power of a master to whom he belongs.’ How, then, can the slave marry?”⁸⁹

e. “The legal relation of master and slave,’ with all the vestal robes of its spotless innocency, and saintly Biblical paternity, has never, in this country, been held to be compatible with marriage.”⁹⁰

f. “So early as in colonial times, when parish ministers, all over New England, owned slaves, it was held by learned civilians in good old Connecticut, that when a slaver master, though inadvertently, gave verbal license to a female slave to marry, the license made her free. Being married, she was not a slave, and the husband bore off his prize in triumph, before her master!”⁹¹

g. “The same doctrine has always been held (though differently enunciated) at the South. Slave mothers are there licensed by their masters to be ‘breeders,’ not wives, and thus they are retained as slaves.”⁹²

h. “A slave cannot even contract matrimony, the association which takes place among slaves, and is called marriage, being properly designated by the word contubernium, a relation which has no sanctity, and which no civil rights are attached.’ (Stroud’s ‘Sketch of the Slave Law,’ p. 61).”⁹³

i. “A slave has never maintained an action against the violator of his bed.”⁹⁴

j. “Slaves were not entitled to the conditions of matrimony, and therefore they had no relief in cases of adultery; nor were they the proper objects of

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid.

cognition or affinity, but of quasi-cognition only.’ (Dr. Taylor’s ‘Elements of the Civil Law,’ p. 429).⁹⁵

k. “The obligations of marriage are evidently inconsistent with the conditions of slavery, and cannot be performed by a slave. **The husband promises to protect his wife and provide for her. The wife promises to be the help-meet for her husband. They mutually promise to live with and cherish each other, till parted by death. But what can such promises by slaves mean? The ‘legal relation of master and slave’ renders them void!** It forbids the slave to protect even himself. It clothes his master with authority to bid him inflict deadly blows on the woman he has sworn to protect. It prohibits his possession of any property wherewith to sustain her. His labor and his hands it takes from him. It bids the woman assist, not her husband, but her owner! Nay! It gives him unlimited control and full possession of her own person, and forbids her, on pain of death, (as will be shown,) to resist him, if he drags her to his bed! It severs the plighted pair, at the will of their masters, occasionally, or for ever!”⁹⁶

l. “The innocent ‘legal relation’ of slave-ownership does or permits all this, and without forfeiting clerical favor, or a high seat in the Church, or in the Senate, or Presidential chair. What, then, can the marriage vows of slaves mean?”⁹⁷

m. “The Presbyterian Synod of Kentucky, in their address, have given us their testimony to the general fact and its effects. They say: The system ‘produces general licentiousness among the slaves. Marriage, as a civil ordinance, they cannot enjoy.’”⁹⁸

n. “We have seen a well-authenticated account of a respectable Christian lady at the South, who kept a handsome mulatto female for the use of her genteel son, as a method of deterring him, as she said, from more indiscriminate and vulgar indulgences.”⁹⁹

o. “Even in Puritan New-England, seventy years ago, female slaves, in ministers’ and magistrates’ families, bore children, black or yellow, without

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

marriage. No one inquired who their fathers were, and nothing more was thought of it than of the breeding of sheep or swine. We had the facts from those who well remembered them.”¹⁰⁰

p. “The rapid and constant bleaching of colors, at the South, assures us that there is no exaggeration in these pictures. And if the Synod of Kentucky were not mistaken, the innocent ‘legal relation’ of slave ownership is to be held responsible for it all. Where the laws annul marriage, we may be certain that ‘the people are not better than their laws.’”¹⁰¹

4. And, as another example, **Chapter VIII, “Slaves Cannot Constitute Families,”** *The American Slave Code*, states the following:¹⁰²

a. “The family relation originates in the institution of marriage, and exists not without it.”

b. “‘Of course, these laws do not recognize the parental relation, as belonging to slaves. A slave has not more legal authority over his child than a cow has over his calf.’ (Jay’s Inquiry, p. 132)”

c. “The fact that the slave, as a chattel personal, may be bought, sold, transported from one place to another, mortgaged, attached, leased, inherited, and ‘distributed’ in the settlement of estates, shows plainly that slaves cannot constitute families.”¹⁰³

d. “‘In the slaveholding States, except in Louisiana, no law exists to prevent the violent separation of parents from their children, or even from each other.’ (Stroud’s Sketch, p. 50).”¹⁰⁴

e. “‘Slaves may be sold and transferred from one to another without any statutory restriction or limitation, as to the separation of parents and children, &c., except in the State of Louisiana.’ (Wheeler’s Law of Slavery, p. 41).”¹⁰⁵

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid., pp. 113-121.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

f. “ ‘They often part men from their wives by selling them far asunder, which is common when estates are sold by executors at vendue.’ (Journal of the Life of John Woolman, London edition, p. 74).”¹⁰⁶

g. “It is the common understanding at the South, that slaves do not constitute families.”¹⁰⁷

h. “Parents are almost never consulted as to the disposition to be made of their children, and they have as little control over them as have domestic animals over the disposal of their young. Every natural and social feeling and affection are violated with indifference. Slaves are treated as though they did not possess them.’ (Ib. pp. 65-7)[Italics in the original text].¹⁰⁸

5. And a final example can be found in **Chapter IX, “Unlimited Power of the Slaveholder,”** *The American Slave Code*, which says:¹⁰⁹

a. “The Savannah River Baptist Association approvingly recognized the unlimited authority of the master, when they maintained his authority to annul slave marriages, and to compel new sexual connections between Baptist husbands and wives whom he had forcibly severed! The people are here found to be no better than their laws, and the Church no better than the people.”¹¹⁰

6. Similarly, while describing the impact of this aspect of the “American Slave Code” upon the black family, African American scholar **W.E.B. Du Bois, in his seminal classic *The Souls of Black Folk*** has likewise noted:

a. “Under the lax moral life of the plantation, where marriage was a farce, laziness a virtue, and property a theft, a religion of resignation and submission degenerated easily, in less strenuous minds, into a philosophy of indulgence and crime. **Many of the worst characteristics of the Negro masses of to-day had their seed in this period of the slave’s ethical growth.** Here it was

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid., pp. 122-127.

¹¹⁰ Ibid., p. 127.

that the **Home was ruined under the very shadow of the Church**, white and black....”¹¹¹

b. **“The plague-spot in sexual relations is easy marriage and easy separation. This is no sudden development, nor the fruit of Emancipation. It is the plain heritage from slavery.** In those days Sam, with his master’s consent, ‘took up’ with Mary. No ceremony was necessary, and in the busy life of the great plantations of the Black Belt it was usually dispensed with. If now the master needed Sam’s work in another plantation or in another part of the same plantation, or if he took a notion to sell the slave, Sam’s married life with Mary was usually unceremoniously broken, and then it was clearly to the master’s interest to have both of them take new mates. This widespread custom of two centuries has not been eradicated in thirty years. To-day Sam’s grandson ‘takes up’ with a woman without license or ceremony; they live together decently and honestly, and are, to all intents and purposes, man and wife. Sometimes these unions are never broken until death; but in too many cases family quarrels, a roving spirit, a rival suitor, or perhaps more frequently the hopeless battle to support a family, lead to separation, and a broken household is the result. **The Negro church has done much to stop this practice**, and now most marriage ceremonies are performed by the pastors. Nevertheless, **the evil is still deep seated, and only a general raising of the standard of living will finally cure it.**”¹¹²

*“You are great, lord, and greatly to be praised;
great is your power, and infinite is your wisdom.”*

-- St. Augustine of Hippo

¹¹¹ W.E.B. Du Bois, “The Souls of Black Folk,” *Writings* (New York, N.Y.: The Library of America, 1986), p. 500.

¹¹² *Ibid.*, p. 461.